

(Translation)

Unofficial Translation*

**PROTECTION OF A CHILD BORN BY
MEDICALLY ASSISTED REPRODUCTIVE TECHNOLOGY ACT,
B.E. 2558 (2015)**

BHUMIBOL ADULYADEJ, REX.

Given on the 28th Day of April B.E. 2558;

Being the 70th Year of the Present Reign.

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

Whereas it is expedient to have a law on protection of a child born by medically assisted reproductive technology;

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

Section 1 This Act is called the “Protection of a Child Born by Medically Assisted Reproductive Technology Act, B.E. 2558 (2015)”.

Section 2 This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.¹

Section 3 In this Act:

“sperm” means gametes of a man;

“oocyte” means gametes of a woman;

“medically assisted reproductive technology” means any procedure of medical science that takes sperm and an oocyte from human body for procuring artificial pregnancy including artificial insemination;

“artificial insemination” means transfer of sperm into a sex organ of a woman for pregnancy without having sexual intercourse;

“surrogacy” means pregnancy by the medically assisted reproductive technology provided that a surrogate mother enters into a written arrangement with lawful husband and wife prior to the pregnancy that a foetus is a child of such lawful husband and wife;

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“embryo” means fusion of human sperm and a human oocyte which cause fertilisation till eight weeks;

“baby” means a foetus of human over eight weeks of age inside or outside human uterus;

“sell” means dispose, distribute, give away, exchange, or give for commercial benefits or any other unjust benefits for oneself or other persons and including proposing to sell;

“Committee” means a Committee of the Protection of a Child Born by Medically Assisted Reproductive Technology;

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

Section 4 The court having the power to adjudicate the juvenile and family case under the law on the juvenile and family court and the juvenile and family procedure shall have jurisdiction to adjudicate the case under this Act only in a case concerning parentage of a person born by medically assisted reproductive technology under this Act.

Section 5 The Minister of Social Development and Human Security and the Minister of Public Health shall have charge and control of the execution of this Act and shall have the power to issue Notifications for the execution of this Act; provided, with regards to the public service of such Ministry.

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

CHAPTER I

THE COMMITTEE FOR THE PROTECTION OF A CHILD BORN BY MEDICALLY ASSISTED REPRODUCTIVE TECHNOLOGY

Section 6 There shall be a committee called the “Committee for the Protection of a Child Born by Medically Assisted Reproductive Technology” or “a Committee of PMRT” in brief, consisting of the Permanent Secretary Ministry of Public Health as Chairperson, the President of the Medical Council of Thailand as Vice-Chairperson, representative from the Ministry of Social Development and Human Security, representative from the Department of Health, representative from the Committee for National Children Protection, the President of the Royal College of Pediatricians of Thailand, the President of the Royal College of Psychiatrists of Thailand, the President of the Royal Thai College of Obstetricians and Gynaecologists as *ex officio* members, and six qualified

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members appointed by the Minister of Social Development and Human Security from the persons having knowledge, skill and explicit experience in the field of law, women rights and children rights; one person from each field, and appointed by the Minister of Public Health from the persons having knowledge, skill and explicit experience in the field of assisted reproductive technology, medical genetics and research; one person from each field as members.

The Director-General of the Department of Health Service Support shall be member and secretary, and the Director-General of the Department of Health Service Support shall appoint not more than two government officials in the Department of Health Service Support to be assistant secretary.

Section 7 The Committee shall have the following powers and duties:

- (1) to submit opinions to the Ministers for setting policy for the protection of a child born by medically assisted reproductive technology;
- (2) to submit opinions to the Ministers for developing or resolving problems relating to medically assisted reproductive technology;
- (3) to submit opinions or provide advice to the Ministers for issuing Notifications for the execution of this Act;
- (4) to notify and prescribe rules, procedures, and conditions for applying for permission and granting permission relating to an operation of surrogacy under section 23;
- (5) to consider on permission relating to the operation of surrogacy under section 23;
- (6) to notify prescribed rules, procedures, and conditions for applying for permission and permission relating to usage of a leftover embryo from infertility treatment of lawful husband and wife for a conduct of research under section 37;
- (7) to grant the permission relating to usage of a leftover embryo from infertility treatment of lawful husband and wife for a conduct of research under section 37;
- (8) to approve issuance of the Medical Council of Thailand's Notifications relating to a service of medically assisted reproductive technology under this Act; provided that such Notifications shall come into force when it is published in the Government Gazette;
- (9) to control, examine or supervise the service relating to medically assisted reproductive technology to be in accordance with this Act;
- (10) to promote and support the study and research in ethics, law or culture relating to medically assisted reproductive technology;
- (11) to prepare a report on result of undertaking under this Act to be submitted to the Ministers at least once a year;

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(12) to perform other acts as entrusted by the Ministers or the Council of Ministers.

Section 8 A qualified member shall hold office for a term of four years.

A qualified member who vacates office upon the expiration of the term may be reappointed, but may not hold office more than two consecutive terms.

Section 9 In addition to vacating office on the expiration of term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being bankrupt;
- (4) being an incompetent person or a quasi-incompetent person;
- (5) being imprisoned due to a final judgment to a term of imprisonment except for an offence committed through negligence or a petty offence;
- (6) being dismissed by the Minister of Social Development and Human Security or the Minister of Public Health, as the case may be, due to inappropriate behavior by the proposal of the Committee; provided that the resolution of the Committee for dismissal shall not be less than two-third of existing members.

Section 10 In the case where a qualified member vacates office before the expiration of the term, the Minister of Social Development and Human Security or the Minister of Public Health, as the case may be, shall appoint a person having knowledge, skill and explicit experience in the same field as the qualified member to replace the vacated qualified member, and the person appointed to replace the vacated member shall be in office for the unexpired term of office of the qualified member already appointed. However, if the remaining term of the qualified member is less than ninety days, there may not be proceedings for appointing the replacing qualified member.

In the case where a qualified member vacates office before the expiration of the term, the Committee shall consist of existing members until the appointment of a qualified member under paragraph one is made.

Section 11 When a qualified member vacates office upon the expiration of the term, a new qualified member shall be appointed within ninety days. While a new qualified member has not yet been appointed, the qualified member whose term of office has expired shall be in office to perform his or her duties until a new qualified member has been appointed.

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Section 12 At a meeting of the Committee, the presence of not less than one-half of members is required to constitute a quorum.

At a meeting of the Committee, the Chairperson shall preside over the meeting. If the Chairperson does not attend or may not perform the duties, the Vice-Chairperson shall preside over the meeting. If the Chairperson and the Vice-Chairperson do not attend the meeting or may not perform the duties, the meeting shall elect one among themselves to preside over such meeting.

A decision of the meeting, unless otherwise provided, shall be made by a majority of votes. In casting a vote, each member shall have one vote. In the case of an equality of votes, the presiding member shall have an additional vote as the casting vote.

Section 13 The Committee may appoint a sub-committee for considering and submitting opinions in any matter or performing any act as entrusted by the Committee.

The provisions of section 12 shall apply to the meeting of the sub-committee *mutatis mutandis*.

Section 14 The Department of Health Service Support, Ministry of Public Health shall have the duties to support the undertakings of the Committee and shall have the following powers and duties:

- (1) to perform generally administrative works of the Committee;
- (2) to coordinate and cooperate with government sector, state and private agencies concerned for the undertakings relating to medically assisted reproductive technology that is under the duties of the Committee;
- (3) to prepare records of agencies or organizations undertaking the medically assisted reproductive technology and records of service applicants;
- (4) to undertake gathering of information and result of research and to analyze information relating to the undertakings under the medically assisted reproductive technology;
- (5) to perform other acts as entrusted by the Committee.

CHAPTER II
SERVICE RELATING TO
THE MEDICALLY ASSISTED REPRODUCTIVE TECHNOLOGY

Section 15 A medical practitioner, who is a service provider relating to the medically assisted reproductive technology under this Act, shall have qualifications and not be under the

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prohibitions and shall also comply with standard of service relating to the medically assisted reproductive technology as prescribed by the Notifications of the Medical Council of Thailand with the approval of the Committee.

Section 16 Prior to providing the service relating to the medically assisted reproductive technology, the service provider relating to the medically assisted reproductive technology shall provide an examination and an assessment of readiness of physical, mind, and environment of the service applicant, the surrogate mother and a donor of sperm or oocyte which will be used in the operation including prevention of diseases which may affect a baby as per the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 17 Forming, storing, using an embryo or removing an embryo shall comply with the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee, but there shall not prescribe to store or use an embryo over fourteen days of age as from the date of fertilization; provided that duration of embryo cryopreservation shall not be counted in the age of an embryo.

Section 18 In providing the service relating to the medically assisted reproductive technology, the service provider relating to the medically assisted reproductive technology may necessarily and appropriately examine and diagnose a genetic disease in an embryo which may occur; provided that there shall not be an act understanding as sex selection.

The examination and the diagnosis under paragraph one shall comply with the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 19 Subject to section 15 and section 16, only a woman having lawful husband shall undergo artificial insemination and the artificial insemination shall comply with the standard of service relating to the artificial insemination as prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 20 Artificial insemination by using a donor sperm shall receive written consent from lawful husband and wife intending to undergo the artificial insemination.

The consent under paragraph one shall comply with the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

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CHAPTER III
SURROGACY

Section 21 Subject to section 15, section 16 and section 18, an operation of surrogacy shall at least comply with the following conditions;

(1) lawful husband and wife, when a wife is unable to carry pregnancy, intending to have a child by surrogacy, shall hold Thai nationality. In the case where a husband or a wife does not hold Thai nationality, the registration of their marriage shall not be less than three years;

(2) a surrogate mother shall not be an ascendant or a descendant of the lawful husband and wife under (1);

(3) a surrogate mother shall be blood relative of the lawful husband or wife under (1), in the case where there are no blood relative of the lawful husband or wife, other woman may undergo the surrogacy, as prescribed by the rules, procedures, and conditions of the Minister of Public Health with the advice of the Committee;

(4) a surrogate mother must have previously given birth to a child. If such surrogate mother has lawful husband or cohabits with a man as husband and wife, consent must be obtained from such lawful husband or such man

Section 22 An operation of surrogacy under this Act may proceed with these two following methods;

(1) to use an embryo formed from sperm of lawful husband and an oocyte of lawful wife intending to undertake the surrogacy;

(2) to use an embryo formed from sperm of lawful husband or an oocyte of lawful wife intending to undertake the surrogacy and other person's oocyte or sperm; provided that an oocyte of a surrogate mother shall not be used.

Section 23 The service provider relating to the medically assisted reproductive technology may operate the surrogacy under this Act to any husband and wife under section 21 (1), when the Committee grants permission to operate the surrogacy to such husband and wife.

Rules, procedures, and conditions for applying for the permission and the granting of permission shall be prescribed by the Committee and published in the Government Gazette.

Section 24 No person shall operate the surrogacy for commercial benefits.

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Section 25 The Minister of Public Health with advice of the Committee shall prescribe the rules, procedures and conditions relating to surrogacy arrangement and expense for keeping surrogate mother's health in good condition during pregnancy, an abortion instead of childbearing and after giving birth including expense for postnatal care of a child born by the surrogacy for a term not less than thirty days.

Section 26 An abortion of the surrogacy shall be done by a medical practitioner and upon receiving written consent from lawful husband and wife intending to undertake the surrogacy and a surrogate mother; except in the case where the surrogate mother does not agree, the surrogacy arrangement under section 25 shall be terminated and the surrogate mother shall not pay expenses under such arrangement.

An abortion of the surrogacy under paragraph one shall comply with the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 27 No person shall act as an intermediary or an agent and demand, accept or agree to accept any property or benefit as a remuneration for arranging or suggesting to undertake the surrogacy.

Section 28 No person shall advertise or circulate by any act relating to the surrogacy that there is a woman willing to act as a surrogate mother or there is a person willing to procure other woman to act as a surrogate mother regardless of committing for a commercial benefit or not.

CHAPTER IV

PARENTAGE OF A CHILD AND PROTECTION OF A CHILD BORN BY MEDICALLY ASSISTED REPRODUCTIVE TECHNOLOGY

Section 29 A child, born by sperm, an oocyte or an embryo of a donor as the case may be by the medically assisted reproductive technology under this Act irrespective of pregnancy by a lawful wife of a husband intending to have a child or surrogacy by other woman, shall be a legitimate child of lawful husband and wife intending to have a child; provided that even if lawful husband or wife intending to have a child dies before the child was born.

A man or a woman donating sperm or an oocyte which is used for fertilization of an embryo for pregnancy or a donor of an embryo and a child born by sperm, an oocyte or an embryo

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which is donated shall not have rights and duties between each other under the Civil and Commercial Code on family and succession.

Section 30 In the case where lawful husband and wife intending to undertake the surrogacy die before a child was born, a surrogate mother shall be a guardian of such child until a new guardian is appointed; provided that a surrogate mother, an official under the law on children protection, an interested person or a public prosecutor shall have the power to request to the court to appoint a guardian and for appointing such guardian, the court shall highly consider prosperity and benefit of such child.

Section 31 When a surrogate mother starts having antenatal care or giving birth at any hospital, an arrangement under section 25 shall be presented to a doctor who provides the antenatal care or a person who delivers a baby at such hospital as evidence for issuing a child's certificate of birth and notification of birth accordingly.

Section 32 lawful Husband and wife intending to undertake the surrogacy shall have the duty to notify birth of a child born by the surrogacy to the registrar under the law on civil registration.

In the case where the lawful husband and wife intending to undertake the surrogacy die before a child was born, do not live in Thailand, or do not appear after giving birth, a surrogate mother shall notify birth of a child born by such surrogacy.

Birth notification of a child born by the surrogacy shall comply with the rules, procedures and conditions prescribed by the director of central registration under the law on civil registration.

Section 33 Lawful husband and wife or lawful husband or wife intending to have a child by the surrogacy shall be prohibited from refusing acceptance a child born by such surrogacy.

Section 34 The provisions under the Civil and Commercial Code on family and succession shall apply *mutatis mutandis* and apply to such an extent as not contrary to or inconsistent with the provisions of this Act.

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CHAPTER V
CONTROL OF OPERATION RELATING TO MEDICALLY ASSISTED
REPRODUCTIVE TECHNOLOGY

Section 35 No person who is not a medical practitioner shall provide service relating to medically assisted reproductive technology including undertaking deposit, donation, utilizing sperm, an oocyte or an embryo or terminating an embryo.

Section 36 No person shall form an embryo for using in any affair except for using in infertility treatment of lawful husband and wife.

Section 37 A medical practitioner who intends to use a leftover embryo from infertility treatment of lawful husband and wife for a conduct of research shall receive permission from the Committee.

Rules, procedures, and conditions for applying for permission and the granting of permission shall be as prescribed by the Committee through publication in the Government Gazette.

Researching an embryo over fourteen days of age from the date of fertilization shall not be done; provided that duration of embryo cryopreservation shall not be counted in the age of the embryo.

Section 38 No person shall carry out any act for the purpose of creating human being by other method in addition to the fertilization between sperm and an oocyte.

Section 39 No person shall transfer sperm, an oocyte, an embryo or any part of such cell into animal body or transfer gametes of an animal, cell formed by fertilization of gametes of an animal into human body.

Section 40 No person shall form, store, sell, import, export or use an embryo having human's genetic materials of more than two persons or an embryo having cell or an element of human's cell with other species being included.

Section 41 No person shall purchase, propose to purchase, sell, import or export sperm, an oocyte or an embryo.

Section 42 The deposit, donation, usage from sperm or an oocyte or an embryo which is deposited or donated because of the operation of the medically assisted reproductive technology or termination of an embryo deposited or donated shall comply with the rules,

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procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 43 A service relating to the medically assisted reproductive technology to lawful husband or wife, if an owner of sperm, an oocyte, or an embryo deposited with a depositary under section 42 dies, such sperm, oocyte or embryo shall not be used; except receiving written consent before death. And the usage of sperm, an oocyte or an embryo shall only be used for the infertility treatment of such husband or wife who is still alive.

The consent under paragraph one shall comply with the rules, procedures, and conditions prescribed by the Medical Council of Thailand with the approval of the Committee.

Section 44 Any medical practitioner being a service provider relating to the medically assisted reproductive technology fails to comply with the standard of service relating to the medically assisted reproductive technology under section 15, it shall be deemed that such person violates ethics of medical profession under the law on medical profession.

Section 45 Any medical practitioner who fails to comply with section 16, section 17, section 18, section 19, section 20, section 21, section 22, section 26, section 37, or section 42 shall be deemed a violation of ethics of medical profession under the law on medical profession.

CHAPTER VI PENALTIES

Section 46 Any medical practitioner having no qualifications or being under the prohibitions according to section 15 provides a service relating to the medically assisted reproductive technology, such person shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand baht or to both.

Section 47 Any medical practitioner who fails to comply with section 23 shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand baht or to both.

Section 48 Any person who violates section 24 shall be liable to imprisonment for a term not exceeding ten years and to a fine not exceeding two hundred thousand baht.

Section 49 Any person who violates section 27, section 28, section 33 or section 40 shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand baht or to both.

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Section 50 Any person who violates section 35 shall be liable to imprisonment for a term not exceeding ten years and to a fine not exceeding two hundred thousand baht or to both.

Section 51 Any person who violates section 36, section 41, or section 43 shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding sixty thousand baht or to both.

Section 52 Any person not being a medical practitioner conducts a research under section 37, such person shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding sixty thousand baht or to both.

Section 53 Any person who violates section 38 or section 39 shall be liable to imprisonment for a term of three years to ten years and to a fine of sixty thousand baht to two hundred thousand baht.

TRANSITORY PROVISIONS

Section 54 A medical practitioner, being responsible for or providing service relating to medically assisted reproductive technology under the Notifications of the Medical Council of Thailand on standard of service relating to assisted reproductive technology prior to the date when this Act comes into force and upon notifying to The Royal Thai College of Obstetricians and Gynaecologists within ninety days from the date when this Act comes into force, may continue to proceed until the Notifications of the Medical Council of Thailand with the approval of the Committee relating to qualifications and prohibitions and standard of service relating to the medically assisted reproductive technology under section 15 comes into force.

Section 55 Regulations, rules or, notifications of the Medical Council of Thailand relating to service of medically assisted reproductive technology which are still in force on the date when this Act comes into force, shall continue to be in force to the extent as not contrary to or inconsistent with this Act; provided that until the issuance of the Notifications under this Act.

Section 56 A person born by the surrogacy prior to the entry into force of this Act whether there is a written arrangement, husband or wife undertaking the surrogacy or a public prosecutor shall have rights to submit a petition to the court to issue an order stating that the person born by the surrogacy prior to the entry into force of this Act is a legitimate child of the husband and

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the wife undertaking the surrogacy as from the date when such person was born; provided that whether the husband and the wife undertaking the surrogacy are lawful husband and wife. However, that it may not be referred to the prejudice of the rights of third persons acting in good faith during the time when the child was born until the time when the court issue orders of filiation.

Countersigned by
General Prayut Chan-o-cha
Prime Minister

Office of Justice Affairs

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Note:- Reason for promulgation of this Act: Whereas, the technological advancement and medical technologies for treatment of infertility can help those who are subject to the condition of infertility to have children by using the assisted reproductive technologies in medical science; as a result, the provisions of the applicable laws on lawful parenthood of children born from the assisted reproductive technologies in medical science, are inconsistent with the genetic relations; therefore, to determine proper status of lawful parenthood of children born from the assisted reproductive technologies in medical science, and to control the studies and researches on medical science relating to embryos and the assisted reproductive technologies in medical science from any misuse; therefore, it is necessary to enact this Act.

Office of Justice Affairs

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