

VICKERY & WORACHAI LTD.

LAWYERS

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Laws and Regulations Updated

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- Draft Small and Medium Sized Enterprises Development Bank of Thailand Act
- Draft Islamic Bank of Thailand Act
- Draft Ministerial Regulations
Describing the rules and procedures for refund of duty or security for the payment of duties of counter market dumping and subsidy of goods from abroad

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Draft Computer Crime Act

Status: *Approved by the National Information Technology Commission on 2 May 2002.*

This draft act will be proposed to the Juridical Council, the Cabinet and the Parliament for further consideration.

Relevant Authority: Office of the Prime Minister

In order for the prevention and suppression of the computer criminal action, this law determines the penalty for the offences that are considered as the computer criminal actions.

The followings are the significant offences under this law which shall be subject to the punishment, i.e. an imprisonment or a fine or both:

Offences relating to the secret control, completeness and operation of computer information and computer system:

- 1) To access illegally to the computer system of the others that has its own specific protection from being accessed.
- 2) To access illegally to the computer information of the others that has been kept or sent by electronics means and has its own specific protection from being accessed.
- 3) To commit any illegal action by the electronics means in order to know or to obtain the computer information of the others which is during transmitting through the computer system.
- 4) To illegally delete, damage, destroy, deteriorate, change or add the computer information of the others in whole or in part.
- 5) To commit any illegal action in order to disturb the operation of the computer system.
- 6) To possess, produce, distribute, sell, offer to sell, exchange, offer to exchange, purchase, use, possess for use, export from or import into Thailand the following things for committing the above offences:
 - (1) device including computer information which is specifically designed or modified; or
 - (2) password, access code or any like information in order to access the computer system.

Draft Small and Medium Sized Enterprises Development Bank of Thailand Act

Status: *Approved by the Parliament in the Ordinary General Parliament's Meeting on 29 May 2002, as proposed by the Cabinet and the Members of Parliament.*

This draft Act has been considering by the Senate.

Relevant Authority: *Ministry of Finance and Ministry of Industry*

This Act intends to dissolve the Small Industry Finance Corporation by repealing the Small Industry Finance Corporation Act B.E. 2534 (AD. 1991) and to establish a juristic person called the "Small and Medium Sized Enterprises Development Bank of Thailand" ("SMEs Bank"). Firstly, the status of SMEs Bank is a government enterprise. All businesses, assets, debts, equity, accumulated profit, reserves, including all rights and liabilities of the Small Industry Finance Corporation as of the effective date of this Act shall be transferred to SMEs Bank.

The objective of SMEs Bank is to carry out the business for developing, promoting and supporting of the establishment, operation, extension or improvement of the Small and Medium Sized Enterprises by providing loan, guarantee, joint investment, advice or other necessary services pursuant to this Act.

The initial capital of SMEs Bank is Baht 10,000,000,000 (Baht Ten Billion) divided into 100,000,000 shares which shall be offered to the Ministry of Finance, financial institutions, or other persons as stipulated in the SMEs Bank's Articles of Association.. The capital may be increased or decreased by the resolution of its shareholders' meeting.

SMEs Bank may offer its securities to the public (public offering) upon readiness and having stable status and obtaining the approval from the Cabinet.

SMEs Bank shall be managed by its Board of Directors, Executive Committee, and Manager under the control of the shareholders, Finance and/or the Industrial Minister in accordance with the Articles of Association and this Act.

SMEs Bank shall have authority and power to perform its businesses within its objective scope. Such authority and power shall include but not limited to:

- 1) Granting loan to the Small and Medium Sized Enterprises with or without the security in accordance with its Articles of Association, which shall determine the borrower's qualification, loan purpose, repayment term, maximum amount of loan, security of loan or the exception of such security procurement, loan interest rate, loan repayment and other related matters.
- 2) Joint investing in the Small and Medium Sized Enterprises.

- 3) Providing advice relating to finance, technique, knowledge, production development, marketing, administration and management to the Small and Medium Sized Enterprises and assisting such enterprises to obtain the financial, administrative, management or technical services.
- 4) Providing debt guarantee.
- 5) Issuing financial instruments.
- 6) Carrying out of foreign monetary business.
- 7) Obtaining the deposit which must be paid on call or at the end of the expiration of the fixed period with the interest at the rate specified by SMEs Bank, provided that for obtaining deposit from the public, the prior approval from the Cabinet must be obtained.

In the event that SMEs Bank is damaged due to the implementation in accordance with the order of the Minister pursuant to this Act or the agreement made between SMEs Bank and the government, the Ministry of Finance may, with approval of the Cabinet, consider compensating any damage to SMEs Bank as appropriated.

Definition:

“**The Small and Medium Sized Enterprises**” means merchandise production business, service providing business, wholesale business, retail business or other businesses that the volume of employment, permanent assets value or the paid-up registered capital is met the requirements and conditions specified by the Board of Directors of SMEs Bank.

Draft Islamic Bank of Thailand Act

Status: *Approved by the Parliament in the Ordinary General Parliament's Meeting on 29 May 2002, as proposed by the Cabinet and the Members of Parliament.*

This draft Act has been considering by the Senate.

Relevant Authority: Ministry of Finance

Under this Act, the Islamic Bank of Thailand (“**Bank**”) shall be established as a juristic person.

The initial capital of the Bank is Baht 1,000,000,000 (Baht One Billion) divided into 100,000,000 ordinary shares which shall be offered to the Ministry of Finance or other persons as stipulated in the Bank's Articles of Association. The Ministry of Finance shall purchase the Bank's shares in the number as it deems appropriate, but same shall not exceed 49% of the total issued shares of the Bank.

The reduction of capital shall be approved by the Cabinet in advance.

Unless the waiver from the Finance Minister is obtained, Thai nationals shall hold certain shares of the Bank in the number not lower than the rate to be specified in the Ministerial Regulations, and not less than two-thirds of all directors shall also be Thai nationals.

The Public Limited Companies Act shall apply to the Bank *mutatis mutandis*.

The Bank's objective is to carry out the financial business that does not relate to the interest in order to comply with the principles of the Islamic religion.

The Bank shall be managed by its Board of Directors, Executive Committee, and Manager under the control of the shareholders and the Finance Minister in accordance with the Articles of Association and this Act.

The significant business operations of the Bank, which shall be in compliance with the principles of the Islamic religion, are as follows:

- 1) Obtaining the deposit which must be paid on call or at the end of the expiration of the fixed period.
- 2) Obtaining the deposit for the investment.
- 3) Carrying out of foreign monetary business.
- 4) Issuing, selling, purchasing, or purchasing with discount of the financial instruments, or accepting the transfer of claims from the beneficiary of such instrument.
- 5) Lending or rendering other financial services which are in customary practice of the commercial banks or other financial institutions relating to the international trading business.
- 6) Collecting for a discount, fee and other service charges in connection with granting of loan, purchasing, purchasing with discount, guarantee and other service providing.

Punishment:

This Act specifically determines the criminal penalties for the violation against this Act. The significant penalties are as follows:

- 1) Director, manager, employee or the authorized person of the Bank, who, in bad faith, deceives the public by demonstrating a falsehood or concealing the facts which should be revealed to the public, and by such deception, obtains a property from the person so deceived or a third person, or causes the person so deceived or a third person to execute, revoke or destroy a document of right, shall be punished with an imprisonment from 5 to 10 years and a fine from Baht 500,000 to Baht 1,000,000.
- 2) Director, manager, employee or the authorized person assigned for managing the Bank's or other person's assets, who, in bad faith, commits any act with his wrongful duty for whatever reason, which causes the damage against the property advantages of the Bank or such person, shall be punished with an imprisonment from 5 to 10 years and a fine from Baht 500,000 to Baht 1,000,000.
- 3) Director, manager, employee or the authorized person of the Bank possessing the property of the Bank or other person, who, in bad faith, converts such property for himself or for a third person, shall be punished with an imprisonment from 5 to 10 years and a fine from Baht 500,000 to Baht 1,000,000.
- 4) Director, manager, employee or the authorized person of the Bank committing or consenting to any person committing the following actions:
 - (1) to cause damage, destroy, alter, delete or falsify any account document or security of the Bank or related to the Bank;
 - (2) to fill out the false statement or not to fill out the significant statement in the account or documents of the Bank; or
 - (3) to make incomplete, incorrect, untrue or not up to date account in order to deceive the Bank or the shareholders to miss their benefit that is supposed to belong to them or to deceive any person;

shall be punished with an imprisonment from 5 to 10 years and a fine from Baht 500,000 to Baht 1,000,000.

Draft Ministerial Regulations**Describing the rules and procedures for refund of duty or security for the payment of duties of counter market dumping and subsidy of goods from abroad**

Status: *Approved by the Cabinet, as proposed by Ministry of Finance and considered by the Juridical Council.
Ministry of Finance considering this draft for further publicize in the Royal Gazette.*

Relevant Authority: *Ministry of Finance*

This Ministerial Regulations describe the rules and procedures for the refund of duty or the security for the payment of duty as follows:

- 1) The Customs Department shall refund the duty security and the security for temporary payment of duty to the importer in accordance with the final decision of the Committee Considering Market Dumping and Granting of Subsidy (“**Committee**”) which ordered to refund since there is no reason to keep such security.
- 2) The Customs Department shall refund the temporary duty or the difference of the duty if the Committee has its final decision to collect the counter market dumping duty whether or not the temporary measure is enforced or applied.
- 3) The Customs Department shall refund the temporary duty in case the Committee has its final decision that there is no market dumping or no occurrence of damage.
- 4) The Customs Department shall refund the counter market dumping duty in case the importer requests for the refund of the collected counter market dumping duty and can prove that there is no market dumping differential or such market dumping differential is lower than the counter market dumping duty so enforced or applied.
- 5) The rules and procedures for the refund of the duty or the security for payment of the counter market dumping duty shall apply or enforce to the counter subsidy mutatis mutandis.