

(Translation)

Ministerial Regulation

Regarding the Registration and Stipulation of the Qualifications of the Plan Preparer and the Plan Administrator

B.E. 2545 (A.D. 2002)

By virtue of the provisions of Section 5 of the Bankruptcy Act B.E. 2483(1940) and Section 90/16 of the Bankruptcy Act B.E.2483 (A.D. 1940) as amended by the Bankruptcy Act (No.4) B.E.2541 (A.D. 1998), the law with certain provisions about restriction of rights and freedom of persons as allowed by Section 29 in combination with Section 36 Section 48 and Section 50 of the Constitution of the Kingdom of Thailand, to be executable by virtue of the provisions of the law, the Minister of Justice hereby issues the Ministerial Regulation as follows:

Chapter 1 General Provisions

Clause 1 In this Ministerial Regulation,

“Minister” means the Minister of Justice.

“Business reorganization of debtor” means the procedure of business reorganization of debtor under the Bankruptcy Law.

“Debtor” means the debtor who is a limited company, a public limited company or other juristic persons on a business reorganization.

“Committee” means the committee who considers the plan preparer and the business reorganization plan administrator.

“Office” means the Business Reorganization Office.

“Plan” means the plan for a business reorganization.

“Plan preparer” means the person who prepares a business reorganization plan.

“Plan administrator” means the person who manages the business and assets of the debtor according to the business reorganization plan.

“Debtor’s executives” means the directors, managers or the authorized person who is empowered to operate the business of the debtor on the day on which the court orders for business reorganization.

“Value of assets” means the value of assets of a business.

Clause 2 This Ministerial Regulation is not enforced in the case that the debtor or the debtor's executives is appointed by the Court to be the plan preparer or the plan administrator.

Chapter 2
Committee

Clause 3 The one Committee shall be called "the committee considering the plan preparer and the business reorganization plan administrator" consists of the Director-General of the Legal Execution Department as the Chairperson, the representative of the Association of Accountants and Auditors of Thailand, the representative of the Office of the Securities and Exchange Commission, the representation of the Lawyers Council of Thailand, the representative of the Ministry of Commerce, the representative of the Ministry of Finance, the representative of the Thai Chamber of Commerce, the representative of the Thai Bankers' Association, the representative of the Federation of Thai Industries and other directors of no more than six persons appointed by the Minister from people who are experts in accounting, business, finance or law, and the Director of Business Reorganization Office of the Legal Execution Department as the director and the secretary of the committee.

The committee selects one director to be a vice chairperson having duties as the assistant of the chairperson for all activities that relate to the chairperson's power and duties as assigned by the chairperson, and being the representative of the chairperson when the chairperson is absent or cannot operate duties.

Clause 4 The director who is appointed by the Minister has two years for a term of the position.

In case where the appointed director is removed from the position before a term, the newly appointed director, as substitute, holds that position for the remaining time of the appointed director.

Upon the maturity of the term under paragraph 1, if there is no new appointment of the director, the removed director of that matured term shall operate until there is the newly appointed director but no longer than sixty days from the matured date.

The removed director in term might be appointed for no more than two consecutive terms.

Clause 5 If any person has any following character, that person is prohibited to be a director:

- (1) Being a bankrupt,
- (2) Being an incompetent person or quasi-incompetent person,
- (3) Having been sentenced by final judgment to imprisonment, unless the guilty of negligence or misdemeanors,
- (4) Being a plan preparer or a plan administrator, or
- (5) Being a director or administrator or an empowered person in operating the finance entities.

Clause 6 Unless removing the position for a term under Clause 4, the appointed director shall be removed from the position under the following circumstances:

- (1) Death,
- (2) Resignation,
- (3) Being imprisoned pursuant to a final judgment, except for offences arising out of negligence or for petty offences,
- (4) Upon removal from the position by the minister order because of defects in functioning or dishonesty in duties or lack of abilities, or
- (5) Having characteristics as stated under Clause 5.

Clause 7 The chairperson shall call a meeting of committee to consider the business occasionally.

One-third of directors or more can file the petition to call a committee meeting.

Clause 8 The committee has a meeting at the office or other place that the chairperson stipulates and directors no less than half of the total number of all directors must attend the meeting to form a quorum. In a case where the chairperson and the vice chairperson are absent or cannot perform duties, the attending directors select a director to preside that meeting.

If a consideration has been postponed due to lack of quorum and the next meeting in the same consideration is called within fourteen days from the last meeting and the committee attends the meeting not less than one-third of the whole committee, it is deemed as a quorum.

Any interested director in any consideration must leave the meeting and cannot vote on such agenda for consideration.

The resolution of the meeting shall be by a majority of votes of which a director has one vote. If the votes are equal in number, the chairperson of the meeting, in addition to his or her normal vote, shall exercise an additional vote as a casting vote.

Clause 9 The committee has power and duties as following:

- (1) Registration and licensing or renewal of license to be a plan preparer and a plan administrator,
- (2) Suspension or revocation of license from being a plan preparer and a plan administrator,
- (3) Declaration the registration forms and the process of applying the license, licensing and renewal of license to be a plan preparer and a plan administrator, and
- (4) Operating any other which be assigned in this Ministerial Regulation.

Clause 10 The office is responsible for keeping the register of plan preparers and plan administrators and the general affairs of the committee.

Chapter 3

Registration of the plan preparer and the plan administrator

Clause 11 A person who appointed to be a plan preparer or a plan administrator in any cases, that person must register with the committee as stipulated in this Ministerial Regulation.

Clause 12 A person intends to register as a plan preparer or a plan administrator must file the petition to the committee in the form as stipulated by the committee, and provide evidence to certify the qualification.

In considering the registration as a plan preparer or a plan administrator, the committee might inform the applicant to explain or submit further evidence that may be deemed proper and order the applicant to explain or submit that evidence within the assigned period.

Clause 13 A natural person who will be a plan preparer must have qualification and must not have adverse characteristics as following:

- (1) Thai nationality.
- (2) Not less than twenty-five years of age on the day of filing the registration petition.
- (3) Graduated at least bachelor degree or equivalent in finance, accounting or law and has experience working in that field for no less than three years.
- (4) Not being a person with misconduct or defective in morality and any conduct demonstrating untrustworthiness in integrity.
- (5) Not being an unsound mind person or mental infirmity,
- (6) Not during the sentence to imprisonment pursuant to a final judgment while filing the petition.
- (7) Never been sentenced to imprisonment pursuant to a final judgment in the case that the committee deems to bring disgrace to the honor of the profession.
- (8) Not being under a receivership order.

In case of a body of persons, every person in that body must have qualification and must not have adverse characteristics be as paragraph 1.

Clause 14 A juristic person which will be a plan preparer must have qualification and must not have adverse characteristics as following:

- (1) Having the objective to operate the business as a consultant in financial, accounting or law.
- (2) Having the objective to operate the business of managing business and assets of others.
- (3) Having the working line responsible for works and duties of a plan preparer and maintaining full-time workers of no less than three persons at least half of which has to be of Thai nationality. All of these workers have to graduate at least bachelor degree with experiences as in (1) no less than three years and at least one of workers has to have knowledge relating to finance or accounting.
- (4) The executive of that juristic person has ethics and competency or experience in that business that he or she will administer, honesty, no records of being dismissed, discharged, accused of or due to bad faith, or operating duties in dishonest manners, or managing operation or committing any act that leads to an illegal act or is considered fatal misconduct which can be indicated as lack of responsibilities or prudence in work administration.
- (5) Having concise and reliable rules and guidelines in operational process.

Clause 15 A natural person who will be a plan administrator must have qualification and must not have adverse characteristics as following:

- (1) Thai nationality.
- (2) Not less than twenty-five years of age on the day of filing the registration petition.
- (3) Graduated at least bachelor degree or equivalent, maintaining knowledge and competency and having experience in business administration for no less than three years.
- (4) Not being a person with misconduct or defective in morality and any conduct demonstrating untrustworthiness in integrity.
- (5) Not being an unsound mind person or mental infirmity,
- (6) Not during the sentence to imprisonment pursuant to a final judgment while filing the petition.
- (7) Never been sentenced to imprisonment pursuant to a final judgment in the case that the committee deems to bring disgrace to the honor of the profession.
- (8) Not being under a receivership order.

In case of a body of persons, every person in that body must have qualification and must not have adverse characteristics as paragraph 1.

Clause 16 A juristic person which will be a plan administrator must have qualification and must not have adverse characteristics as following:

- (1) Having the objective to operate the business as a consultant in management.
- (2) Having the objective to operate the business of managing business and assets of others.
- (3) Having the working line responsible for business administration and maintaining full-time workers not less than three persons at least half of which has to be of Thai nationality and all of these workers of no less than three persons at least half of which has to be of Thai nationality. All of these workers have to graduate at least bachelor degree with experiences as in (1) no less than three years and at least one of workers has to have knowledge relating to business administration.
- (4) The executive of that juristic person has ethics and competency or experience in that business that he or she will administer, honesty, no records of being dismissed, discharged, accused of or due to bad faith, or operating duties in dishonest manners, or managing operation or committing any act that leads to an illegal act or is considered fatal misconduct which can be indicated as lack of responsibilities or prudence in work administration.
- (5) Having concise and reliable rules and guidelines in operational process.

Clause 17 A plan preparer or a plan administrator shall pay the security deposit with the office in amount that is stipulated in Clause 20 for compensation for any damage that might occur in cause of working as a plan preparer or a plan administrator.

Clause 18 The security which a plan preparer or a plan administrator can deposit at the office can be:

- (1) Cash

(2) The Bank or Finance companies guarantee that be permitted to operate the business in Thailand, or

(3) Other securities that be permitted from committee.

Clause 19 Classification of securities:

(1) General securities.

(2) Particular case securities.

Clause 20 A plan preparer or a plan administrator shall give the general securities valued not less than Baht five hundred thousand on the day of filing the registration petition.

In case where a plan preparer or a plan administrator will give consent to be a plan preparer or a plan administrator in each case, the particular case securities shall be paid as stipulated in Table 1 of the Ministerial Regulation in any time prior to the consent. After giving such securities, the office will issue the proof of giving of such securities to propose to the court. In case of decreasing value of assets in the case and then causing decrease in the amount of particular case securities, the office shall return the exceeding amount of the particular case securities to a plan preparer or a plan administrator within thirty days after filing date.

Clause 21 The committee considers and orders the application within thirty days after receiving accurate and complete evidence. In exceptional circumstances that the order cannot be issued within that period, the time can be extended for no more than thirty days. In case where the committee does not issue an order within such period, it is deemed that the committee approves the petition.

In case where the committee dismisses the application, the committee shall inform the applicant of the reasons of the dismissal. The applicant shall be entitled to appeal the order of the committee to the Minister within thirty days after knowing the order of the committee.

The Minister reviews and adjudges an appeal within sixty days from the date of receipt of the appeal. In case that the Minister does not issue an order within that period, it is deemed that the Minister issue as the same order as the committee. The decision of the Minister shall be final.

Clause 22 In registering a plan preparer or a plan administrator, the office shall issue the license to the applicant as evidence.

The plan preparer license be expired after two years due to the issued date.

The plan administrator license be expired after two years due to the issued date.

Chapter 4

Termination of the Registration of a plan preparer or a plan administrator

Clause 23 A plan preparer or a plan administrator might be removed from the register under the following circumstances:

(1) Death.

(2) The juristic person who is a plan preparer or a plan administrator is dissolved.

(3) That person files a petition for removal from the register.

(4) Disqualification or any prohibition from Clause 13 to Clause 16.

(5) The license is expired and no further renewed.

(6) Being sentenced to imprisonment pursuant to a final judgment in the case that the committee deems to bring disgrace to the honor of the profession.

Clause 24 Under Clause 27, in case of removing a plan preparer or a plan administrator from the register, the office shall return the general securities to the plan preparer or the plan administrator within thirty days after receiving the petition.

Clause 25 Under Clause 27, the office shall return the particular case securities to a plan preparer or a plan administrator when:

(1) A plan preparer or a plan administrator is removed from the register.

(2) The court issues an order to dismiss the petition for a business reorganization.

(3) The court issues an order to cancel the business reorganization order.

(4) The court issues an order to terminate the business reorganization.

(5) The court orders to appoint other person to be a plan preparer or a plan administrator in that case.

(6) The court orders the debtor to be under absolute receivership.

Overall, the remittance of the particular case securities must be done within thirty days after receiving the petition.

Clause 26 The petition to return the general securities under Clause 24 or the particular case securities under Clause 25 must be in writing in the form stipulated by the committee.

Clause 27 In case where there is evidence showing that the action was brought against a plan preparer or a plan administrator for damages in the plan preparation or administration and that the general securities or the particular case securities could be paid for the damages, the office shall temporarily cease the return of the securities for no less than sixty days and order that the court injunctive relief in temporary seizure or attachment of such securities be shown to the committee. Where there is no such compliance to the order, the office shall return the securities.

Provisional clause

Clause 28 This Ministerial Regulation is not enforced in the business reorganization cases which were filed before this regulation becomes effective and the business reorganization cases which are filed within ninety days after this regulation becomes effective.

Given on the 19th day of April B.E.2545 (A.D. 2002)

Chaturon Chaisang

Minister of Justice

Remarks :- Reasons for promulgation of the Ministerial Regulation are as follow: Section 90/16 of the Bankruptcy Act B.E. 2483 (1940) which were amended by Bankruptcy Act (No.4) B.E. 2541 (1998) provided that when the Minister considered to the beneficial of the business reorganization, the Minister shall enact the Ministerial Regulation prescribing the registration and stipulation of qualification of the plan preparer and the plan administrator, it is therefore to have the effective provision to control, supervise, manage the business organization be consistent with the Act. Therefore, it is deemed appropriate to enact the Ministerial Regulation prescribing rules, process, and conditions of registration and qualification of the plan preparer and the plan administrator, it is therefore necessary to issue this Ministerial Regulation.

Unofficial Translation

Table 1**The particular case securities in case of the plan preparer or a plan administrator**

Value of Assets (Baht)	Securities (Baht)
10,000,000-50,000,000	200,000
50,000,001-100,000,000	300,000
100,000,001-500,000,000	1,250,000
500,000,001-1,000,000,000	2,000,000
1,000,000,001-5,000,000,000	7,500,000
5,000,000,001 upper	10,000,000