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On the maintenance of stability of the financial system and economic security of the country

Vajiralongkorn

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EMERGENCY DECREE
ON THE MAINTENANCE OF STABILITY OF THE FINANCIAL SYSTEM
AND ECONOMIC SECURITY OF THE COUNTRY, B.E. 2563 (2020)

HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOUYUHUA;

Given on the 18th Day of April B.E. 2563;

Being the 5th Year of the Present Reign.

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

Whereas it is expedient to have the law on the maintenance of stability of the financial system and economic security of the country;

By virtue of the provisions in section 172 of the Constitution of the Kingdom of Thailand, the King hereby issues the Emergency Decree as follows.

Section 1. This Emergency Decree is called the “Emergency Decree on the Maintenance of Stability of the Financial System and Economic Security of the Country, B.E. 2563 (2020)”.

Section 2. This Emergency Decree shall come into force as from the date of its publication in the Government Gazette.¹

Section 3. In this Emergency Decree:

“Fund” means the Maintenance of Liquidity of Capital Raising in the Debt Instrument Market Fund;

“Commission Overseeing the Fund” means the Commission Overseeing the Maintenance of Liquidity of Capital Raising in the Debt Instrument Market Fund;

* Translated by Rachanichol Pakdeesettakul, Legal Opinions and Translation Section, Foreign Law Division, Office of the Council of State. – Initial Version – pending view and approval by the Office of the Council of State.

¹ Published in the Government Gazette, Vol. 137, part 30a, page 12, dated 19th April B.E. 2563 (2020).

“Minister” means the Minister having charge and control of the execution of this Emergency Decree.

Section 4. In order to alleviate the impact resulting from COVID-19 pandemic and in order to maintain the stability of the overall financial system and economic security, actions shall be taken in order to maintain the liquidity of capital raising in the private debt instrument market in accordance with the procedures provided in this Emergency Decree.

It shall be the duties and powers of the Ministry of Finance and the Bank of Thailand to take actions collectively in accordance with paragraph one.

This Emergency Decree does not affect the duties and powers in the supervision of the maintenance of stability of the private debt instrument market of the Securities and Exchange Commission and the Capital Market Supervisory Board as prescribed by law, unless otherwise specifically provided by this Emergency Decree.

The implement of this Emergency Decree shall last for a period of five years as from the date this Emergency Decree comes into force, unless the Council of Ministers, in accordance with the recommendation of the Bank of Thailand, is of the opinion that there is a necessity for protecting the interest of the State, a resolution may be adopted to extend such period.

Section 5. In the case where a problem relating to the execution of this Emergency Decree arises, the Minister shall be the person who considers and makes a decision on such problem. The decision of the Minister shall be final, and persons concerned shall act in accordance with the decision.

Section 6. The Minister of Finance shall have charge and control of the execution of this Emergency Decree.

CHAPTER I THE FUND

Section 7. A mutual fund shall be established, called “the Maintenance of Liquidity of Capital Raising in the Debt Instrument Market Fund”, with the objectives of maintaining the stability and liquidity of the private debt instrument market which is impacted by the COVID-19 pandemic by way of the investment in newly issued private debt instruments.

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Section 8. The Fund shall be a juristic person, and shall be deemed a mutual fund which is established and operated under the law on securities and exchange.

In the initial period, the Fund shall have the amount not exceeding four hundred billion baht.

Subject to section 17 and section 18, in the initial period, the Bank of Thailand shall be the sole unitholder of the Fund.

The Bank of Thailand shall have the power to purchase units within the amount not exceeding four hundred billion baht within the period determined by the Commission Overseeing the Fund.

The operation of the Fund and the administration and management of the Fund shall be carried out in accordance with the law on securities and exchange, unless otherwise specifically provided in this Emergency Decree.

Section 9. There shall be a commission, called “the Commission Overseeing the Maintenance of Liquidity of Capital Raising in the Debt Instrument Market Fund”, consisting of the Permanent Secretary of Finance as the Chairperson; the Governor of the Bank of Thailand as the Vice-Chairperson; the Director-General of the Public Debt Management Office, the Director-General of the Fiscal Policy Office, and not more than three qualified persons appointed by the Minister with advice of the Governor of the Bank of Thailand from persons having knowledge and expertise in capital market, debt instrument market or law as members. The Governor of the Bank of Thailand shall appoint a staff of the Bank of Thailand as a secretary.

The term for holding office and the vacating of office of qualified members and the meetings of the Commission shall be in accordance with the Rules issued by the Minister.

Section 10. The Commission Overseeing the Fund shall have the duties and powers, as follows:

(1) to make policies, operation guidelines, and investment frameworks, as well as risk management of the investment of the Fund to be in accordance with the objectives under section 7;

(2) to establish a securities company for the management of the Fund, and such company must be a securities company which is licensed to undertake securities business that manages mutual funds under the law on securities and exchange;

(3) to supervise the operation of the investment commission, as well as the investment and the operation of the Fund to be in accordance with the objectives under section 7 and the Fund management projects;

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(4) to take other actions relating to or in connection with the exercise of duties and powers of the Commission Overseeing the Fund.

The Commission Overseeing the Fund shall report the results of the operation to the Minister annually.

Section 11. An investment framework under section 10 (1) must contain in its essence at least the following matters:

(1) type, qualification, framework for the determination of price and return rate, and maturity of the debt instruments to be invested in;

(2) objective of and limitation on the use of money;

(3) proportion of the investment in the debt instruments of the Fund in comparison with other financial sources of the issuer of the debts instruments of the same issue, which shall not exceed fifty percent of the amount of the debt instruments that will mature unless an exception is obtained from the Commission Overseeing the Fund;

(4) other rules or conditions which shall not have a characteristic of discrimination or create unnecessary process.

In the case where the issuer of debt instruments raises capital by issuing debt instruments which are offered for sale to the public or to any person and a security is provided to the holder of debt instrument, the debt instrument purchased by the Fund must be provided with a security not inferior to the security the issuer provides to other holder of debt instrument of the same issue, in accordance with the Rules prescribed by the Commission Overseeing the Fund.

Section 12. There shall be an investment commission, consisting of a Deputy Governor of the Bank of Thailand as entrusted by the Governor of the Bank of Thailand as the Chairperson; a representative of the Public Debt Management Office, a representative of the Government Pension Fund, and not more than two qualified persons appointed by the Governor of the Bank of Thailand from persons having knowledge and expertise in capital market or finance and banking as members. The Governor of the Bank of Thailand shall appoint a staff of the Bank of Thailand as a secretary.

The term for holding office and the vacating of office of qualified members and the meetings of the investment commission shall be as prescribed by the Bank of Thailand.

Section 13. The investment commission shall have the duties and powers to select private debt instruments which comply with section 11 and section 14, and to perform other duties as entrusted by the Commission Overseeing the Fund.

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The investment commission shall report the results of the operation to the Commission Overseeing the Fund at least every three months.

In taking action under paragraph one, the investment commission may appoint a consultant to give advice to the investment committee. The costs of hiring a consultant and his remuneration shall be deemed expenses of the Fund.

Section 14. A debt instrument which the Fund may invest in must have the following characteristics:

(1) being a debt instrument which is newly issued in order to redeem the old debt instrument which has matured;

(2) the issuer of the debt instrument has a financial source other than the Fund for not less than fifty percent of the amount of its debt instruments that will mature; unless an exception is obtained from the Commission Overseeing the Fund;

(3) being a debt instrument of which the issuer receives an investment grade credit rating, but does not include a debt instrument of the same issue offered for sale to the Fund, the public or any person which receives a credit rating below investment grade, and such credit rating is conducted by organisations as determined by the Bank of Thailand;

(4) the issuer of the debt instrument is a company which is incorporated and operates an undertaking in Thailand, but does not include a State enterprise, a financial institution, or a company belonging to a business group of a financial institution.

Section 15. The members of the Commission Overseeing the Fund and the investment commission shall receive remuneration as determined by the Minister, which shall be deemed expenses of the Fund.

Section 16. The establishment of a securities company for the management of the Fund under section 10 (2), the appointment of a consultant under section 13 paragraph three, and the purchase or sale of units or debt instruments under this Emergency Decree shall be in accordance with the Rules prescribed by the Commission Overseeing the Fund, and shall not need to comply with the law on public procurement and supplies administration.

Section 17. At any time where it is considered reasonable for the interest of the State or where the necessity that the Bank of Thailand is the sole unitholder ceases to exist, the Commission Overseeing the Fund may adopt a resolution that the Bank of Thailand

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sells the units in hand, or that the Fund sells the units to other persons in accordance with the rules, procedures, and conditions as prescribed by the Commission Overseeing the Fund.

Section 18. Before the expiration of the period under section 4 paragraph four, the Commission Overseeing the Fund shall consider and propose to the Council of Ministers for the determination of procedures and steps for the cessation of the operation once the period expires, whereby the units may be sold for repurchase or may be sold to other persons for the further operation of the Fund, or by any other means. Upon an approval by the Council of Ministers, actions shall be taken accordingly.

In the case where the Fund continues to operate after the expiration of the period under paragraph one, the Fund shall notify the Office of the Securities and Exchange Commission for information, and the Fund shall be deemed to be legitimately established under the law on securities and exchange. As for further compliance with the law on securities and exchange, in the case where it is not possible to do so, action shall be taken as determined by the Commission Overseeing the Fund.

CHAPTER II

PURCHASE AND SALE OF DEBT INSTRUMENTS IN A SECONDARY MARKET

Section 19. In the case where the debt instrument market faces a serious liquidity problem as a result of COVID-19 pandemic, and there is an urgent necessity for the maintenance of stability of the overall economic and financial systems, the Bank of Thailand with approval of the Council of Ministers shall have the power to purchase and sell private debt instruments which are not newly issued debt instruments.

In taking action under paragraph one, the Bank of Thailand may entrust any person to perform the duty to administer and manage the purchase and sale of debt instruments under paragraph one on behalf of the Bank of Thailand. Such entrustment shall be performed in accordance with the Rules of the Bank of Thailand, and shall not need to comply with the law on public procurement and supplies administration.

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CHAPTER III
COMPENSATION FOR LOSS FOR THE BANK OF THAILAND

Section 20. In the taking of actions of the Bank of Thailand under this Emergency Decree, if a profit is made, the Bank of Thailand shall remit it to the Ministry of Finance as State revenue, but if a loss is incurred to the Bank of Thailand, the Ministry of Finance shall provide compensation for the loss to the Bank of Thailand within the amount not exceeding forty billion baht.

Section 21. There shall be a commission considering operation result, having the duties to prescribe the rules and procedures for the calculation of profit, loss, and the amount of compensation, and to determine the amount of resulting profit or loss in accordance with such rules and procedures, and consisting of the Director-General of the Comptroller General's Department as the Chairperson; a Deputy Director of the Bureau of the Budget as entrusted by the Director of the Bureau of the Budget as the Vice-Chairperson; a Deputy Governor of the Bank of Thailand as entrusted by the Governor of the Bank of Thailand, the Director-General of the Public Debt Management Office, and the Director-General of the Fiscal Policy Office as members. The Comptroller General's Department shall appoint a government official attached to it as a secretary, and the Bank of Thailand shall appoint a staff of the Bank of Thailand as an assistant secretary.

Once the commission under paragraph one has determined the amount of profit or loss, it shall be reported to the Bank of Thailand or the Ministry of Finance, as the case may be, in order for the actions under section 20 to be taken expeditiously.

Countersigned by:
General Prayut Chan-o-cha
Prime Minister

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Remark: The grounds for the promulgation of this Emergency Decree are as follows. Whereas the coronavirus disease 2019 has abruptly and severely spread around the world including Thailand until the World Health Organization declares it a pandemic, this creates an impact on the economic system of every countries around the world, especially the debt instrument market which constitutes a critical mean of capital raising in the operation of business, investment, and saving of the people. No organisation could yet predict when this pandemic is going to end. As a result, economic activities of every sector around the world have abruptly and severely come to a halt. Entrepreneurs who raise capital in the debt instrument market are faced with a sudden liquidity shortage and are unable to redeem the debt instruments which have matured and which will soon mature, the value of which is around hundreds of billion bath. This situation is very likely to result in a significant increase in the cases where the issuers will default on the payments, which constitutes a systematic risk that has an impact on the stability of economic and financial systems of the country as well as the people overall. This situation constitutes an emergency of unavoidable and urgent necessity for the purpose of maintaining the economic security of the country. It is therefore necessary to enact this Emergency Decree.

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