

NATIONAL COMPETITIVENESS ENHANCEMENT FOR TARGETED INDUSTRIES ACT, B.E. 2560 (2017)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 12th Day of February B.E. 2560;

Being the 2nd Year of the Present Reign.

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

Whereas it is expedient to have the law on national competitiveness enhancement for targeted industries;

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

Section 1. This Act is called the “National Competitiveness Enhancement for Targeted Industries Act, B.E. 2560 (2017)”.

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

Section 3. In this Act:

“targeted industry” means the industry which corresponds to the potential of the country, creates immense value to national economy, society and security and is in the position to enhance national competitiveness in a sustainable manner, being the industry of a new type

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in which no domestic production or provision of services has taken place before or being the industry requiring the use of new technology or advanced knowledge in the production for the purpose of generating the development or promotion of innovation, as prescribed in the Notification of the Policy Commission;

“applicant for promotion” means a business operator in the targeted industry who applies for promotion under this Act;

“promoted person” means a business operator in the targeted industry to whom a promotion certificate is granted under this Act;

“Fund” means the National Competitiveness Enhancement for Targeted Industries Fund;

“Policy Commission” means the Commission on the National Competitiveness Enhancement for Targeted Industries Policies;

“Secretary-General” means Secretary-General of the Board of Investment;

“Office” means the Office of the Board of Investment;

“competent official” means the person appointed by the Prime Minister for performing activities under this Act.

Section 4. The Prime Minister shall have charge and control of the execution of this Act and shall have the power to appoint competent officials for performing activities under this Act.

CHAPTER I

COMMISSION ON THE NATIONAL COMPETITIVENESS ENHANCEMENT FOR TARGETED INDUSTRIES POLICIES

Section 5. There shall be a commission called the “Commission on the National Competitiveness Enhancement for Targeted Industries Policies” consisting of the Prime Minister as Chairperson, Deputy Prime Minister entrusted by the Prime Minister as Vice Chairperson, Minister of Finance, Minister of Science and Technology, Minister of Industry, Permanent-Secretary for Digital Economy and Society, Director of the Bureau of the Budget, Secretary-General of the National Economic and Social Development Board and Secretary-General of the National Science, Technology and Innovation Policy Office, as members.

The Secretary-General shall be a member and secretary and the Secretary-General shall appoint two Government officials in the Office as assistant secretaries.

Section 6. The Policy Commission has the powers and duties as follows:

(1) to lay down policies and strategies and prepare plans on national competitiveness enhancement for targeted industries;

(2) to issue Notifications prescribing types of targeted industries and descriptions of businesses in targeted industries;

(3) to prescribe guidance frameworks for the selection of and negotiations with business operators with a view to generating investment in targeted industries;

(4) to issue Notifications prescribing rules, procedures and conditions for granting rights and benefits under this Act;

(5) to give approval to the effect that applicants for promotion are granted rights and benefits under this Act and prescribe conditions to be observed by each promoted person;

(6) to approve payment of subsidies out of the Fund;

(7) to revoke the granting of rights and benefits under this Act;

(8) to issue Rules on receipt of money, disbursement of money and retention of money in the Fund;

(9) to assess the operation of the Fund and assess worthiness of the granting of rights and benefits to promoted persons and report such assessment to the Council of Ministers;

(10) to perform any other activities as provided by law to be the powers and duties of the Policy Commission or as entrusted by the Council of Ministers.

Section 7. At a meeting of the Policy Commission, the presence of not less than one-half of the total number of members is required to constitute a quorum.

At a meeting of the Policy Commission, if the Chairperson is not present or is unable to perform the duty, the Vice Chairperson shall preside over the meeting. If the Vice Chairperson is not present or is unable to perform the duty, one member shall be elected at the meeting to preside over it.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

Section 8. There shall be a selection and negotiation sub-committee consisting of the Vice Chairperson of the Policy Commission as Chairperson, a representative of the Ministry of Finance, a representative of the Ministry of Digital Economy and Society, a representative of the Ministry of Science and Technology, a representative of the Ministry of Industry and a representative of the Office of the National Economic and Social Development Board, as members.

The Secretary-General shall be a member and secretary and a representative of the National Science, Technology and Innovation Policy Office shall be a member and assistant secretary and the Secretary-General shall appoint one Government official in the Office as an assistant secretary.

Section 9. The selection and negotiation sub-committee has the powers and duties, as follows:

(1) to conduct selection of and negotiations with business operators with a view to generating investment in targeted industries in accordance with the guidance frameworks for the selection of and negotiations determined by the Policy Commission;

(2) to submit the memoranda summarising results of negotiations to the Policy Commission for considering whether to approve the granting of rights and benefits under this Act to applicants for promotion;

(3) to appoint working groups for performing activities as entrusted by the selection and negotiation sub-committee;

(4) to perform any other activities as entrusted by the Policy Commission.

Section 10. In the performance of duties under this Act, the Policy Commission may authorise the Office to carry out any act on its behalf or appoint sub-committees for carrying out any act as entrusted or instruct any person concerned to provide facts, explanations, advice or opinions.

After the Office or the sub-committee has carried out the act under paragraph one, it must also report the same to the Policy Commission.

Section 11. The provisions of section 7 shall apply to a meeting of a sub-committee *mutatis mutandis*.

Section 12. The Office shall serve as the secretariat of the Policy Commission, with the powers and duties, as follows:

(1) to be responsible for clerical work, meeting administration and affairs pertinent to the work of the Policy Commission, sub-committees and working groups;

(2) to monitor and inspect business of promoted persons;

(3) to prepare reports on results of the monitoring and inspection of business of promoted persons for submission to the Policy Commission for considering and approving disbursement of subsidies from the Fund;

(4) to report problems and obstacles in the operation of promoted persons to the Policy Commission for considering relaxation of conditions in certificates of promotion;

(5) to study and analyse national economic directions for making recommendations to the Policy Commission in prescribing appropriate industries as targeted industries under this Act;

(6) to conduct studies and analysis of directions for the promotion and development of targeted industries of foreign countries to be used as information in support of the performance of duties of the Policy Commission, sub-committees and working groups;

(7) to gather data and prepare statistics in connection with business operators in targeted industries;

(8) to assess the operation of work of the Fund and assess worthiness of the granting of rights and benefits to promoted persons, and report results of such assessment to the Policy Commission;

(9) to co-ordinate and co-operate with Government agencies, State agencies and private agencies on the operation of work under this Act;

(10) to receive, disburse and retain money of the Fund in accordance with the Rule prescribed by the Policy Commission;

(11) to perform any other activities as entrusted by the Policy Commission, sub-committees or working groups.

Section 13. In the case where there must be inspection and assessment of the business in the targeted industry to which rights and benefits are granted under this Act, the Office may entrust any person to carry out the operation on its behalf and prepare reports thereon for submission to the Office, in accordance with the rules prescribed by the Policy Commission.

Section 14. The competent official shall have the power to enter a place of business of the promoted person during office hours for enquiring facts or examining any documents or articles pertinent to the business in the targeted industry to which rights and benefits are granted under this Act from persons present at such place, as is necessary.

In the case where the competent official intends to enter the place under paragraph one, the competent official must, if it is not the case of urgency, give reasonable prior written notice to the promoted person.

Section 15. In the performance of duties under section 14, the competent official shall show the identification card to persons concerned.

The identification card under paragraph one shall be in accordance with the form prescribed by the Secretary-General.

CHAPTER II

SELECTION AND NEGOTIATIONS AND GRANTING PROMOTION

Section 16. The Policy Commission shall, by Notification, prescribe types and natures of businesses in targeted industries and rules, procedures and conditions for the granting of rights and benefits under this Act.

Section 17. Upon the Notification under section 16, in the case where the selection and negotiations sub-committee is of the opinion that any particular business operator in the targeted industry should be considered for the granting of rights and benefits under this Act, the Office shall notify such business operator that if it intends to be considered for entering negotiation procedures for the granting of rights and benefits under this Act, it shall submit an investment project proposal to the Office within the specified period of time. When the Office has received the investment project proposal, it shall conduct analysis thereof and submit opinions thereon to the selection and negotiations sub-committee for approving the commencement of negotiations.

In the case where the selection and negotiations sub-committee approves the commencement of negotiations, the Office shall notify it to the business operator in the targeted industry for preparing details of the investment project to be submitted in support of the

negotiations. Negotiations with the business operator in the targeted industry shall be in accordance with guidance frameworks for the selection and negotiations prescribed by the Policy Commission under section 6 (3).

Upon completion of the negotiations under paragraph two, the selection and negotiations sub-committee shall prepare a memorandum summarising results of the negotiations and notify such business operator in the targeted industry to submit an application for promotion together with details of the investment project corresponding to the result of the negotiations to the Office within the agreed period of time for further submission to the Policy Commission for considering whether to approve rights and benefits under such project.

Section 18. Upon issuance of the Notification under section 16, any business operator in the targeted industries shall, in case of an intention to be granted rights and benefits under this Act, submit an investment project proposal to the Office. The Office shall, upon receipt of the investment project proposal, conduct analysis thereof and submit opinions to the selection and negotiations sub-committee for approving the commencement of negotiations, and the provisions of section 17 paragraph two and paragraph three shall apply.

Section 19. A promoted person must be a juristic person established under the law of Thailand.

The application for promotion under section 17 or section 18 shall be in accordance with the rules, procedures, conditions and form prescribed by the Secretary-General.

Section 20. When the Policy Commission has considered the memorandum summarising results of the negotiations made by the selection and negotiations sub-committee and the application for promotion together with details of the investment project submitted by the applicant for promotion under section 17 or section 18 and considers it appropriate to grant promotion to such applicant for promotion, it shall pass a resolution approving the granting of rights and benefits under this Act to the applicant for promotion. In this regard, the Policy Commission may also prescribe conditions on any one or more matters in connection with the capital, size of business, commencement of the operation of business, personnel development, research and development, technology transfer or other conditions as the Policy Commission deems appropriate, for observance by such promoted person.

When the Policy Commission has passed the resolution under paragraph one, the Office shall, within fifteen days as from the date thereof, give written notification of the resolution and the conditions prescribed by the Policy Commission to such applicant for promotion.

In the case where the applicant for promotion agree to accept the rights, benefits and conditions under paragraph one, it shall make a reply in writing to the Office within one month as from the date of receipt of such written notification.

In the case where there is a reasonable cause, the Secretary-General shall have the power to extend the time under paragraph three on not more than three occasions for a period of one month each.

Section 21. In the case where the applicant for promotion has accepted the rights, benefits and conditions under section 20, a certificate of promotion shall be issued to such promoted person without delay. The certificate of promotion shall indicate details as to the conditions for the operation of business in the targeted industry as well as the rights and benefits to which the promoted person is entitled.

Section 22. Certificates of promotion shall be in accordance with the form prescribed by the Policy Commission.

The Secretary-General shall sign certificates of promotion.

Correction of certificates of promotion shall be made upon a resolution of the Policy Commission and the Secretary-General shall sign certificates of promotion in which correction is made for delivery to promoted persons without delay.

CHAPTER III RIGHTS AND BENEFITS

Section 23. Promoted persons may be entitled to one or more rights and benefits as follows:

(1) rights and benefits under the law on promotion of investment, excluding rights and benefits as regards exemption from or reduction of corporate income tax;

(2) rights and benefits as regards exemption from corporate income tax under section 24;

(3) rights and benefits as regards subsidies from the Fund.

It shall be the power and duty of the Policy Commission to approve the granting of rights and benefits under paragraph one.

In granting rights and benefits under paragraph one, each promoted person may be granted different rights and benefits. In this regard, there shall be taken in account the need, worthiness and usefulness of the promotion and development of targeted industries of the country.

For the purpose of the execution of this Act, the provisions of Chapter III, Rights and Benefits, and Chapter IV, Machinery, Raw Material and Necessary Articles, under the law on promotion of investment shall apply to the approval of the granting of rights and benefits under (1) *mutatis mutandis* and it shall be deemed that the powers and duties of the Board of Investment are the powers and duties of the Policy Commission under this Act.

Section 24. The promoted person may be granted exemption from corporate income tax on net profits acquired from the operation of business in the targeted industry for a period of time determined by the Policy Commission, provided that it shall not exceed fifteen years as from the date on which income begins to be generated from the operation of such business. In this regard, the Policy Commission may also grant exemption from corporate income tax in proportion to the money invested excluding the value of land and the revolving fund.

The income for the purpose of calculation of net profits acquired from the operation of business shall include income from the distribution of byproducts and income from the distribution of semi ready-made goods as the Policy Commission may deem appropriate.

In the case where the operation of business generates loss during the time of the exemption from corporate income tax under paragraph one, the Policy Commission may allow the promoted person to deduct the annual loss accruing during such time from net profits accruing subsequent to the period of time of the exemption from corporate income tax, for a period not exceeding five years as from the date of the expiration thereof, provided that such deduction may be chosen to be made from net profits of a particular year or several years.

The calculation of invested money under paragraph one shall be in accordance with the rules and procedures prescribed in the Notification of the Policy Commission.

The calculation of net profits and net loss of the promoted person granted exemption from corporate income tax shall be in accordance with the Revenue Code.

Section 25. Dividends from the business in the targeted industry in respect of which exemption from corporate income tax is granted under section 24 are not required to be included in the calculation for the purpose of paying income tax throughout the period of time in which the promoted person is granted exemption from such corporate income tax.

Dividends in respect of which exemption from income tax is granted under paragraph one, if paid within six months as from the date on which the period of time of the exemption therefrom expires, shall enjoy the exemption under paragraph one.

Section 26. The Policy Commission may grant subsidies from the Fund to promoted persons for supporting expenses incurred in the investment, research and development, promotion of innovation or development of specific personnel of businesses in targeted industries.

The rules, procedures and conditions for considering whether to grant subsidies under paragraph one shall be as prescribed by the Policy Commission.

Section 27. In the case where any promoted person violates or fails to comply with the conditions prescribed by the Policy Commission, the Policy Commission shall have the power to order revocation of rights and benefits granted to such promoted person.

For the purpose of the execution of this Act, the provisions of Chapter VI, Revocation of Rights and Benefits, under the law on promotion of investment shall apply to the revocation of rights and benefits under paragraph one *mutatis mutandis* and it shall be deemed that the powers and duties of the Board of Investment are the powers and duties of the Policy Commission under this Act.

CHAPTER IV

NATIONAL COMPETITIVENESS ENHANCEMENT FOR TARGETED INDUSTRIES FUND

Section 28. There shall be established in the Office a fund called the “ National Competitiveness Enhancement for Targeted Industries Fund” , the objects of which lie in the promotion and development of targeted industries, thereby leading to national competitiveness enhancement.

Section 29. The Fund consists of the money and property as follows:

- (1) the inaugural capital allocated by the Government;
- (2) subsidies received from the Government;
- (3) money or property donated or given to the Fund;
- (4) money or property vested in the Fund;
- (5) fruits or interests accruing on the money or property of the Fund.

The money or property of the Fund under paragraph one is not required to be remitted to the Treasury as the State revenue.

Section 30. Money of the Fund shall be expended in conformity with its objects, as follows:

- (1) supporting expenses incurred in the investment, research and development, promotion of innovation or development of specific personnel of businesses in targeted industries;
- (2) financing expenses in the operation of the Fund as determined by the Policy Commission.

Payment of subsidies under (1) may be made when it is apparent that promoted persons have complied with the conditions prescribed by the Policy Commission.

Section 31. Money in the Fund shall be deposited with the Ministry of Finance or a bank which is a State enterprise as prescribed by the Policy Commission.

Section 32. The Office shall establish and maintain appropriate accounting systems capable of preparing financial reports accurately indicating the financial standing and operational results of the Fund, in accordance with generally recognised accounting principles.

Section 33. The Office shall prepare financial statements of the Fund for submission to the auditor within sixty days as from the end of the accounting year.

The accounting year of the Fund shall be by reference to the financial year unless otherwise prescribed in the Notification of the Policy Commission.

Section 34. The Office of the Auditor-General or the person approved by the Office of the Auditor-General shall be the auditor of the Fund and shall audit and certify all kinds of accounts and financial affairs of the Fund in every accounting year.

The auditor of the Fund shall prepare an audit report for submission to the Policy Commission within one hundred fifty days as from the end of the accounting year.

The Policy Commission shall furnish financial statements together with an audit report of the auditor to the Ministry of Finance within thirty days as from the date of receipt thereof from the auditor.

Section 35. The Office shall make available internal audit systems for auditing operations of the Fund in accordance with the rules and procedures prescribed by the Policy Commission.

Section 36. In the case where the operation of affairs of the Fund is no longer necessary, the Policy Commission shall make a recommendation to the Council of Ministers for considering dissolution of the Fund.

Upon the Council of Ministers' resolution giving approval thereto, the Fund shall be dissolved at the expiration of thirty days as from the date of the resolution of the Council of Ministers.

Section 37. Upon dissolution of the Fund, there shall be an audit of property, a liquidation and the transfer or distribution of the remaining property, in accordance with the rules, procedures and conditions prescribed by the Policy Commission.

During the liquidation, it shall be deemed that the Fund remains for such duration as is necessary for the liquidation.

TRANSITORY PROVISIONS

Section 38. At the initial stage, the Government shall allocate to the Fund money under section 29 (1) in the amount of ten thousand million Baht to be expended in accordance with the objects of the Fund.

Countersigned by:

General Prayut Chan-o-cha

Prime Minister