Office of Transport and Traffic Policy and Planing
Ministry of Transport

Program Management Services : PMS

Technical Report #2
(Legal Report)




Avantgarde Capital Co., Ltd.
Korea Smart Card Co., Ltd.
PSK Consultants Co., Ltd.

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สำนักงานนโยบายและแผนการขนส่งและจราจร

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Condition

This document is prepared by consulting consortium including (1) Avantgarde Capital Co., Ltd. (2) Korea Smart Card Co., Ltd. (3) PSK Consultants Co., Ltd., which are selected as the advisor for the Program Management Service (PMS) for the Office of Transport and Traffic Policy and Planning (OTP). The objectives of the project include (1) To set policy and operating plan for common ticketing system (2) To develop common ticketing system and its associated standards and (3) To prepare readiness of Central Clearing House (CCH). This document is under confidential privilege between OTP and the advisor, which will only be used for the project's objectives by OTP.

This document is prepared under considering information received from OTP and/or other organizations, studies of other consultants, public information, and interview and questions made with organizations associated with this project. To be used as basic information in making common ticketing system and central clearing house development plan based on determined objectives of the project, the advisor have examined sources of such information and use with care, but not including the certification correctness of the information received by OTP, other consultants and/or other organizations. Therefore, use of information from this document for publicizing or reference purposed must be decided with own considerations.

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Chapter 1 Introduction

This report on the laws, rules, and regulations, relevant to the establishment and implementation of a Common Ticketing Office (CTO), aims to study and collect the various laws, rules, and regulations relevant to the establishment and implementation of a Common Ticketing Office (CTO) and serve the purpose of setting guidelines according to state policy governing common ticketing system administration by means of a Common Ticketing Company (CTC).

Furthermore, in this report, the consultant has provided possible proposed organization modelsof the Common Ticketing Office as well as recommendation for the mostappropriate form of Common Ticketing Office when considering various factors relevant to the establishment i.e. time period and process of establishment, implementation flexibility and efficiency, as well as government policy to supervise the organization to be set up of the established agency etc. Possible types of the CTO can be set in 3 alternatives i.e. Government body, State owned enterprise, and limited company with the following details.

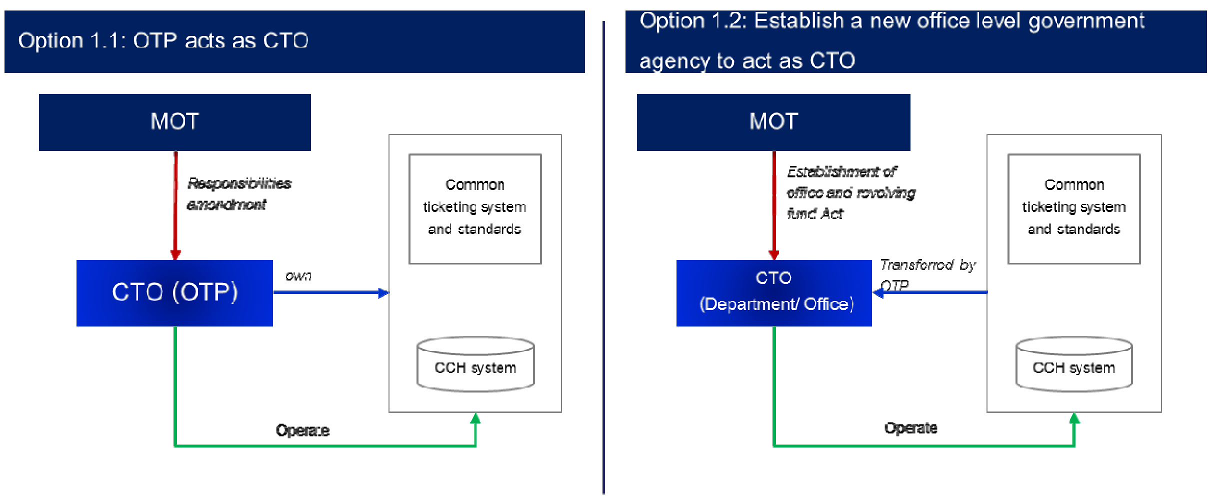
1. Government body model

A Department-level government agency under the Ministry of Transport that performs administrative duties in the Common Ticketing System; there are 2 alternatives as follows.

1.1 Expand the powers of Office of Transport and Traffic Policy and Planning (OTP) to perform CTO duties

1.2 Establish a new agency at the Department-level under the Ministry of Transport to perform CTO duties

Figure 1 Establishment of Government body



2. State owned enterprise model

There are 2 possible alternatives as follows.

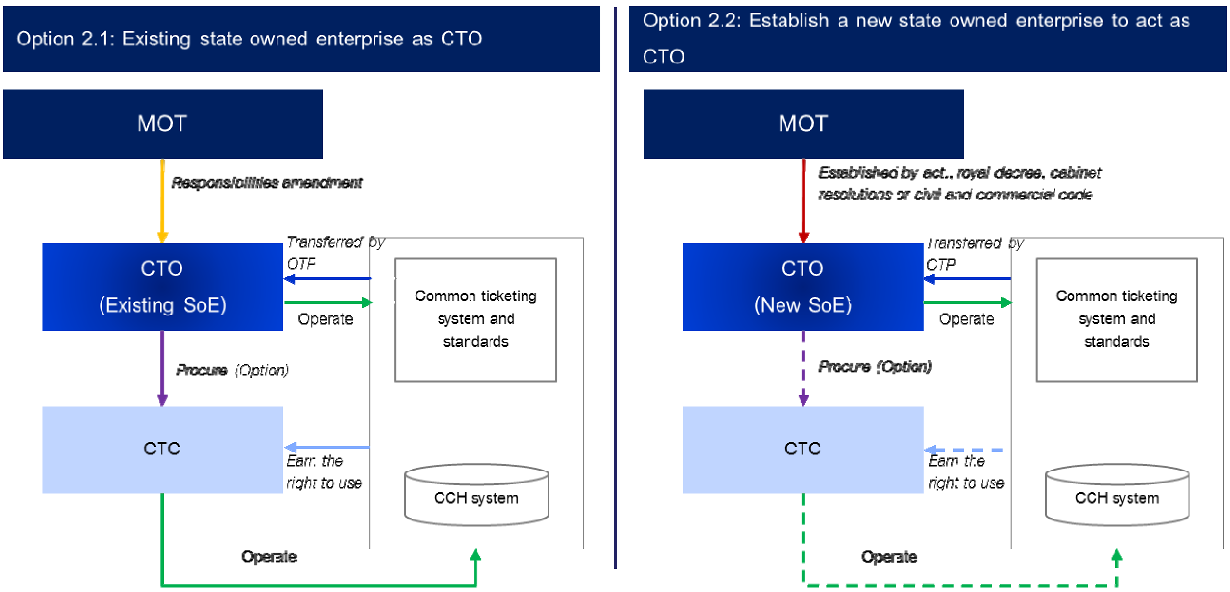
2.1 The public sector, by the Ministry of Transport, sets policies for State owned enterprises under its supervision to perform CTO administrative duties.

This might consider to assignState owned enterprises to have duties to implement public transport services which are within the scope of duties relevant to common ticketing system administration and without legal limitations concerning CTO management and CTC establishment.

2.2 Establishment of a new State owned enterprise to perform CTO duties

To operate CTO or (alternatively) hire/ outsource a CTCto manage the common ticketing system under whereby regulation to be in accordance with terms and conditions in the contract of the state owned enterprise actions at the CTO.

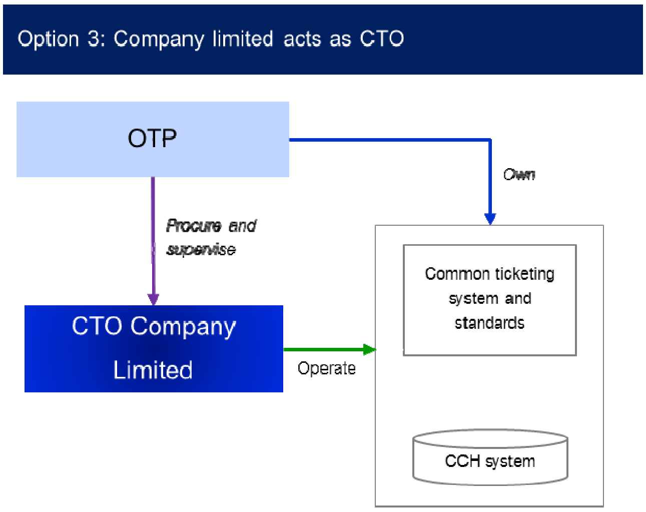
Figure 2Establishment model for State owned enterprise



3. Limited Company model

CTO is established as Limited Company with common ticketing system administration duties and hired and supervised by Office of Transport and Traffic Policy and Planning (OTP) to ensure compliance with terms and conditions of the contract and implementation of government policy.

Figure 3Establishment model for Limited Company



The applicable laws, rules, and regulations, as well as implementation processes and procedures, differ according to each of the 3 potential CTO types. Therefore, the consultant includes, in this report, various laws, rules, and regulations relevant to the establishment of a common ticketing management organization, including implementation and operations of said agency, as vital information to consider, decide, and select the appropriate CTO type aligned with operational characteristics of Thailand's public transportation systems. Additionally, this report proposes potential legal issues that may arise in the establishment and / or the implementation process of CTO and suggests solutions to the aforementioned problems. This report is comprised of the following chapters.

Chapter 2: Laws applicable to CTO

Chapter 3: Establishment of the CTO

Chapter 4: Recommendation for appropriate CTO model

Chapter 5: Relevant legal issues concerning operational aspects

Chapter 2 Laws applicable to CTO

1. Laws governing establishment of the CTO

From the 3 CTO establishment alternatives, the consultant will study the laws applicable to establishment of such 3 CTO types i.e. establishment of Government agency, State owned enterprise, and Limited Company, which would be newly set up organization, by explaining detailed set up processes of each CTO type, and analyzing the various legal matters as applicable to each of such 3 aforementioned CTO types, whether for newly set up organization or assignment to an existing organization.

Additionally, the consultant will study and analyze the laws applicable to the operation for each organization type as information for considering.CTO model, to set up the organization within the determined time period and in accordance with government policy, to ensure consistency with operating characteristics of current public transport systems currently existing in Thailand, and the ability to provide efficient and flexible services under government regulation. Details are as follows.

1.1 Laws and Processes Related to Establishment of Government agency

Regarding the establishment of a new Government agency to perform common ticketing administration duties as CTO, the organization must be equivalent to a Department with legal status as juristic person, capable of executing various legal transactions; the following laws apply to establishment of the Department.

1.1.1 Laws Applicable to the Establishment of Government agency

(1) State Administration Act B.E. 2534[1]

The Land Administration Act B.E. 2534 was enacted to improve civil administration systems, to enable work operations that respond to national development, to enhance the efficiency of public services, and to improve the administration of ministries in achieving their goals; thus the new civil service model was set and government agencies to

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[1]Land Administration Act B.E. 2534

Section 7 provides centralized civil administration regulations as follows:

(4) Government division under a different name either affiliated or not with the Office of The Prime Minister, a Ministry, or Bureau

Government division pursuant to (1) (2) (3) or (4) have legal status as a juristic person

Section 8 Establishment and dissolution of government division pursuant to Section 7 shall be enacted as Act.

establish organization by duties within their respective government ministry such as the transfer of Royal Thai Police Department in accordance with the State Administration Act (No. 6) B.E. 2546 or the establishment of the Office of the Attorney General which is considered a constitutional organization and independent entity completely separate from the Ministry of Justice in accordance with the Administration Act (No. 8) B.E. 2553 etc.

(2) Act Amending Ministry, Sub-Ministry and Department B.E. 2545

In the past, to establish a new government agency, many laws were enacted to amend ministries, sub-ministry, and Departments and public services within ministries to be responsible for the increased state obligations and duties i.e. (2) Act Amending Ministry, Sub-Ministry and Department B.E. 2545 Revised (No. 2) B.E. 2549 (No. 3) B.E. 2550 (No. 4) B.E. 2550 (No. 5) B.E. 2550 (No. 6) B.E. 2552 (No. 7) B.E. 2552 (No. 8) B.E. 2553 (No. 9) B.E. 2553 empowers the Ministry of Transport to have Department-level government agency i.e. Office of The Minister, Office of the Permanent Secretary, Marine Department, Department of Land Transport, Department of Civil Aviation, Department of Highways, Department of Rural Highways, and Office of Transport and Traffic Policy and Planning (OTP).

(3) Cabinet Resolutions Related to Establishment of State Agencies

There are numerous Cabinet Resolutions that set guidelines and processes in requesting the establishment of a state agency for the responsible parties to consider suitability of founding the state agency prior to proposing for consideration and approval by Cabinet because establishment of a new agency would certainly impact the national budget obligations. The following are Cabinet Resolutions that apply to the procedures involved with requesting to found a new state agency.

(A) Cabinet Resolution dated 6th July 1999 principally approved the establishment of the Groundwater Revolving Fund, appointment of the fund's board of directors, and budget allocation as initial capital of the fund proposed by the Ministry of Industry.

(B) Cabinet Resolution dated 18th July 2004 agreed with the process of founding public organization in accordance with opinions of the Office of the Public Sector Development Commission.

(C) Cabinet Resolution dated 27th July 2004, 24th January 2006, and 19th December 2006 agreed with procedures to establish government divisions within a Department, in accordance with opinions of the Office of the Public Sector Development Commission. Procedures to Establish a Division under a Department will be discussed further in Chapter 1.1.2.

(D) Cabinet Resolution dated 3rd April 2007 concerns the establishment of a public organization.

(E) Cabinet Resolution dated 24th July 2007 agreed with the procedures to establish government agencies in accordance with the Office of the Public Sector Development Commission.

(4) Circular letter issued by the Office of the Public Sector Development Commission (OPDC)

Cabinet has agreed with the guidelines concerning divisionswithin Departmentof OPDCdated 27th July 2004 and 2006 the amendments in and Cabinet Resolution dated 24th July 2007. The OPDC issued circular letter to inform of guidelines concerning divisions within a Department, for Government agencies to comply accordingly as follows.

(A) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1204.1 Vor 4 dated 17th September 2004

(B) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1204 / Vor 6 dated 8th December 2004

(C) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1204.1 / 44 – 190 dated 27th January 2005

(D) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1200 / Vor 3 dated 17th February 2006

(E) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1200 / Vor 18 dated 27th December 2006

(F) OPDC letter Publication by Office of the Public Sector Development Commission no. Nor Ror 1200 / Vor 13 dated 28th December 2007

1.1.2 Processes to Establish a Department-level Government Agency[2]

Establishment of the CTO as a Government agency is an alternative that empowers the government to regulate operations of the CTO to ensure the CTO's operations are implemented efficiently and fully adhere with government policy.

Nevertheless, to establish the CTO asGovernment agencywhich might be named as "Common Ticketing Administration Bureau" requires The Act Amendment of Ministry, Sub-ministry and department (No. …) B.E. (……) to add a department under oversight of the Ministry of Transport because the CTO, that will be established, must be a Department-level government agency with juristic person legal status to facilitate the various work operations of the CTO e.g. procurement and hire, and execution of legal transactions on its own behalf. Additionally, the founded agency shall sustain permanently not temporary because the common ticketing system must be operated by the agency capable of providing continuous services and development throughout the entire duration of services provided to ensure efficient administration of the common ticketing system. The following are processes applicable to establishing the Department-level CTO.

(1) The Ministry of Transport requests for establishment of an additional Department by enactment of Act Amendment Ministry, Sub-ministry and Department (No. …) B.E. (……) and submits the request to Development Committee of the Ministry of Bureaucratic

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[2]Publication by Office of the Public Sector Development Commission no. Nor Ror 1204.1 / Vor 4 concerning appointment of a separate entity under a Government agency dated 17th September 2004

(1) The Department applying must appoint a working committee responsible for establishing the separate entity under the Department and the ministry must appoint a Ministry Systems and Structure Development Board, with its presiding minister as chairman, and the board members comprised of permanent secretary and secretariat of the Office of the Public Sector Development Commission, director general of the Budget Bureau, permanent secretary of the Ministry of Finance, secretariat of the National Economic and Social Development Board, Secretary to the Council of State, Cabinet Secretary, and with an official from the Office of the Public Sector Development Commission as its board secretariat.

(2) The working committee must submit the matter to the Ministry Systems and Structure Development Board after which the ministry must submit the drafted law, which has been considered by the Ministry Systems and Structure Development Board, to the Office of the Public Sector Development Commission again. When the Office of the Public Sector Development Commission has approved, the Minister must submit the drafted law to the Office of the Council of State for approval upon which the Office of the Council of State will submit the matter to the Office of the Cabinet Secretary to propose to the Cabinet and promulgated in the Government Gazette. If the Office of the Public Sector Development Commission and the Ministry Systems and Structure Development Board disagree, the Office of the Public Sector Development Commission will submit the drafted law to the Cabinet for consideration.

Structures and the Office of the Public Sector Development Commission before submitting to the Cabinet. Application to request establishment of the CTO would entail the following.

(A) Provide explanation according to requirements concerning the necessity examination of a new Act. The explanation of the request to found a new Government agency should contain the following.

- Mission analysis of the CTO
- Reasons for the request to establish the CTO as a Department-level government agency
- Scope of authorities of the CTO
- Significant government policies and plans under responsibility and obligation of the CTO
- Workload of the CTO
- Budget and expenses to cover CTO work operations
- Workforce of the officers, required for the CTO
- Other explanation (if any)

(B) Prepare a summary of key points and principles of the drafted Act.

(C) Prepare a comparison of table to present the amendments (since it is the addition or amendment to an existing Act).

(2) OPDC requests the Office of the Cabinet Secretary to strictly examine the reasons of the request to enact the Act and requests opinion from the Bureau of the Budget, Office of the Civil Service Commission (OCSC) and other offices relevant to the CTO. If there are issues that the Ministry of Transport does not answer of clarify the reasons, the Office of the Cabinet Secretary will return the draft Act to the Ministry of Transport immediately.

(3) The Council of State examines the draft Act by inspecting the reasons and necessity of the enactment. If the Ministry of Transport does not answer any issues, the Council of State will return the draft Act to the Office of the Cabinet Secretary to awaitfor responses on such matters.

(4) The Cabinet Secretary will inquire the opinion of the independent agencies, and other related agencies, concerning establishment of the CTO as a Department-level agency and gather information to propose to the Screening Committee for consideration of necessity of the CTO establishment as a Department-level agency. If deemed necessary by the Committee, the matter shall be proposed to the Cabinet to approve its principles of CTO establishment as a Department-level government agency, accordingly.

(5) When the Cabinet approves the principles of CTO establishment, as a Department-level government agency, the Cabinet Resolution shall be passed to approve establishment of the CTO. The Office of the Cabinet Secretary submits the draft Act Amendment Ministry, Sub-ministry and Department (No. …) B.E. (……), which stipulates applicable covenant concerning the establishment of the CTO as a Department-level government agency, including the aforementioned Cabinet Resolution to the Council of State for consideration, and submits the draft Act to the Cabinet Secretary.

(6) The Office of the Cabinet Secretary submits the draft Act, returned from the Council of State, to the cabinet for consideration and approval of the draft Act Amendment Ministry, Sub-ministry and Department (No. …) B.E. (……), which stipulates applicable covenant concerning the establishment of the CTO as a Department-level government agency and to be proposed for approval by parliament.

(7) When Parliament approves the draft Act Amendment Ministry, Sub-ministry and Department (No.…) B.E. (……) which stipulates covenant concerning governing the establishment of the CTO as a Department-level government agency, the draft Act shall be submitted to Office of the Cabinet Secretary for further notice and promulgated in the Government Gazette.

1.1.3 The process of forming a government agency under the Department

According to the Cabinet had a resolution to agree with the proposal submitted by the OPDC to improve the Department segmentation processes as per the Cabinet Meeting, dated 27th July 2004, that enables a Ministry to restructure internally as appropriate to its mission, OPDC has issued the OPDC letter no. Nor Ror 1204.1 / Vor 4 dated 17th September 2004 to notify government agencies on the process to establish government agency within their the Department. Therefore establishment of a CTO as a Government agency must follow to the procedures.

(1) OTP, as the agency's originator, establishes a working team and presents the matter to the Ministry's Bureaucratic Structure Development Board to consider segregation of CTO as a Common Ticketing Administration Bureau and propose the information according to the explanation form of the Department's internal segregation.

(2) The Minister of Transport considers appointment of a Ministerial Bureaucratic Structure Development Board comprising of elements determined by OPDC.

(3) The Ministry submits the Draft Ministerial Bureaucratic Segregation order, to establish the CTO, approved by Ministerial Bureaucratic Structure Development committee that it will be sent to, the OPDC approve accordingly.

(4) OPDC considers the role, mission, and powers of the CTO to ensure that it does not overlap with other existing state agencies, or that there are no inappropriate missions, and then reports the results to the Ministry of Transport for consideration.

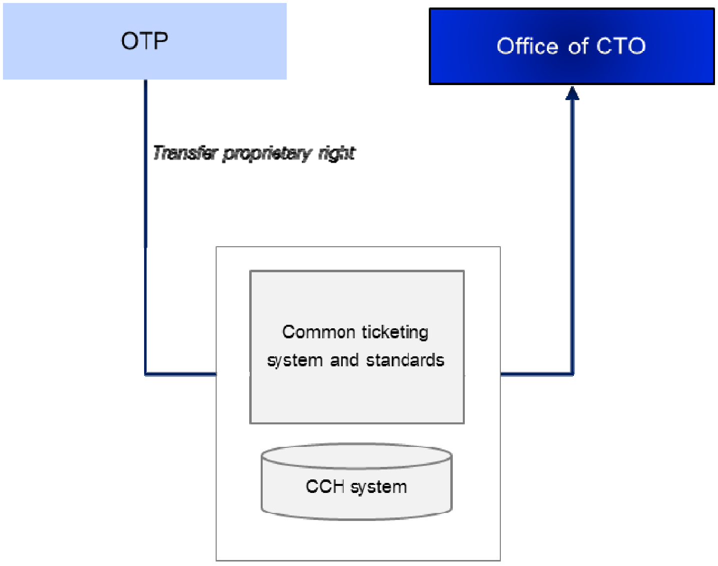
(5) In case that OPDC approves, the Minister of Transport shall submit the Draft Ministerial Bureaucratic Segregation order, to establish the CTO, to the Office of the Council of State for examination and then submit, to the Office of the Cabinet Secretariat, for its notification, and to publish in the Government Gazette.

(6) In case that OPDC has a different opinion from the Ministerial Bureaucratic Structure Development Committee, OPDC will propose the matter to Cabinet for consideration. If Cabinet approves, the Office of the Cabinet Secretariat shall submit the Draft Ministerial Bureaucratic Segregation order to the Council of State for consideration, and then submit to the Office of the Cabinet Secretariat, for its notification, and to publish in the Government Gazette.

The steps required to segregate a government agency within a Department are illustrated in the chart below.

1.1.4 The process of transferring assets to a newly formed Government agency

Figure 4Steps in transferring assets to a newly formed Government agency



The CTO, which is a newly established government agency, will be transfered of assets i.e. common ticketing systems and standards and CCH system from OTP whereby such transfer of said assets must be conducted in accordance with the regulations of the Office of the Prime Minister on Procurement B.E. 2535 and amendments (Procurement Regulation) as follows.

(1) Conduct an annual materials inspection of the government agency, before the end of September each year, according to regulations clause 155 in the regulation.[3]

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[3] Regulations of the Office of the Prime Minister governing Parcels B.E. 2535 and Amendments

Chapter 155: Prior to end of September every year, the Department Head, or the Supervisor with a parcel, pursuant to Chapter 153, depending on circumstance, appoints either one or multiple department or agency officials whom are not parceling officials as necessary to examine the parceling payments since 1st October of the preceding year until 30th September of the present year and count the remaining parcels on the final date of the period.

The parceling audit in the preceding paragraph must be commenced on the first working day in the month of October onwards to confirm the accuracy of expenses and whether parcel inventory is consistent with accounts or registry and there are no damaged, deteriorated, lost or unneeded goods. The results of the audit shall be reported to the appointees within 30 working days since the first day of the audit.

The appointees receive the report from auditors and submit one set of the report to the department head, and one copy of the report to the Office of the Auditor General or Regional Office of the Auditor General; regional administrative agencies are required to submit an additional set of the report to their owning agency.

(2) If after the inspection found that the materials are not neccessary for further use by the government, a Fact-Finding Committee will be appointed comprising of a chairman and at least 2 committees members appointed from civil servants, government employees, university employees, or government officers by mainly considering their duties and responsibilities of those appointed. In case of necessity or for the benefit of the state, not more than 2 additional individuals can be appointedas committee. If the chairman is unable to perform his duties, the head of such Government agencyshall appoint a government officer, with determined qualification to serve as chairman instead by a meeting agenda i.e. Discussion meeting of the Committee with a quorum of not less than half of the total committee members and each committee shall have one vote in the resolution, which shall be majority votes by the committee. If the votes are equal, the chairman will be counted as one additional vote as a casting vote.

(3) The head of the Government agencyshall order to proceed by a particular method. When OTP is relieved of its CTO administration powers, the assets owned by OTP i.e. common ticketing systems and standards and CCH systems required for common ticketing operations will be deemed as no longer needed by OTP and must be transferred to other government agency according to Chapter 157 (3), in this case is CTO,for the purpose of common ticketing system administration whereby the Working Committee will deliver the materials to CTO.

(4) The delivering agency, and the recipient agency, of the assets will register the delivery and receipt of the materials and further notify relevant agencies.

Chapter 156: When the government agency head has received the report pursuant to Chapter 155 and it appears that certain goods are damaged, deteriorated, lost, or unneeded for official use, a fact finding committee shall be appointed to apply the provisions under Chapter 35 and Chapter 36 mutatis mutandis.

Chapter 157: If certain goods are unneeded or would incur unnecessary expenses in further official use, the parcel officer shall report to the government agency head to consider ordering procedures according to one of the following methods.

Transfer to a government agency or agency in accordance with regulations governing local administration or other agencies that are legally prescribed as local administrative organization, state owned enterprise, or charitable organizations pursuant to Section (7) 47 of the Revenue Code with evidence of transfer and delivery.

1.2 Laws and Processes Related to the Establishment of State owned enterprise

In case that the CTO is founded as a State owned enterprise, a newly formed State owned enterprise would be established under the Ministry of Transport, or aaffiliated companyof a state owned enterprise(s) would be established or hire/ outsource a contractor to perform CTO duties, under the regulation of the establishedState owned enterprise to ensure that the administration follows government policy concerning the common ticketing system. The following laws and processes are applicable.

1.2.1 Laws Applicable to Establishment of State owned enterprise

(1) The Constitution of the Kingdom of Thailand B.E. 2550

The establishment of State owned enterprise by Act or Decree must follow requirements concerning enactment of Act and Decree according to the Constitution of the Kingdom of Thailand B.E. 2550.

(2) The Budget Procedure Act B.E. 2502

State owned enterprise is defined by the Act consists of state owned enterprise that is established by particular laws and company or partnership which the government, or a State owned enterprise, holds no less than 50 percent in shares or registered capital.

(3) The Establishment of Government Organizations Act B.E. 2496

Establishment of state owned enterprise under this Act occurs because the government realizes a need to have a state agency or organization to provide public or economic benefit, assist in livelihood, or provide servicesto people.The government shall enacta decreeto regulate state owned enterprise to have clear guidelines, objectives, and plans. Presently, there are many state owned enterprises establishment i.e. the Weaving Organization ,which was established by the Weaving Organization Establishment Decree B.E. 2498 etc.

(4) The Public Company Act B.E. 2535

State owned enterprise establishment as a public company must comply with rules and procedures set forth in The Public Company Act B.E. 2535 which entails processes and procedures that are more complicated than the establishment of other CTO models due to the offering of shares to the general public. Therefore, procedures and methods are required to control the sale of shares and operations of a public company to be more carefule and conscious. Additionally, a Government agency or State owned enterprise must hold no less than 50 percent of the total shares.

(5) Civil and Commercial Code

Establishment of a State owned enterpriseas a Limited Company must comply with requirements set forth in the Civil and Commercial Code. Additionally a Government agency or State owned enterprise must hold no less than 50 percent of the total shares.

1.2.2 Types of State owned enterprise

Establishment of State owned enterprisein the pass has taken the following forms.

(1) Established by Royal Act i.e. State owned enterprises that are important for country in term of economic and the operations would highly impact the general public with use of special powers of state such as expropriation, poling, and cabling, as well as operations that require considerable budget and manpower, and organizations with complex structures such as Government Savings Bank, State Railway Authority of Thailand, Electricity Generating Authority of Thailand, Ports Authority of Thailand, and Metropolitan Water Authority etc.

(2) Established by Royal Decree such as Secondary Mortgage Corporation and Bangkok Asset Management Corporation etc.

(3) Established by Royal Decree to the Establishment of Government Organizations Act B.E. 2496 which includes State owned enterprises with less significance and impact, to the general public, than State owned enterprises established by Royal Act and with less administrative powers i.e. The Market Organization, The Zoo Organization, Mass Communications of Thailand (MCOT), and Bangkok Mass Transit Authority etc.

(4) Established by Announcement of a Revolutionary Concilwhich has equal status to Royal Act i.e. Expressway Authority of Thailand, National Housing Authority etc.

(5) Established by Cabinet resolution which includes State owned enterprises that have no legal juristic person status under a certain Ministry, Sub-ministry, or Department nor of an agency equivalent to Ministry, Sub-ministry, or Department, but have status as an organization, under originated agency, with scope of powers and duties of the originated agency, and operate under the budget of such agency i.e. Thailand Tobacco Monopoly, The Liquor Distillery Organization, Police Printing Office, and Office of the Government Pawnshop etc.

(6) Established by the Civil and Commercial Code and the Public Company Act B.E. 2535 areState owned enterprises that were founded to provide flexibility and management efficiency, measured by annual profits generated by the State owned enterprise. These might be a joint venture between government and private shareholders whereby the government holds over 50 percent shares i.e. The Transport Limited Company, Airports of Thailand (Public) Limited Company, and Thailand Post Limited Company etc.

Nevertheless, the CTO might be established either by Royal Act, Decree, or Decree; moreover it might be established as a State owned enterprise in the form of a Limited Company under the Civil and Commercial Code, or as a public company under the Public Company Act B.E. 2535 whereby the government sector must hold over 50 percent shares. However, the consultant has conducted a study and found that State owned enterprises in the form of public company are mainly caused by privatization and are not initially established as a public company State owned enterpriseat the beginning i.e. Airports Authority of Thailand PCL., and Thai Airways PCL. Both of which are transformed State owned enterprises and established by Royal Act as a public company for purpose of increased flexibility and fund raising ability. The establishment of a Limited Company State owned enterprise is generally the forming of existing state owned enterprise is affiliated or related company, to support current business of its parent company or as a State owned enterprise that neither involves the use of state powers nor affects the rights of the general public or other agencies.However, it aims for operation flexibility and requires establishment in form of a company form. Since the CTO requires sustainability under close government regulation. Additionally, CTO's operations may affect the rights and duties of other relevant agencies i.e. fee collection and rate policies and other operations related to revenue collection from participating service providers. **The consultant suggests that the establishment of a State owned enterprise to serve as CTO be founded by**

Royal Act, Decree, or Decree to ensure the organization is sustainable and efficient in implementation of its work operations with the following procedures of establishment.

1.2.3 The Establishment Process of State owned enterprise by Royal Act or Royal Decree

Establishment of state owned enterprises by enactment of Royal Act or Royal Decree shall have the following processes.

(1) Prepare a draft Royal Act to establish the CTO as a State owned enterprise and bring such draft Royal Act to discuss among relevant agencies.

(2) Propose the aforementioned draft Royal Act to the originated Minister (Ministry of Transport) to propose to the Cabinet to consider abd approve for approval including the to establishment of CTO as a State owned enterpriseofState owned enterprise Policy Office (SEPO), Ministry of Finance.

(3) If the Cabinet and SEPO approve the draft Royal Act proposed by the Minister of Transport, the draft Royal Act shall be then proposed to the Council of State.

(4) When the draft Royal Act has passed the examination, the Council of State shall propose the matter to the Cabinet for submission to prepare the House of Representatives for consideration accordingly.

(5) The House of Representatives, together with representative of SEPO (optional), shall jointly consider such draft in terms of principles and necessity of enactment.

(6) Once approved by the House of Representatives, the proposed draft Royal Act must be re-examined by the Senate.

(7) Once the Actis approved by the House of Representatives and the Senate, the Prime Minister must present the draft Act for royal approval within 20 days from the date of receipt for His Majesty the King to affix the royal signature and will be published in the Government Gazette for further enforcement.

Regarding Royal Decree, it shall be enacted by the Cabinet to be used in emergency situation for benefit of the state. The Decree has equal enforcement powers as a

Royal Act. The enactment of the Royal Decree to establish the CTO as a State owned enterprise is subject to the following processes.

(1) The originated Minister (Ministry of Transport) drafts the Royal Decree and proposes to Cabinet for approval.

(2) Cabinet considers the reasons and necessity for the draft Royal Decree; once approved by Cabinet, the Prime Minister shall present the draft Royal Decree to His Majesty the King to affix the royal signature and publish in the Government Gazette with the required approval by the Senate.

(3) After the Decree has been promulgated, the Cabinet will propose Decree to the Parliament for consideration, without delay, at the next sitting of Parliament. If it is out of Parliament session, the Cabinet must arrange an extraordinary sitting of Parliament to consider and approve the Decree without delay.

(4) If Parliament approves the Decree, the Decree is transformed a Royal Act and immediately enforced. In case Parliament does not approve or if the House of Representatives approves but the Senate does not, and the House of Representatives insist such approval by a vote of not more than half of the total number available in the House of Representatives, the Decree shall be dropped. However this shall not affect the actions that have already commenced during the period while the Emergency Decree was effective.

1.2.4 The Processes of Establishing a State owned enterprise by Enactment of Royal Decree

Establishment of state owned enterprise by enactment of Royal Decree is formedaccording to The Establishment of State Organizations Act B.E. 2496 [4] with the following processes.

[4] The Establishment of State Agency Act B.E. 2496

Section 3: When the government deems it necessary to establish an organization to perform operations for the public benefit or for the economic benefit or to assist in subsistence or provide public service, using funds from the national budget, it shall proceed by codification of Royal Ordinance.

Section 6: Royal Ordinance to establish an organization according to provisions under Section 3 will require the following minimum.

(1) Name of the organization.

(1) The Minister concerned, in this case the Minister of Transport, shall draft the Royal Decree to establish a State owned enterprise which must comprise of content pursuant to Article 6 of The Establishment of State Organizations Act as follows.

(A) Name of the State owned enterprise

(B) Address of the head office

(C) Objectives of the State owned enterprise

(D) Approved capital

(E) Allocation of benefits

(F) Control and administration of the State owned enterprise including powers and duties of its board of directors,director or manager

(G) Accounting, audit, and examination

(H) Other conditions

(2) The Minister of Transport proposes the draft Decree, concerning establishment of the state owned enterprise, to State owned enterprise Policy Office (SEPO).

(3) The Minister of Transport proposes the draft Decree to the Cabinet to approve the Royal Decree according to Royal Decree on Cabinet submission and Cabinet meeting B.E. 2548 and criteria and procedure for Cabinet submission B.E. 2548.

(4) The Cabinet approves the draft Decree and presentsto His Majesty the King to affix his royal signature having Minister of Transport as the countersign of the royal command.

(5) Published in the Government Gazette and enforced as law.

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(2) Head office address.

(3) The organization's objective.

(4) Approved funding.

(5) Allocation of benefits.

(6) Control and management of the organization including authority and duties of the directors or management

(7) Bookkeeping, accounting and audit.

(8) Other guidelines necessary to properly commence operations of the organization.

1.2.5 Processes to Establish a State owned enterprise in the Form of Limited Company

Establishment of a State owned enterprise in the form of Limited Company shall have the processes as defined in the Civil and Commercial Code.

(1) A minimum of 3 individuals founding members, perform the registration of the Memorandum of Association. Each founding member must hold at least one share.[5]

(2) The founding members must complete the subscription of shares.To have a status as state owned enterprise the Government agency must subscribe to a minimum of 50 percent of total shares issued.[6]

(3) When all shares have been subscribed, the founding members shall issue an invitation to a share subscriber to set a company meeting.The notice must be issued at least 7 days prior to the meeting date.[7]

(4) Arrange a share subscriber meeting to set up a company shall require subscribers or promises of the subscribers of not less than half of total subscribers and account for not less than half of the total numbers of shares to consider related matters, e.g. draft Articles of Association, Ratification of the founders' agreement, expenses incurred by the founders for establishment of the company, and election of directors and auditors etc. [8]

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[5]Civil and Commercial Code

Section 1097: Three or more persons may found and establish a limited company by listing their names in the company memorandum and may do otherwise according to the provisions of this Code.

[6] Section 1104: The total amount of registered shares by the company must be purchased or issued prior to the official company formation.

[7] Section 1107: If the shares, the type that require investment, have been sold out, the founders shall assemble the share holders to attend a conference without delay. This shall be called the company formation meeting.

The founders shall submit the company formation report, with testimonials to its authenticity, and statements regarding the meeting agenda, to all persons who have purchased shares, within no less than seven days before the conference date.

[8] Section 1108: Meeting agenda shall entail the following.

(1) Reach an agreement concerning the various company regulations.

(2) Ratification of contracts entered into by company founders and expenses necessary to the company formation.

(3) Determine the amount of funds to be given to company founders if intended so.

(5) After the company meeting, the founders deliver all matters to the company directors.

(6) The directors are responsible for notifying the founders and share subscribers to pay at least 25 percent of par value to further company registration.[9]

Nevertheless, all above processes to establish the Limited Company may be completed within a single day.

However, in the establishment of a State owned enterprise as a Limited Company, the government has a policy that the Ministry of Finance hold shares in every company invested by the state. Cabinet must grant special permission if the Ministry of Transport, or OTP, is to hold shares in the newly formed company. Cabinet may not to allow the Ministry of Transport, or OTP, to hold shares but instead assign the Ministry of Finance as shareholder and authorize OTP with powers to regulate the CTO.Moreover, concerning the holding of shares in the newly formed CTO, OTP must comply with orders of Ministry of Finance Sale and Purchase of Government's Shares B.E. 2535 that requires approval from the Minister of Finance, and have the Deputy Permanent Secretary of the Ministry of Finance, and the Director-General of the State owned enterprise Policy Office to sign share purchase orders.

1.2.6 The Establishment Process of a State owned enterprise in the Form of Public Company

(1) A minimum of 15 founding members perform to register the Memorandum of Association, which must comprise of the following items at minimum.

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(4) Determine the amount of preferred shares including the volume and preferred conditions of the shares if the company intends to issue preferred shares.

(5) Determine the volume of common shares or preferred shares issued as fully, or partially, paid-up or paid by non-monetary means and how to determine whether fully paid-up if such shares exist in the company; the matter must be brought up at the conference particularly to determine how the common shares or preferred shares have been paid, by labor, property, or assets. This must be clearly specified.

(6) Vote the first company directors and auditors and determine authority of these individuals.

[9] Section 1110: After adjournment of the company formation meeting, the company founders shall transfer all matters to the company directors.

When the directors have accepted, they shall immediately collect funds from all the founders and share subscriber, no more than 25 percent per each share as specified in the prospectus or tender.

(A) The company name either stating “(Public) Company Limited” or the acronym PCL.

(B) The company’s intention to offer shares to public.

(C) The registered capital must specify the type, number, and value of shares.

(D) The company’s head office.

(E) The names, dates of birth, citizenships, and addresses of company founders, the number of shares reserved by each founder, and the signatures of company founders.

(2) Concerning the sale of shares, company founders may either subscribe to all shares (Method 1) or offer to sell the shares to the public (Method 2). If shares are offered to the public, the company founders must submit IPO documentation or prospectus to agencies according to the securities and exchange law (Securities and Exchange Commission of Thailand: SEC). The aforementioned documentation must be delivered to the Registrar within 15 days from submission to said agencies.

(3) When the total number of shares, specified within the prospectus, has been subscribed, which shall be not less than fifty percent of the shares set forth in the Memorandum of Association, the founders must call a statutory meeting to consider the draft regulations, election of Directors, and company auditors. The meeting must be held within two months from the date all available shares have been subscribed and no later than six months from the date of the Memorandum of Association.

(4) The founders shall hand over the business and all company documents to the directors, who have been elected at the above shareholders’ meeting, for the Directors to complete further registration.

(5) The Board of Directors is responsible to ensure that all share subscribers have paid in full. After the amounts have been paid in full, the Board of Directors shall seek incorporation within three months from the meeting date to establish the company.

However, the establishment of a CTO in the form of State owned enterprise, aside from being established as a newly formed State owned enterprise, it may also be established as aaffiliated companyof existing State owned enterprise whereas suchaffiliated company shall also have an state owned enterprise status. Rules and procedures are as follows:

1.3 Criteria for the Establishment / Joint Venture in a State owned enterpriseAffiliated company

Establishment of a State owned enterpriseAffiliated company is subject to the Resolution by State owned enterprise Policy Committee (Kor Nor Ror) No. 1/ 2550 dated 8th November 2007 which defines criteria for the establishment/ joint venture/ regulation of affiliated companies, which shall be applicable to all State owned enterprises, except for State owned enterprises that are financial institutions, and has been approved in principle by Cabinet Resolution dated 4th December 2007. Details are as follows:

(1) The establishment/ joint venture are subject to relevant law, especially law governing the establishment of State owned enterprise.

(2) Affiliated company shall not operate business, which is primary mission of the parent state owned enterprise, unless the establishment/ joint venture of the affiliated company has the following characteristics:

(A) State owned enterprisethat has financial problems and need restructuring for efficiency enhancement possibility

(B) State owned enterprisethat wants to expand its business to international markets, to bring expertise to generate more revenue abroad

(C) State owned enterprise that needslarge capital investment to sekk for technology or expertise to run the business.

(3) Affiliated company must perform business which is directly related with the mission of the parent state owned enterprise.

(4) Affiliated company has neither monopoly power nor privileges of the parent state owned enterprise.

(5) Affiliated company must not perform business that competes with private sector, unless necessary for the purpose of state security and save public benefits, and must or provide public utility.

(6) Affiliated company must neither perform manufacturing of product nor provide services that adversely affect public health, sanitation, or morals of people.

1.3.1 Consideration of the Establishment / Joint Venture of Affiliated Company

(1) Consideration processes

The parent State owned enterprise considers whether the establishment / joint venture in the affiliated company meets the criteria mentioned above and prepare and propose a proposal, on establishment/ joint venture in the affilicated company, to the Cabinet for further consideration.

(2) Information for consideration

(D) Study results

- Neccessity to establish the affiliated company
- Impact from affiliated company establishment in term of industrial, economic, social, and environmental

(3) Operation plan

(A) The process and timelines for the establishment / joint venture in the affiliate company

(B) Detailed information on the operations of the affiliated company

(C) The business to be transferred to the affiliated companyfrom its parent state owned enterprise in cases the affiliated company would operates the business current performed by its parent state owned enterprise

(D) Employee transfer plan and manpower structure of the affiliated company and its parent state owned enterpriseafter the establishment

(E) Management structure and Board of Directors

(F) Remuneration structure of directors, management, and employees

(G) List of shareholders, registered capital, and sources of funding

Any changes and / or additions to the business objectives approved in the establishment / joint venture in the affiliated company are subject to approval procedures.

However, newly formed affiliated companies of of the state owned enterprise must comply with all relevant rules, regulations, and Cabinet Resolutions generally applicable to State owned enterprise with the following exceptions:

(1) Rules, regulations, and Cabinet Resolutions concerning evaluation

(2) Rules, regulations, and Cabinet Resolutions concerning manpower

If a State owned enterprise establishes aaffiliated company as state owned enterprise overseas in accordance with government policy, suchstate owned enterprise may request exclusion to generally applicable rules, regulations, and Cabinet Resolutions and provide reasons for such exclusion.

1.3.2 Processes for Establishing aAffiliated Company

(1) Preparation of information for the approval process

In preparing the information for approval of affiliated company establishment, the parent State owned enterprise must provide details according to State owned Enterprise Policy Committee (SEPO) guidelines for establishment of affiliated company / joint venture with two main topics as follows:

(2) Presentation of the study results comprise of the following:

(A) Neccessity for affiliated company establishment, by presenting the principles and reasons of establishment, which should be beneficial to the parent State owned enterprise and the country as a whole.

(B) Impact from affiliated company establishment in terms of industrial, economic, social, and environmental by presenting the benefit of the establishment in various dimensions including industrial, economic, social, and environmental.

(3) The operation plan consists of:

(A) The process and timelines for the establishment / joint venture in the affiliate company

(B) Detailed information on the operations of the affiliated company

(C) The business to be transferred to the affiliated company from its parent state owned enterprise in cases the affiliated company would operates the business current performed by its parent state owned enterprise

(D) Employee transfer plan and manpower structure of the affiliated company and its parent state owned enterpriseafter the establishment

(E) Management structure and Board of Directors

(F) Remuneration structure of directors, management, and employees

(G) List of shareholders, registered capital, and sources of funding

(4) Propose to State owned enterprise Policy Office (SEPO)

During the preparation, of information, for affiliated company establishment approval, the parent State owned enterprise must consult SEPO regarding the details and business model, of the affiliated company to be accordance with establishment/ joint venture in the affiliated company set by SEPO prior to proposing to BoD of the state owned enterprise for its consideration and approval.

(5) Propose to State Owned enterprise's Board of Director

To consider and approve in principle and information for the establishment of aaffiliated company, to further propose to the Ministry of Transport or SEPO in the next steps

(6) Propose to the Ministry of Transport

To consider and propose the principles of affiliated company establishment to SEPO or Cabinet for further approval

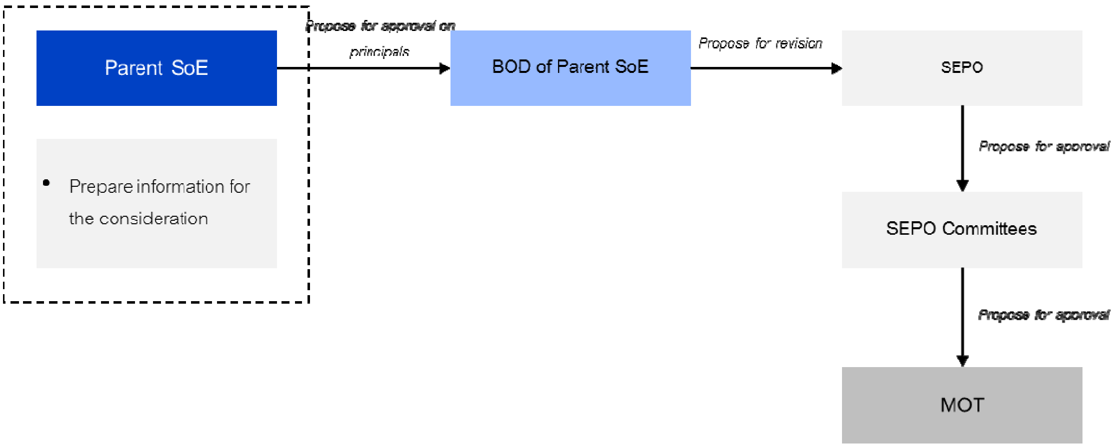
(7) Propose to SEPO

To regulate and monitor the operations of State owned enterpriseto enable flexible, efficient, and quality administration as well as to consider increasing the private sector's role in supervision, oversight, and acceleration of work in accordance with the plan to increase the role of private sector. **In the case of establishing anaffiliated companyof aState owned enterprise, the Ministry of Transport may propose to the Cabinet for approval of establishment of the affiliated company without consideration by SEPO. However, to make the establishment** of the affiliated company be in accordance with the criteria for establishment/ joint venture in affiliated company set by SEPO which has been approved by Cabinet. The consultants would recommend proposing to SEPO it necessary to initially prior to proposing to the Cabinet for further approval.

(8) Propose to the Cabinet

To consider and approve the establishment of anaffiliated companyof theState owned enterprise as proposed by Ministry of Transport or SEPO.

Figure 5Steps to request establishment of a State owned enterpriseaffiliated company



1.4 Laws and processes related to the establishment of a Limited Company

1.4.1 Laws related to the establishment of a Limited Company

(1) Civil and Commercial Code

The establishment of a Limited Company must proceed according to Section 4, Chapter 1 of the Civil and Commercial Code governing the conditions and establishment of a Limited Company.

1.4.2 Process in establishing a Limited Company

Process for establishment of a limited company shall follow the Civil and Commercial Code having the same process as the establishment of a state owned enterprise in the form of a limited company in section 1.2.5 Procedures to Establish a State owned enterprise in form of a limited company.

2. Laws related to CTO's operations

2.1 Laws related to E-money cards business and electronic transactions

2.1.1 Telecommunications Business Act B.E. 2549

To conduct electronic transactions, which is the primary function of CCH, the use of a telecommunication network is required to connect and communicate with the parties involved i.e. the electronic card issuance, electronic card top-up, and electronic card settlement etc. **The consultanthas opinion that if the CTO provides services to rent / use the telecommunication network for all related parties, whether the network is owned by CTO or not, the CTO must apply for the type 2 telecommunications business license from the Office of the National Broadcasting and Telecommunications Commission under Article 7 of the Telecommunications Business Act B.E. 2544. The license is for telecom operators with objectives to serve only a limited group of individuals or for businesses that have no significant impact on free and fair competition, or against the public interest and consumers.**[10]

Furthermore, in the case telecom equipment is used to conduct E-money transactions, which the Telecommunications Business Act B.E. 2544 specifies that the equipment to be used must follow specifications according to standards set by the National Broadcasting and Telecommunications Commission. [11]

However, the preliminary CCH system design in terms of connecting the transfer data between CCH can be made via internet connection of existing telecommunication service providers. Through either a lease agreement or by requesting usage. In this case, the CTO would not be required to obtain the license to operate a telecommunications business.

[10] The Telecommunications Enterprise Act B.E. 2544

Section 7: Persons who wish to enter the telecommunications business according to the type and criteria, as specified by the commission, under frequency allocation, broadcasting, television, and telecommunications law, must be licensed by the commission.

(2) The second type of license is a permit for telecommunications business operators that have, or don't have, their own network. This is deemed operating an enterprise with objectives to provide services to a limited group of individuals, or operating an enterprise that poses no significant impact to free and fair competition, or to public benefit and consumers. Moreover, when the persons who wish to operate the aforesaid enterprise have conducted suitably and fully adhere to all standards and principles previously set by the commission, the commission shall issue license to operate.

[11] Section 32: The commission has authority to announce and set types of telecommunications networks, telecommunications machinery, or equipment used in telecommunications enterprise that affects technical standards of telecommunications services provided.

2.1.2 Anti-Money Laundering Act B.E. 2542

The Act requires all business operators related to E-money cards, which are not financial institutions to report transactions to the Anti-Money Laundering Office (AMLO).[12]

However, **the common ticketing business operations are exempted from the above Act by the Ministerial Regulation No. 5 (B.E. 2543) issued under provisions of the Anti-Money Laundering Act B.E. 2542 because the transactions involve switching, clearing and settlement.[13] Therefore CTO business operations are not subject to report such transactions.**

[12]Anti-Money Laundering Act B.E. 2542

Section 16: The following professional operators have a duty to report transactions to the Office if transaction spends funds that exceed amounts specified in Ministerial Law, or if the transaction is of a suspicious nature.

(7) Professional operators related to electronic money card that are not financial institutions according to the announcement by Ministry of Finance governing electronic money cards or according to law governing financial institutions.

(9) Professional operators involved in electronic payment services according to law governing businesses providing electronic payment services.

[13] Ministerial law version 5 (B.E. 2543) issued under provisions of the Royal Anti-Money Laundering Act B.E. 2542

Chapter 1: Transactions exempted are not required to report to the Office according to Section 13, Section 15, and Section 16 of the Royal Anti-Money Laundering Act B.E. 2542 as follows.

(7) Transactions involving services as follows.

(A) Representative payment collection services valued fewer than seven hundred thousand baht.

(B) Credit card network services.

(C) EDC network services.

(D) Payment switching services.

(E) Account debit services.

(F) Settlement services.

(G) Checking account debit, draft, exchange ticket, bill, and financial instruments services.

Others.

2.1.3 Electronic Transactions Act B.E. 2544

E-money transactions are subject to the Electronic Transactions Act B.E. 2544 which deems all electronic transactions as complete and enforceable by law if the transaction follows to the following criteria

(1) In case that the law requires a transaction to be made in writing, with available written evidence, or documentation, if the text has been created in electronic data format that is accessible and recoverable with unaltered content, the text shall be considered as been made in writing, and with available written evidence or documentation. [14]

(2) In case that a person has signed a document, the electronic data will be considered signed if the methods applied that can both identify the signature's owner and certify that the signature's owner has signed the electronic data. Moreover, the aforesaid methods are reliable and suitable to the purpose of creating or sending electronic data, taking into account the behavior and surrounding circumstances or the parties' agreement. [15]

(3) In case that the law requires presentation or storage of the data in its original condition with original documentation, if presented or stored in electronic format with reliable methods of maintaining the contents' correctness from the point of completing the creation of its content, and capable of displaying the content at a later time, it shall be deemed that the document presented or stored is the original document by law. [16]

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[14] Royal Electronic Transactions Act B.E. 2544

Section 8: Under the provisions of Section 9 of the Act, in the event that any law requires written or documented evidence, if the content is made as electronic data that is accessible and retrievable in its unaltered content, it shall be deemed that the content is written and documented evidence.

[15] Section 9: In the event an individual has signed the document, it shall be deemed that the electronic data has been signed in the following circumstances.

(1) Methods are used that can specify the signatory and specify that the signatory has certified the electronic data as their own and the aforesaid methods are trustworthy and suitable to the objective of the creation or delivery of the electronic data bearing in mind the behavioral environment or agreement made between either counterparty.

[16] Section 10: In the event the law requires to present, or store, the content in its original documented condition, if it has been presented or stored in electronic data format, according to the following conditions, it shall be deemed as presented, or stored, as original and legally valid documented format.

(1) The electronic data uses trustworthy methods to maintain the content's accuracy from the creation until final completion and capable of displaying the content on a later time.

(4) The offer or acknowledgement of a contract may be made in electronic data format and prohibit to deny legal enforcement at such contract for the reason that the offer or acknowledgement is made in electronic data format. [17]

(5) Between data service and recipient, intention or acknowledgement may be made in electronic data format. [18]

2.1.4 Royal Decree governing the Supervision of Electronic Payment Business B.E. 2551

This Royal Decree requires electronic payment service Business to notify registor, or apply for license from the Bank of Thailand, prior to providing the service.[19] **The consultant has considered the characteristics of CTO business operations and deems it shall apply to obtain the electronic payment service license according to Provision C**[20] that covers the following business matters:

(1) Providing clearing service

(2) Providing settlement service

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[17] Section 13: Proposals or responses to the contract may be in electronic data format and the legal validity shall not be denied on the basis that the contract's proposal or response is in electronic data format.

[18] Section 14: Between data sender and data recipient, any display of intent or correspondence may be in electronic data format.

[19] Royal Ordinance governing the control and supervision of electronic payment service providers B.E. 2551

Section 7: Any electronic payment services business that the provider must notify, register, or receive license shall be subject to the provisions of this Royal Ordinance.

[20] Account C service businesses that must be licensed prior to providing services.

(1) Account debit services.

(2) Settlement services.

(3) Electronic payment services via any particular equipment or by network.

(4) Transaction switching services.

(5) Collection services.

Electronic payment services used for the purchase of goods and / or specific services according to previously set items from multiple service providers, not limiting the place, and not under a single distribution and service system.

(3) Providing electronic payment service via a particular device or through a network

(4) Providing switching service for multiple payment systems

(5) Providing representative payment service

(6) Providing E-money service used to purchase goods or specific services according to a pre-defined list from multiple providers, unlimited location, and not subject to same distribution system and service provided.

The application for electronic payment service business license must request to cover all types of business aspects intended to perform and submitted, together with required documentation, to the Bank of Thailand before business operations commencement. The license is valid for 10 years and extendable within 90 days, but not less than 60 days, before the expiration. Additionally, the CTO unit must comply with the rules and regulations concerning other aspects of business operations set forth by the Bank of Thailand.

However, applicants for the electronic payment service business license, according to Provision C of the Royal Decree, must be juristic persons in form of the partnership, limited partnership, limited company, or public company limited and with business objectives related to electronic payment services. Therefore, **juristic persons in form of the Government agency type cannot obtain the permit under this Royal Decree.**

2.1.5 Announcement by the Electronic Transactions Commission concerning criteria, methods, and conditions for the operations of an electronic payment services business B.E. 2552

This Announcement requires electronic payment service providers, according to Provision C, to have the following registered capital.

(1) Clearing service- not less than 50 million Baht

(2) Settlementservice - not less than 200 million Baht

(3) Providing Electronic Payment Service via a particular device or through network connection – no less than 5 million Baht

(4) Switching Service for multiple payment systems (Transaction Switching Provision C) – not less than 50 million Baht

(5) Representative Payment Service – not less than 5 million Baht

(6) Electronic Payment Service for the purchase of goods and/or specific pre-defined services listed by the seller or to provide the same services (e-Money Provision C) – not less than 200 million Baht

In case that a provider wishes to serve more than one business must have registered capital of not less than the paid-up capital required for the business type with highest amount. [21]

Additionally, methods and procedures are determined for each type of business that provides electronic payment services as well as documentation, evidence, and information required to request the license as follows.

(1) Details, evidence, and information about the service provider

(A) A copy of the Certificate of company registration

[21] Announcement by the Electronic Transaction Commission regarding guidelines, methods, and conditions for businesses providing electronic payment services B.E. 2552

Chapter 3: Persons who wish to provide services according to Account C, in each sector, must have the following paid-up capital.

(1) Clearing services – no less than 50 million Baht.

(2) Settlement services – no less than 200 million Baht.

(3) Electronic payment services via a particular equipment or by a network – no less than 5 million Baht registered capital.

(4) Transaction Switching Account C services – no less than 50 million Baht.

(5) Representative collection services – no less than 5 million Baht.

(6) Electronic money services for the purchase of goods and / or specific services according to previously set items from multiple service providers, not limiting the place, and not under a single distribution and service system – no less than 200 million Baht.

Furthermore, those who wish to become service provider for more than one sector must have registered paid-up capital no less than the maximum amount according to business sector; and upon receiving business license, service providers according to Account C are not permitted to reduce capital unless granted permission from BOT except for services providers whom are financial institutions under the Royal Financial Institution Act B.E. 2551 or E-money service providers or credit card providers or private credit service providers under provisions of the Announcement by the Revolutionary Committee issue 58 who are licensed according to conditions under the aforementioned law.

(B) Business objectives related to providing electronic money payment services

(C) A copy of the Memorandum of Association

(D) A copy of the Articles of Association

(E) A copy of the Shareholders' Registry

(F) Name, work background, and qualifications of Directors

(2) Details concerning the business operations of electronic money payment services

(3) Details about the services provided

(A) Name and type of service

(B) Key aspects, terms and conditions, and form of service

(C) Details of steps and methods in providing service including the following

- Work systems chart
- Detailed description of technology used in the service and the technology used to maintain security in the service system
- Methods of connection with other relevant systems

(D) Scope of services i.e. user groups, product type, service facility, creditor that collect on behalf of the service provider etc

(E) Parties relevant to the service by specifying duties, responsibilities, and interrelationships (if any)

(F) Details of information technology services from other service providers or individuals (Outsourcing) by specifying the time period, scope of use, and responsibilities of those involved in the service provided

(4) Policies and measures to maintain security of information technology systems that should meet the minimum standards set under the Announcement issued by Bank of Thailand

(5) Organizational structure, related to information technology, of the service providers, agencies, or officers, who perform information technology duties including their responsibilities

(6) Business policies and plans concerning electronic money payment services for a period of 3 years, including investment fund, income, expenses, transaction volume, and services to be added etc

(7) Operational plan to support the electronic money payment services business

(8) Business Continuity Management (BCM) guidelines; the service provider should define details concerning Business Continuity Management suitable to the business type and its complexity with the following content

(A) Business Continuity Management guidelines

(B) Identification and risk assessment. This includes risk management systems, , capable of indicating, measuring, controlling, and monitoring the overall risk levels within the organization, including

- Strategic Risk
- Liquidity Risk
- Operation Risk
- Legal Risk
- Reputation Risk

(C) Preparation of an emergency or contingency plan to support the Business Continuity Planning (BCP)

(D) Guidelines for monitoring and evaluation and BCP testing guidelines

(9) Internal Control System includes the following

(A) Defining the duties and responsibilities of entities involved

(B) Guidelines for outsourcing services from third-party service providers or individuals, and details of the third-party service providers or individuals (i.e. shareholders, financial status, responsibility of services provided etc.)

(10) Feasibility study and risk assessment of the services provided

(11) Policies and measures to prevent money laundering and anti financial support to the terrorism which are no less than as required by AMLO

(12)) Additional specific details concerning electronic payment services according to Provision C

2.1.6 Royal Decree governing Criteria and Methods for Electronic Transactions Performed by the State Sector B.E. 2549

This Royal Decree sets criteria and methods concerning electronic transactions performed by the state agency and require the state agency to have documentation system in electronic data format as follows:

(1) Electronic documents must be made in a suitable format which can display, or refer, for later use and retains the completeness of the text in the form of electronic data

(2) Time period, including the start and end date, for submitting the electronic data must be clearly defined, typically stick on the operating period of such government agency, and may set the time period for consideration by the state agency by electronic method unless legally specified otherwise

(3) The methods of identifying the signature owner, type, characteristic, or form of electronic signature must be clearly defined and must be able to present that the answer has certified the test in or other electronic data

(4) Electronic methods of receipt acknowledgement must be clearly defined, as evidence of a process of sending electronic data to another party

2.1.7 Royal Decree governing Secure Methods in Electronic Transactions B.E. 2553

This Royal Decree requires electronic transactions (including electronic money payment service business) to provide minimum secure methods required by Announcement of the Electronic Transactions Commission. [22]

[22] Royal Ordinance governing security methods for electronic transactions B.E. 2553

2.1.8 Announcement by the Electronic Transactions Commission concerning Information Technology Security Standards and Secure Methods B.E. 2555

This Announcement sets information technology security standards divided into 3 levels i.e. basic, intermediate, and strict to be used as a measure for the control of information technology security which covers confidentiality, integrity, and availability of information technology system and information in such system. Electronic transactions made via an information technology system must be made according to relevant standards aligned with its level of risk, assessed whereby there are 11 standards applied for the security of information technology systems as follows.

Section 4: There are 3 levels of security as follows.

(1) Stringent level.

(2) Intermediate level.

(3) Basic level.

Section 5: Security methods under Section 4 shall be used for the following electronic transactions.

(1) Electronic transactions that pose an impact to national security or public order or to the general public.

(2) Electronic transactions of agencies or organizations or departments within agencies or organizations which are considered important to national structure.

Section 7: Each level of security methods under Section 4 shall have measures to maintain security and stability of the information technology system according to conditions under the announcement by the commission; whereby the measures implemented for each level of security might be subject to different conditions as necessary but should have the following minimum.

(1) To create stability and security in areas of management.

(2) To create stability and structure in areas of structure within the information technology system covering matters of stability and security of the system both internally and externally for the agency or organization.

(3) Management of information technology property.

(4) Creation of stability and security for the information technology system in areas of personnel.

(5) Creation of stability and security for the information technology system in areas of environment.

(6) Communication and operational management of the computer network system, the computer system, and the information technology system.

(7) To control access to the computer network system, the computer system, the computer work system, the information technology system, the electronic data system, and the computer data system.

(8) To source, or provide, development and maintenance of the computer network system, the computer system, the computer work system, and the information technology system.

(9) Situation management in areas of stability and security for undesirable or unexpected scenarios.

(10) Service or operational management of the agency or organization to ensure continuity.

Examination and evaluation to ensure compliance with policies, measures, guidelines, or procedures including regulations in areas of safety and security of the information technology.

(1) Creation of safety and security for areas of administration

(2) Safety and security structure, of for the information technology system in terms of administration of safety and security of the information system both inside and outside the organization

(3) Administration of information technology property

(4) Creation of safety and security within the information technology system for matters concerning personnel

(5) Creation of safety and security concerningphysical and environmental

(6) Administration concerning communication and computer network operations, computer systems, computer work systems, and information systems

(7) Access control of computer networks, computer systems, computer work systems, information technology systems, information technology data, electronic data, and computer data

(8) Provision of development and maintenance of the computer network system, computer system, computer work system, and information system

(9) Management of undesirable or unexpected security situations

(10) Business continuity management of services, or work operations, of agencies or organizations

(11) Monitoring and evaluation of implementation by policies, measures, criteria, or processes including security requirements for information technology systems

2.1.9 Announcement by the Electronic Transactions Commission concerning Types of Electronic Transactions, Assessment Criteria for the Level of Impact of Electronic Transactions by Secure Methods B.E. 2555

This Announcement determines the type of electronic transaction and assessment criteria to evaluate the level of impact by secure methods, which requires electronic payment transactions, according to the Royal Decree governing the Supervision of Electronic Payment Service Providers B.E. 2551and electronic transactions in providing public utility and public services, which must perform continuously at all times and must apply secure transaction methods of the strict level.

In addition to the impact assessment methods for electronic transaction at the strict level, the following areas of impact will be assessed.

(1) Impact from value of financial losses

(2) Impact to the number of users or stakeholders exposed to fatal or physical hazards

(3) Impact to the number of users or stakeholders exposed to other hazards aside from (2)

(4) Impact on the security of the state

2.1.10 Announcement by Bank of Thailand no.SorRorKor 2 / 2552 regarding criteria, Procedures, and Conditions governing the Supervision of Electronic Payment Services Business

This Announcement by Bank of Thailand determined various criteriaapplicable to the electronic payment services business which are summarized as follows.

(1) E-money Services

(A) E-money service provider must maintain financial and liquidity status to enable continuous service and to refrain from incurring damages to service users.[23]

(B) E-money service providers who must apply for license under Provision C must separate advanced money, received from users, from the service providers' working capital and must deposit at a financial institution or a special purpose financial institution, at any time, not less than the outstanding balance of advancedmoney except for service providerwho

[23] Announcement by the Bank of Thailand no.SorRorKor 2/2552 regarding guidelines, methods, and conditions concerning supervision of electronic payment service providers.

Chapter 4.2 E-Money services

4.2.1 E-Money service providers Account A, B, and C must maintain financial and liquidity status to ensure service continuity and to prevent losses incurred to service users.

is financial institution shall comply with the rules and regulations concerning E-money services under the Financial Institution Business Act B.E. 2551.[24]

(2) Settlement Services

(A) Service provider must determine criteria and conditions related to the finality of transactions which enables recipients to immediately, unconditionally, and irrevocably use the money and shall notify recipients accordingly. [25]

(B) Providing electronic payment services either through a particular device or through a network.

(C) The service provider must issue evidence of payment, evidence of transfer, or other similar evidence and deliver to users by means agreed with users. [26]

(3) Representative Payment Services

(A) Upon receipt of payment, service providers must issue evidence, to show the receipt of money from users, in the form of receipt, payment confirmation, deposit certificate, or other evidence with similar content and deliver to users by means agreed upon with users.[27]

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[24] 4.2.2 E-Money service providers Account C must allocate receivables due from service users separate from the working capital and deposit at a financial institution, or a special financial institution, at a certain time no less than the receivables balance except for service providers who are financial institutions and must comply with provisions governing E-money services under the Royal Financial Institution Act B.E. 2551.

[25] Chapter 4.3: Settlement Services

Service providers must set regulations, terms, and conditions governing finality of fund transfers whereby the recipient is able to immediately and irrevocably use the funds, moreover the service provider must inform the user accordingly.

[26] Chapter 4.4 E-Money service provided via particular equipment or by network.

Service providers must issue evidence of payment and evidence of transfer or other evidence of the similar content and deliver to users by methods agreed upon with the user.

[27] Chapter 4.5 Representative Collection Services.

Upon receipt of funds, service providers must issue evidence to confirm receipt of funds from service user, in the form of receipt, confirmation of funds payment, deposit slip, or other evidence of the similar content and deliver to users by methods agreed upon with the user, containing the following minimum.

4.5.1 Name of service provider and name of creditor.

4.5.2 Amount of funds and details of goods or services paid specifying their acronym or code including reference details of the service user.

(B) If Bank of Thailand deems appropriate, it may require service providers to arrange for security examination by independent auditors according to the list determined by the Electronic Transactions Commission. [28]

2.1.11 Announcement by Bank of Thailand no.SorRorKor 3 / 2552 regarding Policies and Measures to Maintain the Security of Information Systems in Business Operations of Electronic Payment Service Providers

This Announcement by Bank of Thailand establishes rcriteria regarding safety maintenance measures in business operations of electronic payment service providers with the following content.

(1) Service provider must establish written policies to maintain the security of the information technology system, approved by the executive board or senior management of the service provider. The service provider must publish the aforementioned policies and provide training to its relevant individuals to ensure compliance and arrange for regular review or improvement for the policies as suitable. [29]

(2) Policies maintain the security of information systems related to the service must include the following minimum.

(A) Access control and user authentication

(B) Maintain data confidentiality, correctness, and reliability in the information system

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4.5.3 Date, month, year, and time of the evidence issued to confirm receipt of funds; when the service provider has issued proof of payment, it shall be deemed that the payment by user has reached finality except for payments by check, which shall be deemed final when the full amount according to check has been collected.

[28] Chapter 4.6: If BOT deems appropriate, it may require Account B and Account C service providers to provide examination regarding safety and security by independent auditors according to the list of names given by the Electronic Transactions Commission.

[29] Announcement by the Bank of Thailand no.SorRorKor 3/2552 concerning policies and measures to maintain security and safety of information technology systems for E-Money service providers.

Chapter 4.1: Information Technology Safety and Security Maintenance Policies

(1) Service providers must arrange for policies to maintain safety and security of the information technology system, in writing, and approved by the board of directors or executive management of the service provider; moreover, the service provider must publish such policies and train relevant personnel to ensure implementation including regular review or improvement of policies as appropriate to the circumstances.

(C) Maintain availability of the service provide

(D) Examination of safety and security of the information technology system.[30]

(3) Service providers must arrange for precautionary measures to maintain information system security related to providing electronic payment services in accordance with established policies and such measures must beappropriate to the business characteristics, covering access control, user authentication, data confidentiality, maintaining of accuracy and reliability of the information system, maintaining of the availability of service, troubleshooting, and generating reports and provide regular assessments on the safety and security of the information system of at least once a year. [31]

(4) Service providers must review or impress the measures according to a specified time period or upon changes that affect the previously defined policies and measures as well as provide training and knowledge to relevant personnel. [32]

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[30] (2) The policies to maintain safety and stability of the information technology system, relevant to the service provided, must cover the following minimum.

(A) Control of access and user authentication.

(B) Control of data confidentiality, accuracy, and trustworthiness within the information technology system.

(C) Maintain availability of the function and service provided.

(D) Examination of safety and security within the information technology system.

[31] Chapter 4.2: Information technology safety and security measures

Service providers must provide safety and security measures, for the information technology system, relevant to the E-Money service provided, aligned with policies and measures implemented, and appropriate to the type of business, covering accessibility and user authentication, data confidentiality, accuracy and trustworthiness of the system, availability of the functions and services provided, troubleshooting and generating reports, including regular examination of the safety and security measures for the information technology system provided at least once per year.

[32] Service providers must review or improve the measures according to the time period set or upon changes implemented that pose an impact to the policies and measures implemented; moreover training and knowledge must be provided to relevant personnel

2.1.12 Announcement by Ministry of Finance concerning entities that must request for permission pursuant to Clause 5 of the Announcement by Revolutionary Committee No. 58 (E-money card business)

This announcement by Ministry of Finance requires businesses that issue electronic payment cards, for consumers to use in the purchase of goods or services, to apply for permission pursuant to Clause 5 of the Announcement by Revolutionary Committee No. 58. Those who wish to conduct this business must apply for the business license with Bank of Thailand before commencement of business operations. [33]

Those obligated to apply for permission in accordance with this Announcement include all limited companies or public limited companies authorised to issue common ticketing and receive payments for the common ticket. However, parties authorised to issue common ticket and receive payments from such the common ticket is state agencyshall not be required to apply for the above permission since Clause2 exempts the enforcement to state agencies.[34]

2.1.13 Announcement by Bank of Thailand No.SorNorSor 1 / 2550 concerning criteria, methods, and conditions for electronic payment card business

This announcement by Bank of Thailand specifies conditions for the E-money card business which is summarized as follows

(1) To conduct the E-money card business, operators must issue E-money cards in Thai Baht currency only for use in Thailand and are unable to issue cards in foreign currency for overseas use. [35]

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[33] Announcement by the Ministry of Finance regarding businesses that must request licenses under Chapter 5 of the Announcement by the Revolutionary Committee no. 58

Chapter 2: Businesses that provide credit card services must request a permit.

The preceding paragraph does not apply to the following.

(1) Financial institutions.

(2) Entities that issue credit cards to consumers to pay for goods, services, or other business expenses.

[34] Chapter 3: Credit card providers must be juristic persons of the limited company, or public limited company, type and must be granted written permission from the Minister.

[35] Bank of Thailand no.Sor Nor Sor 1/2550 concerning guidelines, methods, and conditions for the E-Money card enterprise

(2) An important characteristic in conducting the E-money card business is that clients, or consumers, pay advanced money to E-money card business operator,so business operators are not able to issue E-money in the form of loans or credit. [36]

(3) E-money card business operators must only operate the E-money card business or businesses related to, or caused by, providing E-money card services i.e. as a payment medium, network service provider for payments, etc. and are forbidden to conduct other businesses, which the credit and loan business. [37]

(4) E-money card business operators must arrange for bookkeeping that keeps an account of advance payments received from consumers clearly separate from the company's working capital. [38]

(5) E-money card business operators must deposit advance payments received from consumers in cash at commercial banks, or SFI, at any time, not less than the total value of advance payments made to the E-money card business operator by opening a separate account independent from other company deposit accounts, without restriction, and usable exclusively for only liquidation due to the E-money card services. [39]

Chapter 5.1: E-money card service providers must issue E-money cards in Thai Baht currency for use in Thailand only and are unable to issue in Thai Baht currency overseas.

[36] Chapter 5.2: E-money service providers have a primary characteristic i.e. customers or consumers pay in advance to the E-money card service provider; therefore, E-money enterprises are unable to issue electronic credit cards.

[37] Chapter 5.3: E-money card service providers must only conduct the E-money business or businesses related to, or arisen from, the E-money card service business i.e. payment intermediary, payment network service, etc. and are forbidden from conducting other businesses including providing credit.

[38] Chapter 5.4: E-money card service providers must perform bookkeeping by clearly separating the funds received in advance from consumers from the company's working capital.

[39] Chapter 5.5: E-money card service providers must deposit funds received in advance from the consumers as cash deposits at a commercial bank or special financial institution at a particular time no less than the value of outstanding funds received in advance from consumers by opening a different account separate from the company's other deposit accounts, without obligations, and used only for account payments from the E-money card service provided.

(6) In conducting the E-money card business, operators are required to provide a system that can track historic transactions and prevent users from transferring funds between each other outside of the service provider's system. [40]

(7) In case the E-money card service provider uses information technology services, or other supporting operations from other business of service providers, the E-money card service provider must remain accountability to provide continuous, safe, and reliable service to its customers as though the service provider provides the service by itself. [41]

(8) E-money card business operators are required to provide safety and security policies that cover access to service system and data, user authentication, and anti-disclaimer, maintaining reliability and accuracy of service system and data, maintaining data confidentiality and service availability, tracking and monitoring abnormalities within the system, and troubleshoot problems, and report generation if the service has been damaged or if the service has been disrupted or halted for more than 24 hours.[42]

(9) E-money card business operators are required to audit the information technology aspectfor at least once a year and submit a copy of the audit results to Bank of Thailand within 30 days from the test date completion. [43]

[40] Chapter 5.6: In the E-money card business, service providers must have a working system that enables retrieving past transactions and preventing users from transferring money among each other outside of the service provider's system.

[41]Chapter 5.7: If the E-money card service provider uses information technology services or other support services from a third-party service provider, the E-money card service provider shall remain fully responsible to customers in matters of continuity, safety, and trustworthiness as though the service is provided directly by the E-money card service provider itself.

Moreover, the E-money card service providers must provide suitable risk management, user selection, service monitoring and tracking including contracts of service that stipulate the rights of internal and external auditors, and the Bank of Thailand in examining the work operations and internal controls of the service provider.

[42] Chapter 5.8: E-money card service providers must provide and implement safety and security policies covering accessibility to the system, service, and data, client authentication, and disclaimer protection, maintenance of accuracy and trustworthiness of the system, service, and data, including data confidentiality, availability of the system and service provided, monitoring and tracking abnormalities within the system provided, troubleshooting and report generating in scenarios which the system and service provided has suffered losses or if the system has halted operations for over 24 hours.

[43] Chapter 5.9: E-money card service providers must arrange for information technology audit at least once per year and submit the audit results to the Bank of Thailand within 30 days from the audit completion date.

(10) E-money card business operators must announce and inform consumers the details of service charges, fees, and other expenses related to use of E-money card services, which are enforced at the time.As required by Bank of Thailand. In case of any changes to aforementioned rates, or conditions, E-money card business operators must notify consumers at all operating offices and points of service at least 14 days prior to the changes rendered. [44]

(11) E-money card business operators must announce and inform consumers the details of terms, conditions and fees in converting value in E-money card to cash at all operating offices and points of service at least 14 days prior to the changes rendered. [45]

(12) In case a consumer complains about the use of the E-money card, the E-money card business operator must proceed with an investigation, inform the progress, and notify the consumer how to proceedthe next steps within 7 days from receiving the complaint, and resolve the said complaint and inform the consumer without delay. [46]

(13) E-money card business operators must prepare financial statements and submit the first 6 months financial statements to Bank of Thailand within 30 days after the end of the period and deliver the annual financial statements, certified by an auditor, within 60 days after the end of the period. E-money card business operators who are unable to submit annual financial statements ontime are required to submit their unaudited annual financial statements,

[44] Chapter 5.10: E-money card service providers must announce details concerning service fees and other expenses incurred, and in effect, during use of the E-money card services, as required by the Bank of Thailand; if there are changes rendered to the aforementioned rates, E-money card service providers must announce to notify consumers at each point of service within at least 14 days in advance prior to the changes rendered.

Moreover, when setting service fees and other expenses, E-money card service providers must take into account market mechanisms to remain competitive and fairness to consumers.

[45] Chapter 5.11: E-money card service providers must announce details concerning terms, conditions, fees, and conversion of E-money card value into cash, to notify consumers at each point of service in advance within at least 14 days prior to the changes rendered.

[46] Chapter 5.12: If consumers have inquiries or concerns regarding the use of E-money card services, the E-money service provider must proceed with examination and inform the progress, including the next steps, to the consumer within 7 days from receiving the inquiry or concern; furthermore, service providers must fully implement a solution to the concern and inform the consumer without delay.

within 60 days after the end of the period and submit the annual financial statements, which have been certified by CPA, within 90 days after the end of the period.[47]

(14) E-money card business operators must prepare monthly reports according to the forms specified by Bank of Thailand and submit the reports to Bank of Thailand within 30 days from the end of month starting from the first month of E-money business license onwards.[48]

2.2 Other relevant laws

In the case of hiring a Common Ticketing Company (CTC), whether OTP or a State owned enterprise owns rights to the common ticketing system and standards and CCH system, outsources the operations, which may require to assign the rights of use and maintenance of the common ticketing system, including CCH, to CTC, in order to obtain the rights of use the system and standards involved in the management of the common ticketing system. This may fall within the scope of the Public Private Participation Act B.E. 2556 (PPP Act B.E. 2556) and require the procurement process to follow process dertermined the aforementioned Act.

2.2.1 Public Private Participation Act B.E. 2556

The PPP Act B.E. 2556 requires all projects that involve private investment in state enterprise to follow the terms and conditions of the Act as follows.

(1) Projects that are jointly invested by state agencies or State owned enterprises and the private sector, regardless of means, or solely invested by private by grant permission or concession granted exclusive or rights, regardless of means, to invest into state enterprise which include:

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[47] Chapter 5.13: E-money card service providers must provide financial statements and submit the financial statements of the first 6 months to Bank of Thailand within 30 days after the end of the period and submit the annual financial statements certified by CPA within 60 days after the end of the period. Moreover, E-money card service providers who are unable to submit annual financial statements as required must submit their annual financial statements that have not been certified by CPA within 60 days after the end of the period and submit the annual financial statements that have been certified by CPA within 90 days after the end of the period beginning from fiscal year 2006 onwards.

[48] Chapter 5.14: E-money card service providers must submit reports according to the templates set by Bank of Thailand, every month, to the Bank of Thailand within 30 days after end of month starting from the first month of E-money license onwards.

(A) Enterprise that Government agency, State owned enterprise, other state organizations, or local administrative organization, whether one or multiple units combined have the authority to do so by law

(B) Enterprise that must use natural resources or assets of a Government agency, State owned enterprise, other state organizations, or local administrative organization, whether one or multiple units combined

In the case a CTC is outsourced, which would use the assets of a Government agency or State owned enterprise i.e. the common ticketing systems and standards including CCH systems, and would fall in the scope of state enterprise, if the rights of use to the aforementioned assets are granted, such outsource would be subject to the PPP Act B.E. 2556 with the following procurement process.

The minister of the originated ministry, process a policy framework, to have private investment in state enterprise under responsibility of the ministry, to the Public Private Participation Committee (PPP Committee), including the project overview, description, and importance level or suitability to have private investment in the enterprise under the ministry's responsibility. Furthermore, it must be aligned with the strategic plan to have private investment in state enterprise as follows. [49]

(1) The agency, which is project owner, hires advisor to prepare a study report and project analysis whereby the advisor provides a detailed report that outlines all matters required by the Committee. [50]

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[49] Royal Act of Private Joint Venture in State owned enterprise B.E. 2556

Section 20: In formulation of the strategic plan, the Minister of the owning Ministry shall propose the policy framework concerning the private joint investment in state owned enterprise, within the Ministry's scope of responsibility, to the Commission according to the time period granted by the Commission as data comprising the formulation of the strategic plan by the Commission.

The policy framework proposed by each Ministry shall demonstrate the overall picture, the project type, and priorities of the state owned enterprise under the Ministry's scope of responsibility or as suitable to necessitate private investment.

In the formulation of the strategic plan, there shall be a forum held to gather opinions of state and public agencies according to guidelines and methods set forth by the Commission.

[50] Royal Act of Private Joint Venture in State owned enterprise B.E. 2556

(A) The project owning agency proposes the study and analysis results, including required details according to the PPP Act, to the Minister of the owning Ministry for approval within 60 days.

(B) The project owning agency presents the matter to SEPO

(C) In case of revisions within 30 days following the date receiving of the project study and analysis results have been received, should SEPO request the owning agency to amend the project details, or request additional relevant documentation, if the study results must be modified, the project owning agency must implement accordingly and present to the Minister of the owning ministry for consideration and approval of the amendments. [51]

(2) If SEPO approves the project, it will be presented to the Committee to consider further approval.If not, SEPO will inform the Minister of the owning ministry and the project owning agency. If the originated Minister does not agree, the matter is proposed to the Committee for further consideration whereby the proposal must contain the opinion of National Economic and Social Development Board (NESDB) and other relevant agencies.

In such case, SEPO must complete the consideration within 60 days. If the time period has expired, it will be deemed as approved by SEPO. [52]

Section 20: In formulation of the strategic plan, the Minister of the owning Ministry shall propose the policy framework concerning the private joint investment in state owned enterprise, within the Ministry's scope of responsibility, to the Commission according to the time period granted by the Commission as data comprising the formulation of the strategic plan by the Commission.

The policy framework proposed by each Ministry shall demonstrate the overall picture, the project type, and priorities of the state en terprise under the Ministry's scope of responsibility or as suitable to necessitate private investment.

In the formulation of the strategic plan, there shall be a forum held to gather opinions of state and public agencies according to guidelines and methods set forth by the Commission.

[51] Section 26: The project's owning agency shall propose the study results and the project analysis to the Minister of the owning Ministry for consideration and approval which must be completed within sixty days from the date the proposal has been received from the project's owning agency. The project's owning agency shall further propose to the Office.

Within thirty days from the date that the study results, and project analysis, have been received, the Office may request the project's owning agency to revise or amend the project's details, or to submit additional relevant documentation. If the aforesaid action requires the project's owning agency to revise or amend the study results and project analysis, the project's owning agency must comply and propose to the Minister of the owning Ministry for consideration and approval once again, after which the project's owning agency shall submit the matter to the Office within the time period required by the Office.

[52] Section 27: After the Office has fully received the study results and project analysis including all relevant documentation, the matter shall further proceed as follows.

(3) If the Committee approves the project proposed by the owning agency, it shall be forwarded to Cabinet for approval. [53]

(4) When the Committee gives approval in principle, or when Cabinet approves in caseof using national budget or project agency's budget, the owning agency shall draft an invitation draft project scope, and draft PPP contract. Such operations will follow the procedures, methods, and documentation set forth by SEPO with consent of the Committee.[54]

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(1) If the Office approves the project, the matter will be proposed to the Commission for further consideration and approval in principle.

(2) If the Office disapproves the project, the Minister of the owning Ministry, and the project's owning agency, will be informed. If the Minister of the owning Ministry disagrees with the Office's opinion, the matter will be proposed to the Commission for judgment.

When the matter is proposed to the Commission under (1) and (2) the opinions of NESDB and other relevant agencies should comprise the proposal and if the project requires spending of the national budget, the opinion of the Budget Bureau is also required to co

The Office shall complete consideration of the project, under this Section, within sixty days after receiving the study results and project analysis including all relevant documentation. If the time period has expired, it shall be deemed that the Office approves the project.

[53] Section 30: If the project has characteristics as set under the strategic plan but the state agency that proposed the project wishes to proceed entirely by spending national budget or the budget of a state agency, the said state agency shall compare costs incurred, inherent risks, and value gained from the project and its private joint investment, and propose to the Commission for consideration together with the project.

If the Commission deems it appropriate for the private sector to jointly invest, the state agency that has proposed the project shall further adhere with this Act.

If the Commission approves the project proposed by the state agency, the matter will be further proposed to Cabinet for approval.

Comparison of costs incurred, inherent risks, and value gained from the project, pursuant to the first paragraph, shall adhere to conditions announced by the Commission.

[54] Section 33: When the Commission has approved the project in principle, or when Cabinet has approved under Section 28, the project's owning agency shall draft an invitation for the private sector to invest including the project's draft scope and prospectus.

The project's originated agency may hire advisors who possess the criteria and have none of the forbidden characteristics, according to the announcement by the Commission, to draft the invitation for the private sector to jointly invest, including the project's draft scope and prospectus.

Section 34: The draft prospectus, pursuant to Section 33, must comprise of standard terms and conditions announced by the Office and approved by the Commission with the following minimum details.

(1) The project's time frame.

(2) The project's services provided and work operations.

(3) Service fees and payment methods of the private sector or the project's owning agency or benefits and compensation that the private sector must provide to the project's owning agency.

(4) Changes to the type of services provided under the project, changes to the counterparties, contractors, or sub-contractors, and transfers of rights and privileges.

(5) The project's assets including ownership rights and calculation of the project's asset value.

(6) Force majeure and contingencies including compensation payments.

(7) Termination of contract, methods of termination, and payment of damages.

(8) Guarantee, collateral, insurance, and payment of damages.

(5) The owning agency shall appoint a selection committee, comprised of elements set forth in the PPP Act, to perform the duties of approving the draft invitation, the draft project scope, and the draft project's PPP contract, also to determine collateral guarantee, and perform other duties according to the Act. [55]

(6) In selection of private investors

(A) If the project owning agency and the selection committee mutually agree not to use bidding method, the matter shall be proposed to SEPO to consider; if SEPO also agrees, the matter will be proposed to the Committee to consider approval.

(B) If the project owning agency and the selection committee have different opinion on whether the bidding method will be applied, the matter shall be proposed to SEPO for consideration. If SEPO determines the bidding methodshould be used, then the method of auction shall be applied but if SEPO determines otherwise, the matter will be proposed to the Committee for final decision. [56]

(7) Within 15 days after getting the private selection results, and the negotiation results, and the draft PPP contract with the selected private investors is completed, the selection committee shall proceed as follows:

(A) Propose private selection results negotiating issues concerning the interests of the state, the draft PPP contract that has passed final negotiations with the private

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(9) Settling disputes.

[55]Section 35: The project's originated agency shall appoint a selection committee comprised of a representative of the project's owning agency as president, representatives from the Budget Bureau, SEPO, Office of the Attorney General, and no more than 4 qualified experts as board members. Moreover, one representative of the project's originated agency shall be board member and secretary.

The qualified experts in the preceding paragraph must be persons with knowledge, expertise, and experience that will directly benefit the project's consideration and must possess the criteria and not possess the forbidden characteristics under Section 10.

[56] Section 38: In the selection of private investors, if the project'soriginated agency and the selection committee mutually agree not to use selection methods of tender, the matter shall be proposed to the Office for consideration. If the Office agrees, the matter shall be proposed to the Commission for consideration and approval.

If the project'soriginated agency and the selection committee disagree concerning selection methods of tender, the matter shall be proposed to the Office for consideration. If the Office approves selection methods of tender, the selection methods of tender shall proceed. But if the Office disapproves of selection methods of tender, the matter shall be proposed to the Commission for final judgment.

investors who have been selected for the joint venture, including relevant documentation to SEPO; whereas SEPO will submit its opinion concerning the selection of private investors, the financial obligation to the state, and other comments and documentation, to the Minister of the owning ministry within 45 days from the date receipt of private selection results from the selection committee and,

(B) Submit the draft PPP contract, which has passed negotiations with selected private investors, to the Office of the Attorney General for consideration and approval. When the Office of the Attorney General has completed, the draft PPP contract shall be submitted to the Minister of the owning ministry for approval within 45 days from receiving the draft PPP contract. [57]

(8) When the Minister of the owning ministry has received the, comments, and documentation, including the draft PPP contract, the Minister shall consider and submit all comments, of the proposal and concerned matter, to the Cabinet for approval within 30 days. [58]

(9) When the Cabinet considers the private selection results, the financial obligation to the state, the draft PPP contract that has passed examination and consideration by the Office of the Attorney General, including comments from the Minister of the owning ministry, if Cabinet does not approve, the matter will be returned to the Minister of the owning ministry to notify the selection committee to review and consider further to review such cases under Clause 8 and Clause 9 and the results of consideration will be submitted to Cabinet for final decision.

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[57] Section 40: Within fifteen days from receiving the selection results, of the private investors, and negotiation results, and the draft prospectus for joint investment, by selected private investors, has been created, the selection committee shall proceed as follows.

(1) The selection results, negotiation topics concerning state benefits, the draft prospectus that has passed negotiations with the selected private investors, and all relevant documentation shall be submitted to the Office. The Office shall propose its opinions concerning the selection results of private investors, and financial obligations on the state sector, including opinion and all relevant documentation, to the Minister of the owning Ministry within forty five days after receiving the selection results from the selection committee.

(2) Furthermore, the draft prospectus that has passed negotiations with the selected private investors shall be submitted to the Office of the Attorney General for consideration. The Office of the Attorney General shall complete consideration and propose the draft prospectus, which has been examined, to the Minister of the owning Ministry within forty five days after receiving the draft prospectus.

[58] Section 43: When the Minister of the owning Ministry has received the approval and all documentation including the draft prospectus pursuant to Section 40, the matter in its entirety shall be proposed to Cabinet for approval within thirty days.

(10) When the Cabinet considers and approves the private selection results, and the draft PPP contract, the project owning agency shall be allowed to sign the PPP contract with the selected private investors.[59]

(11) After the PPP has been signed, the Minister of the owning ministry shall appoint a Steering Committee, comprised of elements set forth under the PPP Act, to perform duties of tracking, monitoring, and regulator the project to ensure compliance with the contract and other duties as set forth under the PPP Act.[60]

[59] Section 42: When Cabinet has considered the selection results of private investors, the financial obligations imposed on the state sector, and the draft prospectus that has been examined by Office of the Attorney General, including opinions of the Minister of the owning Ministry, if Cabinet disapproves, the matter will be returned to the Minster of the owning Ministry to inform the selection committee for further consideration and review under powers of Section 40 and Section 41, after which results shall be proposed to Cabinet for final judgment.

When Cabinet has considered and approves the selection results of private investors and the draft prospectus, the project's owning agency shall proceed with signing the prospectus and agreement with the selected private investors for further joint investment.

[60] Section 43: When the prospectus has been signed, the Minister of the owning Ministry shall appoint a supervisory board comprising of a representative of the owning ministry, whom is a civil servant of the high executive position, and not in the project's owning agency, as president, and representatives of NESDB, OAG, and no more than four qualified experts appointed by the Minster of the owning Ministry, as board members; additionally, one representative of the project's owning agency, whom is a civil servant, employee, or management of the project's owning agency, as board member and secretary.

The qualified experts pursuant to the preceding paragraph must be persons with knowledge, expertise, and experience, beneficial to supervision and monitoring the project whereas Section 10, Section 11, Section 12, and Section 13 shall apply mutatis mutandis.

Chapter 3 Guidelines for Establishment of the CTO

1. Guidelines for development of the common ticketing system and the establishment of a CTO

From the study and analysis of applicable and relevant law including establishment procedures for the CTO in Chapter 2, the consultant is of the initial opinion that the establishment of an organization, whether in the form of Government agency, State-owned enterprise (SOE), and limited company, would require different establishment steps, time periods and complexities. Establishment in the form of Government agency and State-owned enterprise, which is not a limited company, would require a lengthy period of preparation and approval from a several relevant agencies. Furthermore, the organization with CTO administration duties must have the flexibility and efficiency to operate in alignment with CCH and the state policies that determine the limited time constraints for preparation and establishment.

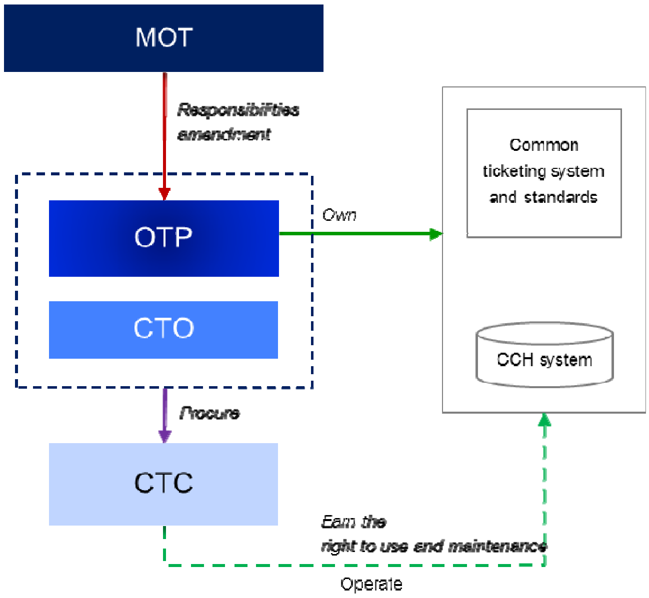
The consultant proposes 3 options for the establishment of CTO i.e. Government agency, State-owned enterprise, and limited company. For the Government agency and limited company types, the consultant suggests, to reduce the time period required for a new establishment, the CTO should be an existing Government agency, or State-owned enterprise. However, if the existing Government agency, or State-owned enterprise, does not currently have powers and duties that cover the common ticketing administration function, the consultant suggests adding the available powers and duties to the existing Government agency, or State-owned enterprise, restructuring the organization, and preparing development of personnel, to further support management of the CTO. The following includes details for each option.

1.1 Option 1: Establishment of a CTO in the form of Government agency

The first option is to establish the CTO in the form and equal status of a Government agency as a juristic person capable of completing various legal transactions i.e. the outsourcing and hire of a CTC with ownership rights over the CCH. **The consultant realizes that the Government agency capable of performing CTO duties, including the outsourcing and supervision of a CTC, and holding ownership rights over the CCH, including common ticketing systems and standards, should be the Office of Transport and Traffic Policy and Planning, which was authorized, with necessary powers and duties, to hire CCH system developers and (OTP) assigned common ticketing system development operations, with the Common Ticketing**

Project Development Office comprised of personnel sufficiently knowledgeable and capable in the supervision and operational management of the CTC.

Figure 6 Option 1 Overview

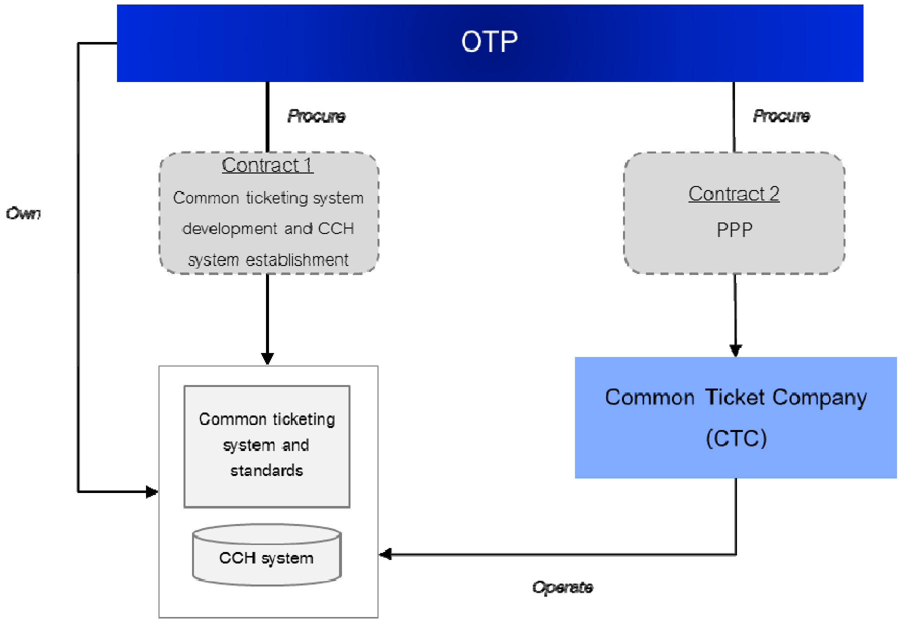


1.1.1 Characteristics and procedures of establishment

In the early stages, OTP proceeds with the procurement of common ticketing system and the Central Clearing House (CCH) developers. When the development is completed, OTP shall hire a CTC to operate the common ticketing system under OTP's regulation having the Common Ticketing Project Administration Bureau (CTAB) as responsible agency to regulate the operation of CTC to be accordance with government's common ticketing administration policies, which include contract management to have CTC to operate in accordance with the terms and conditions of the contract and to provide continuous and efficient services.

Nevertheless, in case that OTP grants the rights of CCH operation and maintenance to the CTC, it may fall within the scope of joint venture in accordance with the PPP Act B.E. 2556 of which the consideration and selection as well as contract preparation processes shall be subject to the processes and procedures set forth in the above Act.

Figure 7Option 1 Establishment characteristics



1.1.1 Advantages

(1) The state sector will fully have authority to control, regulate, set policies, and examine the work operations under all circumstances since OTP is Government agency with duties to set policies and regulate.

(2) The state sector is capable of controlling expenses related to work operations and to track and monitor income and expenses of the unit.

(3) The CTO is capable of directly receiving budgetary support from the state because it is a state agency.

(4) There will be transparency in operations because the operations of a state organization are subject to more examinations, audits, and requirements to reports, than private-sector.

1.1.2 Limitations

(1) Amendent of OTP's authorities to include areas of common ticketing system administration orprocurement or regulation of the CTO, would expand the scope of authority of OTP beyond that of a policymaking agency established with primary objective of planning and policymaking. OTP neither has a primary mission to bring policy to action nor to directly regulate projects, which must be proposed to the Cabinet to consider the suitability.

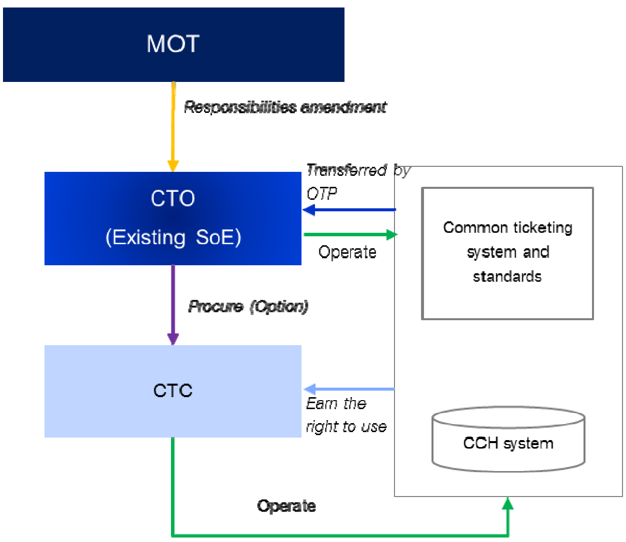
(2) OTP may have to establish a revolving fund to support the management of revenues in case of government policies for OTP to receive revenue sharing from common ticketing administration. The enactment of Revolving Fund Establishment Act may have limitations in terms of time required and complexity of the enactment.

(3) Operation may have limitatoins i.e. operation flexibility because OTP is a Government agency that is bound by government rules, laws and other regulations enforcing Government agencies, which may include procurement procedures. The administration of the CTO would require operation flexibility because common ticketing systems rely on stable and efficient technology and require the research, development, improvement, and continuous maintenance, which may require high capital investment.

1.2 Option 2: Establishment of CTO in form of State-owned enterprise

The second option for establishment of the CTO as a newly formed State-owned enterprise by means of enactment of a Royal Act or Decree requires many steps and processes that would likely require lengthy establishment time. **The consultant is of the opinion that an affiliated company under existing State-owned enterprise toperform administration duties of the common ticketing system. Therefore, for operation flexibility, the affiliated company should be in form of a limited company established under civil and commercial code of law.**

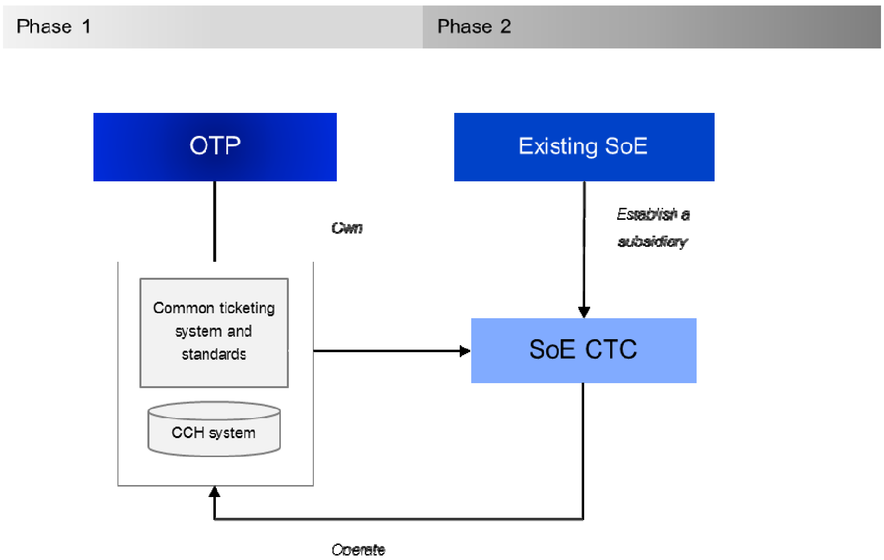
Figure 8Option 2 Overview



1.2.1 Characteristics and processes of establishment

In the first phase, when OTP completes the procurement of common ticketing system developer and establishment of CCH, while simultaneously, the State-owned enterprise designated by the state sector to establish itsaffiliated company to operate the CTC, will proceed with establishment of CTC as a limited company form with State-owned enterprise status (CTC State-owned enterprise). Then the CTC State-owned enterprise will be transferred ownership rights of the system and the common ticketing standards as well as CCH from OTP to operate the common ticketing system. The parentState-owned enterprise will perform duties as the CTO receiving common ticketing administration policies from the state to implement and regulate CTC State-owned enterprise to follow its duties assigned.

Figure 9Option 2 Establishment characteristics



1.2.2 Advantages

(1) The state sector has the authority to regulate and set common ticketing policies because the State-owned enterprise is considered a state organization to operate according to government rules, regulations, and policies.

(2) The state still holds ownership rights of the common ticketing system and standards, which makes the administration of the common ticketing be monopolized by any single private party.

(3) The CTOis able to ask forgovernment budget to use for operations and to set budget for study, development, and improvement of common ticketing systems and standards including the CCH system.

(4) The operation would have transparency because it is a state organization with clear operational objectivesand examination processes as other state organizations.

(5) The establishment time period is shorter than case of Government agency and State-owned enterprises establishment by enactment of Royal Act or Royal Decree because it is an establishment of a limited company in accordance with civil and commercial code.

1.2.3 Limitations

(1) Operations of existing State-owned enterprises have clear scope of duties and internal division work allocation and operational cultures have been particularly determined for each organization. If the organization is assigned additional mission as a CTO, there might be some operational limitations e.g., allocation and proportioning of new mission in terms of budget, manpower and working space, which may lead to obstacles for the early operation of the common ticketing system.

(2) If the State-owned enterprise that has been assigned to operate the CTO is a mass transit service provider, the common ticketing administration might cause a conflict of interest to other organizationsthat are also the mass transitservice provider services e.g., Mass Rapid Transport Authority and State Railway or Thailand etc.

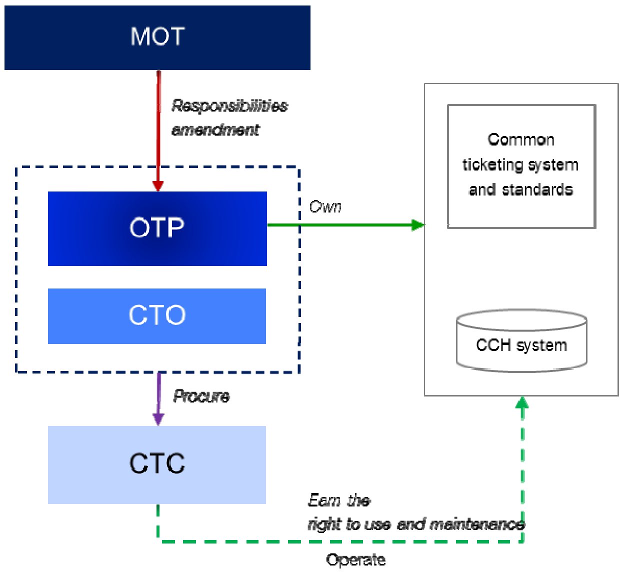
(3) The operation of State-owned enterprise must followparticularregulations and laws, which may cause inefficient operations.

(4) Establishment process and transfer of rights in assets from OTP may require lengthy, which might not be in accordance with the timeframe in developing the common ticketing system as set by the policy.

1.3 Option 3: Establishment of CTO in form of private limited company

The third establishment option requires OTP to hire the CTO agency, which would be a private limited company (CTO Company Limited) to operate the common ticketing system. OTP willgrant rights to use the common ticketing systems and standards as well as CCH system. CTO Company Limited may outsource a contractor (CTC) to partly or fully conduct operation and maintenance of the commont ticketing and CCH systems. OTP would then have duty to set management policies at the operational level to ensure work operations are aligned with state policies, and would be the regulator of the general services and manage contracts as the employer. Administration duties would be responsible by CTO Company Limited and the CTC.

Figure 10Option 3 Overview



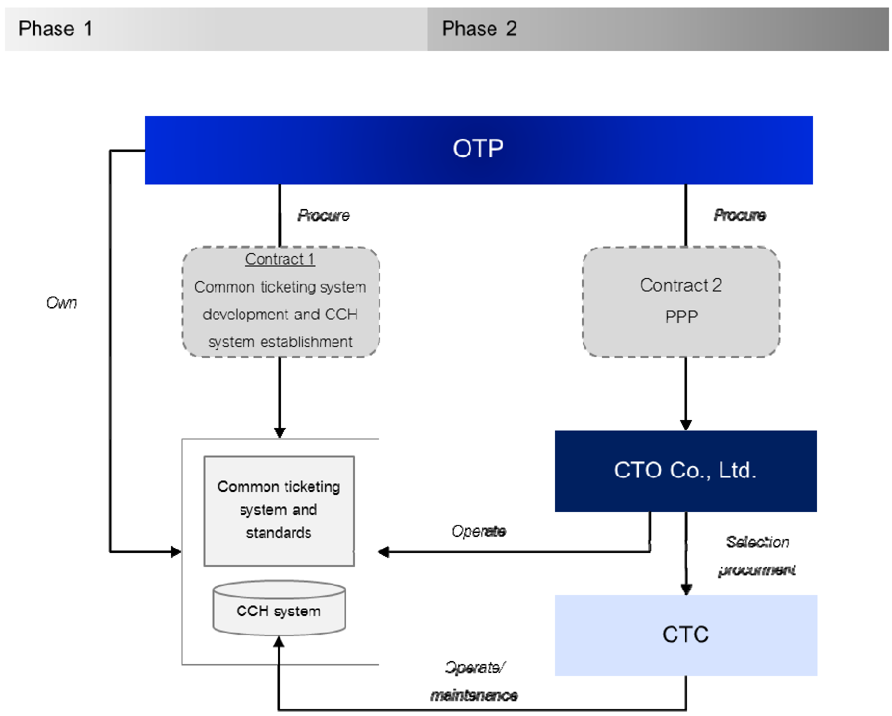
1.3.1 Characteristics of the establishment

OTP requests for approval from Minister of Transport on the project and to hire CTO Company Limited in accord with the processes under the PPP Act B.E. 2556 to perform CTO administration duties whereby OTP shall grant the rights to use assets i.e. common ticketing and CCH systems and standards, for the administration of the common ticketing system and provides the common ticketing services to CTO Company Limited.

OTP shall perfrom the regulatory duties of the CTO Company Limited whereby CTO Company Limited may assign or outsource other private parties with particular expertise to support the CTO Company Limited e.g., operate and/or maintenance of the CCH system.

However, OTP may specify conditions in the procurement contract that, in case the CTO Company Limited shall outsource a contractor to operate any parts of the outsourced works, the CTO Company Limited must procure a CTC by the most appropriate selection method, which is not necessarily to use bidding method in accord with Regulations of Office of the Prime Minister on Procurement B.E. 2535 becausethe CTO Company Limited is a private company, which has no duty to comply with the aforementioned regulations. Nevertheless, to ensure transparency in outsourcing the CTC and to select the most appropriate contractor, direct procurement without selection method may affect OTP who is the owner of the common ticketing and CCH systems and standards.

Figure 11Option 3 Establishment characteristics



1.3.2 Advantages

(1) OTP need not to internally restructure itself because OTP already have a duty to regulate and support the common ticketing system adminitstration and may assign an agency within OTP, i.e. Common Ticketing Administration Bureau (CTAB), which has the setup objective of doing so, to regulate and coordinae and perform other related duties accordingly.

(2) Operations of a private company would be more flexitble than Government agency because the private companies are subject to more flexible rules, regulations, and overall direction.

(3) Wages for the CTO would be received from the CTO operations according to the procurement contract and would not increase a financial obligation to the state.

(4) OTP merely has a duty to regulate the CTO's operations to be aligned with state policies would not significantly increase burden to OTP because OTP is not the operator.

1.3.3 Limitations

(1) State authority to regulate and control is limited to a mere regulatory agency and as a counterparty status but without internal administration authority within the organization unless specified that the state may send representative to sit on the CTO board of directors.

(2) Administration solely performed by CTO may reduce the efficiency of work operations because CTO is not expertised in every area.

(3) The above case may fall within the scope of the PPP Act because it would use state's assets i.e. common ticketing and CCH systems and standards; moreover since it is operated, and invested into, by the private sector, it may be deemed as a joint investment between the state and private sectors.

Chapter 4 Recommendation for appropriate CTO model

1. Key Content of Proposed Model

Following analysis of the suitability for the establishment of each CTO model, the consultant has summarized the following 3 forms of establishment.

Table 1Comparison table of the 3 options

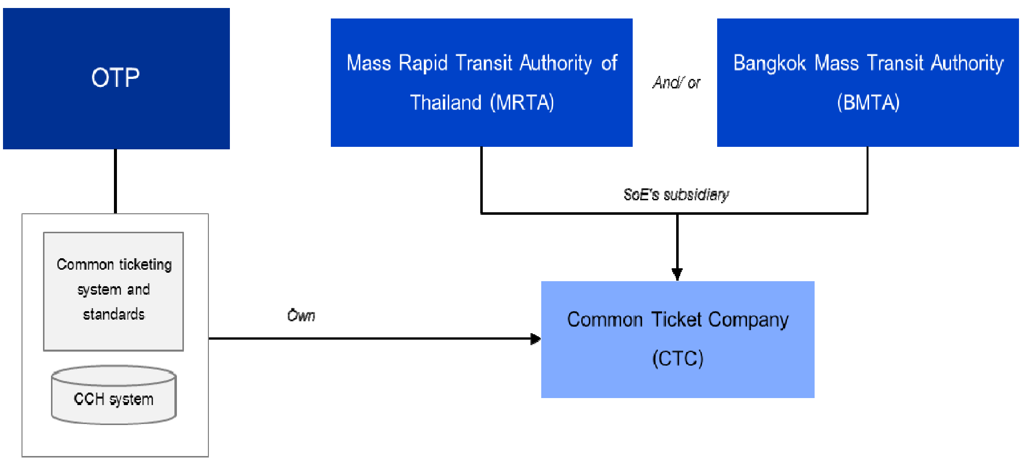
	Government agency	State owned enterprise	Limited Company
(1) Relationship with the state			
(A) Establishment	Act	Act/ Decree	Civil and Commercial Code
(B) Status	Juristic Person (Department level upwards)	Juristic Person	Juristic Person
(C) Appointment of top-level persons	State	State	Company directors
(D) Supervision by state	State has management authority	State has management authority	Depends on terms and conditions in the contract and in relevant policy setting
(2) Operational objectives	Not for profit, administrative public services	To generate income, commercial and industrial public services	To seek profit, not public services
(3) Budget / income	Budget provided by state	Budget provided by state	Income generated by business operations
(4) Personnel status	Civil servants	State owned enterprise employees	Company employees
(5) Procedures, systems, and work operations	Law applicable to government agencys	Applicable laws and regulations	Company regulations and laws enforced

Nevertheless, the consultant has analyzed the various forms of organizational establishment and is of the opinion that the CTO should be established as “Common Ticketing Project Administration Bureau” (CTPAB), which is an agency under OTP suitable to perform CTO duties. This isbecause OTP is the owener of common ticketing project, which has studied the development of common ticketing system and lead to the setup of CTPAB as internal office having personal with sufficient knowledge and expertise in the area of common ticketing systems administration, capable of proposing common ticketing administration policies, including the administrating in form of CTO as a regulatory agency. However, since OTP is presently an agency with policymaking duties, it might not be flexible to perform as an operator.**Therefore, the consultant is of the opinion that CTC should be established as a limited company, as an affiliated company of a State-owned enterprise** with the following details.

1.1 Recommendation in establishment of a State-owned enterprise in a limited company form

From the above analysis of various underlying factors involved in the establishment and work operations, including the advantages and limitations, of the CTO models in Chapter 2 and Chapter 3, **the consultant is of the opinion that establishment of the CTO should proceed according to option 2 i.e. establishment of CTC in the form of State-owned enterprise by establishing CTC State-owned enterprise in a form of limited company, which is an affiliated company under existing State-owned enterprise. The State-owned enterprise to be a parent of the CTC State-owned enterprise should be established with stability i.e., established by enactment of Royal Act or Royal Decree. Furthermore, the State-owned enterprise must have authority relevant to CTO administration operations, such as a State-owned enterprise under the Ministry of Transport, with duties and authority related to provision of mass transit services, capable of providing common ticketing services as a business related to the operational duties of the suchState-owned enterprise.**

Figure 12Establishment model for aaffiliated companycompany under a State-owned enterprise



The consultant is of the opinion that the State-owned enterprise which will establish the affiliated company to perform common ticketing systems administration duties, may be a State-owned enterprise under the Ministry of Transport,which currently provides mass transit services i.e. Mass Rapid Transit Authority of Thailand (MRTA) and / or Bangkok Mass Transit Authority (BMTA) because MRTA and / or BMTA are State-owned enterprises with duties to provide mass transit services for a large volume of passengers in the present and future, which are work operations related to common ticketing administrtion. In addition, both agencies are under the Ministry of Transport capable towork with other agencies under the Ministry of Transport or with other relevant agencies responsible for providing mass transit services. Thus they would be able to drive common ticketing development policies both fortransit and non-trabsit sectors.

Nevertheless, to havetheaffiliated company of MRTA and/or BMTA able to operate the common ticketing system, OTP must transfer rights of ownership in the common ticketing and CCH systems and standards to the CTC so that it would have sole rights to use and maintain the said assets.

1.1.1 Scope of responsibility of MRTA

According to the Thailand Mass Rapid Transit Authority Act B.E. 2543 (The MRTA Act) Section 9 determines that MRTA has the following duties.

(1) "To hold ownership, entitlement, or possess assets

(2) To establish rights or perform legal transactions both inside and outside the kingdom

(3) To collect fares, services and usage fees from use of assets, provision of services and conveniences in mass rapid transit business

(4) To establish measures for safety in operating mass rapid transit and safety and order in taking mass rapid transit as well as use and maintain of mass rapid transit, assets, and service and convenience in oparting and taking mass rapid transit

(5) To borrow or obtain loans both inside and outside the kingdom

(6) To issue bonds or other instruments for investment

(7) To establish a limited company or public limited company for business operations connected or related toMRTA's enterprise. However, the aforesaid limited company

or public limited company shall have no more than 49% of foreign shareholders according to law governing foreign businesses

(8) To hold shares in a limited company or public limited company to conduct business operations connected or related toMRTA'senterpris

(9) To invest or enter a joint venture with other entities to conduct business connected or related toMRTA's enterprise

(10) To offer partial or full concessions to the private sector

(11) To develop the real estate of MRTA as necessary for the benefit of the mass rapid transit services

(12) To perform all other connected or related actions toachieve MRTA objective"

Clause (7) of the above MRTA duties in accord with the MRTA Act authorizes MRTA to establish anaffiliated company in the form of limited company or public limited company to conduct business operations connected or related toMRTA's enterprise whereby the affiliated company established must not have more than 49% foreign shareholders.

Additionally, when taking into account Section 7 of the MRTA Act., the following objectives are stated.

(13) "To perform mass rapid transit business within Bangkok metropolis and other provinces or between provinces in accord with Royal Decree

(14) To study, analyze, and organize projects and plans related to mass rapid transit enterprise for modern improvement and development

(15) To conduct business operations related to mass rapid transit enterprise and other businesses for the benefit of MRTA and public in usingmass rapid transit services."

Therefore, operations connected or related toMRTA enterprise must be aligned with MRTA objectives. Common ticketing administration is considered a matter related to use of MRTA's mass rapid transit services because itprivideconvenience to users and facilitates MRTA in providing its services. Common ticketing administration benefits MRTA and mass rapid transit users as it enhances convenience and is subsidized by the state according to the policy.

1.1.2 Scope of duties of BMTA

The BMTA Royal Decree B.E. 2519 Section 7 sets forth the following duties of BMTA.

(1) "To hold ownership rights or possession rights to own assets, build, purchase, sell, rent, lease, hire-purchase, borrow, lend, procure, exchange, transfer, and receive transfer of, by various means, all forms of assets, rights, or privileges, and to receive donated assets

(2) To provide services related to transportation, vehicles, vehicle equipment, appliances, and services i.e. garage, repair center, port, warehouse, and accommodation

(3) To hire, or provide services related to transportation enterprises

(4) To determine fares for transport, freight, services fees, and other business charges

(5) To conduct commercial advertising

(6) To trade, order, and fulfill orders for the import of vehicles, machinery, tools, appliances, and raw materials into the kingdom, for use in the achievement of BMTA objectives

(7) To borrow, obtain credit, or lend with either individuals or assets as collateral, for the benefit of BMTA enterprises

(8) To establish or appoint branches, representatives, or agents, to achieve business objectives of BMTA enterprise

(9) To conduct industrial operations including construction, repair, or maintenance, of various vehicles and machinery

(10) To enter joint venture or joint investment with other party for the benefit of BMTA enterprise and to enter limited liability partnership in limited partnerships, or to hold shares in limited companies or juristic persons, upon approval by Cabine

(11) To perform all other business operations connected or related toachieving objectives of BMTA."

Clause (10) enables BMTA to enter joint venture or joint investment with other party for the benefit of BMTA enterprise according to the following objectives stated under Section 6.

(12) "The transportation of persons within Bangkok and between Bangkok and NakhonPathom, Nonthaburi, PathumThani, SamutPrakarn, and SamutSakhorn.

(13) To perform other operations connected or related tothe transportation of persons."

Nevertheless, for the benefit of common ticketing system administration, whereby the joining service providers shall participate byholding shares in the CTC State-owned enterprise.The CTC State-owned enterprise must increase registered capital and sell its shares in the CTC State-owned enterprise to participants. The increase of registered capital and sale of shares in the CTC State-owned enterprise must follow relevant law i.e. CTC, as a limited company, must comply with Civil and Commercial Code Section 1220 [61] that requires a special shareholders' meeting resolution to approve the increase in registered capital and to offer shareholders the newly issued shares according to the proportion held by existing shareholders. If shareholders do not purchase the shares, the directors are able to purchase the shares themselves or sell to other shareholders.[62] To enable project participants to hold shares in the CTC State-owned enterprise, each participant that wishes to purchase shares in the CTC State-owned enterprise must receive transfer of at least 1 share from MRTA and / or BMTA in advance. When the company has increased its capital, the said participant that has become a shareholder will be able to purchase additional shares from the portion that other shareholders have refused to purchase in the said increase of registered capital.

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[61] Civil and Commercial Code

Section 1220: Limited Companies may increase their registered capital by issuing new shares in a special shareholders' meeting resolution.

[62] Section 1222: The newly issued shares must be proposed to all shareholders according to their proportionate shareholdings.

This proposal must be made in written correspondence to all existing shareholders, specifying the amount of shares that each shareholder may purchase, and specifying the date by which no response within the said date would be considered as no intention to purchase the shares.

When the date has passed or if the shareholder has informed of no intention to purchase the shares, the directors may sell the shares to other shareholders or purchase the shares themselves.

The sale of shares to participants may include other State-owned enterprises that provide public mass transit services such as State Railway of Thailand (SRT) and Expressway Authority of Thailand (EXAT). The consultant has studied the law relevant to establishment of said State-owned enterprises to see whether there are limitations in holding shares in the CTC State-owned enterprise. The study into law governing the organizational establishment of 2 agencies reveals that both agencies are capable of holding shares in the CTC State-owned enterprise with the following details.

(1) SRT – The State Railway of Thailand Act B.E. 2494 Article 9 (11) [63] authorizes SRT to enter joint ventures with other party or to hold shares in limited companies or public limited companies for the benefit of railway enterprise.

(2) EXAT – The Expressway of Thailand Act B.E. 2550 Article 10 (7) [64] authorizes EXAT to establish or hold shares in limited companies or public limited companies to conduct business operations connected or related tothe operations of EXAT. Additionally, Article 10 (8) [65] authorizes EXAT to invest or enter joint venture with other party to conduct business operations connected or related to EXAT business operations.

Furthermore, the sale of shares in CTC State-owned enterprise must adhere to the 1961 rules and regulations of the Office of the Prime Minister governing the sale of businesses or shares owned by the state or by a Stateowning -owned enterprise as follows.

(1) The Ministry of Transport, as the originated ministry, proposes the matter to the Cabinet to request for approval in principle via Office of the Prime Minister's Secretary

(2) After the Cabinet approves the matter in principle, Ministry of Transport appoints a committee comprised of a representative from the Ministry of Transport as Chairman, a representative from the Ministry of Finance, a representative of the Budget Bureau, a

[63] (11) Jointly enter investment with other persons or hold shares in limited companies, or public limited companies, for the benefit of rail enterprise.

[64] Section 10: EXAT has the authority and duty to conduct enterprise within the scope of objectives under Section 8 which includes the following.

(7) To establish or hold shares in limited companies, or public limited companies, that are related to, or arisen from EXAT operations.

[65] (8) To invest, or jointly invest, into enterprise with other persons to perform business operations related to, or arisen from, EXAT operations.

representative from NESDB, and a representative from the Office of the Auditor General as committee members

(3) The appointed committee under (2) holds meeting and gives opinions in the following matters.

(C) Selling methods taking into account the benefit of the state

(D) Selling price taking into account financial status and stability, efficiency in generating profits and selling time period

(E) Other matters as the committee deems appropriate

(4) All committee members must attend the meeting to constitute a quorum

(5) The above committee proposes its results to the Ministry of Transport and the Ministry of Finance by having both ministries to agree on approach to proceed in accordance with the considering results from the committee.

(6) MRTA shall transfer the shares sold according to terms and conditions agreed upon by Ministry of Transport and Ministry of Finance.

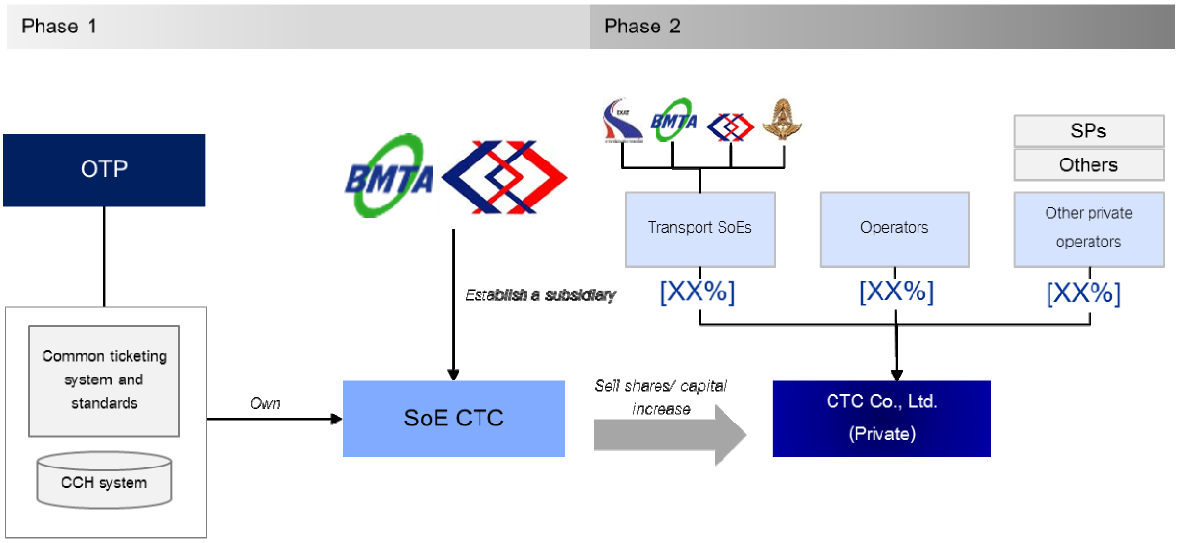
(7) In case the Ministry of Transport and the Ministry of Finance fail to reach a mutual agreement, or if the shares to be sold have value or price exceeding 10 million Baht, the Ministry of Transport shall propose the matter to the Cabinet for approval of the transaction.

(8) In case the matter is subject to the Cabinet approval according to (6), MRTA must receive the Cabinet approval in order to sell the assets to other participants

In the sale of shares to other project participants, if the proportion of shareholding from the private sector exceeds 50 percent of registered capital, the CTC State-owned enterprise will transform into a limited private company.However if the state sector holds combined shares exceeding 50 percent, the CTC State-owned enterprise shall remain in its original status as a State-owned enterprise. The advantages and limitations of State-owned enterprise and private company have been analyzed by the consultant in Chapter 3 as a guideline to assist in policy setting concerning the establishment of CTO agency.

Furthermore, the transfer and sale of shares may proceed whereby the buyer and seller signs the share transfer instrument and records such transfer in the shareholders' log of the State-owned enterprise / CTC company to validate the share transfer with external parties. Additionally, the consultant realizes that the State-owned enterprise / CTC company should submit the new updated shareholders' list to the Department of Business Development (DBD), Ministry of Commerce for the information contained within the DBD's database to match the data stated in the shareholders' list of the State-owned enterprise / CTC company.

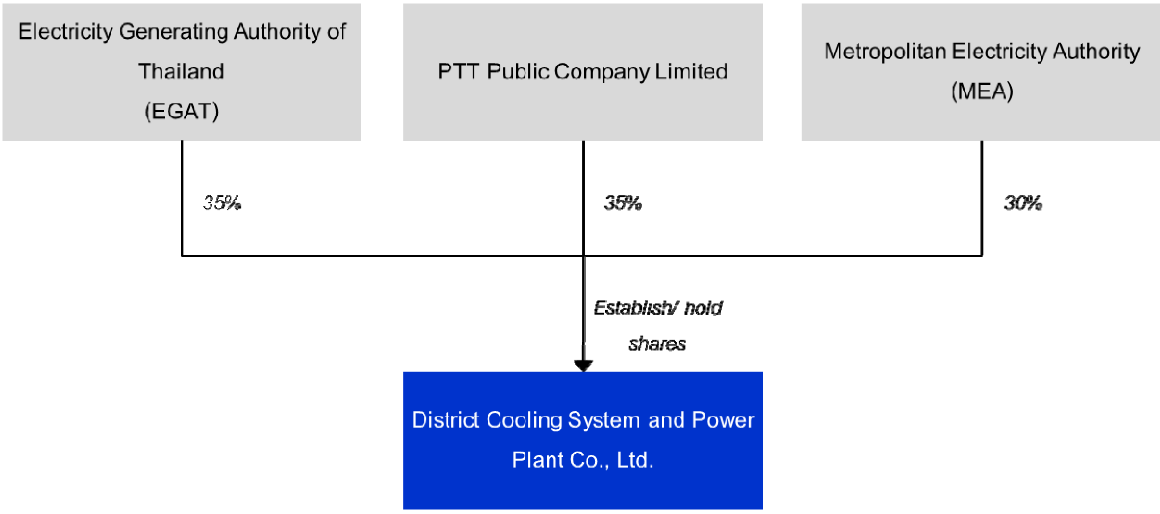
Figure 13Proposed establishment model



1.1.3 Sample of establishment model

District Cooling System and Power Plant Co., Ltd. : DCAP was established as anaffiliated companyof 2 or more State-owned enterprises by Cabinet Resolution on 11th February 2003 and joint venture between 3 State-owned enterprises i.e. Electricity Generating Authority of Thailand (EGAT), PTT (Public) Co., Ltd., and Metropolitan Electricity Authority (MEA), at the proportion of 35:35:30 respectively with registered capital of one billion Baht to produce electricity and cold water for the purpose of air conditioning in various buildings within Suvarnabhumi International Airport including Airports Authority of Thailand (Public) Company Thailand, EGAT, Thai Airways (Public) Company Limited, Suvarnabhumi Airport Hotel Co., Ltd., State Railway of Thailand, and Suvarnabhumi Airport Railway Station.

Figure 14Shareholder structure: District Cooling System and Power Plant Co., Ltd. : DCAP



1.2 Rationales for the proposed appropriate establishment model

Establishment of the CTC as anaffiliated company of MRTA and / or BMTA would follow the procedures under Civil and Commercial Code and require short period of time for establishment.Therefore it would be established within the given time period after OTP has completed the procurement and establishment of CCH system. The aforementioned CTC would be immediately able to perform operation and maintenance of the system in accord with state policy. Furthermore, transfer of assets i.e. common ticketing system, standards and CCH system would be possible in accord with 1992 Regulations of the Office of the Prime Minister on Procurement since the CTC State-owned enterprise would have State-owned enterprise status capable of receiving assets transferred from OTP. Additionally, MRTA and / or BMTA, which would arrange the formation of CTC State-owned enterprise as anaffiliated company, both have a primary duty to provide public mass transit services, which is a duty relevant to providing common ticketing services.Furthermore, mass transit services require collection of service fees, sothe consultant is of the opinion that MRTA and / or BMTA have strong potential to manage the common ticketing system since personnel of MRTA and / or BMTA possess knowledge and expertise in the management of mass transit systems and are capable to further develop core efficiencies by transfer of technology from the common ticketing system developers and establishment of the CCH.

Chapter 5 Relevant legal issues concerning operational aspects

1. Aspects related to state subsidized fares

1.1 Law applicable to fare subsidy / present operations relevant to basic infrastructures

Law applicable to fare subsidy / present operations relevant to basic infrastructures.

Presently, law applicable to fare subsidy / present operations relevant to basic infrastructure covers the telecommunication and energy enterprises in the form of subsidizing services fees for (licensed) operators and subsidization to ensure widespread service coverage, social service, and local / community development or restoration. Such enterprises are set up as a fund under Royal Act.Additionally there are laws that provide funding for subsidization of public services for State-owned enterprises that provide public services related to infrastructure and encounter or suffer losses from state policy governing service fees. The details are as follows.

1.1.1 Telecommunication Enterprise

(1) Subsidization requirements

According to Article 52 of the Frequency Allocation, Radio, Television, and Telecommunications Act B.E. 2553, the “Radio, Broadcast, Television, and Telecommunication Research and Development Fund for Public Benefit” is established with the following objectives.

(A) To provide widespread coverage of radio, broadcast, television, and telecommunication services and to promote the community and support community service enterprises

(B) To promote and support the development of communication resources, the research and development of broadcast, television, and telecommunications enterprise including up-to-date technological capabilities related to frequency usage, information technology, and technology for the disabled, elderly, or underprivileged, including development of the telecommunications industry and downstream industries

(C) To promote and support the development of personnel within radio, broadcast, television, telecommunication, and information technology enterprise, including work operations of organizations responsible for setting ethical, vocational, and professional standards in accord with applicable law governing radio, broadcast, television, and telecommunication enterprise

(D) To support, promote, and protect consumers of radio, broadcast, television, and telecommunication enterprise

(E) To support legal enactment of the Safe and Creative Media Development Fund by allocating funds to the Safe and Creative Media Development Fund

(2) Types of Subsidization

According to Article 52 of the Frequency Allocation, Radio, Television, and Telecommunications Act B.E. 2553, there are 3 types of subsidization as follows.

(A) The first type includes projects created by applicants who request promotion and support from the fund according to the fund's objectives pursuant to Article 52 (1), (2), (3), and (4) of the Frequency Allocation, Radio, Television, and Telecommunications Act B.E. 2553

(B) The second type covers projects set under the announcement by the fund executive board to achieve the fund's objectives pursuant to ticle 52 (1), (2), (3), and (4) of the Frequency Allocation, Radio, Television, and Telecommunications Act B.E. 2553 and to promote, support, and implement operations aligned with state policy, the frequency management master plan, radio broadcast and television master plan, telecommunications master plan, and management plan to provide widespread basic telecommunications coverage and social services

(C) The third type supports operations in accord with the law governing Safe and Creative Media Development Fund under Article 52 (5) of the Frequency Allocation, Radio, Television, and Telecommunications Act B.E. 2553

(3) Terms and Conditions of Subsidization

According to the announcement issued by the Board of Broadcast, Television, and Telecommunications Enterprise Development Fund for Public Benefit concerning guidelines, methods, and conditions of payments, tracking, and evaluation of the Broadcast, Television, and Telecommunications Enterprise Development Fund for Public Benefit, applicants eligible to receive promotion and support from the Fund must submit the request to the Fund's Secretariat, completing the standard Application Form, within the time required by the Board and specifying all required details of the project. The Board of Broadcast, Television, and Telecommunications Enterprise Development Fund for Public Benefit will consider the applicant's proposed request for subsidization.

1.1.2 Energy Enterprise

(1) Subsidization Guidelines

According to Article 93 of the Energy Enterprise Act, a fund shall be established under the Office of Energy Regulatory Commission called the "Energy Development Fund" with objectives to support energy services widely provided to various localities to distribute prosperity to the local areas and develop areas affected by power plants, to promote the use of renewable energy and technology applied to electricity enterprise that impacts the environment, taking into account the balance of natural resources and fairness to the electricity user.

(2) Types of Subsidization

According to Article 97 of the Energy Enterprise Act, the Energy Development Fund is to focus on the following subsidization.

(A) Compensation and subsidies for licensed electricity operators that provide services to underprivileged users or to provide widespread coverage of electricity or to support policy relevant to spreading wealth in the region

(B) To compensate electricity users who must pay higher tariff rates because of licensed operators with power control station that violates Article 87 paragraph 2 (cases where licensed operators, with power control station, order licensed operators to generate electricity fairly, but instead proceed unfairly or discriminatory; and the operators are licensed by the Energy Supervisory Board and selected to compensate users that must pay higher tariffs according to the automatic tariff rate adjustment calculation)

(C) To develop or restore localities affected by power plant.

(D) To promote use of renewable energy and technology applied to electricity enterprise with environmental impact

(E) To promote electricity knowledge, awareness, and participation in society and among the general public

(F) To cover fund management expenses

(3) Terms and Conditions of Subsidization

The 2010 regulations of the Energy Supervisory Commission concerning the Energy Development Fund governing licensees approved by the Energy Supervisory Commission pursuant to Article 97 of the Energy Enterprise Act.

(4) The 2011 regulations of the Office of the Prime Minister governing subsidization of public services by State-owned enterprises

These regulations require State-owned enterprises that wish to request for subsidization of public services, to submit their proposed request for subsidization to the Minister of their owning ministry after approved by the Public Service Commission, Minister of Finance, and Cabinet respectively.

State-owned enterprises eligible to request subsidization of public services must be State-owned enterprises, under law governing budget methods, that provide public utility services and encounter or suffer losses from state policy governing service fees such as rail, mass transit, public transport, waterworks, or other public utility enterprise determined by the Minister of Finance and approved by Cabinet but not including State-owned enterprises that have supervisory organizations or State-owned enterprises registered in the Stock Exchange of Thailand.

1.2 Guidelines for requesting state financial suppor

In the request for state financial support, the consultant has found relevant regulations i.e. Regulations of the Office of the Prime Minister B.E. 2554 governing subsidization of public services provided by State-owned enterprises (The Subsidization Regulations) which can be summarized as follows.

(1) Companies or agencies that request subsidization under these regulations must be State-owned enterprises, according to law governing budgetary methods (regardless of formation type), which provide public services in the area of public utilities and encounter or suffer losses from the government tariff rate policies. This set of regulations only specifies enterprises that provide public utility services such as rail, public transit, waterworks, or other public utility enterprise determined by the Minister of Finance and approved by the Cabinet. Nevertheless, the consultant has not found other types of public utility service providers that

qualify for subsidization under this regulation. However, this regulation does not cover State-owned enterprise with a supervisory organization or State-owned enterprise registered in the Stock Exchange of Thailand.

(2) The aforementioned State-owned enterprise may request for state subsidization to compensate said losses whereas the compensation shall be paid to the State-owned enterprise in the form of budget according to the difference between cost and service fees set by the government or aforesaid State-owned enterprise and approved by the Cabinet.

(3) To request subsidization, the State-owned enterprise must propose a request for financial support approved by the owning minister for the Public Service Commission to consider 10 months prior to commencement of the fiscal year.

(4) Following consideration, the Public Service Commission will propose its opinion to the Minister of Finance for proposal to Cabinet in time for request as expense in the annual budget.

(5) If the Cabinet approves the proposed request for financial subsidization, the State-owned enterprise must provide financial details for approval by the Cabinet and request annual expense budget according to methods and procedures of setting the annual expense budget.

(6) The Public Service Commission will arrange a memorandum of agreement with the State-owned enterprise whereby the president of the Public Service Commission, the Budget Bureau, the permanent secretary of the owning ministry, and the executive management at the State-owned enterprise are to sign the memorandum.

From searching the archives of relevant Cabinet Resolutions, the consultant has found that State-owned enterprises that have requested subsidization according to the aforementioned regulation include Provincial Waterworks Authority, Bangkok Mass Transit Authority, and State Railway of Thailand.

1.3 Requesting state subsidization under the common ticketing project

Since the common ticketing project would comprise of multiple mass transit operators, each operator has a different legal status i.e. State-owned enterprise, limited company, and public limited company registered in the stock exchange, for the state sector to subsidize and compensate losses incurred from policies that promote the public use of common ticketing systems by discounting the fares.Each operator must be carefully considered. The consultant wishes to present the opinion concerning feasibility in requesting financial subsidization from the state by explaining each separate operator as follows.

1.3.1 Enterprises capable of requesting state subsidization in accord with the Subsidization Regulations

(1) Passenger of buses and vans of BMTA

The Bangkok Mass Transit Authority is a State-owned enterprise established by the Royal Decree to Establish the Bangkok Mass Transit Authority B.E. 2519 and provides public utility services. BMTA is a State-owned enterprise agency that may request state subsidization under the Subsidization Regulation if it encounters or suffers losses from state policies that set measures to reduce public travel-related living expenses by providing regular passenger vehicles for free public transportation

(2) State Railway Authority

Transportation by rail is currently implemented by the State Railway of Thailand (SRT), a public utility State-owned enterprise established under the State Railway of Thailand Act B.E. 2494. Therefore, SRT is a State-owned enterprise eligible to receive state subsidization under the Subsidization Regulations if it encounters or suffers losses as a result of state policy governing service fees that sets measures to reduce public travel-related living expenses by offering third-class train services to the general public free of charge.

Nevertheless, subsidy funding of the BMTA and SRT would be supported by the state budget only should either organization suffer a loss as specified under the Royal Decree to Establish Bangkok Mass Transit Authority B.E. 2519 and the State Railway of Thailand Act B.E. 2494.

(3) Suvarnabhumi Airport Rail Link

The Suvarnabhumi Airport Rail Link is managed by S.R.T. Electrified Train Co., Ltd. and hired by SRT whereby S.R.T. Electrified Train Co., Ltd. has the duty to implement and manage work operations related to administration of the Airport Rail Link and has the right to only receive income generated as set forth under the contract of hire. Any income generated from train services belongs to the SRT.Therefore, SRT is the party that would directly benefit from profit or, otherwise, in case of loss realized. At present, the Airport Rail Link project is encountering problems because of losses realized from the initial fare policies when the services were launched at a fixed 20 Baht rate applicable to all destinations. SRT was able to request supporting fund from the state sector according to the State Railway of Thailand Act B.E. 2494.

1.4 Criteria for obtaining supporting fund from government subsidies in accord with Subsidy Regulations

If the bus enterprise of the BMTA and the train enterprise, and Airport Rail Link, of the SRT would participate in the common ticketing system administration and request for supporting fund from government subsidies to cover losses incurred from fare discounts to promote public use of the common ticketing service, the government must set policies in relevant areas to promote public use of the public transportation services by means of lower fares. It would then impact the State-owned enterprises which would realize, or potentially realize, losses from the aforesaid policies. These State-owned enterprises would be able to request supporting fund from the government under the Subsidization Regulations; but if it is merely a company policy implemented to promote sales, regardless of whether the State-owned enterprise has encountered a loss from the policy in question, the State-owned enterprise will not qualify to receive funding from government subsidies.

1.5 Public transportation enterprises managed by the private sector

(1) Affiliated buses run by various private companies who are concessionaires

(2) Affiliated vans run by various private companies who are concessionaires

(3) Speed boats and ferry crossings run by various private companies who have registered with the Marine Department

(4) Taxis are categorized into individually-owned taxis, which are run by individuals who own the vehicle and have registered the vehicle as a taxi, and union-owned taxis that are run by the various taxi unions and are considered the private sector

(5) Don Muang Toll way – run by Don Muang Toll way (Public) Company Limited that was granted concession from Departmentof Highway, Ministry of Transport to construct and provide elevated highway services

(6) Part of the expressway is run by Bangkok Expressway (Public) Company Limited that has been granted rights and privileges according to the contract made with EXAT to construct and provide expressway services

(7) The BTS (main line) is run by Bangkok Mass Transit System (Public) Company Limited that has received a concession from BMA to implement the BTS (main line) from On Nut to Mor Chit station and from SapanTaksin to National Stadium station

(8) The MRT is run by Bangkok Metro (Public) Company Limited (BMCL) by the concession grantedby MRTA which is a State-owned enterprise established in accord with the Royal Mass Transit Act of Thailand B.E. 2543. Later on 21st September 2006, BMCL was listed on the Stock Exchange of Thailand with MRTA and Ch-Kanchang (Public) Company Limited as majority shareholders. Nevertheless, MRTA holds less than 50 percent shares in BMCL. Therefore, BMCL is not considered a State-owned enterprise according to law governing budget methods.

Although the above public transportation companies provide public utility services, but as the enterprises are run by the private sector, whether by limited or public limited companies, they do not meet the criteria required for entities that qualify for state subsidies under the Subsidization Regulations and are unable to request government supporting fund to cover differences that arise from fare discounts to promote public use of the common ticketing services.

1.6 Public transportation enterprises run by the state sector or State-owned enterprise but fail to meet the criteria for funding by government subsidies under the Subsidization Regulations

(1) The expressway run by EXAT was established in accord with the Expressway of Thailand Act B.E. 2550 and has State-owned enterprise status according to law governing budgetary methods.

(2) The motorway is run by Department of Highway which is a government agency according to Act Amendment Ministry, Sub-ministry and Department B.E. 2545.

Since the above are not enterprises that provide public utility service within the scope of entities that may request government subsidy funding according to the Subsidization Regulations i.e. neither rail enterprise, public mass transit, nor waterworks, and the Minister of Finance has not deemed the above entities as other public utility providers that may request government subsidy support under this regulation.Therefore, the above entities may not request funding from the government to cover differences that arise from fare discounts to promote public use of the common ticketing services.

Furthermore, in the case of the motorway, which is run by Departmentof Highway, a government agency and not a State-owned enterprise, Department of Highway may not request support from government subsidies.

1.7 Other public transportation enterprise

(1) BTS (extended line)

This entity is run by BMA, a local administration organization according to the Royal Bangkok Administration Act B.E. 2528 and is neither a government agency, nor a State-owned enterprise, according to the Royal Budgetary Methods Act B.E. 2502, whereby BMA has entered a contract of hire with The KrungthepThanakom Co., Ltd., a private company which BMA holds nearly 100% shares, and is considered an enterprise under Article 94 of the Royal Bangkok Administration Act B.E. 2528 (but is not considered a State-owned enterprise in accord with the Royal Budgetary Methods Act B.E. 2502 since BMA, which is majority shareholder, is not a government agency), to manage the basic transit and ticketing systems structure. Later on, The KrungthepThanakom Co., Ltd. entered contract with BTSC as subcontractor to manage and provide services, including the maintenance, of the BTS (extended line).

Income generated from the passenger fare belongs to BMA; therefore BMA would be responsible over any losses incurred. However, although BTS is a public utility enterprise as set forth under the Subsidization Regulations, but since BMA does not have State-owned enterprise status under the Royal Budgetary Methods Act B.E. 2502.Thus, if BMA suffers a loss caused by state policies in areas relevant to promoting public usage of the public transit system by means of fare discounts, BMA would be unable to request supporting fund from government subsidies under the Subsidization Act.

(2) BRT

The BRT is run by BMA whereby BMA has hired The KrungthepThanakom Co., Ltd. and BTSC to manage in a similar scenario to the BTS (extended line).

Income generated from passenger fares belongs to BMA.Therefore, any losses incurred would be absorbed by BMA. However, although BRT is an enterprise that provides public utility services as specified under the Subsidization Regulations, but as BMA does not have State-owned enterprise status according to the Royal Budgetary Methods Act B.E. 2502, thus if BMA suffers a loss caused by state policies in areas relevant to promoting public usage of the public transit system by means of fare discounts, BMA would be unable to request supporting fund from government subsidies under the Subsidization Act.

1.8 Legal proposal

To promote public usage of the public transit systems by means of passenger fare discounts within the common ticketing project whereby the state would subsidize many areas that arise from the aforesaid policy, the consultant wishes to summarize the recommended approach in requesting supporting fund from the state sector as follows.

(1) Enterprises in which the private sector is public utility service provider

Private companies do not meet the criteria to qualify for government subsidies, in accord with the Subsidization Regulations, to cover losses incurred as a result of government policies in areas relevant to promoting public usage of the mass transit system by means of rate discounts since the aforesaid private companies are not State-owned enterprises according to regulations governing subsidization. Additionally, the funds provided by government in accord with the Subsidization Regulations are taxpayers' funds. The consultant is of the opinion that there is a strong unlikelihood for the government to set policies or amend existing regulations governing subsidization to cover enterprises run by private companies.

(2) Enterprises that government agencys, State-owned enterprises, or local administrative organizations are public utility service providers

There are some types of enterprises run by State-owned enterprises that do not qualify to request supporting fund from government subsidies in accord with the Subsidization Regulations such as EXAT and certain entities that may qualify for state subsidies under the Subsidization Regulations but are not run by State-owned enterprises i.e. BMA. The consultant is of the opinion that in this case, the state sector should set policies or amend the Subsidization Regulations to enable all enterprises, which are run by state agencies of all types, to participate in the common ticketing project and qualify for supporting fund by government subsidies.

The request for government supporting fund, to cover a difference that arises from passenger fare discounts under the common ticketing management system, would require either subsidy support payments by the government on a yearly basis or a revolving fund allocated to support the entity under the common ticketing project.

Regarding guidelines to set certain comprehensive measures or special methods that instill confidence, among all the common ticketing system participants, that the state will subsidize the discount for common ticketing users, the consultant has studied relevant laws and is of the opinion that there are no such feasible methods available since each participant has a different form and establishment type with different applicable laws. Therefore, such comprehensive measures would be impossible.

2. Establishment of a fund for the purpose of fare subsidies

From examining case studies in various business sectors, the consultant is of the opinion that establishment of a fund is another option to access funds for the fare subsidization to support operators that are affected by state policies (for example, common fare scheme); past examples of funds reveal establishment of the "Energy Conservation Promotion Fund" under the Royal Energy Conservation Act B.E. 2535 and the "Radio Broadcast, Television, and Telecommunication Research and Development Fund" under the Royal Frequency Allocation and Radio, Broadcast, Television, and Telecommunications Enterprise Act B.E. 2553. The objectives of both funds are to access funds to cover working capital, expenses, and to support various specific operations. Additionally, a separate agency has the duty to monitor and supervise the fund (in this case, the Ministry of Energy and the National Broadcasting and Telecommunications Commission respectively).

Nevertheless, establishment of the above two funds was under enactment of law at the Royal Act level that stipulates various key aspects concerning the said funds i.e. the fund's objectives, source of capital, the fund's board of directors, methods of disbursement, methods of fund management etc. thus if OTP wishes to establish a fund to access capital for subsidization of the common ticketing system, the consultant is of the opinion that such a fund must likewise be established by means of Royal Act codification.

Additionally, the unique aspects of the fund should enable sourcing of capital to use on its own accord (without the need to await budget allocation from the state) regardless of whether the funds are collected from operators within the sector, fees, fines, or funds or assets that have been donated to the fund itself. The aforementioned examples of funds brought up by the consultant have entirely accessed capital from other sources outside of budget allocation by the state. Therefore in the establishment of a fund to access capital for the purpose of fare subsidization to operators, the consultant is of the opinion that the details should be studied comprehensively and sources of capital should be clearly specified in alignment with the fund's characteristics, to ensure sustainability of the fund, the permanent secretary of the Ministry of Transport should be the Chairman of the fund, the deputy permanent secretary of the Ministry of Transport (head of the mission to develop fundamental structure) should be the vice chairman, and skilled experts should be appointed as legal consultants, with board members appointed from the Ministry of Transport, the Director-General of OTP, Deputy Director-General of OTP, and members from other relevant agencies.

3. Aspects concerning authority to set the common ticketing fare

3.1 Authority of the present common ticketing system commission

The Ministry of Transport has issued order no. 335/2554 on 7th December 2011, to appoint the Common Ticketing Administration Committee (CTAC), signed by the Minister of Transport under enactment of the Royal Administration Act B.E. 2534.

The committee's authority is specified under Clause 2 of the order no. 335/2554 whereas authority to set the fare rates is under Clause 2.1 (5) which states "The commission has the authority to consider the fare structure of the common ticketing system for integration into other systems".

When considering the source of authority to appoint the committee including the authority of the committee itself pursuant to Clause 2 of order no. 335/2554, the consultant is of the opinion that the committee does not have authority to set fare rates for the common ticketing system nor to enforce such rates upon operators and participants in the common ticketing system because of the following reasons.

(1) The committee members have been appointed under authority of the Royal Administration Act B.E. 2534 which is a law that merely stipulates guidelines concerning administration of the state sector and is not a law that governs management of a common ticketing system.

(2) Clause 2.1 (5) of order no. 335/2554 grants authority to the committee in mere consideration of the fare rates and does not empower the committee to set rates of fares in the common ticketing system nor to enforce rates with the operators and project participants.

Nonetheless, concerning use of authority pursuant to Clause 2.1 (5) of order no. 335/2554, the consultant is of the opinion that the committee has a duty merely as a neutral party in negotiations amongst operators to seek the common ticketing fare within a scope that is generally acceptable by each participant and which is mutually agreed upon. This may be confirmed by means of contract signed by all participants, which would be considered legal and binding. In summary, the committee has no authority to set fare rates of the common ticketing system for operators.

3.2 Empowering the committee with authority to set common ticketing fares

From studying above examples concerning the committee's present authority including the characteristics of the common ticketing system, the consultant is of the opinion that to empower the committee with authority to set common ticketing fares would require enactment of law at the Royal Act or Royal Decree level since the use of authority to set common ticketing fares would directly impact rights to conduct business operations among project participants. Article 43[66] of the 2007 Constitution of the Kingdom of Thailand stipulates that the limitation of rights and freedom must be implemented in accord with Royal Act law.However, laws which are lower than the Royal Act or Royal Decree levels are unable to limit rights and privileges granted under Royal Act or Royal Decree. Therefore, empowering the committee with authority to set common ticketing fares would be limiting the rights of certain operators whom have been granted such rights under Royal Act (for example, public rail or bus services). Thus only laws at the Royal Act or Royal Decree levels would be applicable.

Nevertheless, the consultant wishes to inform that new codification of provisions under a Royal Act or Royal Decree would require a comprehensive study into the potential impact, in various areas, that operators or project participants would realize. Each particular operator and participant would have different methods of calculating fares, income allocation, and responsibilities i.e. some operators might have the duty to act according to conditions of price structure set under the concession granted or perhaps set by the project's creditor therefore, a comprehensive study into the potential impact that may arise would require a lengthy period of time. Additionally, the draft Royal Act or Royal Decree would be subject to approval by the many various relevant parties i.e. Office of the Judicial Council, Office of the Attorney General, etc. and would require further approval by the parliament and the senate prior to enactment and

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[66] The 2007 Constitution of the Kingdom of Thailand

Section 43: A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

announcement of the new legislation. Thus, enactment of law at the Royal Act or Royal Decree levels may require a lengthy time period that would not justify enactment.

3.3 Guidelines for setting common ticketing fares

As enactment of Royal Act or Royal Decree to set common ticketing fares would be a difficult matter, the consultant is of the opinion that a possible method would be to hold mutual negotiations with all project participants to set common ticketing fares, whereby the committee would be a neutral party and coordinator at the negotiations. Moreover, should all participants achieve mutual agreements concerning the common ticketing fares; the committee would be able to proceed with signed agreement by all participants to set the common ticketing fares. The advantage of this method is that it does not require legislative authority but would instead require mutual consent among participants.