Public Consultation Paper

No. Or Gor Or. 39/2564

Re: Evaluation of the Provident Fund Act B.E. 2530 (1987) and

Amendment to the Provident Fund Act B.E. 2530 (1987)

Published on 26 November 2021

The Securities and Exchange Commission has prepared this consultation paper to canvass opinions of the pubic and stakeholders. It is downloadable at www.sec.or.th.

Please send your comments or suggestions to the SEC via email: sirinad@sec.or.th or thitimam@sec.or.th or the mailing address below.

The public consultation ends on 25 January 2022.

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Thank you for your participation in this public consultation.

Your comments and suggestions are welcomed and truly appreciated.

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Introduction

The Act on Legislative Drafting and Evaluation of Law B.E. 2562 (2019) ("Evaluation of Law Act") requires that any government agency responsible for the enforcement of a law carry out the evaluation of the law at minimum every five years from the effective date of the law, or in any other recurring time periods as prescribed in the ministerial regulation, or in other cases as prescribed in the Evaluation of Law Act. As such, the Securities and Exchange Commission ("SEC"), as a government agency under the Evaluation of Law Act, has the duty to comply with the requirements for legislative drafting and evaluation of law. Pursuant to the Evaluation of Law Act, any law that came into force prior to 27 November 2019 is subject to evaluation. The agency responsible for the evaluation of such law must commence an initial evaluation by 31 December 2024 and complete the evaluation process no later than one year from the commencement date of the evaluation. In this regard, the Provident Fund Act B.E. 2530 (1987) ("PVD Act"), which has been enforced by the SEC since 27 November 1987, is therefore subject to the aforesaid requirement under the Evaluation of Law Act.

Currently, the Ministry of Finance is proposing legislation to introduce a mandatory pension scheme, consisting of two laws, namely the draft National Pension Fund Policy Committee Act ("PPC Act") and the draft National Pension Fund ("NPF Act"). The proposed legislation requires that the National Pension Policy Committee be established to oversee the nation's pension policy and ensure uniformity, and that the National Pension Fund ("NPF") be as a mandatory pension scheme for formal workers in the private sector. Nevertheless, the NPF Act includes an exemption for those who have already been enrolled in other funds or other pension systems as prescribed by the ministerial regulation, which may exempt the employees who are enrolled in a provident fund qualified in accordance with the ministerial regulation from being required to enroll in the NPF. Any PVD with qualifications equivalent to the NPF ("Qualified PVD") would be accepted as an alternative within the mandatory pension scheme to support the employers who have already offered PVD as a benefit and a savings option for their employees. Thus, the PVD Act should be revised to be consistent with the mandatory pension scheme as prescribed in the draft NPF Act.

The SEC is soliciting opinions of the business sector and the general public in order to evaluate the current enforcement of the PVD Act and concurrently open up a platform for suggestions on amending the PVD Act to be in line with the draft NPF Act. The SEC will take the results of this hearing into consideration when proposing further amendment to the relevant laws or regulations.

1. Purpose of the Law

The PVD Act has been enacted to promote the establishment of savings funds for formal employees with voluntary contribution by employers and employees for the purpose of providing security and welfare for employees during retirement, ensuring that employees are able to secure enough savings to support their livelihood after retirement, as well as promoting the raising of savings from the private sector to be utilized in the economic and social development of the country. To this end, it is necessary to establish policies and guidelines to ensure that PVD is a stable savings and investment mechanism and provides security to employees according to its objectives.

2. Summary of the PVD Act and Related Announcements

The key principles of establishing guidelines for the implementation and management of PVD are as follows:

2.1 Establishment of the Fund

Employees and the employer agree to establish a fund as a security for employees in the event of death, termination of employment, or withdrawal from the fund. A fund may be established as a single fund or a pooled fund which may have one or multiple investment policies. Upon agreement between the employees and the employer to establish the fund, an application for registration must be submitted to the Registrar, with the condition that the fund’s articles be complete and consistent with laws and the objective of the fund. The fund must have a Fund Committee (“FC”) consisting of both representatives elected by the employees and representatives appointed by the employer. The duty of the FC is to oversee the general affairs of the fund, wield the power to appoint fund managers, and act as representatives of the fund in any business dealings with third parties.

At each payment of wages, the employer deducts employees' savings from their wages, and the employer pays a contribution into the fund at the rate prescribed in the fund's article, provided that the rate is not less than two per cent but not more than fifteen per cent of the wages. If the employer remits the savings or the contribution into the fund later than three business days from the date of payment of wages, the employer must pay a surcharge into the fund at the rate of five percent per month of the amount of savings or contribution whose remittance is delayed. However, in the case of an economic crisis, public disaster, or any event that affects the economic situation, the Minister may prescribe type of business, period, or any conditions which may allow for employer or employees to cease or postpone the remittance of savings or contributions for no more than one year at a time.

2.2 Management of the Fund

(1) Authority of the Registrar

The Registrar has the authority and duty to supervise the management of the fund as well as the power to mandate the fund manager to clarify the facts related to the management of the fund and to rectify or suspend any actions that may cause damage to the fund or order the removal of the fund manager. Furthermore, the Registrar must prepare a report on the supervision of fund management for submission to the Minister at least twice per year.

(2) Fund Management

The fund must be managed by a person other than the employer who is licensed to operate a securities business in the category of private fund management under the law governing securities and exchange. The fund manager has powers and duties in accordance with the provisions relating to the management of private funds under the law governing securities and exchange.

In addition, the fund manager must invest the employees' savings and the employer's contribution in accordance with the investment policy selected by the employee. In the case that no current investment policy has been selected by the employee, the said amount must be invested in the policy previously selected by the employee. In the case that no investment policy was previously selected, the investment must be made in accordance with the policy specified in the fund's articles. In the case that the fund's articles do not specify such an investment policy, the investment must be made in accordance with the policy associated with the lowest risks.

The fund manager is discharged from office in the case of an order for removal by the Registrar, lack of qualifications of the fund manager, termination of contract by the fund or the fund manager, or dissolution of the fund. Once a fund manager has vacated office, the FC will appoint a new fund manager within 30 days from the date of the former fund manager's cessation of office and notify the Registrar within 14 days from the date of appointment.

(3) Fund Accounting

The employer must completely segregate the accounts and documents regarding the company's own financial matters or other assets from the accounts and documents regarding the fund's financial matters or other assets, and the fund manager must prepare an account segregating the assets of all funds. In the case of a pooled fund, the incomes and expenses of the fund must be recorded according to the employees' interest and segregated by employer. Nevertheless, the income of some types of funds as prescribed in the PVD Act may be determined in the fund's articles to be recorded according to the employees' interest or averaged among the number of employees of one or more employers. And in the case of a fund with multiple investment policies, there must be a separate account of the assets of each investment policy. The incomes and expenses incurred from fund management according to a particular investment policy must be recorded as incomes and expenses in the account of that investment policy, while other incomes and expenses must be distributed among every investment policy of the fund in proportion to each investment policy's net asset value and recorded as incomes and expenses in the account of each investment policy.

2.3 Fund Payout

Members have the option to manage the money they are entitled to receive from the fund under the following criteria:

(1) Lump Sum Payment

When an employee’s membership terminates for a reason other than the dissolution of the fund, the fund manager must make a payment out of the fund to the employee in accordance with the rules and procedures provided in the fund’s articles in one lump sum within thirty days from the date of termination of membership.

In the case of termination of membership due to death and without a designated beneficiary, payment will be made out of the fund according to the following criteria:

(a) The deceased’s children will receive two portions, but if the deceased has three or more children, three portions will be allotted;

(b) The spouse receives one portion;

(c) Parents, or the living father or mother, will receive 1 portion.

If categories (a), (b), or (c) do not apply, or the persons specified are no longer living, the portion of the payment otherwise entitled to such persons will be allocated to the living persons in the proportion detailed above. If no person exists who is entitled to the payment out of the fund according to (a), (b), and (c), or the deceased has no legal heir, the money will be vested in the fund.

(2) Payment in Installments

In the case of termination of membership due to retirement or resignation at the age of no less than 55 years old, the employee may request to receive payment from the fund in installments, and the employee will retain membership for the period of time specified by the fund’s articles, but the employee and the employer, do not have to make further payments of savings or contribution respective to that employee.

(3) Maintenance of Fund

In the case of membership termination upon the end of employment for whatever reasons, the employee is entitled to maintain the whole amount of the benefits he or she is entitled to receive within the fund as well as his or her membership. The employee and the employer, however, do not have to make further payments of savings or contribution, provided that the maintenance of fund period specified in the fund’s articles is no less than ninety days from the date on which employment ends.

(4) Transference to Other Pension Funds

In the case that the employer has disengaged from a pooled fund and has not yet established a new fund, or the employee's membership has terminated due to termination of employment for whatever reasons, or the fund has been dissolved, the employee may transfer the entire amount of benefits he or she is entitled to receive from the fund, or any remaining amount in the case of payment in installments, or the amount of benefits maintained in the fund to a retirement mutual fund (RMF for PVD) or any other fund the objective of which is to serve as a security for termination of employment or old age.

However, the claim to payment out of the fund is neither transferable nor subject to execution.

2.4 Dissolution of Fund

The fund is dissolved upon the dissolution of the business, dissolution of the fund by the resolution of the general meeting, occurrence of any event requiring a dissolution as prescribed by the fund's articles, or dissolution of the fund by the order of the Registrar. In the case of fund dissolution, the fund committee must notify the Registrar within seven days from the date of dissolution, and the fund committee must arrange for liquidation within 30 days and complete the liquidation within 150 days from the date of dissolution. However, during the liquidation process, the liquidator may make a partial payment to the employees, and after completion of the liquidation, all of the outstanding amounts will be paid out to the employees within 30 days from completion of the liquidation. If there is any remaining money, it must be handled in accordance with the fund's articles.

In the case of a pooled fund, the dissolution or withdrawal from the fund by certain employers does not constitute a cause for the dissolution of the fund, unless the fund's articles provide that the fund must dissolve thereby. If such an event occurs, the fund committee must notify the Registrar within seven days of the date of dissolution or withdrawal by any employer, and the liquidation of the portion of the fund attributable to such employer and its employees will be conducted in accordance with the procedures provided in the fund's articles. Once the liquidation has been completed, the Registrar must be notified within seven days from the date of completion.

2.5 Authority to Monitor Fund Management

The Registrar and the competent official have the power to enter the fund's office or the fund manager's office to examine the business, assets, and liabilities of the fund during business hours and to order the fund committee members, the fund manager, or any officers who are involved in the management of the fund to submit or present fund accounts and documents, as well as to summon these individuals for enquiry or demonstration of facts related to the management of the fund.

2.6 Penalty

Criminal penalty in the form of fines will be imposed on any FC, fund manager, or employer who fails to comply with the PVD Act, including any person who fails to comply with, obstructs, or refuses to facilitate the order of the Registrar or competent official. Moreover, a committee appointed by the Minister has the power to settle any offenses committed against the PVD Act under Section 38 of the Penal Procedure Code.

3. Intended benefits for the people from the passing of the law

The enactment of this law was intended to benefit the people and related sectors as follows:

3.1 Establishment of guidelines for the implementation and management of PVD for all concerned parties within the PVD system in order to provide PVD with stability so that it may offer security to employees according to its intended purpose.

3.2 Greater access for employees in the formal sector to long-term savings and investments through PVD and thus security and financial independence, with enough savings to sustain a livelihood after retirement, which would, in turn, reduce the burden of the government to provide welfare for the elderly in the country.

3.3 Promotion of long-term savings and investments in order to foster the country's economic and social development as an important source of funding for the government, the nation's infrastructure, and projects that are beneficial to society and the environment. Additionally, the development of PVD as a strong long-term institutional investor would also help create balance, reduce volatility, and raise the standards of good governance, thus helping the Thai capital market to reach its potential in competing on the world stage.

4. Problems and Obstacles in Enforcement and Necessity to Amend the Law

Thailand is entering an aging society, with the proportion of elderly population projected to be 20 percent of the country's total population in 2022[1]. The population has a longer average lifespan yet insufficient retirement savings and can no longer rely on income of children as in the past, resulting in lack of income to support livelihood and lack of financial stability. A voluntary pension scheme based on PVD alone is not enough to solve the problems of aging society completely, as PVD has approximately 2.88 million members, covering only 18.5 percent of formal workers within the private sector[2] because PVD is a voluntary pension scheme, and employees whose employers have established PVD still carry the burden of applying for membership, which if the dissemination of information is inadequate or employees lack financial knowledge, they may lack the initiative to opt in for PVD as a benefit. Statistics show that although almost all companies listed on the Stock Exchange of Thailand and state-owned enterprises have established PVD, the proportion of employees who are enrolled in PVD remains small[3].

Proper investment which yields good returns in the long run is an important factor in generating growing funds to ensure that employees have sufficient retirement savings. At present, many funds (47% of all employers with PVD) do not allow members to choose their own investment plans. Moreover, the PVD Act prescribes that in the event the employee does not show an intention to select an investment policy, there is no policy that the employee has previously selected, and no policy is stipulated in the fund's articles, savings and contributions must be invested in accordance with the policy which carries the lowest risk. As a result, fixed income instruments and deposits account for a combined total

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[1] "Annual Report on the Situation of the Thai Elderly 2019" by the Foundation of Thai Gerontology Research and Development Institute

[2] Data as of June 2021 retrieved from the PVD Database of the Office of the Securities and Exchange Commission and data from the Ministry of Labor

[3] Based on data collected from 59 listed companies, only 23 percent of employees are enrolled in PVD.

of 75.2 percent of PVD investments[4], making it impossible to generate enough returns for retirement for most members.

Therefore, the Ministry of Finance is in the process of proposing a law to establish the NPF as a mandatory pension scheme for formal workers within the private sector with several specifications to NPF to ensure that it can effectively provide retirement security for employees, with appropriate and ongoing investment, and to clearly determine the roles and responsibilities of the employer and the money management mechanism of the fund. And to support employers who have elected to establish PVD as a benefit for their employees, the draft NPF Act exempts those who are already enrolled in other funds or other pension systems as prescribed by ministerial regulations, including any PVD with qualifications equivalent to the NPF (Qualified PVD) as an alternative in the mandatory pension scheme, from being required to enroll in the NPF.

Nevertheless, the current PVD Act is designed on the basis of a voluntary pension scheme. Therefore, it is necessary to amend the PVD Act to ensure that PVD is in line with the draft NPF Act and can be considered Qualified PVD in accordance with the ministerial regulations which will be issued under the NPF Act.

In order to convert PVD into Qualified PVD, in addition to amending the PVD Act to be in line with the NPF Act, amendment must also be made to existing fund articles, of which the current PVD Act only specifies minimal items and without granting the Registrar the power to prescribe articles regulating quality. This is one mechanism that will ensure that the transition to Qualified PVD occurs according to standard and enhance the protection of rights and fairness for members while simultaneously addressing the existing problems and lack of clarity that has resulted in many complaints.

In addition, the process of drafting the NPF Act has already progressed considerably. It is, therefore, necessary to expedite the amendment of the PVD Act to ensure the efficient conversion of PVD to Qualified PVD, limit redundancy, provide legal clarity to employers who already offer PVD as a benefit to their employees, maintain continuity of retirement savings for employees, and reduce the impact on business operators and the capital market as a result of dissolution of the fund, which currently has a net asset value of more than 1.3 trillion baht.

[4] Data as of June 2021 retrieved from the PVD Database of the Office of the Securities and Exchange Commission

Furthermore, the current PVD Act contains certain provisions that may not be up-to-date with technological changes and does not specify a set of criteria accommodating request for permission, authorization, reporting, submission or filing of documents, notification, information preparation, mandating, disclosure, signing, payment processing, or any other implementation of the PVD Act in electronic form or through an electronic channel, opening the door for problems in practice, including the interpretation of the relevant laws.

5. Purpose and Desired Outcome of Law Amendment

5.1 Amend the PVD Act to be consistent with and qualify as a mandatory pension scheme option for formal workers within the private sector workers in accordance with the draft NPF Act.

5.2 Clarify the duties and reduce the burden of employers with PVD when transiting from voluntary to mandatory pension scheme and create an effective link between PVD and NPF.

5.3 Enable compliance to the PVD Act for electronic implementation in a consistent and practical manner, provide legal clarity, and create flexibility in order to accommodate methods of operation that may change in the future while maintaining proper supervision.

6. Key Content of the Legislative Draft

The SEC is proposing guidelines for the amendment of the PVD Act on key issues as follows:

6.1 Institution of automatic enrollment for employees whose employer offers PVD in order to facilitate enrollment and reduce burden

To ensure that formal workers in the private sector are able to accumulate savings to sufficiently prepare for retirement, the draft NPF Act would require employees aged 15-60 years to be enrolled in the NPF. As such, to facilitate employees' enrollment in a Qualified PVD and reduce the burden of action on both employers and employees, it is advisable for employers to arrange for automatic enrollment, except in the case that an employee opts out of enrollment in the PVD. Employees who opt out of a Qualified PVD would be enrolled in the NPF (Entitling employees to opt out does not fall under the mandatory pension scheme, as employees are provided with an avenue to choose[5]). According to studies conducted abroad[6], automatic enrollment is one method of effectively encouraging employees to take part in the pension system without limiting their rights and freedom.

6.2 Establishment of a mechanism to aid members in selecting appropriate investment policies

To assist members in making the right investment, which is an important factor in their ability to accumulate sufficient savings to support retirement, the draft NPF Act will require that the National Pension Fund Committee ("NPF Committee") provide investment plans for members to choose from. In the event that a member does not make a selection, it will be deemed that the member has by default selected the investment plan prescribed by the NPF Committee, which may be determined according to life path or target date. Therefore, to be in line with the draft NPF Act, it is advisable to amend the PVD Act to specify the PVD default portfolio as a policy that takes into account the balance between adequacy of savings for retirement and level of investment risk as prescribed by the Registrar, which may include consideration given to life path or target date, consistent with the NPF Committee's prescription.

6.3 Reporting of information related to funds and members by employers

The PVD Act does not currently authorize the Registrar to request information about fund members from employers, such as profile information (name-surname, National ID number, gender, age), savings-contribution rate, and investment plan. With Qualified PVD as a component of the mandatory pension scheme, it will be necessary to report employer noncompliance to the NPF Committee. For the purpose of monitoring enrollment in the mandatory pension scheme, it is, therefore, advisable to append information disclosure requirements for employers to submit a PVD report to the Registrar, fund manager, and other persons as prescribed by the Registrar.

[5] A mandatory pension scheme is a pension system which mandates the enrollment of employers and employees through remittance of savings and contributions as required by law.

[6] Paklina, N. (2014). *Role of Pension Supervisory Authorities in Automatic Enrolment*. (IOPS Working Papers on Effective Pensions Supervision No.22). Retrieved from http://www.iopsweb.org/WP_22_Role-Pension-Supervisory-Authorities-Automatic-Enrolment%20.pdf

6.4 Standards for fund registration regulations and guidelines

As the draft NPF Act exempts those who are already enrolled in other funds or other pension systems as prescribed by ministerial regulations, including any PVD with qualifications equivalent to the NPF (Qualified PVD), from being required to enroll in the NPF, in order for the existing PVD to meet the specifications of Qualified PVD as a part of the mandatory pension scheme, it must possess qualifications equivalent to the NPF. As a result, it is advisable to amend the PVD Act to grant the Registrar power to prescribe guidelines for fund articles as well as guidelines and procedures for the registration, amendment, or addition of fund articles in an effort to raise the standards of protection of rights and fairness for those involved at a level that will be on par with NPF and support the establishment of regulatory standards for Qualified PVD.

6.5 Amendment of PVD to accommodate the mandatory pension scheme for employees as proposed by the Ministry of Finance

Section 3(3) of the draft NPF Act exempts members of other funds or pension system in accordance with ministerial regulations from enrollment to NPF, and Section 29/1 exempts employees enrolled in a Qualified PVD from enrollment to NPF. However, the details or principles of these aforementioned ministerial regulations have not yet been specified in the draft NPF Act. Meanwhile, amendment of the PVD Act needs to be undertaken with urgency to ensure consistency in the transition from voluntary to mandatory pension scheme and bridge any legal gaps. As such, it is advisable to amend the PVD Act to be more flexible so that revisions can be undertaken for sake of compliance with Ministerial Regulations in accordance with the NPF Act in the future, namely by bestowing the Registrar with the power to prescribe additional rules and procedures for funds with qualifications prescribed by ministerial regulations under the NPF Act, such as regarding remittance of savings and contribution, benefit calculation, and payout upon termination of the employee's enrollment, among other factors, and also including any actions or other matters as necessary for the benefit of compliance with the NPF.

6.6 Transference between PVD and Other Pension Funds

As the PVD Act currently only accommodates the transference of assets from the employee's previous PVD fund or a government pension fund, and it does not support the transference of assets from NPF, it is, thus, advisable to amend the PVD Act to grant the Registrar the authority to prescribe rules, conditions, and methods for transferring assets from other funds that are intended to promote savings and provide security for retirement in order to accommodate the establishment of an NPF and simultaneously to enable and encourage employees to make continuous long-term investments.

6.7 Vesting the Minister with the power to authorize the reduction of savings or contribution to the fund in case of crisis

Because at present, Section 10/1 of the PVD Act stipulates that in the event of a crisis, the Minister has the power to authorize the employee or employer to suspend or postpone the remittance of savings or contribution to the fund for a period of not more than 1 year at a time, and currently, due to the situation of the Coronavirus 2019 (COVID-19) pandemic affecting the global economy and the Thai economy, many employers who are in financial difficulties have requested to withdraw from PVD and reduce their contributions, it is, therefore, advisable to amend Section 10/1 of the PVD Act by appending a provision that the Minister shall have the power to authorize reduction, suspension, or postponement of the remittance of savings or contribution in order to provide increased flexibility in the case that employers and employees still wish to remit a partial amount, which will benefit members in their savings. Furthermore, it is also in line with the draft NPF Act, which prescribes that the Minister, with the approval of the Cabinet, has the power to authorize the employee or employer to suspend, reduce, or postpone remittance of savings or contribution to the NPF for a period of no more than 1 year.

6.8 Reduction of Additional Employer Contribution to the Fund

In the event that the employer remits the savings or contributions to the fund later than 3 business days, it is proposed to amend the stipulation that the employer must remit an additional amount to the fund during the delayed time, adjusting down from five percent per month to two percent per month of the savings or contributions whose remittance is delayed to be consistent with the draft NPF Act.

6.9 Management of Unclaimed Money

As the PVD Act does not currently contain any provisions for the management of money unclaimed by members or beneficiaries and, thus, the fund manager's resulting inability to pay out the fund, it is advisable to amend the PVD Act to account for the management of this unclaimed money, an accrued amount of which adds up to about 2,000 million baht.[7] In the case that the employee or beneficiary has been notified to collect the funds but no such person makes a claim for payment or the employee or beneficiary cannot be contacted, the fund manager should be prescribed to hold the money for a period of 10 years, after the

[7] Data as of June 30, 2021

expiration of which the unclaimed money shall be vested in the fund, in line with the draft NPF Act, which makes provisions for the managing of unclaimed money.[8]

6.10 Accounting and Recording of Fund Incomes and Expenses

Due to the fact that the PVD Act does not adequately specified the details on the recording of incomes and expenses accrued as a result of fund management, there is no industry standard, thus resulting in differing practices, which may interfere with the benefits of members, such as with questions regarding how additional money contributed by the employer due to late remittance should be distributed to members and whether such an amount should be recorded as a savings or contribution benefit, among other issues. Therefore, the PVD Act should be amended to empower the Registrar to prescribe rules, conditions, and procedures for the recording of fund incomes and expenses as deemed appropriate and with a clear distinction among savings, savings benefits, contribution, and contribution benefits as well as for the distribution of benefits to members, such as with additional employer contribution in the case of late remittance, for example, in accordance with the draft NPF Act.

6.11 Accommodation of Electronic Transaction

To accommodate developments in technology, it is advisable to amend the PVD Act to grant the Registrar power to prescribe rules and regulations related to request for permission, authorization, reporting, submission or filing of documents, notification, information preparation, mandating, disclosure, signing, payment processing, or any other implementation of the PVD Act in electronic form or through an electronic channel for the sake of clarity in practice.

6.12 Prescription of Penalty and Statute of Limitation

(1) Review penalty under the current law, amending the penalty for FC and employers who fail to comply with the Act, including those who fail to comply with, obstruct, or refuse to facilitate the order of the Registrar and competent official, to ensure consistency with the draft NPF Act, which is a law concerning the pension system of formal workers in the private sector, for the sake of uniform implementation; amending the penalty for fund managers to be in line with the Securities and Exchange Act B.E. 2535; as well as amending the use of criminal penalty to civil

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[8] Section 56 of the draft of NPF Act stipulates that in the case where the NPF has notified a member or beneficiary to collect a payout from the NPF, the notified person must claim the money without delay. If the said period has elapsed without the notified person has not collected, the money must be held in the member's pension account, and after a period of ten years has elapsed, the pension shall be vested in the NPF by deposit into the central bank account.

penalty instead to comply with the draft Civil Penalty Act B.E. ...., which the Office of the Council of State has proposed to the Council of Ministers for consideration regarding the use of civil penalty in lieu of criminal penalty and administrative penalty.

(2) Amend the statute of limitation stipulated in the PVD Act, according to which if an offense against the Act were to occur, if a lawsuit is not filed with the court or the matter is not submitted to the Committee for settlement within two years from the date on which the Registrar determines that the commission of an offense has occurred and that the offender is known and within five years from the date of the commission of such offense, the statute of limitation is considered expired, to ensure compliance with the Amendment to the Securities and Exchange Act (No. ..) B.E. ...., which is a law under the supervision of the SEC.

7. Potential Impact of Amendment to the Law

7.1 Social Impact

At present, there are as many as 2.88 million members of PVD, and there is a huge opportunity for growth, with up to 15 million formal workers. The amendment will thereby increase employees' access to long-term savings and investments, as well as help to promote and build readiness to support an aging society. Furthermore, employees will have more options within the mandatory pension scheme through Qualified PVD and NPF.

7.2 Economic Impact

There are 16 asset management companies that can manage Qualified PVD, while the NPF requires a minimum of three. Amendment to the PVD Act will, therefore, bolster the number of institutional investors making long-term investments, which play an important role in maintaining the stability of the capital market by balancing out short-term speculation; as target investors of products related to the Environment, Society and Governance; and in the raising of government funding for national development and thus helping to reduce dependence on foreign capital.

7.3 Fiscal Impact

Developing Qualified PVD into a more efficient retirement savings and investment mechanism for working-age people will help them accumulate sufficient money to sustain their retirement and, thus, alleviate the burden of elderly welfare to the government’s budget in the long run.

8. Reasons for the need for a permission system or criminal penalties, as well as use of discretion by government officials

8.1 Use of Permission System

(1) Submitting an application for registration and notifying the Registrar of various actions (according to the current PVD Act)

In applying for the registration of a fund, the requirements of Section 6 have to be properly and fully complied with, and the fund's articles must be properly in accordance with Section 9 and not in violation of law and the fund's objectives. As such, it is necessary to prescribe that in various processes related to the registration of the fund, an application must be submitted or the Registrar notified within the specified period in order to ensure that the fund articles and other actions are in accordance with the objectives and fair to members.

(2) The fund manager must be licensed under the law governing securities and exchange (according to the current PVD Act).

Because the person responsible for managing the fund must possess sufficient investment expertise and experience and should be under strict control and supervision, it is, therefore, deemed appropriate that the person who will act as fund manager must obtain a license to operate a securities business under the law governing securities and exchange so that there may be close oversight of various operations.

8.2 Criminal Penalties (according to the current PVD Act and proposed amendments)

In prescribing criminal penalties in the law for any offenses, such actions must disrupt public order or affect the general public. Section 5 of the current PVD Act stipulates criminal penalties against any FC, employer, and fund manager that fails to comply with the law, including those who fail to comply with, obstructs, or refuses to facilitate the order of the Registrar and competent official. However, in the amendment to the PVD Act, the use of civil penalty is proposed in lieu of criminal penalty, retaining the latter for use only with employers who report false information and who fail to comply with, obstruct, or refuse to facilitate the order of the Registrar and competent official.

8.3 Use of discretion by government officials according to the current PVD Act

(1) Registration of fund

In reviewing an application for the registration of a fund, if the articles are properly in accordance with Section 9 and are not in violation of law and the fund's objectives, the Registrar may approve the registration of the fund.

(2) Issuance of order to rectify or suspend the action of or remove a fund manager

In the event that the Registrar deems that the actions and management of the fund manager may cause damage to the fund, the Registrar has the power to order the fund manager to rectify or suspend such actions or to order the removal of the fund manager.

(3) Dissolution of Fund

The PVD Act currently empowers the Registrar, with the approval of the Minister, to order a dissolution of a fund in the event that the operation of the fund is deemed to be in violation of the fund's objectives or any law or the operation of the fund is deemed to be untenable for any reasons.

(4) Authority to Monitor Fund Management

The Registrar and the competent official have the power to enter the fund's office or the fund manager's office to conduct an examination and issue an order for the submission or presentation of fund evidence, as well as to summon relevant individuals for enquiry or demonstration of facts related to the management of the fund.

Questionnaire

Re: Evaluation of the Provident Fund Act B.E. 2530 (1987) and

Amendment to the Provident Fund Act B.E. 2530 (1987)

Respondent Information

Respondent Name ______________________ Job title ____________________________

Company Name ____

Phone number ____________________________ Fax _________________________________

E-mail ____

Respondent's Status (Select all that apply)

☐ Employer with PVD fund benefit

☐ PVD fund member

☐ PVD fund committee

☐ Asset management company that manages PVD fund

☐ Others (please specify)

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Please send this questionnaire to

Portfolio Advice and Provident Fund Supervision Department,

The Securities and Exchange Commission, Thailand

333/3 Vibhavadi-Rangsit Road, Chompon Sub-District, Chatuchak District, Bangkok,

10900, Tel. 1207 or 0-2033-999

or email: sirinad@sec.or.th; thitimam@sec.or.th

*** Thank you for your participation in this public consultation.

Your comments and suggestions are welcomed and truly appreciated.***

Questionnaire

1. Do you think that the objectives of the PVD Act are still relevant and in line with the circumstances, technological development and people's ways of life? If so, to what extent?

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2. Do you have any opinion on how the current PVD Act affects or benefits people?

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3. Do you think the PVD implementation and management, described in the following sections, are sufficiently efficient?

(1) Establishment of the Fund	Agree	Disagree
	☐	☐
Suggestions/Comments		

(2) Management of the Fund	Agree	Disagree
(2.1) Authority of the Registrar	☐	☐
(2.2) Fund Management	☐	☐
(2.3) Fund Accounting	☐	☐

Suggestions/Comments

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(3) Fund Payout	Agree	Disagree
(3.1) Lump Sum Payment	☐	☐
(3.2) Payment in Installments	☐	☐
(3.3) Maintenance of Fund	☐	☐
(3.4) Transference to Other Pension Funds	☐	☐

Suggestions/Comments

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(4) Dissolution of Fund	Agree	Disagree
	☐	☐

Suggestions/Comments

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(5) Authority to Monitor Fund Management	Agree	Disagree
	☐	☐

Suggestions/Comments

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4. Do you have any additional suggestions for improving law enforcement efficiency?

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5. Considering that the Ministry of Finance is proposing legislation to make the "National Pension Fund Act" a mandatory savings fund for private-sector employees, what are your opinions on the following issues:

(1) Providing a Qualified PVD as an option for the mandatory pension scheme and in support of the transition from voluntary to mandatory scheme

☐ Agree

☐ Disagree (please specify)

Suggestions/Comments

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(2) If you agree with Question (1), what types of PVD do you think could be classified as Qualified PVD? (Select all that apply)

☐ Only the existing PVD

☐ Only the new PVD

☐ Others (please specify)

Suggestions/Comments

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6. Considering the amendment to the PVD Act whereby PVD would be eligible as a part of compulsory savings and an effective link to the National Pension Fund would be created, what are your opinions on the following topics:

(1) An employee who works for an employer that has already offered PVD benefit will be automatically enrolled	Agree	Disagree
	☐	☐
Suggestions/Comments ______________________________ ______________________________ ______________________________ ______________________________ ______________________________ ______________________________		

(2) Providing a mechanism that allows members to have an appropriate investment policy	Agree	Disagree
	☐	☐
Suggestions/Comments ______________________________ ______________________________ ______________________________ ______________________________ ______________________________ ______________________________		

(3) Employer's reporting on the fund and members	Agree	Disagree
	☐	☐
Suggestions/Comments ______________________________ ______________________________ ______________________________ ______________________________ ______________________________ ______________________________		

(4) Standards of regulations and guidelines for fund registration	Agree	Disagree
	☐	☐

Suggestions/Comments

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(5) Developing PVD to support compulsory savings for employees as proposed by the Ministry of Finance	Agree	Disagree
	☐	☐

Suggestions/Comments

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(6) Transfers between PVDs and other retirement savings funds	Agree	Disagree
	☐	☐

Suggestions/Comments

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(7) In the event of an economic crisis, the Minister has the power to authorize flexibility to the savings or contribution payments	Agree	Disagree
	☐	☐

Suggestions/Comments

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(8) Reduction of additional payment that employers must pay to the fund in case of late payment, from 5 percent to 2 percent per month	Agree	Disagree
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Suggestions/Comments

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(9) Unclaimed money/lost member	Agree	Disagree
	☐	☐

Suggestions/Comments

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(10) Accounting and recording of revenue/expenses	Agree	Disagree
	☐	☐

Suggestions/Comments

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7. Do you agree or disagree that the amendment to the PVD Act must be in line with other relevant laws regarding the following issues:

(1) Support to electronic transactions	Agree	Disagree
	☐	☐
Suggestions/Comments		

(2) Amendment to penalties and statute of limitations	Agree	Disagree
	☐	☐
Suggestions/Comments		

8. Do you agree with the use of the permission system, criminal penalties, and government officials' discretion prescribed in the current PVD Act and the proposed revision to the PVD Act?

(1) Use of permission system	Agree	Disagree
	☐	☐
Suggestions/Comments		

(2) Criminal penalties	Agree	Disagree
	☐	☐

Suggestions/Comments

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(3) Government officials' discretion	Agree	Disagree
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Suggestions/Comments

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9. Other suggestions (if any)

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