

Unofficial Translation

HAZARDOUS SUBSTANCE ACT

B.E. 2535 (1992)<sup>1</sup>

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BHUMIBOL ADULYADEJ, REX.

Given on the 29<sup>th</sup> Day of March, B.E. 2535 (A.D. 1992),

Being the 47<sup>th</sup> Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on toxic substance;

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

**Section 1.** This Act is called the “Hazardous Substance Act, B.E. 2535 (A.D. 1992).”

**Section 2.** This Act shall come into force as from the day following the date of its publication in the Government Gazette.<sup>2</sup>

**Section 3.** The following shall be repealed:

- (1) Toxic Substance Act, B.E. 2510 (1967);
- (2) Toxic Substance Act (No. 2), B.E. 2516 (1973).

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<sup>1</sup> Translated by Center for Translation and Language Services, Research Institute for Languages and Cultures of Asia, Mahidol University under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

<sup>2</sup> Published in the Government Gazette, Vol. 109, Part 39, dated 6<sup>th</sup> April, B.E. 2535 ( 1992)

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**Section 4.** In this Act,

“Hazardous substance” means the following substances:

- (1) Explosives;
- (2) Inflammable substances;
- (3) Oxidizing agents and peroxide substances;
- (4) Toxic substances;
- (5) Disease causing substances;
- (6) Radioactive substances;
- (7) Mutagenic substances;
- (8) Corrosive substances;
- (9) Irritative substances;
- (10) Other substances, whether chemicals or otherwise, which may be harmful to people, animals, plants, property or environment;

“Produce” means make, cultivate, prepare, mix, transform, modify, repack separately or pack in mass;

“Import” means bring or order to bring into, or transit through, the Kingdom;

“Export” means send or cause to send out of the Kingdom;

“Sell” means dispose of, distribute, or dispense for trade purposes, and shall include having in possession for sale;

“Having in possession” means having in possession for the possessor himself or herself or for other persons whether such possession is for sale, transportation, use or for other purposes, including being left or appearing within the area under possession;

“Label” means picture, artificial mark or any statement displayed on hazardous substance or its container or package, or inserted in or keep collectively with hazardous substance or its container or package, including instruction of use or user’s manual of hazardous substance;

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“Convention on the Prohibition of Chemical Weapons”<sup>3</sup> means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction having been opened for signature since 13<sup>th</sup> January, B.E. 2536 (1993);

“Committee” means the Hazardous Substance Committee;

“Competent official” means a person appointed by the Responsible Minister for the execution of this Act;

“Responsible Minister” means the portfolio Minister of the agency entrusted to be responsible for the control of hazardous substance under Section 19.

**Section 5.** The Minister of Defence, the Minister of Agriculture and Cooperatives, the Minister of Transport, the Minister of National Resources and Environment, the Minister of Energy, the Minister of Interior, the Minister of Science and Technology, the Minister of Public Health and the Minister of Industry shall control, promote and supervise the secretary and the assistant secretaries of the Hazardous Substance Committee in the execution of this Act.<sup>4</sup>

The Minister of Industry shall have the power to issue Ministerial Regulations prescribing fees not exceeding the rate of fees annexed hereto, granting exemption from payment of fees, prescribing other acts, issuing Notifications for the execution of this Act.

The Responsible Minister shall have the power to appoint competent officials and issue Notifications for the execution of this Act.

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

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<sup>3</sup> Section 4, the definition of “Convention on the Prohibition of Chemical Weapons” as added by the Hazardous Substance Act (No. 2), B.E. 2544 (2001)

<sup>4</sup> Section 5 paragraph one as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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## Chapter 1

### Hazardous Substance Committee

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**Section 6.**<sup>5</sup> There shall be established a Hazardous Substance Committee consisting of the Permanent Secretary of the Ministry of Industry as Chairperson, the Commissioner General of the Royal Thai Police, the Director-General of the Department of Land Transport, the Director-General of the Department of Internal Trade, the Director-General of the Department of Medical Services, the Director-General of Pollution Control Department, the Director-General of the Department of Energy Business, the Director-General of the Department of Fisheries, the Director-General of the Department of Livestock Development, the Director-General of the Department of Agriculture, the Director-General of the Department of Medical Sciences, the Director-General of the Department of Agricultural Extension, the Secretary-General of the Food and Drug Administration, the Secretary-General of the Office of Atomic Energy for Peace, the Secretary-General of the Thai Industrial Standards Institute, a representative of the Ministry of Defense, a representative of the Ministry of Transport, a representative of the National Bureau of Agricultural and Food Standards and not more than ten qualified persons appointed by the Council of Ministers, as members. The Director-General of the Department of Industrial Works shall be member and secretary, and a representative of the Department of Energy Business, a representative of the Department of Industrial Works, a representative of the Department of Agriculture, a representative of the Food and Drug Administration, and a representative of the Office of Atomic Energy for Peace shall be assistant secretaries.

The qualified members as appointed by the Council of Ministers shall be the persons having knowledge, expertise, contributions and experience in the related fields of chemistry, science, engineering, agriculture or law, and at least five of them shall be appointed from the qualified persons who are representatives of public benefit organizations

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<sup>5</sup> Section 6 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

with experience in providing protection to health and hygiene, consumers, sustainable agriculture, hazardous substance management in the locality, or environment.

**Section 7.** The Committee shall have the powers and duties as follows:

(1)<sup>6</sup> To formulate policies, prescribe measures and prepare plans on hazardous substance control to be complied with by all agencies concerned upon approval of the Council of Ministers;

(1/1)<sup>7</sup> To give recommendations to the Minister of Industry in relation to the issuance of the Notifications under Sections 18 paragraph two and 36 paragraph one;

(2)<sup>8</sup> To give recommendations to the Responsible Minister in relation to the issuance of Notifications under Sections 20, 20/1, 36 paragraph three, 37 paragraph two, 43, 44, and 47 (5);

(3) To give advice to the competent official on the registration or the deregistration of hazardous substance;

(4) To give recommendation or advice to the Responsible Minister, the Minister of Industry, the responsible agencies and the competent official on any matter in relation to hazardous substance;

(5) To consider complaint of a person affected by or injured from hazardous substance;

(6) To notify or disseminate information relating to hazardous substance to the public, doing so with or without the name of the hazardous substance or the name of entrepreneur concerned;

(7) To supervise, monitor, give advice and expedite the competent official or government agencies having powers and duties in relation to any hazardous substances for the performance of their powers and duties as provided by laws;

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<sup>6</sup> Section 7 (1) as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>7</sup> Section 7 (1/1) as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>8</sup> Section 7 (2) as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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(8) To propose recommendations to the Minister of Industry in order to submit to the Council of Ministers concerning hazardous substance control and prevention and remedies for damage caused by hazardous substance as practical guidelines for the operation of various government agencies.

(9) To perform any other acts provided by law as the powers and duties of the Committee.

**Section 8.**<sup>9</sup> A qualified member shall hold office for a term of three years. A qualified member who vacates office may be reappointed, but not more than two consecutive terms.

**Section 9.** In addition to vacating office at the end of the term under Section 8, a qualified member vacates office upon:

- (1) Death;
- (2) Resignation;
- (3) Being dismissed by the Council of Ministers due to deficiency, dishonesty in the discharge of duty, disgraceful behavior or incapability;
- (4) Being a bankrupt;
- (5) Being an incompetent or quasi-incompetent; or
- (6) Having been sentenced by a final judgement to a term of imprisonment, except for an offence committed through negligence or a petty offence.

**Section 10.** If there is an appointment of a qualified member while the appointed qualified members remain in office, irrespective of whether it being an appointment for additional member or for filling the vacancy, the appointee shall hold office for the remaining term of office of the existing appointed qualified members.

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<sup>9</sup> Section 8 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 11.** At the expiration of the term of office, if the newly qualified members have not been appointed, the qualified members who vacate office shall remain in office to perform their duties until the newly qualified members have been appointed.

**Section 12.** At a meeting of the Committee, the presence of not less than one-half of the total number of the members shall constitute a quorum. If the Chairperson is not present at the meeting, the members shall select one among themselves to preside over at the meeting.

A decision shall be made by a majority of votes. In casting votes, each member shall have one vote. In case of an equality of votes, the person who presides over the meeting shall cast an additional vote as a casting vote. A member having personal interest in any matter shall have no right to vote on such matter.

**Section 13.** The Committee may appoint a sub-committee for consideration or implementation of any matter as may be entrusted by the Committee.

The Committee may prescribe the quorum and operation procedure of the sub- committee as deemed appropriate.

**Section 14.** In the performance of duties, the Committee or the sub-committee entrusted by the Committee shall have the power to issue a letter summoning any person to give statement or to submit any document or object for its consideration as it deems necessary.

## Chapter 2

### Hazardous Substance Control

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**Section 15.** In a case where any matter on hazardous substance control has

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been specifically provided by any law, the provisions of that law shall prevail. However, if there is a reasonable cause, the Committee, with approval of the Minister having charge and control of the execution of that law, may resolve that the provisions of this Act shall be additionally applied thereto, or in lieu thereof, in this regard, a time period or any conditions may be prescribed in such resolution.

The resolution under paragraph one shall come into force upon its publication in the Government Gazette by the Minister having charge and control of the execution of that law.

**Section 15/1.**<sup>10</sup> In the passing of resolutions or giving recommendations of the Committee, or in the giving of approval of the Minister having charge and control of the execution of other laws, and in the issuing of Notifications of the Minister of Industry or the Responsible Minister for the execution of this Act, the Convention on the Prohibition of Chemical Weapons and other international conventions and obligations shall be regarded.

**Section 16.** If it is necessary to prevent harm from happening to people, animals, plants, property or environment, a Royal Decree prescribing localities where possession, distribution or use of any hazardous substance is prohibited may be promulgated.

**Section 17.** There shall be established the Hazardous Substance Information Centre under the Ministry of Industry to act as an hazardous substance information coordinating centre among various government agencies and private sector to collect and provide all information services on hazardous substance from its existence in foreign country, the importation or domestic production, transportation, use, destruction, and other affairs related thereto.

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<sup>10</sup> Section 15/1 as added by the Hazardous Substance Act (No. 2), B.E. 2544 (2001)



**Section 18.** For the purpose of control, hazardous substances shall be classified into categories as follows:

(1) Category 1 Hazardous Substance: The production, importation, exportation or possession of which shall be in accordance with the prescribed criteria and procedure;

(2) Category 2 Hazardous Substance: the production, importation, exportation or possession of which requires an advance notification to be made to the competent official, and shall be in accordance with prescribed criteria and procedure;

(3) Category 3 Hazardous Substance: the production, importation or exportation or possession of which requires licensing;

(4) Category 4 Hazardous Substance: the production, importation or exportation or possession of which is prohibited.

For the purpose of prevention and extinguishing of any harm which may happen to people, animals, plants, property or environment, the Minister of Industry, with the recommendation of the Committee, shall have the power to publish in the Government Gazette the name, or properties and category of hazardous substance, enforcement period and responsible agency for the control of such hazardous substance.

**Section 19.** In a case where any agency of a Ministry or sub-Ministry requests to be a responsible agency for the control of any hazardous substance under this Act, the Committee shall submit its recommendation to the Minister of Industry for the issuance of a Notification under Section 18 paragraph two, prescribing that agency with authority to be responsible, wholly or partly, for any execution in relation to such hazardous substance with due regard to specific expertise, number of personnel, relationship between principal missions and workload responsibility of that agency.

In a case where the Committee has a recommendation otherwise, the Minister who supervises the requesting agency shall affirm that request to the Committee within thirty days. Such being the case, the matter shall be presented to the Minister of

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Industry in order for it to be submitted to the Council of Ministers for decision.

**Section 20.** The Responsible Minister, with the recommendation of the Committee, shall have the power to publish the following in the Government Gazette:

(1)<sup>11</sup> Prescription of quantity, composition, properties and adulterants, container, examining and testing method for container, label, production, import, export, sale, transportation, storage, disposal and destruction of hazardous substance, treatment of hazardous substance container, fact reporting, specimen delivery, or any other matters in relation to hazardous substance in order to control, prevent, alleviate or extinguish any danger which may happen to people, animals, plants, property or environment with due regard to international conventions and obligations;

(1/1)<sup>12</sup> Requirements for technology transfer in relation to hazardous substance and to put down guarantee for damage which may be inflicted on environment, life, or property caused by business operation;

(2)<sup>13</sup> Requirements for experts or specialists specifically responsible for any undertaking under (1) and (1/1);

(3) Prescription of variation criteria of stipulated quantity of the essential elements of hazardous substance;

(4) Prescription of hazardous substance registration procedure;

(5) Specifying names or properties of hazardous substance and cases being exempted under Section 36.

**Section 20/1.**<sup>14</sup> The expert or specialist specifically responsible for any undertaking in relation to hazardous substance shall perform in compliance with the criteria,

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<sup>11</sup> Section 20 (1) as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>12</sup> Section 20 (1/1) as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>13</sup> Section 20 (2) as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>14</sup> Section 20/1 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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procedure and conditions as prescribed by the Responsible Minister with the recommendation of the Committee as published in the Government Gazette.

**Section 21.**<sup>15</sup> A producer, importer or exporter of, or any person having in possession of Category 1 hazardous substance, shall comply with the Notifications of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3).

**Section 22.**<sup>16</sup> Subject to the provisions of Section 36, no person shall produce, import, export, or have in possession of Category 2 hazardous substance, except that the competent official has been notified in advance of his or her intent to do so.

Whenever any hazardous substance is specified as Category 2 hazardous substance, a producer, importer, exporter, or a person having in possession of that hazardous substance shall notify the competent official of his or her operation in relation to that hazardous substance within the period as specified in that notification.

Upon receiving the notification under paragraphs one or two, the competent official shall issue a receipt as evidence to the person who makes such notification. The receipt shall be valid through the period as specified therein, but not more than three years as from the date of its issuance.

The notification, the issuance of a receipt, the application for renewal of a receipt, and the renewal of a receipt, shall be in accordance with the criteria and procedure as prescribed by the responsible agency by publication in the Government Gazette.

A producer, importer, exporter, or a person having in possession of Category 2 hazardous substance shall comply with the Notification of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3).

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<sup>15</sup> Section 21 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>16</sup> Section 22 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 23.** Subject to the provisions of Section 36, no person shall produce, import, export, or have in possession of Category 3 hazardous substance except with license granted by the competent official.

The application for and the granting of license shall be in accordance with the criteria and procedure as prescribed in the Ministerial Regulations. The Ministerial Regulations shall specify as clearly as possible the circumstances under which licenses are granted or not granted unless it is necessarily unforeseeable and the period of time required for consideration shall also be clearly specified.

A producer, importer, exporter, or a person having in possession of Category 3 hazardous substance shall also comply with the Notification of the Responsible Minister issued under Section 20 (1), (1/1), (2) and (3)<sup>17</sup>.

**Section 24.** Whenever any hazardous substance is specified as Category 3 hazardous substance, a producer, importer, exporter, or a person having in possession of that hazardous substance shall apply for license under Section 23 within the period as specified in that Notification, and that person may, in the meantime, carry on his or her business operation temporarily until the competent official has denied the application for the license.

**Section 25.** In a case where a license has been granted, if it appears thereafter that the law or the circumstances have changed or there is an important event requiring safety protection, the competent official with license granting power shall have the power to amend or append the license granting conditions as appropriate.

**Section 26.** A license granted under this Act shall be valid through the period specified therein but not more than three years as from the date of its issuance.

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<sup>17</sup> Section 23 paragraph three as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 27.** A licensee desirous to renew his or her license shall submit an application for renewal before the license expires. Upon such submission, that person is deemed to be a licensee and may, in the meantime, continue his or her business operation temporarily until the competent official has denied the renewal of the license.

The application for the renewal of a license and the renewal thereof shall be in accordance with the criteria and procedure as prescribed in the Ministerial Regulations.

**Section 28.** In the case where the competent official refuses to grant or renew a license, the license applicant or the license renewal applicant has the right to appeal to the Responsible Minister within thirty days as from the date of receiving of the letter of the competent official notifying the refusal of license granting or license renewal. The decision of the Responsible Minister shall be final.

**Section 29.** If the competent official refuses to renew a license or the Responsible Minister dismisses an appeal for renewal of license, the license renewal applicant may sell the hazardous substance in his or her possession within three months as from the date the order refusing license renewal or the order of the Responsible Minister dismissing the appeal, as the case may be, is known to him or her. After the expiration of the aforesaid period, Section 52 paragraphs two, three and four, shall apply *mutatis mutandis*.

**Section 30.** If a license or a certificate of registration of the hazardous substance is lost, defaced or substantially damaged, the licensee shall apply for a substitute thereof with the competent official within fifteen days from the date such loss, defacement or damage is known to him or her.

**Section 31.** A licensee whose license has a validity period longer than three months shall display the license or a substitute thereof at the open and conspicuous place

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at the business establishment specified therein.

**Section 32.** If it appears to the competent official that any licensee violates or fails to comply with this Act, the competent official shall have the power to suspend the license for a period he or she deems fit but not more than one year. In a case of significance, the competent official may revoke the license.

**Section 33.** The person whose license has been suspended or revoked under Section 32 has the right to appeal to the Responsible Minister within thirty days from the date the order is known to him or her. The decision of the Responsible Minister shall be final.

The appeal under paragraph one shall not stay the execution of the license suspension or revocation order.

**Section 34.** The person whose license has been revoked under Section 32 may sell hazardous substance in his or her possession within three months as from the date the revocation order or the dismissal order of the Responsible Minister, as the case may be, is known to him or her. At the expiration of the aforesaid period, Section 52 paragraphs two, three and four shall apply *mutatis mutandis*.

**Section 35.** The person whose license has been revoked shall not be eligible to apply for a new license until the expiration of five years as from the date of revocation.

**Section 36.** The Minister of Industry, with the recommendation of the Committee, shall publish in the Government Gazette the name list of hazardous substances which are generally and clearly known that their production and nature may cause harm.

The production or import of any Category 2 or 3 of hazardous substances other than those specified in the list referred to in paragraph one shall be registered with

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the competent official prior to production or import. Upon receiving certificate of registration, it may be produced or imported under Section 22 or the production or import license thereof may be granted under Section 23, except in a case where there is a Notification of the Responsible Minister exempting the registration on the ground that that hazardous substance has been registered by another person or on any other reasonable grounds. The certificate of registration of hazardous substance shall be valid for not more than six years as from the date of issuance of the certificate of registration.<sup>18</sup>

The application for the registration of hazardous substance, the issuance of the certificate of registration of hazardous substance and the renewal of the certificate of registration of hazardous substance shall be in accordance with the criteria and procedure as prescribed by the Responsible Minister with the recommendation of the Committee by publication in the Government Gazette.<sup>19</sup>

**Section 37.** In a case where the registration requires the production or importation of a specimen of a hazardous substance to be registered, or it requires the importation of other hazardous substance to produce a hazardous substance to be registered, and to produce or import such hazardous substance prior permission or registration is required by a law, the applicant may request permission for the production or importation of that hazardous substance under this Act, for which the applicant shall be exempted from complying with the procedures as prescribed by such law.

The production or importation under paragraph one shall be in accordance with the criteria and procedure as prescribed by the Responsible Minister, with the recommendation of the Committee, as published in the Government Gazette.

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<sup>18</sup> Section 36 paragraph two as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>19</sup> Section 36 paragraph three as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 38.** No competent official shall accept the registration of hazardous substance if the Committee is of the opinion that:

(1) The hazardous substance seeking registration is not reliably beneficial as applied for registration, or its usage may be harmful to people, animals, plants, property or environment without ordinarily reasonable prevention,

(2) The hazardous substance seeking registration is named in boastful, impolite, or misleading manner, or

(3) The hazardous substance seeking registration is a forged hazardous substance or a hazardous substance the registration of which has been revoked.

The registration refusal order by the competent official shall be final.

**Section 39.** For the purpose of providing protection to people, animals, plants, property, or environment, the competent official, with the recommendation of the Committee, shall have the power to order the rectification of the hazardous substance registration particulars as necessary.

**Section 40.** If it appears later on that a registered hazardous substance is not as useful as described in the register or its usage may be harmful to people, animals, plants, property or environment without ordinary reasonable prevention, the competent official, with the recommendation of the Committee, shall have the power to revoke the registration of such hazardous substance.

The registration revocation order of the competent official shall be final.

When a hazardous substance registration is revoked, the rights to produce, import, export or have in possession of such hazardous substance shall be extinguished.

**Section 41.** The owner of the hazardous substance the registration of which has been revoked shall destroy or manage one's own hazardous substance in accordance with the order of the competent official within the period of time specified by the

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competent official, where Section 52 paragraphs two, three, and four shall apply *mutatis mutandis*.

**Section 42.**<sup>20</sup> *Repealed*

**Section 43.**<sup>21</sup> No person shall produce, import or have in possession of Category 4 hazardous substance, except with written permission from the responsible agency for use as standard analytical substance in laboratory. The application for and the granting of permission shall be in accordance with the criteria, procedure and conditions as prescribed by the Responsible Minister, with recommendation of the Committee, as published in the Government Gazette.

When the Minister of Industry has issued a notification specifying any substance to be Category 4 hazardous substance, the producer, importer or the person having in possession of that hazardous substance shall comply with the order of the competent official. Such being the case, Section 41 shall apply *mutatis mutandis*.

**Section 44.** The Responsible Minister, with the recommendation of the Committee, shall have the power to issue a notification exempting the following hazardous substances from complying with this Act, wholly or partly, as deemed fit:

(1) The hazardous substance which by its nature or quantity may cause modest harm or the enforcement of various measures under this Act may cause undue burden;

(2) The hazardous substance of any Ministry, sub-ministry, Department, local administration, State enterprise, State organisation, Thai Red Cross Society or other agencies as deemed expedient.

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<sup>20</sup> Section 42 as repealed by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>21</sup> Section 43 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 45.** No person shall produce, import, export, or have in possession of Category 1, Category 2, or Category 3, hazardous substances as follows:

- (1) Forged hazardous substance;
- (2) Hazardous substance with its properties not meeting standard specifications;
- (3) Deteriorated hazardous substance;
- (4) Hazardous substance required to be registered but not registered.
- (5) Registration of hazardous substance has been revoked.

Having in possession of hazardous substance under paragraph one shall exclude having in possession for destruction or for delivery to the competent official or for other purposes according to the duty as prescribed by law.

**Section 46.** A person who knows that the hazardous substance in his or her possession is the hazardous substance under Section 45 shall destroy the same, notify the competent official or deliver it to the competent official in accordance with the criteria and procedure as prescribed in the Notification issued under Section 20 (1).

**Section 47.** The following hazardous substances or objects shall be deemed to be forged hazardous substances:

- (1) An imitation, wholly or partly, of genuine hazardous substance;
- (2) Hazardous substance that is represented under the name of another hazardous substance or indicating an exaggerating expiry date;
- (3) Hazardous substance that is represented by false statement for name or trademark of its producer or place of production;
- (4) Hazardous substance that is falsely represented as registered hazardous substance;
- (5) Hazardous substance produced with less or more essential element than variation criteria under Section 20 (3) at the level prescribed by the Responsible Minister,

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with the recommendation of the Committee, as published in the Government Gazette.

**Section 48.** The following hazardous substances shall be deemed to be hazardous substances with their properties not meeting standard specifications:

(1) Hazardous substance produced with less or more essential element than variation criteria under Section 20 (3), but lower than the prescribed level under Section 47 (5);

(2) Hazardous substance of which the purity, adulterants or any other essential characteristic being varied from prescribed requirements or from the registration.

**Section 49.** The following hazardous substances shall be deemed to be deteriorated hazardous substances:

(1) Hazardous substance the use of which is expired as shown on its label;

(2) Hazardous substance which has been transformed to having the same characteristics as forged hazardous substance under Section 47 (5) or with properties not meeting standard specifications;

**Section 50.** In a case where the Committee is of the opinion that any label fails to comply with Section 20 (1), the Committee shall have the power to order the producer or importer to stop using it or correctly make revision to such label.

**Section 51.** Control of hazardous substance advertisement shall be in accordance with the law on consumer protection. For the purpose of advertisement control, the hazardous substance with prescription of label under Section 20 (1) shall be deemed to be label-controlled goods by the Label Control Committee under such law, *mutatis mutandis*.

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**Section 52.** When it appears to the competent official that any producer, importer, exporter or person having in possession of hazardous substance violates or fails to comply with this Act, the competent official shall have the power to order such person to stop, rectify, or improve such act of violation, or comply. If there is a reasonable ground, the competent official may order that person to return such hazardous substance, by exporting, to the producer or the person sending it, or do otherwise as appropriate in accordance with the criteria, procedure and conditions as prescribed by the competent official.<sup>22</sup>

In a case under paragraph one, if the producer, importer, exporter or person having in possession of hazardous substance is unable to act correctly whether on account of incapability or otherwise, the competent official, with due regard to harm that such hazardous substance may cause, shall have the power to order that person to submit such hazardous substance to the competent official at the specified place for the purpose of destruction or any appropriate treatment.

In a case where such hazardous substance is saleable, the competent official shall sell it by auction or sell it to a government agency within three months as from the date of acceptance of delivery. After deduction of expenses incurred from storage, sale, and relevant overheads, the sale proceeds shall be kept for it to be returned to the owner. After the lapse of three months, if it is unable to sell such hazardous substance and the competent official is of opinion that further delay may be harmful or may cause undue burden, the competent official shall have the power to order the hazardous substance destroyed or treated in any manner appropriate.

The owner of hazardous substance shall pay or reimburse all expenses arising from the destruction or appropriate treatment of hazardous substance to the authority.

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<sup>22</sup> Section 52 paragraph one as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

**Section 52/1.**<sup>23</sup> If it appears that any producer, importer, exporter or person having in possession of hazardous substance carries out a business operation which could cause harm, damage, or nuisance to people or property in the business establishment or its vicinity, the competent official shall have the power to order such person to rectify such activity by complying with the criteria, procedure, and conditions prescribed by the competent official.

**Section 53.**<sup>24</sup> *Repealed*

**Section 54.** In the performance of duties, the competent official shall have the power as follows:

(1) To enter into a business establishment in connection with hazardous substance, the place of production or storage of hazardous substance or any other place suspected to be used as such place between sunrise to sunset or during working hours of that place, or to enter into a vehicle carrying or suspected of carrying hazardous substance in order to inspect hazardous substance, containers of hazardous substance, book(s) of account, documents or other objects concerning hazardous substance;

(2) To take hazardous substance or substance suspected to be hazardous substance in a reasonable amount as specimen for inspection;

(3) To search, detain, seize or attach hazardous substance, containers of hazardous substance, book(s) of account, documents or objects of relevance, in the event there is a reasonable ground to suspect that an offence against this Act has been committed;

(4) To summon, in writing, any person to give statement or submit any documents or objects for consideration.

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<sup>23</sup> Section 52/1 as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>24</sup> Section 53 as repealed by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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**Section 55.** If the hazardous substance, its container, book(s) of account, documents and objects seized or attached under Section 54 (3) are perishable or the storage of which may risk damage or harm therefrom or the expenses may be in excess of their value, the competent official shall have the power to destroy or treat it in any manner appropriate with due regard to harm which may arise from that hazardous substance. Such being the case, Section 52 paragraphs three and four shall apply *mutatis mutandis*.

If the competent official is of the opinion that the seized or attached object is not confiscable under Section 88 or the Public Prosecutor has given a final and conclusive non-prosecution order, the competent official shall cancel the attachment or return that hazardous substance, its containers, book(s) of account, documents and objects to the person who should have the items returned to without delay.

In making the return of the items seized or attached, or the sale proceeds, a notice shall be sent by registered mail with receipt acknowledgment to the person who should have the items returned to at his or her domicile. In a case where such person is not known or is known but his or her domicile is not known, if the notice has been published in a newspaper widely circulated in the locality wherein the seizure or attachment was made, or if the value of the items to be returned is not worth the cost of publication in the newspaper and the returning notice has been posted at the *Amphoe* Administration Office of that locality for not less than fifteen days, it shall be deemed that the notification has been made after the lapse of seven days as from the date the notice has been published in the newspaper or after the lapse of the time period required after the date the notice was posted at the *Amphoe* Administration Office, as the case may be.

The person seeking the return of the items shall be charged with all costs incurred to the State for the newspaper publication together with a surcharge at the rate of twenty percent of the said amount.

If it is unable to return the items because the person who should have the items returned to cannot be found, the attached objects or the money to be returned shall be held for safekeeping, as the case may be. If within one year after the notice was made

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to the person who should have the items returned to, no such person comes to collect the same, the items shall become property of the State.

**Section 56.** In the performance of duties, the competent official shall present his or her identification card to people concerned.

The identification card of the competent official shall be in the form as prescribed by the Responsible Minister.

### Chapter 3

#### Duties and Civil Liabilities

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**Section 57.** The provisions in this Chapter shall not prejudice to or limit the duties and civil liabilities of a person provided under the provisions of other chapters or other laws.

**Section 58.** For the purpose of prescribing the duties and liabilities under this Chapter, the Minister of Industry shall have the power to publish in the Government Gazette any substance deemed to be hazardous substance under the provisions of this chapter.

**Section 59.** The producer of hazardous substance shall have the duty of care in procuring substance to be used as production material, laying down trustworthy production method and procedure, providing safe, strong, and secure container for use, moving and transportation, providing labels that clearly and sufficiently display the harmful nature of such substance, providing storage propriety and examining the propriety of the recipient or the person who could be expected to be the recipient of such hazardous substance from him or her.

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**Section 60.** The importer of hazardous substance shall have the duty of care in selecting a producer, examining the quality of hazardous substance, examining the accuracy of container and label, selecting mode of transportation and carrier, storage propriety and examining the propriety of the recipient or the person who could be expected to be the recipient of such hazardous substance from him or her.

**Section 61.** The carrier shall have the duty of care in examining the propriety of things used in transportation, or vehicle and accessories, containers and labels and the appropriateness of transportation mode, the accuracy of loading and placing on the vehicle and the reliability of the employees or the person working for him or her.

**Section 62.** A person having in possession of hazardous substance shall have the duty of care in examining the reliability of his or her producer, importer or supplier, the exactness or accuracy of containers and labels, the appropriateness of storage and the reliability of the recipient or the person who could be expected to be the recipient of such hazardous substance.

**Section 63.** The producer, importer, carrier or person having in possession of hazardous substance shall be liable for all damage arising from hazardous substance in his or her possession, except where he or she can prove that such damage was caused by *force majeure* or by the fault of the injured person.

**Section 64.** The seller or the person who delivers hazardous substance to any person shall be responsible for all damage incurred to such person caused by such hazardous substance, except where it can be proven that such damage has been caused by *force majeure* or by the fault of the injured person.

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**Section 65.** The employer, principal, hirer or owner of the business operation shall be jointly liable with the person under Sections 63 or 64 for the consequences of the wrongful act committed by such person in the course of his or her business, but he or she shall be entitled to be compensated by such person, except that he or she has a part in the fault in giving instruction, selection of personnel, supervision, or other matters having direct influence in causing the wrongful act to happen.

**Section 66.** The producer, importer, wholesaler, retailer, middleman and the person who takes part in any stage of distribution from the producer to the person who is liable at the moment the wrongful act under Sections 63 or 64 is taking place, shall also be jointly liable for the consequences of the wrongful act.

**Section 67.** The right to claim for compensation for damage caused by hazardous substance under this Act shall be barred by time prescription after the lapse of a three year period as from the date the injured person has knowledge of the damage, the state of being hazardous substance, and the person who is liable to pay compensation.

If there is a negotiation in respect of the compensation between the person who is understood to be liable for the compensation and the person entitled thereto, the prescription shall be interrupted until it appears that such negotiation has failed.

**Section 68.** The person liable under Sections 63, 64, 65 or 66, who has paid compensation to the injured person, shall have the right of recourse against the person who delivered that hazardous substance to him or her or to the person working for him, and against all those who participated at all stages, one person or more, all the way to the producer, in the delivery of hazardous substance. The right of recourse shall be exercised within three years as from the date of payment of compensation. In a case where the person exercising the right of recourse being the person who commits the wrongful act willfully or negligently, he or she shall have the right of recourse only for the part of the

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damage that is over and above his or her responsibility.

**Section 69.** In a case where the hazardous substance causes damage to people, animals, plants or environment, if the State suffers damage on account of expenses paid in order to assist, move, give treatment or alleviation or provide removal of damage and restore it to original or near original condition, or if it causes damage to *res nullius*, natural resources or public domain, upon receiving a request from a responsible agency of such hazardous substance, the Public Prosecutor shall have the power to take an action claiming compensation for the State.

#### Chapter 4

#### Penalties

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**Section 70.** Any person who fails to give statement or submit any document or thing required by the order of the Committee or sub-committee under Section 14 or the written order of the competent official under Section 54 (4) shall be punished by imprisonment for a term of not exceeding one month or a fine of not exceeding ten thousand baht or both.

**Section 70/1.**<sup>25</sup> Any person who fails to comply with Section 20/1 shall be punished by imprisonment for a term of not exceeding six months or a fine of not exceeding fifty thousand baht or both.

**Section 71.**<sup>26</sup> Any person who fails to comply with Sections 21, 22 paragraph five, 41 or 43 paragraph two, shall be punished by imprisonment for a term of not exceeding

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<sup>25</sup> Section 70/1 as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>26</sup> Section 71 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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six months or a fine of not exceeding fifty thousand baht or both.

**Section 72.** Any person who violates Section 22 paragraph one or fails to comply with Section 22 paragraph two or Section 23 paragraph three, shall be punished by imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

**Section 73.** Any person who violates Section 23 paragraph one shall be punished by imprisonment for a term of not exceeding two years or a fine of not exceeding two hundred thousand baht or both.

**Section 74.** Any person who violates Section 43 paragraph one shall be punished by imprisonment for a term of not exceeding ten years or a fine of not exceeding one million baht or both.

If the offence under paragraph one is committed through negligence of the importer, exporter or person having in possession of the hazardous substance, such person shall be punished by a fine of not exceeding eight hundred thousand baht.

**Section 74/1.**<sup>27</sup> A person who employs or abets the commission of an offence punishable under Sections 73 or 74 in relation to Category 3 or Category 4 of hazardous substance which is toxic chemical or substance used for the production of toxic chemical listed in the Convention on the Prohibition of Chemical Weapons as published by the Minister of Industry under Section 18, shall be punished by the penalty imposed on the principal of such offence.

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<sup>27</sup> Section 74/1 as added by the Hazardous Substance Act (No. 2), B.E. 2544 (2001)

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**Section 74/2.**<sup>28</sup> In a case where the commission of an offence under Sections 73 or 74 in connection with the Category 3 or Category 4 of hazardous substances which is toxic chemical or substance used for the production of toxic chemical listed in the Convention on the Prohibition of Chemical Weapons and published by the Minister of Industry under Section 18, if the offender is of Thai nationality, even if the offence has been committed outside the Kingdom, the offender shall be punished within the Kingdom.

Such person shall not be punished in the Kingdom on account of such offence again, if

(1) There is a final judgment of a court in foreign country acquitting such person, or

(2) There is a judgment of a court in foreign country sentencing such person to a punishment and he or she had fully served the punishment.

If the convict has served part of the punishment for such commission by a judgment of a court in foreign country and has yet to serve the punishment in full, the Court may, taking into account the punishment already served, impose whatever less punishment than is provided by law or no punishment at all.

**Section 75.** Any person who violates Section 45 (1) or Section 45 (5) where the registration has been revoked on the ground that harm could occur as there is no ordinarily reasonable prevention, if such violation relates to Category 3 hazardous substance, the violator shall be punished by imprisonment for a term of not exceeding seven years or a fine of not exceeding seven hundred thousand baht or both.

If the violation under paragraph one is committed through negligence of the importer, exporter or person having in possession of such hazardous substance, the violator shall be punished by a fine of not exceeding five hundred thousand baht.

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<sup>28</sup> Section 74/2 as added by the Hazardous Substance Act (No. 2), B.E. 2544 (2001)

**Section 76.** Any person who violates Section 45 (2) or Section 45 (5) where the registration has been revoked on the ground that the registered hazardous substance is not as beneficial as applied for registration, if such violation relates to Category 3 of hazardous substance, the violator shall be punished by imprisonment for a term of not exceeding five years or a fine of not exceeding five hundred thousand baht or both.

If the violation under paragraph one is committed through negligence of the importer, exporter or person having in possession of such hazardous substance, the violator shall be punished by a fine of not exceeding four hundred thousand baht.

**Section 77.** Any person who violates Section 45 (3) and if the violation relates to Category 3 of hazardous substance, the violator shall be punished by imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

If the violation under paragraph one is committed through negligence, the violator shall be punished by a fine of not exceeding eighty thousand baht.

**Section 78.** Any person who violates Section 45 (4) and if the violation relates to Category 3 of hazardous substance, the violator shall be punished by imprisonment for a term of not exceeding three years or a fine of not exceeding three hundred thousand baht or both.

**Section 79.** If the violation under Sections 75, 76, 77 or 78 relates to Category 2 of hazardous substance, the violator shall be punished by two-thirds of the penalty prescribed in those Sections.

**Section 80.** If the violation under Sections 75, 76, 77 or 78 relates to Category 1 of hazardous substance, the violator shall be punished by one-half of the penalty prescribed in those Sections.

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**Section 81.** Any licensee who fails to comply with Sections 30 or 31 shall be punished by a fine of not exceeding ten thousand baht.

**Section 82.** Any person who intentionally misleads others regarding the origin, nature, quality, quantity or other essential elements of hazardous substance whether of one's own or of others, makes or uses label containing false statements or statements which he or she knows or ought to know that it could be misleading, shall be punished by imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

If the offender under paragraph one repeats such offence within six months as from the date of the previous commission, he or she shall be punished by imprisonment for a term of not exceeding two years or a fine of not exceeding two hundred thousand baht or both.

**Section 83.** Any person who sells hazardous substance without label or with label but such label or its display is incorrect, or who sells hazardous substance with label the use of which has been ordered terminated or corrected by the Committee under Section 50, shall be punished by imprisonment for a term of not exceeding six months or a fine of not exceeding fifty thousand baht or both.

If the violation under paragraph one is committed through negligence, the violator shall be punished by a fine of not exceeding forty thousand baht.

If the violation under paragraph one is committed by the producer or importer, the violator shall be punished by imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

**Section 84.** Any person who intentionally or negligently agrees to be hired to make or affix unlawful label or to destroy an essential part of lawful label of any of the

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hazardous substances under Chapter 2, shall be punished by imprisonment for a term of not exceeding six months or a fine of not exceeding fifty thousand baht or both.

**Section 85.** Any person who fails to comply with Section 52 paragraph one shall be punished by imprisonment for a term of not exceeding three months or a fine of not exceeding thirty thousand baht or both.

**Section 85/1.**<sup>29</sup> Any person who fails to comply with the order of the competent official under Section 52/1 shall be punished by imprisonment for a term of not exceeding three months or a fine of not exceeding thirty thousand baht or both.

**Section 86.** Any person who fails to provide reasonable facilitation to the competent official in the performance of duty under Section 54, shall be punished by imprisonment for a term of not exceeding one month or a fine of not exceeding ten thousand baht.

**Section 87.** In a case where a Court has punished a person by a judgement on account of an offence under Sections 71 or 72 and in which case the license is exempted, if under the circumstances, it appears that such person may repeat such offence, the Court may, by stating in its judgement, prohibit such person from engaging in any business operation in connection with hazardous substance for a period of not exceeding five years as from the date the punishment is fully served.

**Section 87/1.**<sup>30</sup> In a case where a person who has once been punished on account of the offence under this Act repeats the same offence, the Court may impose additional punishment on such person for another one-half time of the punishment as

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<sup>29</sup> Section 85/1 as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>30</sup> Section 87/1 as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

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prescribed for that offence.

**Section 87/2.**<sup>31</sup> In a case where a juristic person has committed an offence under this Act, its directors, managers or experts, specialists, or any persons responsible for the commission of such offence shall also be liable to punishment as provided for such offence except where it can be proven that such offence was committed without their knowledge or consent.

**Section 88.** Any hazardous substance produced, imported, exported or possessed in violation of this Act, its container, relevant tools and accessories or any property confiscated by judgement of a Court shall be delivered to the government agency responsible for the control of such hazardous substance for destruction or treatment in any way it deems fit.

In case of destruction, the Court shall include in its judgement ordering the owner thereof to pay all expenses incurred to the authority.

**Section 89.**<sup>32</sup> All of the offences under this Act punishable by imprisonment for a term of not exceeding one year or only by a fine, the Committee shall have the power to compound the matter and if the offender pays the fine for settlement within thirty days as from the date the offender has been informed, the case shall be deemed settled in accordance with the Criminal Procedure Code.

If the Committee thinks fit, it may entrust the power to settle the case to the sub-committee or the competent official. In this regard, the settlement shall be in accordance with the criteria and procedure as prescribed by the Committee.

In a case where evidentiary property in connection with the commission of an offence under this Act has been seized or attached, the person having the power to settle

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<sup>31</sup> Section 87/2 as added by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)

<sup>32</sup> Section 89 as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (2008)



the case under paragraph one or paragraph two shall settle the case in accordance with the following conditions:

(1) If rectification is possible, when the offender has given his or her consent and has rectified the seized or attached property.

(2) If rectification is not possible, when the offender has given his or her consent to pass on the ownership of the evidentiary property to the government agency responsible for the control of that hazardous substance.

In the case where the person agreeing to settle the case has rectified the evidentiary property, the competent official shall withdraw the attachment of such evidentiary property.

All of the properties the ownership of which has been passed on to the government agency responsible for the control of such hazardous substance shall be managed in accordance with the regulation as prescribed by the Responsible Minister.

### Transitory Provisions

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**Section 90.** Any application for license submitted in accordance with the law on toxic substance and being under consideration shall be deemed to be the application for license under this Act *mutatis mutandis*. If the contents of such application are different from the application under this Act, the person with license issuing power shall have the power to give instruction to effect necessary revision or amendment so as to keep the matter in compliance with this Act.

**Section 91.** Licenses and certificates of registration granted and issued to any persons under the law on toxic substance prior to the date this Act comes into force shall still be valid until the expiration of the period specified therein.

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**Section 92.** Within six months as from the date this Act comes into force, all substances or any other objects designated by Notifications as ordinary toxic substances and seriously toxic substances under the law on toxic substance shall be completely reviewed and designated by Notifications as Category 1, Category 2, Category 3 or Category 4 hazardous substances under this Act.

Pending the completion of the implementation of the operation in paragraph one, the provisions of the law on toxic substance shall remain in force; except that the provisions relating to the Toxic Substance Committee shall be replaced by the provisions relating to the Hazardous Substance Committee under this Act, and the provisions of this Act shall immediately come into force insofar as they are not contrary to or inconsistent with the law on toxic substance.

**Section 93.** All Ministerial Regulations and Notifications issued under the law on toxic substance shall remain in force insofar as they are not contrary to or inconsistent with the provisions of this Act.

Countersigned

Anand Panyarachun

Prime Minister

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### Rate of Fees<sup>33</sup>

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(1) Certificate of Registration for Hazardous Substance, each	15,000	baht
(2) Hazardous Substance Production License, each	20,000	baht
(3) Hazardous Substance Import License, each	20,000	baht
(4) Hazardous Substance Export License, each	20,000	baht
(5) License to Possess Hazardous Substance, each	20,000	baht
(6) Hazardous Substance Specimen Production License, each	2,000	baht
(7) Hazardous Substance Specimen Import License, each	2,000	baht
(8) Substitute for Certificate of Registration for Hazardous Substance, each	1,000	baht
(9) Substitute for License, each	1,000	baht
(10) The Fee for each Renewal of Certificate of Registration for Hazardous Substance is the same as that for the Certificate of Registration for Hazardous Substance		
(11) The Fee for each Renewal of License is the same as that for each type of License		

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<sup>33</sup> Rate of Fees as amended by the Hazardous Substance Act (No. 3), B.E. 2551 (A.D. 2008)

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