

Translation

MINISTERIAL REGULATION
DETERMINING RULES, PROCEDURES AND CONDITIONS
ON THE REGISTRATION OF CONSULTANT,
B.E. 2560 (2017)¹

By virtue of the provisions in section 5 paragraph one and section 73 paragraph two of the Public Procurement and Employment Act, B.E. 2560 (2017), the Minister of Finance hereby issues the Ministerial Regulation, as follows:

Clause 1. In this Ministerial Regulation:

“consultant” means a natural person or a juristic person whose occupation, business or service is to give consultation or advice on engineering, architecture, urban planning, law, economics, monetary matters, finance, environment, science, technology, public health, art and culture, research and study, or other fields as prescribed by Notification of the Office;

“freelance consultant” means a natural person whose occupation is a consultant and who is registered as a consultant with the Office;

“juristic person consultant” means a juristic person whose business or service is to be a consultant and who is registered as a consultant with the Office;

“consultant personnel” means a person who has graduated with a bachelor’s degree, master’s degree or doctorate degree for more than ten years, five years, and two years respectively, from an educational institution approved by the Office of the Civil Service Commission, and who has working experience in the relevant sector for more than half of the time prescribed above for each academic degree, and works full-time according to the working hours of such juristic person consultant;

“certificate” means a document issued by the Office to indicate that a person has been registered as a freelance consultant or a juristic person consultant;

“State organisation” means

¹ Published in the Government Gazette, Vol. 134, Part 86 a, page 22, dated 23rd August B.E.2560.

(1) a government agency which has established a special service unit under the law on State administration and the law establishing such agency prescribes that it shall perform the duty of a consultant;

(2) an agency under State oversight and State enterprise under the law on public debt management and the law establishing such agency prescribes that it shall perform the duty of a consultant, but does not include a State educational institution;

“educational institution” means an educational establishment which provides higher education or other educational establishment which provides education equivalent to higher education;

“association” means an association which is established and registered under the Civil and Commercial Code, and shall include other organisations whose objectives of establishment and operation are similar to those established under the Civil and Commercial Code;

“Database Center” means Consultant Database Center, Public Debt Management Office, Ministry of Finance;

“Director-General” means the Director-General of the Public Debt Management Office;

“Office” means the Public Debt Management Office.

Clause 2. The Office shall issue ethical rules for consultant to be published in order for freelance consultants and juristic person consultants to know and to comply with in the performance of their duties as a consultant.

CHAPTER I

TYPES, QUALIFICATIONS AND PROHIBITIONS, AND RULES OF REGISTRATION

Clause 3. There shall be 2 types of consultant under this Ministerial Regulation, as follows:

- (1) freelance consultant;
- (2) juristic person consultant.

Clause 4. A freelance consultant under clause 3 (1) shall have the qualifications and shall not be under any of the prohibitions, as follows:

- (1) being of Thai nationality;
- (2) having graduated with a bachelor's degree, master's degree or doctorate degree for more than ten years, five years, and two years respectively, from an educational institution approved by the Office of the Civil Service Commission, and who has experience working in the relevant sector for more than half of the time prescribed above for each academic degree;
- (3) not being a managing director, manager or hold any other position of similar characters, or being a personnel who works full-time at any agency;
- (4) not currently being imprisoned due to a final judgment to a term of imprisonment;
- (5) not being a person of unsound mind or an incompetent person;
- (6) having the qualifications and not being under any of the prohibitions under section 64 (1), (2), (5) or (6).

Clause 5. A juristic person consultant under clause 3 (2) shall have the qualifications and shall not be under any of the prohibitions, as follows:

- (1) being established and registered as a juristic person in Thailand;
- (2) having the objective of being a consultant;
- (3) having at least one million Baht of paid-up registered capital;
- (4) having shareholders of Thai nationality holding no less than fifty-one percent of the shares, who have the voting rights; all these shares must have already been distributed;
- (5) having a board of directors in which more than half of the members and authorized directors are of Thai nationality;
- (6) having no less than two consultant personnel who are of Thai nationality;
- (7) having the qualifications and not being under any of the prohibitions under section 64 (2), (5) or (6).

The provisions in paragraph one (3) and (4) shall not apply to educational institutions, foundations or associations, and the provisions in paragraph one (3), (4) and (5) shall not apply to State organisations.

Clause 6. In performing the duties as a consultant, where a professional licence or a corporate licence is required, the consultant shall also submit such document to the Office to support the consideration for the registration of consultant.

Clause 7. In the case where a consultant does not have the qualification under clause 4 (1) or the qualification under clause 5 (4) or (5), if the State agency having the powers and duties under the law allows or agrees that such consultant may practice the profession or conduct the business in Thailand, and in the case where a consultant who needs a professional licence has complied with the rules and conditions prescribed by the law on such profession, in such cases the Office may register such consultant under this Ministerial Regulation.

Clause 8. Project experiences of a freelance consultant or a juristic person consultant shall be calculated from contract for consulting services, hiring confirmation, document indicating the scope of work issued by the engaging party, or other evidence as determined by the Database Center. Only projects which have already been completed shall be considered, the required minimum value of which shall be as prescribed by Notification of the Office.

Clause 9. There shall be three levels of freelance consultant, being:

(1) a first level freelance consultant having the qualifications as follows:

- (a) having no less than five years of experience in being a consultant;
- (b) having project experiences in no less than five projects;

(2) a second level freelance consultant having the qualifications as follows:

- (a) having no less than three years of experience in being a consultant;
- (b) having project experiences in no less than three projects;

(3) a third level freelance consultant meaning any freelance consultant who lacks the qualifications under (1) or (2).

Clause 10. There shall be three levels of juristic person consultant, being:

(1) a first level juristic person consultant having the qualifications as follows:

- (a) having been established and registered as a juristic person for no less than three years;

(b) having project experiences in no less than five projects;
 (c) having no less than five consultant personnel who have no less than five years of experience in being a consultant;

(2) a second level juristic person consultant having the qualifications as follows:

(a) having been established and registered as a juristic person for no less than three years;
 (b) having project experiences in no less than three projects;
 (c) having no less than two consultant personnel who have no less than three years of experience in being a consultant.

Any juristic person consultant which lacks the qualification under the rules prescribed in (2) (a) may be second level juristic person consultant if it has project experiences in no less than three projects and has no less than two consultant personnel who have no less than five years of experience in being a consultant.

(3) a third level juristic person consultant meaning any juristic person consultant who lacks the qualifications under (1) or (2).

Clause 11. The Office shall register a freelance consultant or a juristic person consultant in one or more of these sectors, as follows:

- (1) Agriculture and Rural Development Sector: AG;
- (2) Building Sector: BU;
- (3) Education Sector: ED;
- (4) Energy Sector: EG;
- (5) Environment Sector: EV;
- (6) Finance Sector: FI;
- (7) Health Sector: HE;
- (8) Industry Sector: IN;
- (9) Population Sector: PO;
- (10) Information and Communication Technology Sector: ICT;
- (11) Tourism Sector: TO;
- (12) Transportation Sector: TR;
- (13) Urban Development Sector: UD;
- (14) Water Supply and Sanitation Sector: WS;

- (15) Law Sector: LW;
- (16) Quality Standard Sector: QS;
- (17) Management and Institutional Development Sector: MID;
- (18) Public Relations Sector: PR;
- (19) Research and Evaluation Sector: RE;
- (20) Miscellaneous Sector: MS.

The classification of the characteristics of each sector shall be as determined and published by the Database Center in its information network system.

A change to or an adding of the sectors under paragraph one shall be as prescribed by Notification of the Office.

Clause 12. In order for the Office to register a freelance consultant in a particular sector, such freelance consultant must have project experiences in no less than three projects in such sector.

Clause 13. In order for the Office to register a juristic person consultant in a particular sector, the Office shall consider from the conditions as follows:

- (1) the objectives of establishment of the juristic person consultant must be consistent with the sector in which it is to be registered;
- (2) the juristic person consultant has project experiences in no less than three projects in such sector;
- (3) the juristic person consultant has no less than one consultant personnel who specializes in each sector.

CHAPTER II

REGISTRATION AND RATES OF FEES

Clause 14. A consultant who wishes to be registered as a freelance consultant or a juristic person consultant shall fill in the information through the information network system of the Database Center. The rules and procedures of this process shall be as prescribed by Notification of the Office.

Clause 15. The Office will examine the correctness and completeness of the information provided by the consultant under clause 14. If the information is in accordance with Chapter I: Types, Qualifications and Prohibitions, and Rules of Registration, the Office will register such consultant as a freelance consultant or a juristic person consultant, as the case may be. Such registration shall be completed within forty days from the day the information is correct and complete.

A certificate of registration under paragraph one shall be in the form as determined by the Office.

Clause 16. The Office shall charge a fee for a registration of consultant under this Ministerial Regulation at the rates as follows:

- (1) a registration of freelance consultant, 5,000 Baht;
- (2) a registration of juristic person consultant, 10,000 Baht.

The Office shall review the fee rates under paragraph one every five years.

The money received under paragraph one shall be used by the Office for the benefits of the performance of duties of the Database Center in accordance with the regulations agreed upon by the Ministry of Finance under the law on treasury reserves.

CHAPTER III

PERFORMANCE ASSESSMENT OF CONSULTANT

Clause 17. The performance assessment of a consultant shall be in accordance with the regulation issued by the Minister under section 73 paragraph three, section 106 paragraph four or section 108. Such regulation shall at least determine the rules and procedures of performance assessment, assessment committee and relegation of level of a consultant.

CHAPTER IV

CHANGE AND ADDING OF INFORMATION

Clause 18. A juristic person consultant which changes its consultant personnel shall notify such change to the Office through the information network system of the Database Center within thirty days from the day of such change in accordance with Notification of the Office.

If the procedure under paragraph one results in a juristic person consultant lacking the qualifications under clause 5, the juristic person consultant shall proceed to amend its qualifications to comply with the rules and notify the Office within ninety days from the day of such change, or prior to the day the hire agreement between the consultant and State agency is to be signed.

If the procedure under paragraph one results in the level being relegated under clause 10 or the number of sectors being reduced under clause 13, as the case may be, the juristic person consultant shall proceed to amend its qualifications to comply with the rules and notify the Office within ninety days from the day of such change. If the juristic person consultant is unable to amend such qualifications, the Office will relegate its level or reduce the number of sectors it is registered in. In such case, the provisions in clause 10 and clause 13 shall apply *mutatis mutandis*.

Clause 19. A freelance consultant or a juristic person consultant which changes or adds any information apart from that under clause 18 shall proceed in accordance with the guideline under clause 18 paragraph one.

A freelance consultant or a juristic person consultant who wishes to add project experience information shall notify the Office once every three months through the information network system of the Database Center in accordance with notification of the Office.

CHAPTER V

REVOCATION AND CANCELLATION OF REGISTRATION

Clause 20. Where there appears to be one of the following cases, the Office will revoke a registration of consultant under this Ministerial Regulation:

(1) a freelance consultant or a juristic person consultant submits a false document to support the consideration of the registration, the determination of level or sector;

(2) a State agency notifies that a freelance consultant or a juristic person consultant has submitted a false proposal;

(3) the level of a freelance consultant or a juristic person consultant has been relegated in accordance with the regulations issued under clause 17.

Clause 21. Subject to clause 18 paragraph two, in the case where a freelance consultant or a juristic person consultant lacks the qualifications or is under any of the prohibitions under clause 4, clause 5 or clause 6, as the case may be, the Office will cancel such registration of consultant, or a sector of registration as the case may be.

Clause 22. A freelance consultant or a juristic person consultant whose registration is revoked under clause 20 (1), (2) or (3) may submit a request for another registration once the two-year period from the day the registration is revoked has passed.

A freelance consultant or a juristic person consultant whose registration is cancelled under clause 21 may submit a request for another registration once the consultant has the qualifications or is no longer under any of the prohibitions.

Clause 23. Where a juristic person consultant is registered for dissolution, the Office will cancel the registration of consultant.

Clause 24. A freelance consultant or a juristic person consultant who wishes to cancel its registration of consultant shall send a document notifying the Office to cancel such registration.

CHAPTER VI

APPEALS

Clause 25. In the case where the Office proceeds with one of the following:

(1) refuse a registration under clause 15;

(2) relegate the level of a freelance consultant or a juristic person consultant in accordance with the regulations issued under clause 17;

(3) relegate the level of a freelance consultant or a juristic person consultant, or a sector of registration under clause 18 paragraph three;

(4) revoke a registration of consultant under clause 20 (1), (2) or (3);

(5) cancel a registration of consultant as the consultant lacks the qualifications or is under any of the prohibitions under clause 21.

A freelance consultant or a juristic person consultant shall have the right to appeal to the Office by submitting its appeal in writing to the Office within fifteen days from the day it receives a written notice from the Office.

Clause 26. When the Office receives an appeal under clause 25, the Office shall review the appeal without delay. If it agrees with such appeal, the Office shall notify the freelance consultant or the juristic person consultant within thirty days from the day the appeal is received.

If the Office disagrees with the appeal, the Office shall report its opinion along with the reason to the Permanent Secretary of the Ministry of Finance within period under paragraph one. The Permanent Secretary of the Ministry of Finance shall review the appeal within thirty days from the day the report is received. If there is a necessity causing the review not to be completed in time, the appellant shall be notified in writing before such period passes. In this case, the extension of the period for the review of appeal shall not exceed thirty days from the day such period has passed.

CHAPTER VII

INFORMATION SERVICES

Clause 27. The Office shall display the information of the registration of consultants on the information network system and the consultant register, whereby the Office shall make available the information as a public service in order to support and provide useful information to State agencies, private sector and the general public.

TRANSITORY PROVISIONS

Clause 28. A freelance consultant or a juristic person consultant who has been registered before the day this Ministerial Regulation comes into force shall submit a request for registration under this Ministerial Regulation within one hundred and twenty days from the day this Ministerial Regulation comes into force. In such case, a certificate issued before this Ministerial Regulation comes into force shall continue to be valid under the conditions and time period specified in such certificate until the Office issues a new certificate of registration in accordance with the rules and procedures under this Ministerial Regulation, but shall not exceed one hundred eighty days from the day this Ministerial

Regulation is published in the Government Gazette. The period for the consideration of a registration of consultant under clause 15 shall not apply to this case.

Once the period for requesting a registration under paragraph one has passed, the old certificate shall expire and the freelance consultant or the juristic person consultant shall proceed with a new registration request in accordance with the rules and procedures under this Ministerial Regulation.

Given on the 23rd day of August B.E. 2560

Apisak Tantivorawong

Minister of Finance

Remarks: The reasons for the issuance of this Ministerial Regulation are as follows. As the Public Procurement and Employment Act, B.E. 2560 (2017) prescribes that a consultant who submits its proposal to a State agency must be a consultant who has been registered with the Consultant Database Center, Ministry of Finance; the procedures for submitting a request for registration, qualifications and prohibitions, the revocation of registration and the rates of registration fee, as well as the rules and procedures of appeal and the consideration of appeal in the case where the Consultant Database Center, Ministry of Finance, refuses the registration of consultant, shall be as prescribed in a Ministerial Regulation, it is therefore necessary to enact this Act.