

Unofficial Translation สำนักงาน

สำนักงานคณะกรรมการกฤษฎีกา

STANDARD QUALIFICATIONS OF STATE ENTERPRISE

Office of the Council of State

DIRECTORS AND OFFICIALS ACT,

Office of the Council of State

B.E. 2518 (1975)

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BHUMIBOL ADULYADEJ, REX.

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Given on the 14th Day of January B.E. 2518;

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Being the 30th Year of the Present Reign.

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His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim

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that:

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Whereas it is expedient to have a law on standard qualifications of State enterprise directors and officials;

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

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Section 1. This Act is called the “Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518”.

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Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

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¹Published in the Government Gazette, Vol. 92, Part 16, Special Issue, dated 25th January B.E. 2518 (1975).

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Remark: This translation is made by **Office of the Council of State**. Reference to Thai legislation in any jurisdiction shall be made to the Thai version only. This translation has been made so as to establish correct understanding about this Act to foreigners.

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Section 3. The Prescription of Retirement Age for Workers in State Organisations Act, B.E. 2508 (1965) shall be repealed.

All other laws, regulations and rules with respect to the provisions provided in this Act or which are contrary to or inconsistent with the provisions of this Act shall be replaced by this Act.

Section 4. In this Act:

“State enterprise” means

(1) a government organisation under the law on establishment of government organisations, or a State undertaking under the law establishing such undertaking, and shall include a business enterprise owned by the State, but shall not include an organisation or undertaking which has the mere purpose of providing welfare or promoting any non-business activity;

(2) a limited company or juristic partnership in which a Ministry, Sub-ministry, Department or political agency of equivalent standing and/or a State enterprise under (1) holds capital in excess of fifty percent; or

(3) a limited company or juristic partnership in which a Ministry, Sub-ministry, Department or political agency of equivalent standing and/or a State enterprise under (1) and/or (2) hold two-thirds of the capital;

“director” means a director in the board of directors of State enterprise, and shall also include a chairperson and vice-chairperson of the board of directors;

“executive”² means a governor, executive director, managing director, manager, or a person holding the highest executive position having similar functions in a State enterprise;

“official”³ means an official and employee of State enterprise, and shall also include an advisor to the board of directors, advisor to the State enterprise, secretary and assistant secretary to the board of directors, or a person holding a position having similar functions but called different title in the State

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²Section 4, definition of “executive” was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

³Section 4, definition of “employee” was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

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enterprise, provided that such definition shall only apply to the purposes of prescribing standard qualifications and the vacation of a position.

Section 5. A director of State enterprise shall not only possess the qualifications and not be under any prohibition specifically provided for such State enterprise, but shall also possess the qualifications and not be under any prohibition, as follows:

(1) being of Thai nationality;

(2) being not more than sixty-five years of age;

(3) having suitable credentials and experiences for the undertakings of such State enterprise;

(4)⁴ not being a bankrupt or not having been a dishonestly bankrupt;

(5) not having been sentenced by a final judgment to imprisonment, except for a sentence for an offence committed through negligence or a petty offence;

(5/1)⁵ not being a person of unsound mind or of mental infirmity;

(5/2)⁶ not having been ordered by a judgment or an order of a court that his assets shall be vested in the State on the grounds of unusual wealth or an unusual increase of assets;

(5/3)⁷ not being a member of the House of Representatives, senator, member of a local assembly or local administrator;

(6)⁸ not being a political official, except for holding a directorial position pursuant to a provision of law;

⁴Section 5(4) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

⁵Section 5(5/1) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

⁶Section 5(5/2) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

⁷Section 5(5/3) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

⁸Section 5(6) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 2), B.E. 2519 (1976).

(7)⁹ not being a person holding any position in a political party or an official of political party;

(7/1)¹⁰ not having been expelled, dismissed or removed from work on the ground of dishonest performance of duties;

(8)¹¹ not being a shareholder of such State enterprise or a shareholder of a juristic person in which such State enterprise holds shares;

(9)¹² not being a person holding any position in a juristic person in which such State enterprise holds shares, except where entrusted by the board of directors of such State enterprise to hold a directorial position or other position in the juristic person in which such State enterprise holds shares;

(10)¹³ not being a director or an executive or a person having authority in the management or an interest in a juristic person who is a concessionaire or joint venture party, or having an interest relating the undertakings of such State enterprise, except for being a chairperson of the board of directors, director or executive by entrustment of such State enterprise.

The provision of (1) shall not apply to a foreign director whose appointment by a State enterprise is necessary pursuant to an obligation or due to the characteristics of its undertakings.

The provision of (8) shall not apply to the director who is not a government official, official or employee holding a permanent position in or receiving a salary from a central administration, provincial administration, local government organisation or other State agency, and such director holds shares in the

⁹Section 5(7) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

¹⁰Section 5(7/1) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

¹¹Section 5(8) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

¹²Section 5(9) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

¹³Section 5(10) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

amount not exceeding zero point five percent of the paid-up capital of the State enterprise of which he is a director, or of the juristic person in which the State enterprise that he is a director holds shares.¹⁴

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Section 6. A State enterprise shall have not more than eleven directors in total. However, if the rule of any State enterprise provide for fewer than eleven directors, the number of directors shall be as provided.

Where the State enterprise necessarily requires more than eleven directors, the Minister in charge may seek the specific approval of the Council of Ministers for such State enterprise, provided that the total number of directors shall not exceed fifteen.¹⁵

Section 7.¹⁶ A person shall not hold the positions of directors in more than three State enterprises, inclusive of being *ex officio* directors and entrustments to perform official duties on behalf of others as directors.

The number of directorial positions held under paragraph one shall not include *ex officio* directorial positions that have been entrusted to other persons.

Section 8. In addition to the vacation of office specifically provided for such State enterprise, a director vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any prohibition under section 5.

The director of State enterprise who is not an *ex officio* director under a law, or a Royal Decree shall hold office for a term of three years but may be reappointed.

¹⁴Section 5 paragraph three was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

¹⁵Section 6 paragraph two was added by the Announcement of the National Peace Keeping Council No. 56, Re : Directors of State Enterprises, dated 18 February B.E. 2534 (1991).

¹⁶Section 7 was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

The provision of paragraph two shall not apply to a director of a limited company or juristic partnership.

Section 8 bis.¹⁷ An executive of State enterprise shall not have the status of an official of State enterprise.

In the case where the law establishing any State enterprise provides for officials to be competent officials under the Penal Code, the executive of such State enterprise shall be a competent official under the Penal Code.

Section 8 ter.¹⁸ An executive shall not only possess the qualifications and not be under any prohibition specifically provided for such State enterprise, but shall also possess the qualifications and not be under any prohibition, as follows:

(1) being of Thai nationality;

(1/1)¹⁹ being not more than sixty years of age;

(2) having the ability to perform full-time work for such State enterprise;

(3) not being a person of unsound mind or of mental infirmity;

(4)²⁰ not being a bankrupt or not having been a dishonestly bankrupt;

(5)²¹ not having been sentenced by a final judgment to imprisonment, regardless of whether or not the prison term was actually served, except for a sentence for an offence committed through negligence or a petty offence, or the discharge upon completion of sentence, the period of the suspension of sentence or the suspension of punishment has already lapsed more than five years, as the case may be;

¹⁷Section 8 bis was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

¹⁸Section 8 ter was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

¹⁹Section 8 ter (1/1) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

²⁰Section 8 ter (4) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

²¹Section 8 ter (5) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

(6) not having been ordered by a judgment or an order of a court that his assets shall be vested in the State on the grounds of unusual wealth or unusual increase of assets;

(7) not being an executive or official of other State enterprises or profit-seeking undertakings;

(8) not being a government official, official or employee holding a permanent position in or receiving a salary from a central administration, provincial administration, local government organisation or other State agency;

(9) not being a political official, member of the House of Representatives, senator, member of a local assembly or local administrator;

(10)²² not being a person holding any position in a political party or an official of a political party;

(11)²³ not having been expelled, dismissed or removed from work on the ground of dishonest performance of duties;

(12) not being, or within the three years period prior to appointment, not having been a director or an executive or a person having authority in the management or an interest in a juristic person which is a concessionaire or joint venture party, or having an interest in the undertakings of such State enterprise, except for being a chairperson of the board of directors or director of the juristic person by entrustment of such State enterprise.

Section 8 quarter.²⁴ In the employment and appointment of an executive of State enterprise, the board of directors of such State enterprise shall appoint a selection committee consisting of five members who shall possess the qualifications and not be under any prohibition under section 8 ter (1), (3), (4), (5), (6), (11) and (12).

²²Section 8 ter (10) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

²³Section 8 ter (11) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

²⁴ Section 8 quarter was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6) B.E. 2550 (2007).

The selection committee shall perform the duty of selecting persons having knowledge, abilities and experiences suitable to become the executive of State enterprise, who shall possess the qualifications and not be under any prohibition under section 8 ter (1), (3), (4), (5), (6), (9), (10), (11) and (12), not be a director of such State enterprise, except for an executive who is *ex officio* director, and not be more than fifty-eight years of age on the date of application submitted.

Upon selection of a suitable person, a nomination shall be made to an appointing authority for appointment as an executive of the State enterprise. The nomination may contain the names of more than one suitable person, provided that the employment and appointment of the executive of State enterprise shall be completed within one year as from the date the former executive vacates office.

The executive shall be employed for a term not exceeding four years as from the date the employment contract is effective.

In the conclusion of an employment contract, a chairperson of the board of directors of State enterprise, or a director entrusted by the board of directors of State enterprise in the case where there is no chairperson of the board of directors of State enterprise, shall sign the employment contract. The employment under such contract shall not be subject to the law on labour protection, the law on labour relations, the law on State enterprise labour relations, the law on social security and the law on compensations.

The employment contract under paragraph five must at least contain the provisions pertaining to the holding of office, conditions of work, vacation of office, conditions for termination of employment contract, performance appraisal and remuneration or other benefits of the executive.

The determination of remuneration or other benefits as well as the conditions of employment of the executive shall be as determined by the board of directors of State enterprise with an approval of the Ministry of Finance.

In the case where the board of directors of State enterprise wishes to re-employ the executive after the completion of the period in the employment contract on account of the efficient performance of the executive and the re-employment of such executive would confer significant benefits to the State enterprise, the nomination shall be made to the appointing authority for appointment as the executive of such State enterprise without the need to carry out

the selection procedures under paragraph one, paragraph two and paragraph three, but such employment shall not exceed two consecutive terms.

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Section 8 quinquie.²⁵ In addition to the vacation of office specifically provided for such State enterprise, an executive vacates office upon:

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(1) death;

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(2) resignation;

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(3) being disqualified or being under any prohibition under section 8 ter;

(4) being absent for more than three consecutive meetings of the board of directors of State enterprise without a reasonable justification;

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(5) completion of employment contract;

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(6) termination of employment contract.

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Section 9. An official of State enterprise shall not only possess the qualifications and not be under any prohibition specifically provided for such State enterprise, but shall also possess the qualifications and not be under any prohibition, as follows:

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(1) being of Thai nationality;

(2) being not more than sixty years of age;

(3) having the ability to perform full-time work for such State enterprise;

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(4)²⁶ not being a bankrupt or not having been a dishonestly bankrupt;

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(5)²⁷ not having been sentenced by a final judgment to imprisonment,

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regardless of whether or not the prison term was actually served, except for a sentence for an offence committed through negligence or a petty offence, or the discharge upon completion of sentence, the period of the suspension of sentence or

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²⁵Section 8 quinquie was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

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²⁶Section 9(4) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

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²⁷Section 9(5) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 5), B.E. 2550 (2007).

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the suspension of punishment has already lapsed more than five years, as the case may be;

(5/1)²⁸ not being a person of unsound mind or of mental infirmity;

(5/2)²⁹ not having been ordered by a judgment or an order of a court that his assets shall be vested in the State on the grounds of unusual wealth or unusual increase of assets;

(6)³⁰ not being a government official holding a permanent position or receiving a salary, including a political official, employee of a Ministry, Sub-ministry, department or political agency of equivalent standing, local official and member of a local assembly or Bangkok Metropolitan Assembly and local administrator;

(7)³¹ not being a person holding any position in a political party or an official of political party;

(8)³² not having been expelled, dismissed or removed from work on the ground of dishonest performance of duties.

The provision of (1) shall not apply to a foreign official whose employment by a State enterprise is necessary due to the characteristics of work of such State enterprise.

The provision of (3) shall not apply to the official who is an advisor to the board of directors, advisor to the State enterprise, secretary and assistant secretary to the board of directors.

Section 10.³³ An official of State enterprise who is an advisor to the board of directors or advisor to the State enterprise, or a person holding a position

²⁸Section 9(5/1) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

²⁹Section 9(5/2) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

³⁰Section 9(6) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 2), B.E. 2519 (1976).

³¹Section 9(7) was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

³²Section 9(8) was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

having similar functions but called different title in the State enterprise, shall possess suitable credentials and experience for the undertakings of such State enterprise.

Section 11.³⁴ In addition to the vacation of office specifically provided for such State enterprise, an official vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any prohibition under section 9 or section 10.

In case of the vacation of office of an official upon attaining sixty years of age, such vacation shall be effective at the end of the fiscal year under the law on budgetary procedure of the year which such official attains sixty years of age.

Section 12. Any State enterprise which has more than eleven directors shall carry out revision to maintain a number of directors not exceeding such number within two months as from the date this Act comes into force.

Section 12/1.³⁵ In an appointment of other directors who are not *ex officio* directors in any State enterprise, an appointing authority shall consider the appointment from the director pool prepared by the Ministry of Finance in a number not fewer than one-third of the number of other directors in such State enterprise.

The preparation of director pool under paragraph one shall be in accordance with the rules and procedures determined by the Council of Ministers.

Section 13. In the case where any person holds directorial positions in State enterprises exceeding the number prescribed in section 7, such person shall

³³Section 10 was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 4), B.E. 2543 (2000).

³⁴Section 11 was amended by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 3), B.E. 2520 (1977).

³⁵Section 12/1 was added by the Standard Qualifications of State Enterprise Directors and Employees Act (No. 6), B.E. 2550 (2007).

resign from the exceeding directorial positions in any State enterprises within one month as from the date this Act comes into force. If a resignation is not tendered, such person shall be deemed to have vacated the exceeding directorial positions in order of the most recent appointments upon the expiration of one month period.

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Section 14. A director or official of State enterprise being disqualified

or being under any prohibition under the provisions of this Act on the date this Act comes into force shall vacate office upon the expiration of one month as from the date this Act comes into force.

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Section 15. The three year period under paragraph two of section 8

shall commence as from the date of most recent appointment of the director.

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A director who has been in office for more than three years as from the most recent appointment date shall vacate office upon the expiration of one month as from the date this Act comes into force, but may be reappointed.

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Section 16. The Prime Minister shall have charge and control of the

execution of this Act.

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Countersigned by:

Sanya Thammasak

Prime Minister

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Certified Correct Translation

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(Mr. Chukiert Ratanachaichan)

Deputy Secretary-General

Acting for Secretary-General of the Council of State

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