

Preface

Thai Traditional Medicine is a valuable cultural heritage and indigenous wisdom that has helped Thai people take care of our health for a long period of time. In order to protect Thai traditional medical knowledge and Thai herbs from biopiracy and misappropriation, Dr. Pennapa Subcharoen, who served as the Director of the Institute of Thai Traditional Medicine during 1993-2002, had spearheaded the drafting of the Act that would protect such valuable heritage. As a result, Thai traditional medical knowledge recorded in selected classical textbooks, selected items of traditional medicine recipes, valuable Thai herbs and habitats of Thai herbs are now being protected under the **Protection and Promotion of Thai Traditional Medical Knowledge Act B.E.2542** (1999 A.D.), which has come into force since 27 May 2000.

As the government office responsible for enforcing this Act, the Department for Development of Thai Traditional and Alternative Medicine Development (DTAM), Ministry of Public Health therefore collaborated with the Office of the Council of State to translate the Act into English in order to make this Thai *sui generis* law known to other countries. It is hoped that this English version of the Act will be useful as a reference for educational purpose and legal practice for persons who are interested in the law for the protection of traditional medical knowledge.

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Contents

	<u>Page</u>
Preface	a
Protection and Promotion of Thai Traditional Medical Knowledge Act B.E.2542 (1999 A.D.)	1
Chapter I	
Protection and Promotion of Thai Traditional Medical Knowledge Committee	3
Chapter II	
Protection and Promotion of Thai Traditional Medical Knowledge	6
Chapter III	
Herbs Protection	13
Chapter IV	
Appeal	19
Chapter V	
Competent Official	20
Chapter VI	
Thai Traditional Medical Knowledge Fund	21
Chapter VII	
Penalties	21
Rate of Fees	23

**PROTECTION AND PROMOTION OF THAI TRADITIONAL
MEDICAL KNOWLEDGE ACT,
B.E. 2542 (1999 A.D.)**

BHUMIBOL ADULYADEJ, REX. Given on
the 19th Day of November B.E.2542
Being the 54th Year of the Present Reign.

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

Whereas it is expedient to have a law on protection and promotion of Thai traditional medical knowledge;

This Act contains certain provisions in relation to the restriction of right and liberty of a person, in respect of which section 29, in conjunction with section 35, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

Section 1. This Act is called the “Protection and Promotion of Thai Traditional Medical Knowledge Act, B.E. 2542 (1999A.D.);”.

Section 2. This Act shall come into force after the expiration of one hundred and eighty days as from the date of its publication in the Government Gazette.¹

Section 3. In this Act:

“Thai traditional medical knowledge” means fundamentals of knowledge and capability in Thai traditional medicine;

“Thai traditional medicine” means a medical procedure in relation to examination, diagnosis, therapy, treatment or prevention of disease or promotion and rehabilitation of human or animal health, obstetrics or Thai traditional massage, including preparation of Thai traditional medicine and invention of a medical device

¹Published in the Government Gazette, Vol. 116, Part 120a, dated 29th November B.E. 2542 (1999 A.D.).

and instrument upon knowledge or treatise which has been conveyed and developed continually;

“Treatise on Thai traditional medicine” means any technical knowledge in relation to Thai traditional medicine that having been written or recorded on Thai traditional book, palm-leaf, inscription or other materials, or that has not been recorded, but it has been learned or conveyed continually by any means;

“Thai traditional medicine” means drug obtained directly from herb or by mixing, blending or transforming of herbs, including folk medicine under the law on drugs;

“Recipe of Thai traditional medicine” means a formula that specifies production processes and compounds of medicine whereby Thai traditional medicine, irrespective of its form, is one of the compounds;

“Herb” means a plant, animal, micro-organism, substance, original extract of plant or animal to be used, transformed, mixed or compounded as drug or food for examination, diagnosis, therapy, treatment or prevention of disease or for intensification of human or animal health, including the origin or habitat thereof;

“Controlled herb” means herb as notified by the Minister as the controlled herb;

“Conservation area” means national reserved forest, environmental protection area, wildlife sanctuary, hunting prohibition area, national park and other protected areas designated for reservation and preservation of natural conditions as prescribed by law;

“Original extract” means a natural substance which its molecule has not been adjusted or extended by scientific method to render a new substance;

“Primary transformation” means an enrichment or transformation of conditions or properties of herb for its compound extracts whether by traditional or newly developed process, but not including an extracting for each or particular type of pure substance;

“Successor of a recipe of Thai traditional medicine or a treatise on Thai traditional medicine” means a person whom a receipt of Thai traditional medicine or a treatise on Thai traditional medicine has been conveyed from the searcher, enhancer or developer thereof, or a person who learns such recipe or treatise without knowing of the original searcher, enhancer or developer thereof, or a person who receives such recipe or treatise from other persons;

“Holder of right” means a person who has registered his right in Thai traditional medical knowledge under this Act;

“Distribution” means selling, dispensation, disposition or exchange, including possession for sales;

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Remark: Reference to Thai legislation in any jurisdiction shall be made to the Thai version only. This translation has been made so as to establish correct understanding about this Act to the foreigners.

“Export” means taking or export out of the Kingdom;

“Transformation” means enrichment or transformation of herb or its properties;

“Committee” means the Protection and Promotion of Thai Traditional Medical Knowledge Committee;

“Member” means a member of the Protection and Promotion of Thai Traditional Medical Knowledge Committee;

“Licensor” means the Permanent Secretary or a person as entrusted by the Permanent Secretary;

“Registrar” means the Central Registrar or the *Changwat* Registrar, as the case may be;

“Competent official” means the licensor, the Registrar, and a person appointed by the Minister for the execution of this Act;

“Permanent Secretary” means the Permanent Secretary of the Ministry of Public Health;

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

Section 4. The Minister of Public Health shall have charge and control of the execution of this Act and shall have the power to appoint competent official, issue Ministerial Regulation prescribing fee not exceeding the rates as prescribed in the schedule hereto attached and prescribing other activities, including the power to issue rule and notification for the execution of this Act.

Such Ministerial Regulation, rule and notification shall come into force upon their publication in the Government Gazette.

CHAPTER I

Protection and Promotion of Thai Traditional Medical Knowledge Committee

Section 5. There shall be the Protection and Promotion of Thai Traditional Medical Knowledge Committee consisting of Permanent Secretary of the Ministry of Public Health as Chairperson, Director-General of the Department of Medical Services, Director-General of the Department of Intellectual Property, Director-General of the Department of Livestock Development, Director-General of the Royal Forest Department, Director-General of the Department of Agriculture, Director-General of the Department of Medical Sciences, Secretary-General of the Food and Drugs Administration Board, Secretary-General of the Office of Natural

Resource and Environmental Policy and Planning and Director of the Medical Registration Division as *ex officio* members, and qualified members in an equal number to the *ex officio* members who are selected and appointed by the Minister from a group of medical practitioners and a group of persons having knowledge, capability or experience in Thai traditional medicine, production or distribution of Thai traditional medicine, and plantation or transformation of herbs. The Director-General of the Department for Development of Thai Traditional and Alternative Medicine shall be member and secretary.

The selection of qualified members under paragraph one shall be in accordance with the rule and procedure as prescribed by the Ministerial Regulation.

Section 6. The Committee shall have the powers and duties as follows:

(1) to give advice or recommendation to the Minister on the issuance of Ministerial Regulation, rule or notification under this Act;

(2) to promote and develop utilization of Thai traditional medical knowledge and herbs;

(3) to determine measure for strengthening stability and coordination among governmental agencies, State enterprises, communities and non-governmental organisation performing works related to protection and promotion of Thai traditional medical knowledge and herbs,

(4) to give approval to the order revoking the registration of right in Thai traditional medical knowledge under section 39 paragraph three;

(5) to consider and give decision on an appeal against an order or decision of the Registrar or the licensor under this Act;

(6) to issue rule related to rule and procedure for submission and consideration of appeal, making of register of Thai traditional medical knowledge, management, earning and spending of the Fund, and performance of works in concerning with protection and promotion of Thai traditional medical knowledge and herbs;

(7) to perform other acts as prescribed by this Act or by other laws to be the powers and duties of the Committee;

(8) to perform other acts as entrusted by the Minister.

Section 7. A qualified member appointed by the Minister holds office for a term of two years as from the date of appointment.

In the case where a qualified member vacates office before term, the Minister may, subject to section 5 paragraph two, appoint another person having the

same qualifications to replace him or her, and such person shall remain in office for the unexpired term of office of the qualified member he or she replaces.

A qualified member who vacates office at the end of the term may be reappointed.

Section 8. In addition to vacating office at the end of the term under section 7, a qualified member appointed by the Minister vacates office upon:

- (1) death;
- (2) resignation;
- (3) being a bankrupt;
- (4) being an incompetent or quasi-incompetent person;
- (5) being dismissed by the Minister due to negligent or dishonest in the discharge of duty or disgrace behavior;
- (6) having been sentenced by a final judgment of the Court to a term of imprisonment, except for an offence committed through negligence or a petty offence;
- (7) not being a medical practitioner, in the case where he or she has been appointed as qualified member upon such qualification.

Section 9. At a meeting of the Committee, the presence of not less than one-half of the total number of members shall constitute a quorum.

At any meeting, if the Chairperson is unable to attend the meeting, or is unable to perform his or her duty, the members present at such meeting shall select one among themselves to preside over at the meeting.

A decision of the meeting 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 at the meeting shall cast an additional vote as a casting vote.

Section 10. The Committee shall have the power to appoint a sub-committee for consideration or execution any matter as entrusted by the Committee.

The provision of section 9 shall apply *mutatis mutandis* to the meeting of a sub-committee.

Section 11. In the performance of duties under this Act, the Committee and sub-committee shall have the power to summon any relevant person to give statement or to produce evidence or document for their consideration.

Section 12. There shall be the Department for Development of Thai Traditional and Alternative Medicine under the Office of the Permanent Secretary, the Ministry of Public Health, having powers and duties to perform any act related to protection and promotion of education and training in, and research and development of, Thai traditional medical knowledge and herbs, and shall be responsible for secretariat and technical works of the Committee.

Section 13. The Director-General of the Department for Development of Thai Traditional and Alternative Medicine shall be the Central Registrar, and the Chief of Public Health Office to each *province* shall be the Registrar of each *province*.

CHAPTER II

Protection and Promotion of Thai Traditional Medical Knowledge

Section 14. The right in Thai traditional medical knowledge to be protected under this Act is the right in Thai traditional medical knowledge in concerning with a recipe of, and treatise on, Thai traditional medicine.

Section 15. The Department for Development of Thai Traditional Medicine shall have the duty to collect data on Thai traditional medical knowledge in concerning with a recipe of, and treatise on, Thai traditional medicine throughout the Kingdom for the purpose of registration.

The making of the register of Thai traditional medical knowledge in concerning with a recipe of, and treatise on, Thai traditional medicine under paragraph one shall be in accordance with the rule as laid down by the Committee.

Section 16. There are three categories of Thai traditional medical knowledge, *viz.*

- (1) national recipe of Thai traditional medicine or national treatise on Thai traditional medicine;
- (2) general recipe of Thai traditional medicine or general treatise on Thai traditional medicine; and
- (3) personal recipe of Thai traditional medicine or personal treatise on Thai traditional medicine.

Section 17. The Minister shall have the power to notify a recipe of, or treatise on, Thai traditional medicine which is immensely beneficial to, or valuable

for, medical or public health to be a national recipe of, or national treatise on, Thai traditional medicine, as the case may be.

The notification under paragraph one shall be made in accordance with the rule and procedure as prescribed in the Ministerial Regulation.

Section 18. The Minister shall have the power to notify a recipe of, or treatise on, Thai traditional medicine which has been used widely, or which its protection period under section 33 has been expired, to be a general recipe of, or general treatise on, Thai traditional medicine, as the case may be.

The notification under paragraph one shall be made in accordance with the rule and procedure as prescribed in the Ministerial Regulation.

Section 19. Whoever desires to apply a national recipe of Thai traditional medicine for drug recipe registration and for drug production licence under the law on drugs, or to conduct study and research with a view to improve or develop the new recipe of drug for commercial benefit, or to conduct study on national treatise on Thai traditional medicine with a view to improve or develop the new Thai traditional medical knowledge for commercial benefit, shall submit an application for licence thereto and pay fee as well as consideration for utilisation thereof to the licensor.

An application for and the granting of licence, limitation of right, and consideration shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 20. A personal recipe of, or a personal treatise on, Thai traditional medicine under section 16 (3) may be registered with the Registrar for the right in Thai traditional medical knowledge so as to receive protection and promotion as prescribed by the provisions of this Act.

The application for registration of the right in Thai traditional medical knowledge under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 21. A person entitling to apply for registration of the right in Thai traditional medical knowledge under section 20 shall be of Thai nationality and shall have qualifications as follows:

(1) being the searcher of a recipe of, or treatise on, Thai traditional medicine;

(2) being an enhancer or developer of a recipe of, or treatise on, Thai traditional medicine;

(3) being a successor of a recipe of, or treatise on, Thai traditional medicine.

Section 22. The registration of the right in Thai traditional medical knowledge shall not be made if any of the followings appears to the Registrar:

(1) the recipe or treatise applied to be registered is a national recipe of, or national treatise on, Thai traditional medicine or a general recipe of, or general treatise on, Thai traditional medicine; or

(2) the recipe applied to be registered is a personal recipe of Thai traditional medicine which is compounded upon such principle differentiating from Thai traditional medicine principle as the using of an extract from plant, animal or micro-organism which is not natural original extract or the using of non-primary transformation process.

Section 23. In the case where any application for registration of the right in Thai traditional medical knowledge is not compliance with the rule, procedure or conditions as prescribed by the Ministerial Regulation under section 20 paragraph two, the Registrar shall order such applicant to finish correction thereto within thirty days as from the date of receipt of such order.

If the applicant fails to comply with the order of the Registrar within the period under paragraph one, the application shall be revoked.

Section 24. After having considered the application, if the Registrar is of opinion that the applicant is qualified under section 21 and the Thai traditional medical knowledge applied for registration is not subjected to any prohibition under section 22, the Registrar shall, without delay, publish such application at all Registration Offices and local government organisation offices.

Section 25. In the case where several persons jointly apply for registration of the right in Thai traditional medical knowledge, the Registrar shall determine and notify an inquiry date to all applicants.

In course of inquiry under paragraph one, the Registrar may summon any applicant to give statement or clarification or to submit additional document or anything else. Upon the completion of the inquiry of the Registrar and the decision of the Permanent Secretary, the Registrar shall notify the decision to all applicants.

The course of inquiry and decision procedure shall be in accordance with the rule and procedure as prescribed by the Ministerial Regulation.

Section 26. In the case where several applicants separately apply for registration of the right in the same Thai traditional medical knowledge, the first applicant shall have the right to registration. If applications are applied at the same date and time, an agreement among the applicants to those applications shall be reached as to whether the right to registration shall vest to any applicant or to them all. If such agreement is unable to reach within the period as determined by the Registrar, the concerned parties shall submit the case to the Court within ninety days as from the date the period as determined by the Registrar is expired. If the case has not been submitted to the Court within such period, all applications shall be revoked.

Section 27. After having considered the application, if the Registrar is of opinion that the applicant is not qualified under section 21 and the Thai traditional medical knowledge applied for registration is subjected to any prohibition under section 22, the Registrar shall revoke such application and shall notify such revocation order, in writing, to the applicant within thirty days as from the date the order is made.

Section 28. In the case where the applicant appeals against the order of the Registrar under section 27 and the Committee decides that the order of the Registrar is incorrect, the Registrar shall continue the registration procedure for such applicant.

Section 29. Upon the publication of an application for registration under section 24, any person who is of opinion that he or she is entitled to the right in Thai traditional medical knowledge may submit an objection together with evidence to the Registrar. Such objection shall be submitted within sixty days as from the date of publication under section 24.

Section 30. The Registrar shall, before giving decision, provide an opportunity to the applicant and the objector to make a statement or to present his or her witness or supported document for consideration.

The Registrar shall, after giving decision, notify the decision together with reason thereof in writing to the applicant and the objector within thirty days as from the date such decision is given.

Section 31. If there is no objection under section 29, or there is an objection and final decision is given as to whether the applicant or the objector being a person having the right to registration, the Registrar shall make an order to register the right in Thai traditional medical knowledge to such applicant or objector.

After having an order to register the right in Thai traditional medical knowledge under paragraph one, the Registrar shall, in writing, notify such order to the applicant or the objector. In this case, such person shall pay the registration fee within thirty days as from the date of receiving such order. If the applicant or the objector fails to make payment within such period, the application for registration shall be revoked.

The certificate of registration of the right in Thai traditional medical knowledge shall be made in accordance with the form as prescribed by the Ministerial Regulation.

Section 32. In the case where the Permanent Secretary makes the decision under section 25 paragraph two as to whether several persons having the right to registration, or where several persons who apply for registration in the same thing agree that the right to registration shall vest to them all or the Court adjudicates that those persons entitle to the right in Thai traditional medical knowledge jointly under section 26, those persons shall have the right to registration of Thai traditional medical knowledge jointly.

In joint registration of the right in Thai traditional medical knowledge, the persons entitling to registration shall execute the agreement on the joint exercise of such right and submit such agreement to the Registrar together with the registration.

Section 33. The right in Thai traditional medical knowledge under this Act shall valid through lifetime of the holder of right and still valid until the expiration of fifty years as from the date of decease of the holder of right.

If there are joint holders of the right under section 32, the right in Thai traditional medical knowledge shall valid through lifetime of the joint holders of right and still valid until the expiration of fifty years as from the decease of the last joint holder of right.

Upon the expiration of the period under paragraph one or paragraph two, the Minister shall notify in the Government Gazette that such recipe of, and treatise on, Thai traditional medicine becomes a general recipe of, or a general treatise on, Thai traditional medicine under section 16 (2), as the case may be.

Section 34. The holder of right shall have the exclusive right to produce drugs and to study and research, distribute, enrich or develop the registered recipe of Thai traditional medicine or treatise on Thai traditional medical knowledge.

The provisions of paragraph one shall not apply to:

(1) any act which has been done for the benefit of study, explore, experiment or research in accordance with rule as laid down by the Minister; or

(2) preparation of drugs for a specific person by a Thai traditional medical practitioner under prescription of a medical practitioner; or

(3) production of drug for traditional survival, or production of drug by a State infirmary, governmental agency or State agency for the benefit of medical treatment in State infirmary, or usage of a treatise on Thai traditional medicine for the benefit of medical treatment in State infirmary in accordance with the rule as laid down by the Minister.

Section 35. The right in Thai traditional medical knowledge under this Act shall not be assigned to other persons, except by inheritance.

The inheritor of the right in Thai traditional medical knowledge under paragraph one shall apply for registration of the right to the Registrar within two years as from the date of decease of the holder of right.

If no person apply for registration of the right in Thai traditional medical knowledge within the period under paragraph two, the right in Thai traditional medical knowledge to be protected under this Act is deemed to be lapsed. In this case, section 33 (3) shall apply *mutatis mutandis*.

Section 36. The holder of right may permit any person to exercise his or her right under section 34.

The granting of permission under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 37. The Registrar shall have the power to revoke the registration of right in Thai traditional medical knowledge in the following cases:

(1) the holder of right exercises such right in contrary to public order and good morals;

(2) the holder of right violates or fails to comply with conditions or limitation in registration of right in Thai traditional medical knowledge as determined by the Registrar; or

(3) such right is exercised by the holder of right in the manner which may be seriously detrimental to the registered Thai traditional medical knowledge.

Section 38. An interested person or a public prosecutor may bring an action against the registration of right in Thai traditional medical knowledge which is inconsistent with section 21 or section 22 to the Court so as to revoke such registration.

Section 39. Prior to revocation of registration of the right in Thai traditional medical knowledge under section 37, the Registrar shall conduct an inquiry and shall notify the holder of right to submit his or her statement within thirty days as from the date of receiving such notification.

In course of inquiry under paragraph one, the Registrar may summon any related person to give statement or to take witness or submit evidence for its consideration.

If the Registrar is of the opinion, after inquiry, that there is a reasonable ground to revoke the registration of the right in Thai traditional medical knowledge, the Registrar shall request for approval from the Committee. The Registrar shall, upon an approval of the Committee, revoke such registration and shall notify, in writing, such revocation order together with the rationale thereof to the holder of right within thirty days as from the date such revocation order is given.

Section 40. The holder of right whose registration has been revoked under section 39 may apply for registration under section 20 after the expiration of one year as from the date the order revoking the registration of right in Thai traditional medical knowledge is given.

Section 41. In the case where the person who is permitted to exercise the right in Thai traditional medical knowledge exercises such right inconsistent with public order or good morals, or violates or fails to comply with conditions as prescribed by the Ministerial Regulation issued under section 36 paragraph two, or exercises such right in a manner which may be seriously detrimental to the registered Thai traditional medical knowledge, the Registrar shall have the power to revoke the permission to exercise the right in Thai traditional medical knowledge.

The revocation of permission to exercise the right in Thai traditional medical knowledge under this section shall be in accordance with the rules and procedure as prescribed by the Ministerial Regulation.

Section 42. Prior to revocation of permission to exercise the right in Thai traditional medical knowledge under section 41, the Registrar shall notify the

person who is permitted to exercise the right in Thai traditional medical knowledge to submit his or her statement within fifteen days as from the date of receiving such notification. In this case, section 39 paragraph two shall apply *mutatis mutandis*.

If the Registrar revokes the permission to exercise the right in Thai traditional medical knowledge, the Registrar shall notify, in writing, such revocation order together with the rationale thereof to the holder of right and the person who is permitted to exercise the right in Thai traditional medical knowledge within thirty days as from the date such revocation order is given.

Section 43. A person of nationality of another country who consents a person of Thai nationality to obtain protection of the right in Thai traditional medical knowledge in the country of his or her nationality may apply for registration of the right in traditional medical knowledge of that country which has been registered in that country so as to obtain protection under this Act.

The application for registration, the issuance of a certificate of registration and the revocation of the registration under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

CHAPTER III

Herbs Protection

Section 44. For the purpose of herbs protection, the Minister shall, with advice of the Committee, have the power to notify in the Government Gazette prescribing types, characteristics, species and names of herbs which are valuable for study and research or having economic value, or which may be extinct, to be controlled herbs.

Section 45. For the purpose of controlled herbs protection, the Minister shall, with advice of the Committee, have the power to notify in the Government Gazette prescribing:

- (1) amount or quantity of controlled herbs under possession, utilisation, care, preservation or transportation which is required to notify to the Registrar;
- (2) rules, procedure and conditions for the notification under (1);
- (3) rules, procedure and conditions for possession, utilisation, care, preservation or transportation of controlled herbs;

(4) rules, procedure and conditions for study and research of controlled herbs;

(5) rules, procedure and conditions for exportation of controlled herbs either for commercial or non-commercial purposes, or for distribution or transformation of controlled herbs for commercial purpose;

(6) any requirement for protection, prevention or ceasing or lessening of harms or damages which may occur to controlled herbs.

Section 46. No person shall study, research or export controlled herbs, or distribute or transform controlled herbs for commercial purpose, unless a licence is given by the licensor.

An application for and the granting of licence under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

The licence issued under paragraph one shall be valid through the 31st day of December of the third year as from the year of its issuance.

Section 47. The effect of licence issued under section 46 extends to an employee or agent of the licensee.

It shall be deemed that any act done by an employee or agent of the licensee under paragraph one is an act of the licensee, unless the licensee is able to prove that such act is done beyond his or her knowledge or control.

Section 48. The provisions of section 46 shall not apply to a study or research on controlled herbs conducted by any State agency, but such study or research shall be notified to the Registrar and it shall be conducted in compliance with the rules, procedure and conditions as notified by the Minister under section 45 (4).

Section 49. For the renewal of the licence issued under section 46, the licensee shall apply for such renewal prior to the expiration of the licence. Upon submission of such application, the licensee may continue activities under licence until the licensor refuses the renewal thereof.

An application for and the granting of the renewal of licence shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 50. In the case where the licence issued under section 46 is lost or destroyed, the licensee shall apply for its substitution within thirty days from the date such loss or destruction is known to him or her.

An application for and the granting of the substitution of licence shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 51. Any person who, on the date such herbs have been notified as controlled herbs in the Government Gazette by the Minister, possesses controlled herbs more than the amount or quantity as prescribed by the Minister under section 45 (1) shall notify the possession of such controlled herbs to the Registrar under this Act within the period as specified in such notification.

Section 52. If it appears that any licensee under section 46 fails to comply with this Act or Ministerial Regulation, rule or notification issued under this Act, the licensor shall have the power to suspend his or her licence for a period of not exceeding ninety days each time.

The licensee whose licence is suspended shall cease all acts under the licence and shall not, during suspension period, entitle to apply for any other licence under this Act.

Section 53. The licensor shall have the power to revoke the suspension order before the expiration of suspension period if it is satisfied that the licensee whose licence is suspended acts in compliance with this Act or Ministerial Regulation, rule or notification issued under this Act.

Section 54. If it appears that any licensee under section 46 fails to comply with this Act or Ministerial Regulation, rule or notification issued under this Act and it is serious offence, the licensor shall have the power to revoke his or her licence.

The licensee whose licence is revoked shall cease all acts under the licence and shall not, during suspension period, entitle to apply for any other licence under this Act until the expiration of the period of two years as from the date the revocation order is given. In this case, the licensor may or may not issue the licence as he or she deems appropriate.

Section 55. The suspension order under section 52 and revocation order under section 54 shall be notified, in writing, to the licensee. In the case where

the licensee is not found or refuses to receive the order, the order shall be posted publicly and conspicuously at the place as specified in the licence. In this case, it shall be deemed that the licensee acknowledges the order on and from the posting date.

Section 56. The licensee whose licence is revoked under section 54 may distribute the remaining of his or her controlled herbs to another licensee or other persons whom the licensor deems appropriate within sixty days as from the date he or she acknowledges the revocation order or, if there is an appeal, as from the date he or she acknowledges decision of the Committee, unless such period is extended by the licensor. The extension period shall not exceed sixty days.

Section 57. For the purpose of protection of herbs and its place of origin which is in natural ecological system or in biological diversity area, or which may simply be affected by any act of human within the area established as conservation area, the Minister shall, with advice of the Committee, prepare the action plan called “Herbs Protection Management Plan” and propose to the Council of Ministers for approval.

The Herbs Protection Management Plan under paragraph one may be short, medium or long term plan as appropriate, but it shall consist of work plan and guideline on the following matters:

(1) determination of conditions in permitting any person to enter into conservation area under the law on such matter to be complied with by related government agencies with a view to preserve natural conditions or value of herbs or to avoid any act which may affect natural ecological system or biological diversity of the area that is the place of origin of herbs;

(2) determination of management procedure, particularly to the area that is the place of origin of herbs, including determination of scope of duties and responsibilities of related government agencies with a view to establish effective cooperation and coordination for preservation of natural conditions, natural ecological system, biological diversity and values of herbs in such area;

(3) exploration and study and research on herbs and the place of origin of herbs in order to lay down protective measures of herbs and their places of origin;

(4) inspection, follow-up and analysis impact of any entering into the conservation area for the purpose of evaluation of an implementation under the plan and enforcement of the relevant legislations.

The Herbs Protection Management Plan under paragraph one shall be published in the Government Gazette.

Section 58. For the preparation of the Herbs Protection Management Plan under section 57, the competent official shall, with cooperation and coordination of related government agencies in accordance with the rules as prescribed by the Council of Ministers, have the power to enter into any area designated as conservation area in order to explore, study and research on herbs and their places of origin.

Section 59. Upon publication of the Herbs Protection Management Plan under section 57, the protection and management of conservation area shall be in accordance with the Herbs Protection Management Plan and the law on such matter.

Section 60. In any conservation area, if there is inappropriate area management or inappropriate herbs protection, or there is severely critical destruction of herbs or their places of origin and solution is required at once but related agencies have no legal power to cope with, or are not capable to render solution on, such problem, the Minister shall, with advice of the Committee, propose the Council of Ministers so as to authorise the Ministry of Public Health to execute the protective measure under the Herbs Protection Management Plan under section 57 as necessary and appropriate with a view to control and solve the problem.

Section 61. In any area which is a place of origin of herbs and the natural ecological system or biological diversity of such area may be destroyed or affected simply by any act of human, or the entering into such area for utilisation of herbs may be at risk of extinction or genetic reduction, or the official aims to enhance public participation in managing, administering, developing and utilising of herbs in that area, if such area is not designated as conservation area, the Minister shall, with advice of the Committee, have the power to issue the Ministerial Regulation designating that area as herbs protected area.

All lands within the area to be designated as herbs protected area under paragraph one shall not be lands subjected to ownership or possessory right under the Land Code of any person other than government agency.

The Ministerial Regulation under paragraph one shall have a map showing boundaries of lands designated as herbs protected area attached therewith.

Section 62. In the issuance of the Ministerial Regulation under section 61, one or more of the following protective measures shall also be prescribed therein:

(1) utilisation of herbs for conserving natural conditions and value of herbs or for avoiding effect on natural ecological system or biological diversity of the area;

(2) prohibition of any act which may be harmful or cause any change to ecological system of the area from its natural conditions, to biological diversity or to value of herbs;

(3) specific management measures for that area as well as determination of scope of duties and responsibilities of related government agencies for benefit of effective cooperation and coordination for the performance of their duties, or for conservation of natural conditions, value of herbs, natural ecological system or biological diversity of that area;

(4) other protective measures as necessary and appropriate for conditions of that area.

Section 63. In herbs protected area, no person shall own or possess land, built or construct anything, cut, chop, weed, burn or destroy tree or any flora, destroy biological diversity or natural ecological system, excavate for mineral, stone or soil, alter watercourse or cause waterway, brook, swamp or marsh flooding, dry or become toxic or dangerous to herbs, except for any act which is done for management of herbs protected area or for utilisation of herbs under licence granted by the licensor.

An application for and the granting of licence under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

The licence issued under paragraph one shall be valid through the 31st day of December of the third year as from the year of its issuance.

Section 49, section 50 and section 52 to section 55 shall apply *mutatis mutandis* to the renewal of licence, application for a substitution of licence, suspension and revocation of licence issued under paragraph one.

Section 64. In order to enhance public participation in protecting, promoting and developing of herbs, the owner or possessor of land which is the place of origin of herbs or which may be used for the plantation of herbs shall have the right to register such land with the Registrar for assistance or support under this Act.

An application for registration, the issuance of certificate of registration and the revocation of registration shall be in accordance with the rules, procedure and conditions as prescribed by the Ministerial Regulation.

Section 65. The owner or possessor of land registered under section 64 shall have the right to assistance or support in accordance with the regulation as notified by the Minister.

CHAPTER IV

Appeal

Section 66. In the case where the Registrar dismiss an application to register the right in Thai traditional medical knowledge under section 27, the applicant has the right to appeal against such dismissal order to the Committee within thirty days as from the date of receiving such order.

Section 67. In the case where the Registrar renders a decision relating to the person entitling to register the right in Thai traditional medical knowledge under section 30 paragraph two, the applicant or objector, as the case may be, shall have the right to appeal against such decision to the Committee within thirty as from the date of receiving such decision.

Section 68. In the case where the Registrar has an order revoking the registration of the right in Thai traditional medical knowledge under section 39 paragraph three, the holder of right has the right to appeal against such order to the Minister within thirty days as from the date of receiving such order.

The decision of the Minister shall be final.

An appeal under paragraph one shall not stay the execution of an order revoking the registration of the right in Thai traditional medical knowledge.

Section 69. In the case where the Registrar has an order revoking the permission to exercise the right in Thai traditional medical knowledge under section 41, the person who is permitted to exercise the right in Thai traditional medical knowledge shall have the right to appeal against such order to the Committee within thirty as from the date of receiving such order.

An appeal under paragraph one shall not stay the execution of an order revoking the permission to exercise the right in Thai traditional medical knowledge.

Section 70. In the case where the licensor has an order to suspend the licence under section 52 or to revoke the licence under section 54, the licensee whom

licence is suspended or revoked shall have the right to appeal against such order to the Committee within thirty as from the date of receiving such order.

An appeal under paragraph one shall not stay the execution under the suspension or revocation order.

Section 71. The decisions of the Committee under section 66, section 67, section 69 and section 70 shall be final.

Section 72. The submission of appeal and appeal procedure shall be in accordance with the rules and procedure as prescribed by the Ministerial Regulation.

CHAPTER V

Competent Official

Section 73. In the performance of duties, the competent official shall have the power as follows:

(1) to enter into any place during its working hours so as to inspect and control for the execution of this Act;

(2) to search any place or vehicle during sunrise and sunset or during working hours if there is a ground to suspect that an offence under this Act has been committed and there is a reasonable ground to believe that the delay in obtaining a search warrant shall cause the document or material relevant to the commission of an offence to be moved, concealed or destroyed. If it is unable to finish the search within such period, it may be carried out continually;

(3) to seize or attach any document or material related to the commission of an offence under this Act as evidence in proceedings;

(4) to summon any person to give statement or submit document or evidence if there is a reasonable ground to believe that such statement, document or evidence may be beneficial to the exploration or being evidence to proof the commission of an offence under this Act;

(5) to order any person to leave herbs protected area or to refrain from any act in violation of section 63.

In the performance of duties of the competent official under paragraph one, all related persons shall render appropriate facilities to the competent official.

Section 74. In the performance of his duties, the competent official shall produce his or her identification card.

The identification card of the competent official shall be in the form as notified by the Minister in the Government Gazette.

Section 75. In the performance of duties under this Act, the competent official shall be an official under the Penal Code.

CHAPTER VI

Thai Traditional Medical Knowledge Fund

Section 76. There shall be established a fund called the “Thai Traditional Medical Knowledge Fund” in the Department for Development of Thai Traditional and Alternative Medicine, Ministry of Public Health, to be a revolving fund for expenses incurred from the execution of works relating to the protection and promotion of Thai traditional medical knowledge.

The fund consists of money and properties as follows:

- (1) money from the government;
- (2) money or other properties received from private sector both domestic and abroad, foreign government or international organisation;
- (3) interests and benefits arising from the fund;
- (4) other incomes arising from the operation of the fund.

Incomes of the fund shall not be remitted to the Ministry of Finance in accordance with the law on treasury reserve and the law on budgetary procedure.

The Department for Development of Thai Traditional and Alternative Medicine, Ministry of Public Health, shall hold money and properties of the fund and disburse money from the fund in accordance with this Act.

The management, earning and disbursement of money from the fund shall be in accordance with the rules as prescribed by the Committee with approval of the Ministry of Finance.

CHAPTER VII

Penalties

Section 77. Whoever fails to comply with the order of the Committee or sub-committee under section 11 in conjunction with section 6 (5) or the order of the Registrar under section 39 paragraph two or the order of the competent official

under section 73 (4) shall be liable to imprisonment for a term of not exceeding one month or to a fine of not exceeding two thousand Baht or to both.

Section 78. Whoever violates section 19, section 46, section 52 paragraph two, section 54 paragraph two or section 63 paragraph one or fails to comply with the order of the competent official under section 73 (5) shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht or to both.

Section 79. Whoever violates section 51 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Section 80. Whoever violates the protective measures as prescribed in the Ministerial Regulation issued under section 62 (2) shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding forty thousand Baht or to both.

Section 81. Whoever fails to facilitate the competent official in accordance with section 73 paragraph two shall be liable to a fine of not exceeding two thousand Baht.

Section 82. In the case where the offender who is liable to punishment under this Act is a juristic person, its managing director, manager or representative shall be liable to the punishment imposed for such offence, unless such person is able to prove that he or she is not acknowledge or consent to such act of the juristic person.

Countersigned by:
Chuan Leekphai
Prime Minister

Certified translation

(Mr. Chukiert Ratanachaichan)
Permanent Law Councillor
Acting for Secretary-General of the Council of State

Rate of Fees

(1) Controlled Herbs Research Licence and renewal thereof	10,000 Baht each
(2) Licence to distribute, export or transform the controlled herb for commercial purpose and renewal thereof	20,000 Baht each
(3) License to manage the herbs protected area or to utilise herbs from the herbs protected area for commercial purpose and renewal thereof	10,000 Baht each
(4) Substitution of licences issued under (1), (2) or (3)	100 Baht each
(5) Certificate of registration of the land which is the place of origin of herbs	1,000 Baht each
(6) Substitution of registration of the land which is the place of origin of herbs	100 Baht each
(7) Licence to utilise the national recipe of Thai traditional medicine or national treatise on Thai traditional medical knowledge under section 19	20,000 Baht each
(8) An objection to the registration of the right in Thai traditional medical knowledge	500 Baht each
(9) Certificate of registration of the right in Thai traditional medical knowledge	1,000 Baht each
(10) Substitution of the registration of the right in Thai traditional medical knowledge	100 Baht each
(11) An application for licence, renewal of licence, registration under this Act	500 Baht each