

**ESCROW ACT,  
B.E. 2551 (2008)**

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BHUMIBOL ADULYADEJ, REX.

Given on the 13<sup>th</sup> Day of February B.E.2551;  
Being the 63<sup>th</sup> 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 escrow,

This Act contains certain provisions in relation to the restriction of rights and liberties of a person, in respect of which section 29 in conjunction with sections 33, 41, and 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

**Section 1.** The Act is called the “Escrow Act B.E. 2551 (2008)”.

**Section 2.**<sup>1</sup> This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

**Section 3.** In this Act:

“Escrow business” means the operation as a neutral party for the purpose of monitoring the performance of obligations by the parties to the contract as agreed in the escrow contract in the usual course of the business and for remuneration or charges;

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\* Translated by Ms. Sudkhanueng Somboonwong under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Initial Version – pending review and approval by the Office of the Council of State.

<sup>1</sup> Published in the Government Gazette Vol. 125, Part 16a, Page 1, dated 20 February B.E. 2551 (2008).

“Escrow contract” means the contract entered into between the parties to the contract and the escrow agent under which the escrow agent agrees to monitor the performance of obligations as agreed by the parties to the contract;

“Parties to a contract” means the parties to any reciprocal contract under which one party has the obligation to transfer or deliver the property or document embodying the obligations and the other party has the obligation to pay the money in accordance with the contract;

“Escrow agent” means the person who has obtained the license to operate the escrow business under this Act;

“Escrow account” means the deposit account which the escrow agent has opened with the financial institution in his name for the benefit of the parties to the contract;

“Financial institution” means:

(1) The commercial banks and financial companies under the laws on the financial institution business;

(2) The banks established by specific laws;

“License” means the license for the operation of escrow business;

“Committee” means the Escrow Regulation Committee;

“Member” means the member of the Escrow Regulation Committee;

“Competent official” means the persons appointed by the Minister to execute this Act;

“Minister” means the Minister who has the charge and control of the execution of this Act.

**Section 4** The Minister of Finance shall have charge and control of the execution of this Act, and shall have the power to appoint competent officials, and issue Ministerial Regulations and Notifications for the execution of this Act.

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

CHAPTER I  
GENERAL PROVISIONS

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**Section 5.** In entering into any reciprocal contracts, the parties to the contract may agree to have the escrow agent by way of entering to an escrow contract and complying with the rules prescribed by this Act.

**Section 6.** The escrow contract must be made in writing, signed by the parties to the contract and the escrow agent, and at least contain the following particulars:

- (1) The names and addresses of the parties to the contract and the escrow agent;
- (2) The date of entering into the escrow contract;
- (3) The name of the reciprocal contract as stipulated between the parties to the contract;
- (4) The period of time or conditions for delivery of property or document embodying the obligations and delivery of money by the parties to the contract;
- (5) The rules for transfer of money from the escrow account;
- (6) The rights, duties and liabilities of the parties to the contract and the escrow agent;
- (7) Remuneration and other charges in relation to escrow;
- (8) Any other particulars as prescribed by the Committee.

**Section 7.** The escrow agent has the duties to monitor the performance of obligations by the parties to the contract in accordance with the period of time and conditions stipulated in the escrow contract, to take care of money, property or document embodying the obligations that the parties to the contract have delivered to his or her possession and to deliver the money and cause the transfer of ownership or property rights to the party to the contract.

In addition to the duties under paragraph one, the escrow agent may provide other services in relation to the escrow contract as agreed with the parties to the contract in accordance with the rules prescribed by the Committee.

**Section 8.** Where the parties to the contract have not agreed otherwise, the parties shall equally pay the remuneration for the performance of the duties by the escrow agent under section 7 paragraph one. If any of the parties requests the performance of additional duties under section 7 paragraph two, that party shall pay the charges as requested.

The rate of remuneration or charges under paragraph one shall be in accordance with the prescription of the Committee.

No remuneration or charges that the escrow agent is entitled to under paragraph one shall be collected from the escrow account.

## CHAPTER II OPERATION OF ESCROW BUSINESS

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**Section 9.** Any person under section 10 who wishes to operate the escrow business shall obtain the license from the Minister upon the recommendation by the Committee.

The application and issuance of the license shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulation.

**Section 10.** The person who wishes to obtain the license under section 9 must be a financial institution or other juristic persons as prescribed in the Ministerial Regulation.

In issuing the Ministerial Regulation prescribing the juristic person to operate the escrow business, the rules on the maintenance of the financial status, the security or any other rules with which such juristic person must comply may be prescribed in addition to the rules prescribed by this Act.

**Section 11.** No person other than the escrow agent shall use the name or business identification of “escrow agent” or any other words that have the same meaning.

**Section 12.** No escrow agent who has direct or indirect interest with the party to the contract shall perform the duties of the escrow agent with the party with whom he or she has interest.

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The determination of the cases that fall within the meaning of the interest with the party to the contract under paragraph one shall be in accordance with the rules prescribed by the Committee.

**Section 13.** The escrow agent shall make the record of the escrow contracts in accordance with the rules prescribed by the Committee.

The escrow agent shall preserve the record and the copy of the escrow contract for no less than five years as from the date of the last insertion of an item into the record or the date of entering into the escrow contract, provided that such preservation may be in the form of electronic data or any other forms.

**Section 14.** The escrow agent shall keep the property of the party to the contract separated from his or her property by separately making the inventory for each party to the contract and his or her inventory and preserving such inventories in accordance with the rules prescribed by the Committee.

**Section 15.** The Committee shall have the power to order the escrow agent to submit the report or any other documents in relation to the operation of escrow business, provided that the Committee may also order the escrow agent to produce the note explaining or elaborating on such report or document.

**Section 16.** Any escrow agent who wishes to terminate the operation of escrow business shall file an application for permission to the Minister no less than sixty days before the termination of the operation of business.

In filing such application for permission under paragraph one, the escrow agent shall produce the evidence of having done the followings:

- (1) Notifying the parties to the contract and interested person of the termination and exercise of legal rights:
- (2) Managing or transferring the escrow contract which is still binding to any other escrow agent to replace him or her in performing the duties as agreed by the parties:
- (3) Managing the transfer of the money in the escrow account of property under the escrow contract to the parties to the contract where the parties wish to rescind the contract or it is impossible to transfer the escrow contract to any other escrow agent to replace him or her in performing the duties.

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In considering the permission under paragraph one, the Minister may prescribe the conditions or issue the order to be complied with by the applicant for permission.

The escrow agent shall return the permission to the Minister within thirty days as from the date of receipt of the permission for termination of the operation of business.

### CHAPTER III

#### RIGHTS AND DUTIES OF THE PARTIES TO THE CONTRACT AND THE ESCROW AGENT

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**Section 17.** Upon the agreement by the parties to the contract to have the escrow agent, the escrow agent shall make the escrow contract under section 6, open the escrow account for that contract with the financial institution and deposit the money received from the party to the contract who must pay in such escrow account within one business day.

The escrow agent shall issue written evidence of the deposit of money and send it to the party to the contract who must pay every time. It shall be deemed that such evidence is the evidence of the payment of money debts. The escrow agent shall immediately notify in writing the other party to the contract of such deposit.

Where the property to be delivered or the right thereof to be transferred is the immovable property that has the land right document, the escrow agent shall notify in writing the competent official under the Land Code and such competent official shall record as evidence that such immovable property is subject to the escrow contract. The register of transfer of such property right shall be prohibited until the written notification from the parties to the contract is received.

**Section 18.** The escrow agent shall notify in writing the parties to the contract of the list of money deposit or transfer and the balance of the escrow account in accordance with the rules prescribed by the Committee.

**Section 19.** Where the parties to the contract have fully complied with the agreements in the escrow contract, the escrow agent shall transfer the money as well as its fruit from the escrow account to the other party who must deliver or transfer the property and shall cause the transfer or delivery of the property or the document embodying the obligations under the contract to the party who must pay the money.

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In complying with paragraph one, if any party to the contract refuses the performance of obligations, the provisions of section 23 shall apply.

**Section 20.** The escrow agent shall transfer the money from the escrow account directly to the party entitled to it, and immediately notify in writing such party of the transfer.

**Section 21.** The rescission of the escrow contract, irrespective of its ground, does not prejudice the rights of the escrow agent to receive remuneration and charges for the services provided by him or her under the escrow contract, except where the rescission of contract is caused by the fault of the escrow agent.

**Section 22.** Upon the rescission of the escrow contract, the escrow agent shall consider the implementation of the followings:

(1) Causing the party who must pay the money to receive the money and its fruit from the escrow account as stipulated in the escrow contract, or;

(2) Causing the party who must transfer or deliver the property or document embodying the obligations to receive the money and its fruit from the escrow account as stipulated in the escrow contract.

The Committee shall fix in the Notification the period of time for the implementation of (1) or (2).

**Section 23** Unless otherwise stipulated in the escrow contract, where there is a dispute as to rights and duties of the parties to contract under the escrow contract, the transfer of money or property to the other party by the escrow agent shall be prohibited until the parties to the contract make an agreement or there is a final judgment of the Court.

**Section 24.** Upon the termination of the escrow contract and the complete transfer of money from the escrow account, the escrow agent shall close the escrow account in accordance with section 17 paragraph one and notify the parties to the contract immediately.

**Section 25.** Where the escrow agent has been ordered by the Court to place his or her assets under final custody or has been ordered by the official or the organ that has the regulatory duties under any other laws to terminate the business, either in whole or in part, the

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money in the escrow account and the property under the contract shall be protected without them being deemed under seizure or attachment in the civil case in which the escrow agent been ordered by the Court to place his or her assets under final custody or the property divisible to the creditor in the bankruptcy of the escrow agent or the property whose disposal is prohibited under the order to terminate the business, either in whole or in part.

When the escrow agent under paragraph one has been ordered by the Court to place his or her assets under final custody, the Official Receiver and the Committee shall separate the money in the escrow account and the property under the escrow contract, and shall have the powers to implement the followings:

(1) Collecting the money in the escrow account and the property subject to the escrow contract and allocated the money to the parties to the contract where the parties wish to rescind the escrow contract;

(2) Transferring the escrow contract which is still binding to any other escrow agent to replace him or her in performing the duties as agreed by the parties to the contract;

(3) Making a compromise, bringing an action before the Court, defending, or performing any other acts to cause an end to the management of the money in the escrow account and property subject to the contract.

In executing paragraph two, the Official Receiver and the Committee shall have the power may authorise any person to act on their behalf.

#### CHAPTER IV REGULATION AND AUDIT

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**Section 26.** There shall be a committee called the “Escrow Regulation Committee”, consisting of the Permanent Secretary of Ministry of Finance as Chairperson, Director-General of Department of Lands, Director-General of Fiscal Policy Office, the representative of Office of Consumer Protection Board, the representative of Bank of Thailand and not more than five qualified members appointed by the Minister as members.

The Permanent Secretary of Ministry of Finance shall appoint government officials as secretary and assistant secretary.

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The qualified members appointed by the Minister under paragraph one shall have knowledge, skills, expertise or experience in finance, accounting, taxation, laws, consumer protection or sale of property.

**Section 27.** The Fiscal Policy Office shall function as the secretariat of the Committee, responsible for administration, meetings, study, and any other action related to the function of the Committee.

**Section 28.** The Committee shall have the following powers and duties:

(1) To give opinions to the Minister as to the issuance of Notifications under this Act;

(2) To issue Notifications prescribing the rules concerning the operation of escrow business under sections 7, 12, 13, 14, 18, and 22;

(3) To issue Notifications fixing the rate of remuneration and charges for other services related to the operation of escrow business under section 8;

(4) To perform other acts prescribed by the laws as the powers of the Committee or as entrusted by the Minister.

The Notifications under (2) and (3) shall come into force upon their publication in the Government Gazette.

**Section 29.** The qualified members appointed by the Minister shall hold office for a term of two years.

The member who vacates office upon the expiration of the term may be reappointed, but may not be appointed for more than two consecutive terms.

**Section 30.** In addition to vacating office on the expiration of term, the qualified member appointed by the Minister vacates office upon:

(1) Death;

(2) Resignation;

(3) Being dismissed by the Minister due to negligence or dishonesty in the performance of duty, incapability or disgraceful behaviour;

(4) Being bankrupt;

(5) Being an incompetent person or a quasi-incompetent person;

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(6) Being imprisoned due to a final judgment;

(7) Being the director, manager, authorised person or employee of the escrow agent.

**Section 31.** Where the qualified member vacates office before the expiration of the term, the Minister may appoint any other person to replace the vacated member, and the person appointed to replace the vacated member shall be in office for the unexpired term of office of the person he or she replaces.

Where there is an appointment of additional qualified member while the appointed qualified members are still in office, the person appointed additionally to the qualified members shall be in office for the unexpired term of office of the qualified members already appointed.

**Section 32.** At a meeting of the Committee, the presence of not less than one-half of members is required to constitute a quorum.

At a meeting, if the President does not attend or is unable to perform the duties, the members present shall elect one among themselves to preside over the meeting.

A decision of the meeting shall be made by a majority of votes. In casting a vote, each member shall have one vote. In the case of an equality of votes, the presiding member shall have an additional vote as the casting vote.

**Section 33.** The Committee shall have the power to appoint the sub-committee to consider or perform other acts as entrusted by the Committee.

The provisions of section 32 shall apply *mutatis mutandis* to the meetings of the sub-committee.

**Section 34.** In executing this Act, the competent official shall have the following powers and duties:

(1) To enter the place of business of the escrow agent during business hours to audit the business of the escrow agent as well as to collect documents, evidence or information related to the operation of the escrow business:

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(2) To attach the documents or evidence related to the commission of offences under this Act for the purpose of inspection or prosecution which shall not exceed one hundred and eighty days:

(3) To order the director, manager, authorised person or employee of the escrow agent to make the declaration or produce or send account books, documents, instruments or other things related to the business, assets and debts of the escrow agent and said persons.

In performing the duties under (1), no competent officials shall act in such a way as to constitute threatening or searching under the Criminal Procedure Code.

**Section 35.** In performing the duties by the competent officials under section 34, the concerned person shall duly provide convenience.

**Section 36.** In performing the duties, the competent officials shall produce to the concerned person his or her identity card every time.

The identity cards of the competent officials shall be in accordance with the form as prescribed by the Minister.

**Section 37.** In performing the duties under this Act, the competent officials shall be public officers under the Criminal Code.

## CHAPTER V

### APPEAL

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**Section 38.** The escrow agent has the right to appeal an order to pay the administrative fine by the Committee under section 39 paragraph two or section 40 to the Minister within fifteen days as from the date of receipt of that order.

The Minister shall complete the decision of the appeal under paragraph one within sixty days as from the date of acceptance of the appeal.

The decision of the Minister is final.

CHAPTER VI  
PENALTIES

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Part 1

Administrative Penalties

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**Section 39.** Where it appears to the Committee that any escrow agent operates the business in such a way that violates or fails to comply with section 7 paragraph two, section 13, section 15, section 18 or section 24, the Committee shall have the power to order him or her to improve, terminate the violate or comply with them correctly or appropriately within the time fixed.

Where the escrow agent fails to comply with the order of the Committee under paragraph one, the Committee shall order the administrative fine of not exceeding one hundred thousand baht.

**Section 40.** Where the escrow agent who violates or fails to comply with the rules prescribed in the Ministerial Regulations issued under section 10 paragraph two or violates or fails to comply with sections 12, section 14, section 17 or section 22, the Committee shall order the administrative fine of not exceeding five hundred thousand baht.

**Section 41.** In considering the issuance of the order of the administrative fine, the Committee shall have regard to the severity of behaviour of offence.

Where the person on whom the administrative penalty is imposed fails to pay the administrative fine, the provisions on enforcement of administrative act under the laws governing administrative procedure shall apply *mutatis mutandis*. Where there is no officer to execute the order or the officer cannot execute the administrative act, the Committee shall have the power to bring an action before the Administrative Court to enforce payment of the fine. For this purpose, if the Administrative Court finds that such order to pay the fine is lawful, the Administrative Court shall have the power to decide and enforce the seizure or attachment of property for selling by auction for the purpose of payment of the fine.

**Section 42.** Where the escrow agent is liable to the administrative fine, the director, manager or authorised person of that escrow agent shall also be liable for that administrative fine as prescribed for such offence, unless it can be proved that he or she has not contributed in the commission of that offence or that he or she has taken proper measures to prevent such offence.

**Section 43.** The Minister shall, upon the recommendation by the Committee, have the power to revoke the license of the escrow agent if it appears that any escrow agent:

(1) Fails to comply with the conditions or order by the Minister under section 16 paragraph three;

(2) Has been imposed the administrative fine and commits the same offence and is imposed the administrative fine again;

(3) Acts in such a way that violates the provisions containing criminal penalties in this Act;

(4) The director, manager or authorised person of the escrow agent acts does anything under section 48.

The escrow agent whose license has been invoked under paragraph one shall lose the right to operate the escrow business as from the date of receiving the order to invoke the license.

The order to invoke the license under paragraph one shall not prejudice the escrow contract that has been entered into between the escrow agent and the parties to the contract before the licence is invoked and is still binding. The Committee shall have the power to transfer the escrow contract that is still binding to any other escrow agent to replace the old escrow agent in performing the duties as agreed by the parties to the contract, with the escrow agent whose license has been invoked being responsible for the expenses for such transfer.

In executing paragraph three, the Committee may authorise any person to act on their behalf.

**Part 2**  
**Criminal Penalties**

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**Section 44.** Any person who violates section 9 paragraph one shall be liable to a fine of not exceeding one million baht.

**Section 45.** Any person who violates section 11 shall be liable to fine of not exceeding five hundred thousand baht.

**Section 46.** Any escrow agent who violates section 16 paragraphs one and four, sections 20 or 23 shall be liable to a fine of not exceeding five thousand baht.

**Section 47.** Any person who obstructs the performance of duty or fails to comply with the order of the competent official under section 34 or fails to provide convenience to the competent official under section 35 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding fifty thousand baht or to both.

**Section 48.** Any director, manager, authorised person or employee of the escrow agent does any of the followings shall be liable to imprisonment for a term of not exceeding five years or to a fine of not exceeding five hundred thousand baht or to both:

(1) Swindling the party to the contracts by showing false statement or concealing the fact that he or she should have expressly told in relation to the business that the escrow agent has the duty to do for the benefit of the parties to the contract and such act cause the acquisition of the property of the parties to the contract;

(2) Embezzling or causing the decrease of the money in the escrow account from the amount that the party to the contract have deposited;

(3) Possessing the property of the party to the contract which the escrow received in the operation of the business under this Act and misappropriating that property to be that of his or her or third party;

(4) Damaging, destroying, changing, abridging or forging the account or documents of the escrow agent made in performing the duties in the operation of the business under this Act;

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(5) Acting or failing to act, relying dishonestly on the occasion when he or she has such duties, and causing damage to the parties to the contract.

**Section 49.** With respect to all offences under Part 2, except section 48, the Settlement Committee appointed by the Minister shall have the power to settle the case.

The Settlement Committee under paragraph one shall consist of three persons, one of whom must be the case officer under the Criminal Procedure Code.

If the Settlement Committee has settled the case and the accused has paid the fine in accordance with the settlement decision within the time-limit fixed by the Settlement Committee, it shall be deemed that the case is terminated.

**Section 50.** Where the offender under Part 2, except section 48, is a juristic person, the director, manager or authorised person of that juristic person shall also be liable for the penalty as prescribed for such offence, unless it can be proved that he or she has not contributed in the commission of that offence or that he or she has taken proper measures to prevent such offence.

#### TRANSITORY PROVISIONS

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**Section 51.** This Act shall not prejudice the operation in accordance with the Notification of Bank of Thailand regarding Permission for Commercial Banks to Operate Escrow Account Services dated 8 March B.E. 2544 or Notification of Ministry of Finance regarding Permission for Finance Companies and Finance and Securities Companies to Operate Business related to Procuring Escrow Account dated 3 December B.E. 2546 and where such commercial banks or financial companies desire to operate the escrow business in accordance with this Act, they shall file an application for the license within ninety days as from the date of the entry into force of this Act.

**Section 52.** Any person who uses the name which have the same meaning in such a way that violated section 11 while this Act is applicable shall rectify or change them within ninety days as from the date of the entry into force of this Act.

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Countersigned by  
General SurayudChulanont  
Prime Minister

*Office of the Council of State*

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