

THE THAI NATIONAL SHIPPERS' COUNCIL Act B.E. 2534 (1994)

BHUMIBOL ADULYADEJ, REX.

GIVEN ON THE TWENTY NINTH DAY OF JANUARY, B.E. 2537 (1994)

BEING THE 49th, YEAR OF THE PRESENT REIGN

By Royal Command of His Majesty King Bhumibol Adulyadej, it is hereby proclaimed that: -

Whereas it is deemed expedient to have a law on the Thai National Shippers' Council.

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

Section 1 This Act shall be called "The Thai national Shippers' Council Act, B.E. 2537".

Section 2 This Act shall come into force the day following the date of its announcement in the government gazette.*

Section 3 In this Act: -

"Ocean shipment" means an exportation or an importation of goods by means of an ocean carrier from Thailand to a foreign land or from a foreign land into Thailand or from one origin to another outside of the kingdom and also means to included the use if any and all related services;

"Ocean transportation" means rendering transportation services by means of an ocean carrier;

"Shipper" means an exporter or an importer who uses ocean transportation services;

"Ocean carrier" means an entrepreneur rendering services in ocean transportation either singly or collectively and also means to include its agent;

"Council" means The Thai National Shoppers' Council;

"Regulation" means The regulation of the Thai National Shippers' Council;

"Member" means the member of The Thai National Shippers' Council;

"Board of Directors" means the Board of Directors of The Thai National Shippers' Council;

"Director" means the director of The Thai National Shippers' Council;

"Employee" means the employee of The Thai National Shippers' Council;

"Official" means a person appointed by the Minister to carry out this Act;

"Minister" means the Minister of State empowered o enforce this Act.

Section 4 The Minister of commerce is hereby empowered to enforce this Act and to have the authority to appoint officials and to issue ministerial rules and regulations and/or ministerial notifications for the purpose of carrying out this Act.

Such rules and regulations and notifications shall be in effect following the announcement in the government gazette.

CHAPTER 1

FOUNDING OF THE COUNCIL

Section 5 The Thai National Shippers' Council is to be founded as a body to carry out the objectives prescribed in this Act. The Council shall be a legal entity.

Section 6 The objectives of the Council are as follows: -

- (1) To promote and to protect the benefits of the shippers;
- (2) To co-operate with the public and private sectors in matters related to ocean shipments;
- (3) To represent the shippers in consultations, negotiations or making agreements with the ocean carriers including the governmental and private bodies concerned, in matters pertaining to freight charges, surcharges, expenses, terms and conditions in ocean transportation.
- (4) To promote the efficiency and the sufficiency of ocean transportation;
- (5) To procure, preserve and disseminate data and informations pertaining to ocean shipment;
- (6) To conduct studies and researches and give advices for solving problems as well as for the development of ocean shipment;
- (7) To give consultations and advices to its members or other persons in matters pertaining to ocean transportation and to facilitate its members in ocean shipment;
- (8) To give consultations and recommendations to the government for the development of ocean shipment;
- (9) To coordinate and co-operate with other foreign shippers' organizations.

Section 7 The Council is prohibited to undertake the following activities: -

- (1) To run as an enterprise or to run the businesses of any enterprise. To hold shares or become partnership or invest in any enterprise except its sole desire is to accomplish the Council' objectives as stated in Section 6;
- (2) To act in any way that would destroy the natural competitiveness of the enterprise except only when it is done to protect the commercial benefits of the country;
- (3) To act in any way that would jeopardize the economy, the country's security, the public order or good morals;
- (4) To lead or to give money to its members or any other persons except to lead for the welfare purpose of the employees or family of the employees, in compliance with the regulations or to give as public charity or under a moral obligation or as social norms dictate;
- (5) To hinder or prevent any qualified person from becoming a member as stipulated in the Act and the membership regulation, or force any member to leave the Council in violation of the Act or the regulation;
- (6) To disclose statistics, documents or information concerning private interests especially those of members who do not wish it be disclosed, except when a written consent from the member is obtained;
- (7) To share its profit or revenue among its members;
- (8) To engage in politics.

Section 8 The Council is to have its main office located in Bangkok metropolitan and to have branches in other provinces as the Council deemed it necessary. Setting up a branch shall be done according to the regulations.

Section 9 The Council's income may derive from the followings: -

- (1) Registration and membership fees.
- (2) Fees and service charges from services rendered to the members or to other persons.
- (3) Registration and membership fees.

- (4) Fees and service charges from services rendered to the members or to other persons.
- (5) Government subsidy.
- (6) Money and assets by donations.
- (7) Interest income or other benefits derived from the Council's assets.

Section 10 When the Council deems that the ocean freight, surcharges, expenses, terms and conditions for ocean transportation as set forth by ocean carriers, governmental or private bodies are unjustified or affecting shippers at large, the Council shall take such matters up in consultations and negotiations with such ocean carriers or such governmental or private bodies.

Section 11 In case of conflicts between the member and the ocean carrier and the member requests for the Council's assistance, the Council may arrange for a negotiation or nominate a representative to participate in the negotiations between the member and the ocean carrier as the Council deems appropriate.

Section 12 No one except the Council is permitted to use the name in Thai as “สภาผู้ส่งสินค้าทางเรือแห่งประเทศไทย” or to use foreign alphabets to mean or to be read as “The Thai National Shippers' Council”.

CHAPTER 2

MEMBERS, DIRECTORS AND EMPLOYEES

Section 13 The Council shall comprise two kinds of member: -

- (1) Ordinary Member
- (2) Associate Member

Section 14 The shipper who is a juristic person and whose export volume reaches the value set by the ministerial regulation is required to become an ordinary member within 90 days as and when all the qualifications stipulated in the ministerial regulation are met.

Section 15 A person who has any one of the following qualifications is entitled to become an ordinary member: -

- (1) A shipper who is a juristic person.
- (2) A chamber of commerce founded under a law on the chamber of commerce or a trade association founded under a law on the trade association and that which composes of members being shippers.
- (3) A state enterprise under the law on the Government Budget Procedures or a co-operative under the law on co-operatives who is a shipper.
- (4) A Custom Brokers Association.
- (5) Any other legal entity that is not an ocean carrier that meets the qualifications set by the Board of Directors.

Section 16 Associate member of the Council is any other person prescribed by the Board of Directors who is neither an ordinary member nor an ocean carrier.

Section 17 There shall be a Board of Directors of at least twenty one persons elected from the representatives of the ordinary members at the Council's general meeting at the numbers and under the methods as prescribed in the regulation. The Board of Directors shall hold office for a period of two years.

A person who shall be a representative of the ordinary member has to meet the qualifications set in the regulations.

When there is a need to elect additional directors of the Board of Directors, the newly elected directors shall hold office for the remaining terms of the existing Board of Directors.

The Board of Directors as stated in the first paragraph shall elect amongst its directors a Chairman, one or more Vice Chairman, a Secretary-General and other positions as required by the regulation.

Section 18 The representative of the ordinary member with the following characteristics is prohibited from becoming a director: -

- (1) Having a position or direct benefits in an ocean carrier or in its related businesses.
- (2) Being employees.
- (3) Being adjudged bankrupt or property being held in custody.
- (4) Being government official or politician.
- (5) Being insane or unsoundness of mind.
- (6) Having been sentenced to imprisonment and has been released less than three years from date of release except for the case of negligence or misdemeanor.

Section 19 Apart from the termination by term of office as stated in Section 17, first paragraph, the director shall be terminated by the following causes: -

- (1) Death
- (2) Resignation
- (3) The general meeting of the Council with at least two thirds of attending ordinary members voted for the termination.
- (4) No longer being the representative of an ordinary member or that ordinary member has lost its status of membership.
- (5) Having characteristics prohibited in Section 18.
- (6) The minister with approval of the cabinet has ordered for the termination of directorship in accordance with Section 36.

Section 20 When the directorship terminates before the tenure of office, the Board of Directors shall elect a new director from the representatives of the ordinary members within sixty days from date of termination of that director's office except the remaining tenure of that director is shorter than ninety days.

The replacing director as started in the first paragraph shall be in office for the remaining tenure of the director he replaced.

Section 21 If the termination of directorship should cause the remaining number to be less than half of the total number of directors, the existing directors shall only be empowered to conduct a general meeting in order to elect new directors within thirty days from the date when the remaining directors are less than half.

In case of the expiration of the tenure of the entire Board of Directors, except for the case of Section 36, the entire Board of Directors shall remain acting and dealing with only necessary matters and to arrange for a general meeting in order to elect a new Board of Directors within thirty days from the date of such expiration.

Section 22 The authorities and duties of the Board of Directors are to make policies and operate the Council in order to accomplish its objectives and to issue rules and regulations on the followings: -

- (1) Rules on accepting memberships, rights and duties of the members, disciplines and penalties and the termination of memberships.
- (2) Rules regarding registration fees, membership fees, compensations, service charges and expenses to be collected from members or from outsiders.
- (3) Rules on establishing a branch as stated in Section 8.
- (4) Rules on the numbers, the methods of the election and the positions of the directors as stated in Section 17.
- (5) Rules on the transfer of authority of the Chairman as stated in Section 26.
- (6) Rules on positions, salaries, wages and bonuses, placements, appointments, removal from positions including rules and regulations on conducts, punishments and complaints of the employees.
- (7) Rules on accepting memberships, rights and duties of the members, disciplines and penalties and the termination of memberships.

- (8) Rules on accepting memberships, rights and duties of the members, disciplines and penalties and the termination of memberships.
- (9) Rules regarding registration fees, membership fees, compensations, service charges and expenses to be collected from members or from outsiders.
- (10) Rules on establishing a branch as stated in Section 8.
- (11) Rules on the numbers, the methods of the election and the positions of the directors as stated in Section 17.
- (12) Rules on the transfer of authority of the Chairman as stated in Section 26.
- (13) Rules on positions, salaries, wages and bonuses, placements, appointments, removal from positions including rules and regulations on conducts, punishments and complaints of the employees.
- (14) Regulations on the administration of the Board of Directors.
- (15) Regulations on the meetings of the Board of Directors and the general meeting of the Council.
- (16) Regulations on the accounting and the financial matters of the Council.
- (17) Regulations on the welfare of the employees and their families or those who will be retired.
- (18) Rules or regulations on other matters necessary to the administration of the Council. The stipulations or the alterations of any regulations in (1)(2)(3)(4)(5)(6) and (11) require the approval from the general meeting and the approval of the Minister in order to become effective.

The rules and regulations must not contradict this Act.

Section 23 At the meeting of the Board of Directors, a minimum of one third of the total number of the directors must be present to constitute a quorum.

The Chairman shall chair the meeting. If the Chairman is not present or unable to conduct the meeting, the Vice Chairman shall assume the chairmanship of the meeting. If there are many Vice Chairman present, the Vice Chairman with priority of appointment shall assume the chairmanship of the meeting.

If there is no Chairman or Vice Chairman present or unable to conduct the meeting, the Board of Directors shall elect one of them to assume the chairmanship of the meeting.

The decisions made at the meeting shall base on the majority of votes. One director shall have one vote. In case of tie, the Chairman shall make the deciding vote.

In the meeting, if the proceedings concern a director, that director shall have the right to speak but shall not have the right to vote on that matter.

Section 24 The Board of Directors shall have the right to appoint anyone to form an ad hoc committee in order to consider or execute any matter assigned to such committee.

The provisions of section 23 shall apply mutatis mutandis to the meetings of the ad hoc committee and the subcommittee.

The compensation for the members of the ad hoc committee and the subcommittee shall be as stipulated by the Board of Directors.

Section 25 The compensation for the directors shall be as fixed by the general meeting.

Section 26 In the affairs that concern outsiders, the Chairman of the Council shall represent the Council. The Chairman may authorize anyone to execute any specific matter as prescribe in the regulation.

CHAPTER 3

OPERATION OF THE COUNCIL

Section 27 The Board of Directors shall arrange for one general meeting annually. This meeting shall be called an ordinary general meeting.

Any general meetings other than that stated in the first paragraph shall be called an extraordinary general meeting.

Section 28 The Board of Directors may call for an extraordinary general meeting anytime necessitated.

The ordinary members may request the Board of Directors to call for an extraordinary general meeting by submitting the request in writing with a minimum of one tenth of the signatures of the total number of the ordinary members.

The request must contain the purposes for calling the meeting.

When the ordinary members requested for an extraordinary general meeting as stated in the second paragraph, the Board of Directors shall call for an extraordinary general meeting within thirty days from the date the written request is received. If the Board of Directors fails to call for the extraordinary general meeting within the prescribed time, the members as stated in the second paragraph may submit a request to the Minister for him to order the Board of Directors to arrange for the meeting.

Section 29 The general meetings require a minimum of one fifth of the total number of the ordinary members or a minimum of two hundred members present to constitute a quorum.

The decisions at the meeting shall base on the majority of votes from the ordinary members present. One ordinary member shall have one vote. In case of tie, the Chairman shall make the deciding vote.

Section 30 If the quorum is not constituted at the general meeting called by the Board of Directors, that meeting shall be postponed to no later than thirty days and the Chairman shall announce the new date of the meeting by a written announcement to the members at least fifteen days in advance. At the new general meeting, if the number of the ordinary member is less than one fifth of the total number of the ordinary members or if the number is less than to hundred, it shall constitute a quorum but shall be permitted to administer only specific matters as stated in Section 31 and Section 32.

Section 31 The Board of Directors shall make an annual report showing the result of the operations of the Board of Directors and the Council during the past year, the balance sheet and the annual income and expenditure report that is certified by a Certified Public Accountant along with the policy and present them at the general meeting within one hundred and twenty days after the end of the calendar year, and a copy of the said documents shall be submitted to the Minister within thirty days after if is approved at the general meeting.

Section 32 The Certified Public Accountant as stated in Section 31, shall be appointed by the general meeting from a list of Certified Public Accountants commissioned by law pertaining to Certified Public Accountant but who is neither a director nor an employee.

The Certified Public Accountant shall have the authority to examine the records, documents and evidences of the Council and have the authority to seek explanations from the directors and the employees. The Certified Public Accountant shall be given the consideration as prescribed at the general meeting.

CHAPETER 4

GOVERNMENT CONTROL

Section 33 The Minister shall have the authority in overseeing the operations of the Council in general and in order to accomplish this end, he shall be empowered to: -

- (1) order an investigation into the operations of the Council by an official;
- (2) order the Council or the director in writing to explain about the facts of the Council's operations and may also ordered to furnish him with the operation documents or minutes of the meetings of the Board of Directors;

- (3) order an investigation into the operations of the Council by an official;
- (4) order the Council or the director in writing to explain about the facts of the Council's operations and may also ordered to furnish him with the operation documents or minutes of the meetings of the Board of Directors;
- (5) order the Council or the director in writing to administer in accordance with this Act, to halt or to change any action that is contradictory to the law, the government's policy, the cabinet's resolutions or regulations.

Section 34 In executing the orders of the Minister as stated in Section 33 (1), the officials shall be empowered to examine documents or evidences in the office of the Council during working hours of have the concerned persons explain to the officials in the matters requested for.

In carrying out the duties as stated in the first paragraph, all related personnel must provide due co-operation.

Section 35 In executing the duties as stated in Section 34, the officials must show their identifications to the related persons.

The identification card of the official must be in the form stipulated by the Minister.

Section 36 When the Council or the directors fail to comply with the Minister's order as stated in Section 33, or act in any way that is contradictory to the objectives of the Council or pose danger to the economy, the security of the country or the public order or good morals, the Minister, with the approval of the cabinet, is empowered to terminate any director or disband the entire Board of Directors.

The director terminated as stated in the first paragraph does not have the right to be in office again except after five years form the date of the Minister's order of termination have elapsed.

Section 37 In the case that the Minister orders a disbandment of the entire Board of Directors as stated in Section 36, first paragraph, the Minister must appoint a minimum of twenty one persons from the representatives of the ordinary members to be a temporary Board of Directors within that same day and Section 17, fourth paragraph, shall become enforceable mutatis mutandis.

The temporary Board of Directors as stated in the first paragraph shall have the authority to conduct only the necessary duties of the Council and to arrange for a general meeting to elect a new Board of Directors as stated in Section 17 within sixty days from the date the Minister have appointed the temporary Board of Directors.

When the new Board of Directors assumes duties, the temporary Board of Directors appointed by the Minister shall disband.

CHAPTER 5

PENALTIES

Section 38 The violation of Section 7 by the Council shall be liable for a fine of not more than one hundred thousand Baht.

Section 39 When there is a violation by the Council and is punishable in accordance with this Act, it shall be construed that the violation is done by all the directors and each shall be liable for a fine of not more than fifty thousand Baht, except the director can prove that he did not conspire with the other directors or have exerted due effort to prevent such violations.

Section 40 Anyone violates Section 12 shall be liable for an imprisonment of not more than two years or for a fine of not more than two hundred thousand Baht or for both fine and imprisonment and shall be additionally fined at two thousand Baht per diem until the violation ceases.

Section 41 Any shipper as stipulated in Section 14 who does not comply with Section 14 shall be liable for a fine of not more than ten thousand Baht and shall be additionally fined at two hundred Baht per diem until he complies with the stipulations.

Section 42 Anyone hinders or refuses to give explanations or does not co-operate with the officials who act under Section 34 shall be liable for a fine of not more than two thousand Baht.

CHAPTER 6

TRANSITORY PROVISIONS

Section 43 Within sixty days from the date this Act becomes effective, the Minister shall appoint upon his discretion a minimum of twenty one persons to form a founding Committee in order to carry out the duties specified in Section 44.

Section 44 The Founding Committee shall issue provisional regulations concerning the acceptance of memberships and to start accepting memberships within sixty days from the date of the appointment.

When the Founding Committee as stated in the first paragraph has accepted members for a minimum of five times of the total number of members of the Founding Committee, it shall call for a member meeting within ninety days from the date the accepted members reached the specified number in order to carry out the followings: -

- (1) to issue regulations on the numbers, the method of the election and the positions of the directors as stated in Section 22 (4).
- (2) to elect the Board of Directors as stated in Section 17.
- (3) to act on any other necessary matters in order to comply with this Act.

The Founding Committee shall disband when the Board of Directors as stated in subsection (2) has been appointed.

Section 23 shall become enforceable on the meetings of the Founding Committee mutatis mutandis.

Section 45 The Board of Directors that has been duly elected as stated in Section 44, second paragraph, shall hold a meeting within thirty days from the date of its election in order to elect the Chairman, Vice Chairman and Secretary-General and other positions as stated in Section 17, fourth paragraph and to hold the first general meeting within ninety days from date of the election.

At the general meeting as stated in the first paragraph, it shall consider and pass the operation budget as stated in Section 44.

Section 46 In the initial period of founding and operating the Council, there shall be a financial support from the nation's budget and from the International Trade Promotional Fund as stated in the law on exportation and importation of goods into the Kingdom.

Section 47 An entity that has already used the name or words of “สภาผู้ส่งสินค้าทางเรือแห่งประเทศไทย” (The Thai National Shippers' Council) or any words that carried such meanings before this Act is in effect, which is prohibited by Section 12, shall cease to use that name or such words as stated within thirty days from the date this Act is in effect and during such time Section 40 shall not be enforceable.

Countersigned by

**Chuan Leekpai
Prime Minister**

*** Announced in the government gazette, Vol. III, dated February 4, B.E. 2537 (1994).**

Ministerial Regulation B.E. 2537

ISSUED IN ACCORDANCE WITH

THE THAI NATIONAL SHIPPERS' COUNCIL ACT B.E. 2537

By virtue of Section 4 and Section 14 of The Thai National Shippers' Council Act B.E. 2537, the Minister of Commerce issued a Ministerial Regulation as follows:

No. 1 The shipper, who is a juristic person and whose annual export that utilizes ocean transportation valued at fifty million Baht upwards, must apply for an ordinary membership.

The export value as stated in the first paragraph shall be based upon the FOB price that appears on the export entry submitted to the Customs Department, Ministry of Finance, and that has been duly checked and released as from January 1st to December 31st of the previous calendar year.

No. 2 The shipper, who is juristic person and whose annual export that utilizes ocean transportation valued at fifty million Baht upwards as from January 1st to December 31st B.E. 2536 must apply for an ordinary membership within ninety days from the date this regulation becomes effective.

No. 3 This Ministerial Regulation shall become effective on December 31st, B.E. 2537.

Given this the 29th day of December, B.E. 2537

Uthai Phimjaichon

Minister of Commerce

REMARK : *The reason for issuing this Ministerial Regulation is because Section 14 of The Thai National Shippers' Council Act, B.E. 2537 stated that the shipper, who is a juristic person and whose export reaches the value set by the Ministerial Regulation, is required to become an ordinary member within 90 days as and when all the qualifications stipulated in the Ministerial Regulation are met, and it is, therefore, appropriate to set the export value for the said shipper and thereby make is necessary to issue this Ministerial Regulation.*