

GOVERNMENT PENSION FUND ACT

B.E. 2539

BHUMIBOL ADULYADEJ REX.

Given on the 26th day of September B.E. 2539

Being the 51st year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is deemed appropriate to have the law on government pension fund,

Be it therefore enacted by the King, by and with the advice and consent of the

Parliament as follows:

Section 1 This Act shall be called the “Government Pension Fund Act B.E. 2539”

Section 2 This Act shall come into force as from the day following the date of its publication in the Government Gazette except that the provisions under Chapter 3 shall come into force on the one hundred and eightieth day following the date on which this Act has come into force.

Section 3 In this Act

“Official” means a civil official under the law on civil official rules, a judicial official under the law on judicial official rules, a public prosecutor under the law on public prosecutor rules, a civil official in a university under the law on civil officials in the university rules, a teacher under the law on teacher rules, an ordinary parliamentary official under the law on ordinary parliamentary official rules, a police official under the law on police official rules, a military official under the law on military official rules, a constitution court official under the law on constitution court office and a civil official prescribed under the law as a civil official under this Act.

“Fund” means the Government Pension Fund.

“Member” means a member of the Government Pension Fund.

“Salary” means a salary received under the law on the rules with respect to such officials including a monthly academic honorarium, a remuneration for a position of the risky duties for combat or suppression of offenders but excluding other additional money.

“Savings” means the money saved by a Member with the Fund hereunder.

“Additional fund” means the money added by the Government to the savings hereunder.

“Initial fund” means the money put by the Government into the Fund as an additional payment to a Member who was an official before the date on which the provisions under Chapter 3 has come into force and chose to receive a Pension.

“Compensation” means the money put by the Government into the Fund as an additional payment to a Member who receives a Pension.

“Pension” means the money paid to a Member on a monthly basis when his/her membership terminates.

“Gratuity” means the money paid to a Member once and for all when his/her membership terminates.

“Bequesting gratuity” means the money paid to the heirs once and for all in case of death of a Member or a pensioner.

“Official term” means the period commencing on the date on which a Member serves as an official until the last day of his/her Salary pursuant to the criteria and procedures provided herein and also includes the calculation of double official term under the law on officials' gratuity and pension.

“Committee” means the Committee of the Government Pension Fund.

“Committee member” means a member of the Committee of the Government Pension Fund .

“Secretary-General” means the Secretary-General of the Committee of the Government Pension Fund.

“Staff” means a staff of the Government Pension Fund.

“Employee” means an employee of the Government Pension Fund.

“Authority” means a person appointed by the Minister to execute this Act.

“Minister” means the Minister who takes charge of this Act.

Section 4 The Minister of the Ministry of Finance shall take charge of this Act and shall have the powers to appoint the Authorities and to prescribe the ministerial rules for the implementation hereof. Such ministerial rules, upon publication in the Government Gazette, shall come into force.

CHAPTER 1

ESTABLISHMENT OF THE FUND AND NATURE OF ITS AFFAIRS

Section 5 The Fund called the “Government Pension Fund”, as abbreviatedly called the “GPF” shall be established.

The Fund shall be a juristic person having the following objectives.

(1) To serve as a security for the payment of gratuity and pension and to provide the benefits for the officials upon their termination of official services,

(2) To promote the savings of the members,

(3) To provide the welfare and other benefits for the Members.

Section 6 The Fund consists of the following property.

(1) Savings, Additional fund, Initial fund and Compensation,

(2) Money allotted under Section 72,

(3) Donated property,

(4) Money allocated by the Government as necessary for the implementation of the Fund's objectives,

(5) Other revenues,

(6) Accruelements of the money or property of the Fund.

Section 7 The affairs of the Fund are not subject to the laws on labor protection, on labor relations, on state enterprise personnel relations and on social security.

Section 8 The Fund shall have its headquarter located at such place as prescribed and published in the Government Gazette and may establish the branches or agencies in any other place as necessary.

Section 9 The Fund shall have the powers to conduct the affairs within the scope of objectives under Section 5 and such powers shall include

(1) the holding of title, possession and real rights,

(2) the creation of rights or undertakings of any juristic acts both within and

outside the Kingdom;

(3) the extension of loan to the Members,

(4) the investment from the property of the Fund,

(5) the undertakings of such other acts as relating to or connecting with the achievement of the objectives of the Fund.

Section 10 The expenses for operations of the Fund shall be paid out of the money of the Fund in accordance with the criteria and procedures as determined by the Committee.

Section 11 The Fund is neither a government agency nor a state enterprise under the law on budgeting and the revenues of the Fund are not required to remit as the state revenues.

CHAPTER 2 CONTROL AND ADMINISTRATION

Section 12 The Committee called the “Committee of the Government Pension Fund “ shall be established consisting of the Permanent Secretary of the Ministry of Finance as the Chairman, the Director of the Bureau of the Budget, the Secretary-General of the Council of State, the Secretary-General of the Civil Service Commission, the Secretary-General of the National Economic and Social Development Board, the Director of the Fiscal Policy Office, the Director-General of the Comptroller-General’s Department, the Governor of the Bank of Thailand, the Secretary-General of the Securities and Exchange Commission, one representative official of each type of the Members under Section 3 who has been elected under Section 13 and 3 experts who have been elected under Section 14 as the members.

The Secretary-General shall be a member and secretary.

The Committee may appoint a Staff not exceeding two persons to be the assistants to the secretary.

Section 13 An election of a representative of the Members as a member of the Committee under Section 12 paragraph one shall be made in accordance with the criteria and procedures specified by the Minister.

Section 14 The Chairman, ex officio members, and representatives of the Members shall convene to elect the expert members.

Section 15 An expert member shall not be subject to the following prohibitions.

(1) A person who has been expelled, removed, dismissed by the Government or state enterprise or other state agency or whose employment has been terminated on account of misconducts or constructive misconducts of the duties.

(2) A political official holding a political position, a member of a local assembly, or a local administrator or a Committee member or an advisor or staff member of a political party.

Section 16 A representative of the Members shall remain in office for each term of two years but may not hold such office exceeding two consecutive terms.

Section 17 An expert member shall remain in office for each term of two years but may not be an expert member exceeding two consecutive terms.

Section 18 Apart from vacating an office by his/her term, a representative member or expert member shall vacate the office when such person

(1) dies,

(2) resigns,

(3) becomes a bankrupt,

(4) becomes an incompetent or semi-incompetent person,

(5) is sentenced to an imprisonment by the final judgment thereof except for the penalty for offenses committed recklessly or petty offenses,

(6) ceases to be a Member or official of such type as he/she has been elected in the case of a representative member,

(7) is prohibited under Section 15 in the case of an expert member.

Section 19 In case where a representative member or expert member vacates the office by the term, a new member shall be elected within 60 days. Pending an election of a new member, the vacating member shall remain in office to continue his/her functions until a new member assumes his/her duties.

Section 20 In case where any representative member vacates the office before the term, a person having the supporting votes next to such member and whose name was so listed in the election of such type of officials shall be a member. In case where no such person was listed, then an election of a new representative member shall be made in accordance with the procedures prescribed by the Minister.

In case where an expert member vacates the office before the term, an election of a new expert member shall be made in accordance with Section 14.

The member so appointed or elected to fill such vacancy under paragraphs one and two shall remain in the office for the term left for such replaced member.

Section 21 The Chairman and members under Section 12 paragraph one shall appoint the Secretary-General from among the persons who are not prohibited as follows:

(1) Having Thai nationality,

(2) Not above sixty years of age,

(3) Capable of working full-time for the Fund,

(4) Having never been sentenced to an imprisonment by the final judgment thereof except for the penalty for offenses committed recklessly or petty offenses,

(5) Not being or having been a bankrupt,

(6) Not being an official, staff member or employee of any ministry, bureau, department, local administration, state enterprise under the law on budgeting or other state agencies,

(7) Not being a political official, a person holding political office, a member of local assembly, or a local administrator, or Committee member or an advisor or staff member of a political party,

(8) Not being a managing director or manager or holding any such other position as having similar nature of work in a partnership or company,

(9) Not being an interested person in the contracts with the Fund or in any business done for the Fund either directly or indirectly except a person who has been assigned by the Committee to be a director in a company of which the Fund is a shareholder.

Section 22 The holding of office, removal from office and determination of conditions for probation or work of the Secretary-General shall be in accordance with an employment contract as determined by the Committee provided that each term of employment shall not exceed four years and upon expiration of such term the Committee may renew such employment contract.

The Chairman shall have the power to execute an employment contract appointing the Secretary-General on behalf of the Fund.

The Secretary-General shall receive the wages, remuneration and other money as determined by the Committee.

Section 23 Apart from vacating an office by the term of employment, the Secretary-General shall vacate the office when such Secretary –General

(1) dies,

(2) resigns,

(3) lacks the qualifications or is prohibited under Section 21,

(4) is deemed by the Committee to terminate his/her employment.

Section 24 The Secretary-General shall be the superior of the Staff and Employees and responsible for the administration of affairs of the Fund to be in compliance with the

objectives of the Fund and the laws, rules, regulations and policies formulated by the Committee.

The Secretary-General must be responsible to the Committee for the administration of affairs of the Fund.

Section 25 With respect to the affairs of the Fund involving other third persons, the Secretary-General shall act as the representative of the Fund. The work of the Secretary-General and the delegation of his/her powers to other persons to act on his/her behalf shall be in accordance with the regulations prescribed by the Committee.

Any juristic act undertaken in violation of the regulations under paragraph one is not binding on the Fund unless the Fund gives a ratification therefor.

Section 26 The Committee shall have the following functions;

(1) To formulate the policies, to prescribe rules, regulations, announcements and orders for the administration of the Fund,

(2) To formulate the investment policies of the Fund in accordance with the criteria prescribed in a ministerial rule,

(3) To supervise and manage the Fund,

(4) To prescribe the regulations on the work of the Secretary-General and the delegation of his/her powers to other persons to act on his/her behalf,

(5) To determine the expenses of operations of the office and such other expenses as relating to the affairs of the Fund,

(6) To set up the criteria and procedures for the receipt, keeping and payment of the money of the Fund,

(7) To prescribe the rules, regulations and orders relating to the personnel administration, recruitment, removal and disciplines of the Staff and Employees as well as determination of the Salary and other money including support and welfare,

(8) To consider assigning a financial institution to manage the money of the Fund,

(9) To appoint a subcommittee to perform the functions as assigned by the Committee,

(10) To appoint a representative to attend the meetings and to vote in the meeting of shareholders of a company or any other agency whose shares are held by the Fund,

(11) To perform any other function in compliance with the objectives of the Fund as provided herein.

Section 27 Not less than one-half of all Committee members shall be present at the meeting of the Committee in order to constitute a quorum.

At the meeting of the Committee, if the Chairman is absent or unable to perform his/her duties, the members present at such meeting shall elect one member as the Chairman of the meeting.

A decision of the meeting shall be made by a majority vote. One member shall have one vote. If there is a tie of votes, the Chairman of the meeting shall have a casting vote.

The appointment or termination of employment of the Secretary-General shall require the votes of not less than one-half of all members in office.

Section 28 Any member who is an interested person in a matter so considered shall not participate in such meeting.

Section 29 The members of the Committee and Subcommittee shall receive the benefits as determined by the Minister upon approval of the Cabinet.

Section 30 The Investment Subcommittee shall be established consisting of the Director of the Fiscal Policy Office as the Chairman of the Subcommittee, a representative of the Bank of Thailand and four experts appointed by the Committee as the member and the Secretary-General as a member and secretary of the Subcommittee.

Section 31 The Investment Subcommittee shall have the following functions:

(1) To give advice with respect to the investments to the Committee,

(2) To give advice with respect to the formulation of criteria for the selection of financial institutions to be assigned to manage the money of the Fund,

(3) To monitor the operations of such financial institutions as assigned to manage the money of the Fund,

(4) To report on the outcome of investment operations and to submit the opinions to the Committee,

(5) To perform any other function as assigned by the Committee.

Section 32 The Subcommittee called the “Member Relations Subcommittee” shall be established consisting of the Secretary-General of the Office of the Civil Service Commission as the Chairman of the Subcommittee, a representative of the Comptroller-General’s Department, a representative of the Public Relations Department and five

representatives of the Members as the members of the Subcommittee and the Secretary-General shall be a member and secretary of the Subcommittee.

The election of the representatives under paragraph one shall be in accordance with the criteria and procedures specified by the Committee.

Section 33 The Member Relations Subcommittee shall have the following functions:

(1) To act as a media between the Fund and its Members as well as to strengthen the knowledge and understanding for the Members,

(2) To disseminate the information, news and to report the progress of management of the Fund,

(3) To welcome the opinions and problems of the Members,

(4) To recommend the Committee with respect to the provisions of welfare and other benefits for the Members,

(5) To perform any other function as assigned by the Committee.

Section 34 Sections 17, 18, 19, 20, 27 and 28 shall apply *mutatis mutandis* to the holding of office, removal from office and meetings of the Subcommittee.

CHAPTER 3 MEMBERS AND THEIR BENEFITS

Section 35 The following persons shall be the Members:

(1) A person who serves as an official as from the date on which the provisions of this Chapter come into force,

(2) A person who has been transferred to be an official under this Act as from the date on which the provisions of this Chapter come into force,

Section 36 The following persons may apply for a Membership:

(1) An official who was in service before the date on which the provisions of this Chapter come into force,

(2) An official who was out of service in order to perform the functions under the Royal Decree on the Determination of Criteria for the Order of Officials to Perform their Functions whose term of service shall also be regarded as the full Official term before the date on which the provisions of this Chapter come into force and resumes his/her service as from the date on which the provisions of this Chapter come into force.

An application for a Membership shall be in accordance with such criteria and procedures as prescribed by the Ministry of Finance and published in the Government Gazette.

Section 37 The Gratuity, Pension and Bequesting gratuity shall be paid out of the budget, and the Savings, Additional fund, Initial fund, Compensation and the benefits thereof shall be paid out of the Fund subject to the criteria set forth in this Act.

Section 38 For an official who is out of service, if resuming his/her service as from the date on which the provisions of this Chapter come into force, the Official term for the calculation of Gratuity and Pension before being out of service shall be counted as part of the Official term after resuming his/her service unless such official was removed or expelled from the official service on account of material breach of the disciplines and without the right to receive the allowances, Gratuity and Pension for his/her previous service.

An official who has received the Gratuity shall return such Gratuity together with the interest at the rate fixed by the Government Savings Bank for the savings of fixed period in order to be able to include his/her previous Official term as part of his/her latter service under paragraph one. The period required for the return of such Gratuity shall be in accordance with the criteria and procedures specified by the Ministry of Finance.

A Pension for the latter term of official service shall not be paid to an official who has received or is entitled to receive the Pension. However, if such person wishes to continue receiving the Pension, he/she shall submit a letter stating his/her wish to a state agency for which such person resumes his/her official service within thirty days as from the date of his/her resumption of official services and the previous Official term shall not be counted as part of the latter. In this case, if the Salary received at the time of his/her resumption of official service is equal to or higher than that received at the time when he/she was out of service, the Pension shall not be paid. If such new Salary is less than the previous one, the Pension shall be paid equal to the difference between the new and previous Salaries provided that a new state agency for which such person resume his/her official service shall notify a state agency paying the Pension to such person in order to suspend or reduce the Pension. When such official is out of service, he or she shall be entitled to the Pension calculated from his/her Salaries and the new Official term shall be included for the calculation of his/her original Pension. The Pension for the new Official term may be changed into the Gratuity.

For the purposes hereof, an official who resumes his/her official service may be entitled to the Initial fund in accordance with the criteria and conditions prescribed in a ministerial rule.

The provisions hereof shall apply *mutatis mutandis* to a local official who resumes his/her official service as an official of any type as defined in Section 3.

Section 39 A Member shall remit the Savings to the Fund at the rate specified in a ministerial rule unless such Member was in official service before the date on which the provisions of this Chapter come into force who may or may not remit the Savings to the Fund.

If a Member is not entitled to a Salary or receives an incomplete Salary for any period, he/she shall remit the Savings in proportion to the Salary received by such Member.

A state agency shall withhold the Savings under paragraph one from the Salary received by such Member and shall remit such Savings to the Fund on the date of payment of the Salary and a state agency shall remit an Additional fund for the amount equal to the Savings together with such Savings to the Fund for such Member's account.

For the purposes hereof, the Salary shall not include a monthly academic honorarium, a remuneration for a position of the risky duties for combat or suppression of offenders but excluding other additional money.

Section 40 The Ministry of Finance shall calculate an Initial fund for a Member in accordance with the criteria and procedures prescribed in a ministerial rule to be remitted to the Fund.

The remittance of such Initial fund shall be made out of the government deposits.

Section 41 A state agency shall remit a Compensation to the Fund for the Member's account at the rate specified in a ministerial rule every time a Salary is paid to the Member. In this respect, Section 39 paragraph four shall apply *mutatis mutandis*.

If a Member is not entitled to a Salary or receives an incomplete Salary for any period, he/she shall remit the Compensation in proportion to the Salary received by such Member.

Section 42 A Member is entitled to receive the welfare and other benefits from the Fund as determined by the Committee.

Section 43 A Member is entitled to apply for a loan from the Fund not exceeding the Savings, Additional fund and the benefits thereof as recorded in an individual account of such Member for uses in accordance with the objectives, criteria and procedures specified by the Committee.

Section 44 A membership of a Member terminates when such Member is out of service unless such Member is removed from service by an order under the law on regulations of such type of officials or is out of service for the performance of functions under the Royal Decree on the Determination of Criteria for the Order of Officials to Perform their Functions whose term of service shall be regarded as the full Official term.

Section 45 A Member is entitled to receive a Gratuity, Pension, Savings, Additional fund, Initial fund, Compensation and the benefits thereof in accordance with the criteria provided herein upon termination of membership of such Member.

Section 46 A Member who has remitted the Savings to the Fund shall be entitled to receive the Savings, Additional fund and the benefits thereof from the Fund.

Section 47 A Member whose Official term is from ten full years and above but less than twenty-five full years shall be entitled to receive a Gratuity.

Section 48 A Member under Section 35 whose Official term is from twenty-five full years and above shall be entitled to receive a Pension, Compensation and the benefits thereof unless he/she chooses to receive the Gratuity.

A Member under Section 36 (1) or (2) whose Official term is from twenty-five full years and above shall be entitled to receive the Pension, Initial fund, Compensation and the benefits thereof unless he/she chooses to receive the Gratuity.

Section 49 In addition to the matters provided in Sections 47 and 48, a Member is entitled to receive an Gratuity or Pension on account of any of the following reasons;

(1) Disability

(2) Reimbursement

(3) Senility

Section 50 A Gratuity or Pension on account of disability shall be paid to a Member who is out of official service by reasons of illness or disability whom an officially certified physician has examined and is of the opinion that such person is no longer able to serve in his/her incumbent office.

Section 51 A Gratuity or Pension on account of reimbursement shall be paid to a Member who is out of service by reasons of termination or dissolution of his/her office or removal order without fault or in case of a military official who is out of allowance reserves.

Section 52 A Gratuity or Pension on account of senility shall be paid to a Member who is out of service upon attaining full sixty years of age or upon resignation when attaining full fifty years of age.

Section 53 A Member who is entitled to receive the Gratuity or Pension on account of disability, reimbursement or senility shall receive the money in accordance with the following criteria:

(1) If his/her Official term is from one full year and above but less than ten full years, a Member shall be entitled to receive a Gratuity.

(2) If his/her Official term is ten full years and above,

(a) a Member under Section 35 shall be entitled thereto under Section 48 paragraph one,

(b) a Member under Section 36(1) or (2) shall be entitled thereto under Section 48 paragraph two.

Section 54 If a Member is expelled from service or dies as a result of his/her material and malicious misconducts, such Member or his/her heirs shall not be entitled to receive the Gratuity, Pension, Initial fund, Compensation and the benefits thereof.

Section 55 The right to receive a Pension shall commence when a membership of a Member terminates until his/her death.

Section 56 If any pensioner

(1) is sentenced to an imprisonment by the final judgment thereof except for the penalty for an offense committed recklessly or a petty offense or

(2) is a mala fide bankrupt under the bankruptcy law,

such person shall be forfeited of the right to receive a Pension as from the date of final judgment.

Section 57 A pensioner hereunder shall be entitled to receive the same welfare and other allowances as those received by a pensioner under the law on officials' gratuity and pension.

Section 58 In case of death of any Member during his/her official service and such death is not caused by his/her material and malicious misconduct or in case of death of a pensioner, a Bequesting gratuity shall be paid to the heirs of such Member or pensioner in accordance with the following criteria:

(1) A child shall receive two parts of such gratuity. If a deceased Member has three children and above, they shall receive three parts of such gratuity,

(2) A husband or wife shall receive one part of such gratuity,

(3) The parents or father or mother who is till alive shall receive one part of such gratuity.

In case where there is no such heir in any Subsection or such heir has died before such Member, the said gratuity shall be distributed among the heirs who are entitled thereto in the Subsection under which the heirs are entitled thereto.

In case where there is no heir in the said three Subsections, the said gratuity shall be paid to the person for whom the deceased Member has expressed his/her intention to the agency for which such deceased Member has served in accordance with the form and procedures specified by the Ministry of Finance.

In case where there is no heir and the person for whom the deceased Member has expressed his/her intention under paragraph three or such person has died before the deceased Member, the right to receive the gratuity shall be forfeited.

In case where the Bequesting gratuity has been paid, if it appears that there is a child who by a judgment of the court is a legitimate child of the deceased where an action of legitimation has been instituted before or within one year as from the date his/her father dies or as from the date on which the death of the father is known or should have been known, the Bequesting gratuity shall be redistributed among the heirs

who are entitled thereto provided that such legitimate child by a court judgment shall be deemed as the heir who is entitled thereto as from the date of such death. In this case, the Ministry of Finance shall recover the Bequesting gratuity from the heirs who have received such Bequesting gratuity in accordance with the rules prescribed by the Ministry of Finance.

In case where such Bequesting gratuity cannot be recovered from the heirs who have received the same in excess of that to which they are entitled under paragraph five, the Ministry of Finance shall not be responsible to pay such Bequesting gratuity for any reason whatsoever to a child who is adjudged by the court to be the legitimate child retroactively to the date on which the right to receive such Bequesting gratuity was created.

Section 59 If the deceased Member has remitted the Savings to the Fund, the Savings, Additional fund, and the benefits thereof shall be paid to a person who is entitled to receive the inheritance of the Member under the Civil and Commercial Code.

Section 60 In case where a pensioner dies, the heirs shall not only be entitled to receive the Bequesting gratuity under Section 58 but also be entitled to receive a special allowance under the Royal Decree on Payments of Salaries, Annual Allowances, Gratuities, Pensions and Other Money of the Same Nature.

Section 61 The right to receive the money under this Act is personal and inalienable.

Section 62 The calculation of Gratuity shall be made on the basis of the Salary of the last month multiplied by the Official term.

Section 63 The calculation of Pension shall be made on the basis of the average Salaries for the last sixty months multiplied by the Official term and divided by fifty but shall not exceed seventy percent of the average Salaries for the last sixty months.

With respect to the calculation of Pension of a person who assumes his/her official service under Section 38, if such new Official term is less than five years, the average Salary to be used for the calculation of Pension shall be in accordance with a ministerial rule.

Section 64 The Bequesting gratuity to be paid to the heirs of a Member shall be calculated from the Salary of the last month multiplied by the Official term of the deceased.

Section 65 The Bequesting gratuity to be paid to the heirs of a pensioner shall be paid thirty times as much as the rate of Pension to which the deceased was entitled.

Section 66 The counting of Official term for a calculation of the amount of Gratuity or Pension shall include the number of years and their odds. The counting of odd days and months shall be made in accordance with the method of salary payments and twelve months shall be counted as one year. For the number of days, if there are several intervals, thirty days shall be counted as one month.

Section 67 When a person submits an application for the money under Section 45, the responsible agency to which such application is submitted shall examine the right to receive the Savings, Additional fund, Initial fund, Compensation and the benefits thereof of such applicant subject to the criteria set forth by the Committee provided that such agency shall complete such examination and notify the Fund within fifteen working days as from the date of receipt of such application except in case of reasonable grounds.

The payment of money from the Fund to the person entitled thereto under paragraph one shall be made by the Fund within seven working days as from the date of such notification from the responsible agency.

Section 68 The provisions of the law on officials' gratuity and pension shall apply *mutatis mutandis* in so far as it is not conflicting or incompatible with this Act.

Section 69 The acquisition of benefits of the Fund shall be achieved in accordance with the policies of the Committee which may assign any person to undertake such acquisition on its behalf as it sees fit. However, the assignment to manage the money of the Fund shall be made to not less than two financial institutions specializing in investments which are permitted to manage the provident fund under the law on provident fund or which are permitted to manage the private fund under the law on securities and exchange to manage the fund provided that the distribution of risks shall be taken into account.

For the purposes of acquisition of benefits of the Fund under paragraph one, a person so assigned to manage the Fund shall have the duties and be subject to the provisions of the law on provident fund or law on securities and exchange as if the Fund were the provident fund of private fund as the case may be.

In assigning the financial institutions to manage the Fund under paragraph one, the qualifications of the assigns, methods of operation and expenses of such operation shall be in accordance with the criteria and procedures prescribed in a ministerial rule.

Section 70 The money of the Fund shall be invested pursuant to the criteria specified in a ministerial rule which shall at least require an investment in the securities of high stability not less than sixty percent except that the reserves under Section 72 shall first be invested in the state or state enterprise debt instruments.

CHAPTER 4

FINANCE, ACCOUNTING AND INSPECTIONS

Section 71 The Fund shall have the accounts consisting of

- (1) a reserves account stating the reserves and accruements thereof;

(2) a general account stating the donated money, account money, individual money without a recipient, common money not belonging to any Member and the accruelements thereof,

(3) an individual account stating the Savings, Additional fund, Initial fund, Compensation and the accruelements thereof belonging to each member.

Section 72 The State shall allot an annual expenditure budget for the amount not less than twenty percent of the annual expenditure budget for officials' Gratuity and Pension to a reserves account annually until the reserves, general fund and the accruelements thereof reach three times of the annual expenditure budget for officials' Gratuity and Pension. Thereafter, an annual expenditure budget shall be set up to maintain the reserves, general fund and the accruelements thereof at the level of three times of the expenditure budget for officials' Gratuity and Pension in each year. If the reserves, general fund and the accruelements thereof are above three times of the annual expenditure budget for officials' Gratuity and Pension, such excess money shall be remitted as the state revenues.

In case of national economic crises, the State may order the Fund to remit the money from the reserves account as the state revenues to be paid as officials' Gratuity and Pension by virtue of a royal decree but the State shall allot the budget to compensate the money used to the Fund in the following fiscal year.

Section 73 For the accruelements from investment of the money in each account, upon deduction of the expenses for operation in proportion to the investment of each account, the accruelements from investment of the money in the reserves account shall be recorded in the reserves account. The accruelements from investment of other money shall be regularly allocated as the benefits in the general account and individual account of a Member in proportion to the money in each account for a period specified by the Committee.

Section 74 The Fund shall notify a Member of the balance of the Savings, Additional fund, Initial fund and Compensation together with the benefits thereof with respect to each Member at least once a year.

Section 75 The Fund shall submit a report stating the management of the Fund to the Minister at least once a month in accordance with the criteria and procedures as specified by the Minister.

Section 76 The Fund must formulate and maintain an accounting system as appropriate to its affairs classified in accordance with the essential part of work, have the credit and debit accounts of assets and liabilities stating the actual affairs in accordance with the types of work together with the statements of origin such items and have such accounts audited on a regular basis.

Section 77 The Fund must prepare the balance sheet, operating account and loss and profit account to be submitted to an auditor within one hundred and twenty days as from the last day of an accounting year.

Section 78 The Office of the Auditor-General of Thailand shall be the auditor to audit and certify all types of accounts of the Fund.

Section 79 The auditor has the power to inspect all books, accounts and documents and evidence of the Fund. In this respect, the auditor shall have the power to inquire the Chairman of the Committee, members of the Committee, Staff and Employees.

Section 80 The auditor must submit a report on the outcome of audit of accounts of the Fund to the general meeting of representative Members within one hundred and fifty days as from the last day of an accounting year in order to be submitted to the Committee.

Section 81 The Fund shall hold a general meeting of representative Members at least once a year in order to consider the report on the operations, financial status and credit and debit of the Fund.

The holding of such general meeting and the election of representative Members under paragraph one shall be in accordance with the criteria and procedures specified by the Minister.

The general meeting of representative Members shall have the power to give opinions and recommendations with respect to the operations of the Fund to the Committee.

Section 82 Upon receiving such opinions and recommendations with respect to the operations of the Fund from the general meeting of representative Members, the Committee shall submit a report on the audit together with the opinions and recommendations to the Minister to be proposed to the Cabinet and to publish such report on the audit in the Government Gazette.

CHAPTER 5 SUPERVISION OF THE MANAGEMENT OF THE FUND

Section 83 The Committee shall have the power to direct the persons assigned to manage the Fund, committee members, manager or a person responsible for the operations of the persons assigned to manage the Fund to clarify the facts relating to the management of the Fund within a specified period.

In case where the persons assigned to manage the Fund fail to clarify the facts relating to the management of the Fund within a specified period without reasonable grounds or it appears that the persons assigned to manage the Fund has managed the Fund in such a manner as to cause damage to the Fund, the Committee shall have the power to direct the persons assigned to manage the Fund to correct or

suspend such action or to terminate the assignment of the persons assigned to manage the Fund.

Section 84 The Minister shall have the functions of general directions and supervision of the management of the Fund. For the purpose hereof, the Minister may appoint a Competent Official to investigate the facts and to report to the Minister.

In case where the Minister regards that the persons assigned to manage the Fund have managed the Fund in such a manner as may cause damage to the Fund, the Minister may request the Committee to consider undertaking under Section 83 paragraph two.

Section 85 Upon receiving the direction under Section 83 paragraph two, the persons assigned to manage the Fund shall immediately cease to manage the Fund and return the property within the period specified in such directions.

Section 86 In performing the duties hereunder, a Competent Official shall have the following powers:

(1) To enter the business premises or places of the persons assigned to manage the Fund during sunrise to sunset or during the working hours of such places in order to inspect the books, accounts or documents and evidence relating to the Fund,

(2) To seize or attach the documents or evidence relating to the commission of offenses hereunder for the purpose of investigation of facts or prosecution,

(3) To order the directors, manager, personnel or employees of the persons assigned to manage the Fund to testify or submit the copies or present the books and accounts or documents and evidence relating to the management of the Fund.

In performing the duties under paragraph one, the persons concerned shall facilitate accordingly.

After having entered the premises and undertaking to inspect under (1), if such inspection has not been completed, it may be continued at night time or after the working hours of such places.

Section 87 In performing the duties, a Competent Official must present the identity card to the persons concerned.

The identity card of such Competent Official shall be in accordance with the form specified by the Committee and published in the Government Gazette.

Section 88 In performing the duties under this Act, a Competent Official shall be the authority under the Penal Code.

CHAPTER 6

PENALTY

Section 89 Any person assigned to manage the Fund fails to comply with Section 85 shall be subject to a fine not exceeding one million baht and an additional fine not exceeding one hundred thousand baht daily until such compliance is made.

In case where a person assigned to manage the Fund commits an offense under paragraph one, the directors, manager or any person responsible for the operations of a person assigned to manage the Fund shall be subject to an imprisonment not exceeding three years or a fine not exceeding one million and five hundred thousand baht or both unless proved that such persons have not taken part in the commission of an offense of the person assigned to manage the Fund.

Section 90 Any person fails to comply with the order of or fails to facilitate a Competent Official performing the duties under Section 86 shall be subject to an imprisonment not exceeding three months or a fine not exceeding thirty thousand baht or both.

Section 91 The directors, manager, or a person responsible for the operations of any person assigned to manage the Fund presenting a false statement to or conceal the facts which should be manifested in essence with respect to the management of the Fund from the Committee shall be subject to an imprisonment not exceeding five years or a fine not exceeding two million and five hundred thousand bath or both.

Section 92 The Committee shall have the power to effect a fine of the offenses under Sections 89 and 90. Upon payment by an accused of the effected fine within a specified period, the case shall be deemed to rest under the Criminal Procedure Code.

If such accused does not agree with such effected fine or if agrees but fails to pay the fine within a specified period, a prosecution shall proceed.

TRANSITIONAL PROVISIONS

Section 93 An election of representative Members and expert Members and appointment of the Secretary-General shall be made in order to form the Committee of the Government Pension Fund under this Act within two hundred and forty days as from the date on which this Act comes into force.

Pending a formation of the Committee under paragraph one, a Committee shall be established consisting of the Permanent Secretary of the Ministry of Finance as the Chairman of the Committee, the Director of the Bureau of the Budget, the Secretary-General of the Council of State, the Secretary-General of the Civil Service Commission, the Secretary-General of the National Economic and Social Development Board, the Director of the Fiscal Policy, the Director-General of the Comptroller-General's Department, the Governor of the Bank of Thailand, the Secretary-General of the Securities and Exchange Commission as the members and the Director-General of the Comptroller-General's Department shall be a member and secretary to act as the Committee of the Government Pension Fund and the Director-General of the Comptroller-General's Department shall act as the Secretary-General to implement this Act for the time being.

Pending a formation of the Committee under paragraph one, the Director-General of the Comptroller – General's Department may appoint any person to be an assistant to the secretary.

Countersigned by
Mr. Banharn Silpa-archa
Prime Minister

Notes: The reason for the promulgation of this Act is that the current officials' gratuity and pension system which requires annual budget from the Government without any allocation of the reserves therefor in advance is inappropriate and incompatible with the existing financial situations and thereby rendering it impractical to formulate the long-term financial administration and personnel development plans. It is therefore appropriate to improve such gratuity and pension system by establishing the Government Pension Fund which is a juristic person to ensure the payment of gratuity and pension as well as other benefits to the officials upon their retirement and to promote the savings as well as to provide the welfare and other benefits to the officials who are members of the Fund which shall also serve as a savings institution that plays a significant role in helping solve the problems of domestic savings shortages and promotion of investment thereby promoting the economic and social development as a whole. It is therefore necessary to enact this Act.

*** The Government Pension Fund Act (II) was promulgated in B.E. 2542 to annul the definition of "Official" under Section 3 of the Government Pension Act B.E. 2539 and to prescribe the new definition thereof.

Notes: The reason for the promulgation of this Act is that whereas the constitution of the Kingdom of Thailand has stipulated that the Constitution Court possesses an independent administrative office, and thereby the law of Constitution Court established the Office of the Constitution Court as the administrative office of the Court with the status quo of an independent office with its personnel as the official. In order that those officials as well as the officials of those government agencies to be hereafter established as independent agencies are entitled to receive any benefits of the Fund under the provision of the Government Provident Fund, it is deemed appropriate to enlarge the definition of "Official" as prescribed in the Government Pension Act B.E. 2539 to cover also those mentioned officials. It is therefore necessary to enact this Act.