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Thailand

MERCHANT MARINE PROMOTION ACT, B.E. 2521 (1978)

BHUMIBOL ADULYADEJ, REX.

Given on the 11th Day of December B.E. 2521

Being the 33rd 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 merchant marine promotion;

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 Merchant Marine Promotion Act, B.E. 2521 (1978).

Section 2.

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

Section 3.

The Announcement of the Revolutionary Party No. 215, dated the 20th September B.E. 2515, shall be repealed.

Section 4.

In this Act:

merchant marine means the marine transport, marine insurance, marine navigation, shipyard and port businesses, including other businesses relating directly thereto, or being a part thereof, as prescribed in the Ministerial Regulations;

marine transport means the carriage of goods by vessel from Thailand to foreign countries, or from foreign countries to Thailand, or from one place to another outside the Kingdom;

vessel means a seagoing vessel employed in marine transport;

Thai vessel means a Thai vessel under the law on Thai vessel employed in marine transport;

marine transport entrepreneur means a person engaged in marine transport business based in Thailand and carry on marine transport, including a branch and agent of a person engaged in marine transport business whose his principal office placed in foreign country and carry on marine transport in Thailand, as well as a person acting as a broker who collect goods in Thailand for marine transport;

shipper means the owner of goods or his agent who exports to, or orders or imports from, abroad of goods carried by sea;

goods means merchandises, things or live animals;

port means a place where services of berthing, loading or discharging goods are provided for vessel;

port business means the business relating to port, including other businesses relating directly thereto, or being a part thereof, as prescribed by the Ministerial Regulations;

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shipyard business means the business of building, repairing, or maintaining of vessel, or of installing or repairing engines or equipments for navigation of vessel;

Commission means the Maritime Promotion Commission;

Office means the Office of the Maritime Promotion Commission;

competent official means a person appointed by the Minister to carry out the duty under the provisions of this Act;

Minister means the Minister having charge and control of the execution of this Act.

Section 5.

There shall be a Commission called the Maritime Promotion Commission, consisting of the Minister of Transport and Communications as Chairperson, the Permanent Secretary of the Ministry of Transport and Communications and the Permanent Secretary of the Ministry of Commerce as Vice-Chairpersons, the Permanent Secretary of the Ministry of Finance or his or her representative, the Permanent Secretary of the Ministry of Foreign Affairs or his or her representative, the Permanent Secretary of the Ministry of Industry or his or her representative, the Commander in Chief of the Royal Thai Navy or his or her representative, the Secretary-General of the National Economic and Social Development Board or his or her representative, the Secretary-General of the Board of Investment or his or her representative, the Director General of the Department of Foreign Trade or his or her representative, the Director General of the Department of Local Administration or his or her representative, the Director General of Customs Department or his or her respective, and the President of the Board of Trade of Thailand or his or her representative, as members, and not more than four qualified members as appointed by the Council of Ministers from a person of Thai nationality with knowledge or experiences in merchant marine, economics, transportation, laws, foreign affairs, agriculture or industries.

The Secretary-General of the Office of the Maritime Promotion Commission shall be member and secretary of the Commission.

Section 6.

A qualified member shall hold an office for a term of two years. A qualified member, who vacates from office, may be reappointed by the Council of Ministers.

Section 7.

A person with one or any of the following characteristics shall not be a qualified member:

- (1) being an incompetent or quasi-incompetent;
- (2) being imprisoned by a final judgment of imprisonment except for an offence committed through negligence or a petty offence;
- (3) being a bankrupt;
- (4) being a political official;
- (5) being a member of the Board or officer of the political party.

Section 8.

In addition to vacating office at the end of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Council of Ministers;
- (4) having one or any of the characteristics as prescribed in Section 7.

In the case where a qualified member vacates from office before term, the Council of Ministers may appoint the new qualified member.

The term of office of the newly appointed qualified member under paragraph two shall be equal to the remaining term of the previously appointed member.

Section 9.

In the case where the Chairperson is unable to attend the meeting, or is unable to perform his or her duty, the Vice-Chairperson who has been entrusted by the Chairperson shall preside over at the meeting. If both Chairperson and

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Vice-Chairperson are unable to attend the meeting, or are unable to perform their duties, the members shall select one among themselves to preside over at the meeting.

Section 10.

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

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

Section 11.

The Commission shall have the following duties:

- (1) to give advice, upon request, to the Council of Ministers relating to merchant marine;
- (2) to submit recommendations relating to the development, promotion, control, protection, and coordination of merchant marine to the Council of Ministers, especially the recommendations for determining the following measures:
 - (a) to develop both amount and capability of Thai vessel in marine transport;
 - (b) to establish and/or promote merchant marine training institutions in order to produce the number and to extend the capabilities of officers, seaman as well as merchant marine entrepreneurs to meet both the needs of the country and international requirements;
 - (c) to promote and control marine transport, marine insurance, marine navigation, shipyard and port businesses, including the use of communication equipments and navigational aids; and
 - (d) to promote and protect marine transport entrepreneurs who are able to have title over Thai vessel, and shipper based in Thailand;
- (3) to submit recommendations to the Council of Ministers, after having considered with an agency of central administration, provincial administration, local administration, State agency, government agency or State enterprise, on the establishment, amalgamation, separation, and termination of port and port business, and on structure and work plans for expansion, investment, and development of port and port business of an agency of central administration, provincial administration, local administration, State agency, government agency or State enterprise;
- (4) to submit recommendations or advice relating to the enactment of laws for the development, promotion, control, protection and coordination of merchant marine to the Council of Ministers;
- (5) to submit recommendations to the Council of Ministers in order to fulfill an obligation under the international agreements on merchant marine;
- (6) to submit recommendations or advice to the Minister for the issuance of the Ministerial Regulations, notifications and orders under this Act;
- (7) to prescribe rules and conditions in granting rights and benefits in order to control the exercise of the granted rights and benefits to be complied with this Act;
- (8) to coordinate projects and work plans relating to merchant marine, and to control marine navigation operated by an agency of central administration, provincial administration, local administration, State agency, government agency, or State enterprise and private enterprise;
- (9) to perform other duties of the Commission as prescribed by this Act or by other laws, or as entrusted by the Council of Ministers.

The Commission may entrust the Office to be responsible for its duties under (8) and (9).

Section 12.

The Commission may appoint any person to be a member of the *ad hoc* committee or sub-committee in order to consider or carry on any matter as entrusted by the Commission.

The provisions of Section 9 and Section 10 shall be applied *mutatis mutandis* to the meeting of the *ad hoc* committee and sub-committee.

Section 13.

The Commission or the Office shall have the power to summon, in writing, any person to make statements or to deliver documents relating to merchant marine to the Commission.

Section 14.

There shall be the Office of the Maritime Promotion Commission in the Ministry of Transport and Communications with the following duties:

- (1) to be the coordination center for merchant marine;
- (2) to study and analyze projects, work plans or measures relating to merchant marine for the Commission;
- (3) to make a study and analysis on, and to provide coordination for technical aspect of, marine transport, marine insurance, marine navigation, communications and navigational aids, shipyard and port businesses, to collect and disseminate technical data relating thereto, and to exchange those data with other technical institutions;
- (4) to perform duties as entrusted by the Commission;
- (5) to perform other works so as to fulfill the objectives of this Act, or to perform the duties of the Office as prescribed by this Act or by other laws.

Section 15.

There shall be a Secretary-General of the Maritime Promotion Commission with the duties to generally supervise the performance of official affairs of the Office. There may be a Deputy Secretary-General to assist the Secretary-General in the performance of his or her official duty.

Section 16.

In promoting merchant marine, the Government may impose measures and/or grant rights and benefits as follows:

- (1) imposing whether the marine transport between Thailand and each foreign country shall be made by Thai vessel for not less than the proportion between the quantity of goods and freight as specified by the Royal Decree;
- (2) exempting or deducting, by enacting the Royal Decree under the Revenue Code, rate of income tax on dividends to shareholders of the juristic person carrying on marine transport business and having title over Thai vessel or carry on shipyard business as specified;
- (3) imposing whether the shipper who export produces or products from Thailand to foreign countries, or order or import goods from foreign countries into Thailand, by Thai vessel shall have the right to deduct money, in an amount of not more than fifty per cent of freight and/or other money which have to be paid ordinarily for such transportation, from his net incomes or net profits, as the case may be, as specified by the Royal Decree under the Revenue Code;

The Royal Decree enacted under (1), (2) and (3) may impose rules, procedure and conditions on the exercise of measures and the granting of the aforesaid rights and benefits.

Section 17.

The Minister shall have the power to issue the Ministerial Regulations specifying, in whole or in parts, of the following matters;

- (1) specifying whether goods ordered or imported by State agency, government agency, or State enterprise from foreign countries and carried by vessel shall be carried by Thai vessel if the carriage of such goods is made on the route in which Thai vessel provide carriage service and that service is available;
- (2) specifying whether goods ordered or imported from foreign countries by the shippers which are financed by loans borrowed by State agency, government agency, or Industrial Finance Corporation of Thailand under the terms and conditions of such borrowing, or goods ordered or imported from foreign countries by the contractor of State agency, government agency, or State enterprise for the performance of contract, and carried by vessel shall be carried by Thai vessel if the carriage of such goods is made on the route in which Thai vessel provide carriage service and that service is available;
- (3) specifying kinds and categories of goods in which the shippers shall export to, or order or import from, foreign countries by Thai vessel for not less than the specified proportion if the carriage of such goods is

made by vessel on the route in which Thai vessel provide carriage service and that service is available in the specified period.

Section 18.

For the execution of the Ministerial Regulations under Section 17, the Minister shall have the power to notify the following matters in the Government Gazette:

- (1) rules, procedures and conditions necessary for the carriage of goods required to be carried by Thai vessel;
- (2) measures for the shippers to report his or her export to, or order or import from, foreign countries of goods of the kinds and categories as required to be carried by Thai vessel;
- (3) measures necessary for examining quantity of goods required to be carried by Thai vessel and quantity of services of Thai vessel employed by the shippers during the specified period.

Section 19.

In the case where the goods specified under Section 17 could not be carried by Thai vessel, the shippers shall apply to the Office for a written permit to carry such goods by other vessels under the rules and procedure as determined by the Office.

The Office shall, within five days as from the date of its receiving of such application, inform the applicant of its decision of granting permission, or refusing the application. If such decision is not reached to the applicant within five days, it shall be deemed that the permission has been granted.

Section 20.

The permission under Section 19 shall be granted if it appears that:

- (1) there is no Thai vessel to call the port of shipment, or the space of Thai vessel is not available for such shipment, during the period of shipment;
- (2) there is a particular Treaty or an Agreement between the Royal Thai Government and foreign government;
or
- (3) there is a special necessity.

Section 21.

A non-Thai vessel chartered by the marine transport entrepreneur who has title over Thai vessel, in order to add his number of vessels on the route where his vessels ply in the ordinary course of business, may be granted with rights and benefits under this Act as same as Thai vessel along the period of the charter if the marine transport entrepreneur report the chartering and submit related documents to the Office and the permission to employ the chartered vessel in his or her marine transport business has been granted by the Minister or the person entrusted by him. In this regard, rules to be considered in granting such permission shall be determined by the Minister or the person entrusted by him.

The rules, procedure and conditions for reporting as well as documents relating to the chartering which shall be submitted to the Office under paragraph one shall be prescribed by the Minister and published in the Government Gazette.

Section 22.

As from the date in which the Ministerial Regulations under Section 17 come into force, a shipper who fails to carry the specified goods by Thai vessel or by a vessel granted with rights and benefits under Section 21, or carry goods of the specified kinds and categories by Thai vessel or by a vessel granted with rights and benefits under Section 21 less than the specified proportion and the permission to carry such goods by other vessels under Section 20 has not been granted, shall be liable to a special fee equal to twice of the freight money for such shipment, or of the freight money for the deficit proportion.

The calculation of the freight money for the payment of the special fee under paragraph one shall be in accordance with the rules as prescribed by the Ministerial Regulations.

The liability to payment of the special fee shall be incurred as from the day the shipper make a shipment by non-Thai vessel, or, in the case where the shipper make a shipment of goods by Thai vessel or by a vessel granted with rights and benefits under Section 21 less than the specified proportion, the day in which the competence official specify in an order to pay the special fee. If the payment of such special fee is not made within the specified date, it shall be regarded as the unpaid special fee.

The payment of the special fee shall be made to the competent official according to the rules, procedure and conditions as prescribed by the Ministerial Regulations.

Section 23.

As for the payment of the unpaid special fee, the competent official shall have the power to order, in writing, the person liable to the payment of such fee to pay the fee, and shall have the power to seize and sell by auction of any property of the person liable to the payment of such fee without the judicial order.

The provisions on seizing and selling by auction under the Civil

Procedure Code shall be applied *mutatis mutandis* to the seizing and selling by auction under paragraph one. The money from selling by auction of such properties, after having deducted fees and expenses on seizing and selling by auction as well as the special fee, shall be returned to the owner of such properties.

Section 24.

If it appears that a marine transport entrepreneur give his or her special rights or benefits to the shippers or has been granted special rights and benefits, whether directly or indirectly, and such special rights or benefits being unfair advantages over, and detrimental to, other marine transport entrepreneurs who have title over Thai vessel in marine transport, the Minister, upon the recommendations of the Commission, shall have the power to have the following orders:

- (1) to collect money for the prevention of unfair advantages in marine transport from the marine transport entrepreneur who is a cause of the notification to collect money for the prevention of unfair advantages in marine transport on the goods carried by such marine transport entrepreneur during the period as specified in such order, at the rate in which the Minister think fit but not more than the freight money for the shipment of such goods;
- (2) to prohibit all or some vessels of the marine transport entrepreneur who take unfair advantages from loading or discharging goods at port in the Kingdom for a specified period.

The calculation of the freight money for the purpose of collection of money for the prevention of unfair advantages in marine transport under paragraph one shall be in accordance with the rules as prescribed by the Ministerial Regulations.

The duty to collect money for the prevention of unfair advantages in marine transport under paragraph one shall be the duty of the Customs Department and the law on customs shall be applied *mutatis mutandis* to such collection. In this regards, money for the prevention of unfair advantages in marine transport is deemed to be import or export duties under the law on customs tariff. For the purpose of collection of money for the prevention of unfair advantages in marine transport, the competent official under the law on customs shall have the power to arrest the vessel carrying such goods until the marine transport entrepreneur has completed the payment of the money for the prevention of unfair advantages in marine transport or until a satisfactory security has been given.

An order under paragraph one and its amendments or repeals shall be published in the Government Gazette.

Section 25.

A marine transport entrepreneur who own or employ vessel of five hundred tons gross or over, a port operator, and a shipyard operator who provide building, repairing or maintaining service for vessels of five hundred tons gross or over, shall be registered as marine transport entrepreneur, port operator, and shipyard operator under this Act with the competent official.

The application and registration under paragraph one shall be in accordance with the rules and procedure as prescribed by the Ministerial Regulations.

Section 26.

The Office may request an agency of central administration, provincial administration, local administration, State agency, government agency, or State enterprise to submit its projects or work plans as well as technical details, financial details, and statistic necessary for the study of conditions of the merchant marine for consideration of the Commission or of the Office.

Section 27.

For the purpose of a survey and collection of statistics relating to merchant marine, any person who engaged in merchant marine business shall report information, data and other necessity statistics to the Office in accordance

with the rules, procedure and conditions as prescribed by the Ministerial Regulations.

Section 28

No person shall disclose of information, data, statistics or any statements acquired under Section 13 and Section 27 which would normally be undisclosed, except for the disclosure on official duty, or for the purpose of examination or investigation, or for judicial trial.

Section 29.

Any person who fails to comply with the summon under Section 13 shall be liable to a fine for not exceeding five thousand Baht.

Section 30.

Any person who make false statement or deliver false documents to the Commission under Section 13, or fails to comply with Section 27 or the Ministerial Regulations issued under Section 27, or reports false data, statistics or information, shall be liable to imprisonment for a term of not exceeding six months, or to a fine for not exceeding ten thousand Baht, or to Both.

Section 31.

Any person who violates or fails to comply with the notification under Section 18 shall be liable to a fine for not exceeding ten thousand Baht, and to a daily fine for not exceeding two thousand Baht per day during the period of such violation or failure.

Section 32.

Any person who fails to comply with Section 25 shall be liable to a fine for not exceeding fifty thousand Baht, and to a daily fine for not exceeding two thousand Baht per day, during the period of such failure.

Section 33.

Any person who fails to comply with section 28 shall be liable to imprisonment for a term of not exceeding one year, or to a fine for not exceeding two thousand Baht, or to both.

Section 34.

Any person who engaged in marine transport business, port business or shipyard business as mentioned in section 25 on the date in which this Act come into force may continue his or her business only for one hundred and eighty days as from the date in which of this Act come into force. If he or she intends to carry on his or her business thereafter, he or she has to be registered under Section 25.

Section 35.

The Minister of Transport and Communications shall have charge and control of the execution of this Act, and shall have the power to issue the Ministerial Regulations, to appoint competent officials, and to determine other matters for the execution this Act.

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

Countersigned by General Kriangsak Chomanan as Prime Minister

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