

# MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION, INCLUDING PREVENTION OF MONEY-LAUNDERING

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## I. MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION

The Organic Act on Counter Corruption, B.E. 2542 of Thailand is the principal law dealing with corruption cases involving government officials, who are divided into two categories: “State officials” and “persons holding a political position”. (Appendix A)

These officials play a crucial role not only in central government, but also in State enterprise and local government organizations. Thailand makes efforts to control and eradicate corruption among these officials through inspecting their assets and liabilities when taking and vacating office and comparing the difference. If it is found that the official gained an unusual increase in property without reasonable grounds, he or she may be prosecuted and removed from office and be subject to asset measures. This document only focuses on asset measures in corruption cases.

The commission administering corruption cases in this Act is the National Counter Corruption Commission (N.C.C. Commission) which has following main duties and powers;

- (i) to inquire into facts, summarize the case and prepare the opinion to be submitted to the Senate, Removal from Office;
- (ii) to inquire into facts, summarize the case and prepare the opinion to be referred to the Attorney General for the purpose of prosecution in the Supreme Court of Justice’s Criminal Division for Persons Holding Political Positions;
- (iii) to inquire and decide whether a State official has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office; and
- (iv) to inspect the accuracy and actual existence of assets and liabilities of State officials and inspect change of assets and liabilities of the persons holding political positions.

## II. INSPECTION OF ASSETS AND LIABILITIES

### A. Declaration of Accounts Showing Assets and Liabilities of Persons Holding Political Positions

Persons holding political positions have the duty to submit an account showing their assets and liabilities and those of their spouses and children who have not become *sui juris* as they actually exist on the date of the submission to the N.C.C. Commission on each occasion of taking or vacating office.

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## **B. Declaration of Accounts Showing Assets and Liabilities of State Officials**

Not every State official has to declare assets and liabilities. The law prescribes that only some State officials holding positions stated by law have the duty to submit to the N.C.C. Commission an account showing their assets and liabilities and those of their spouses and children who have not yet become *sui juris* upon taking office and upon vacating office.

These positions are President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, Attorney General, Election Commissioner, Ombudsman, judge of the Constitutional Court, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, judge of the Supreme Court of Justice, judge of the Supreme Administrative Court, Deputy Attorney General and person holding a high-ranking Position such as the Commander of a National Force, the Commander-in-chief in respect of military officials and the Commander of the National Royal Thai Police

In addition to these positions of State Officials, the N.C.C. Commission has the power to prescribe the additional positions of State officials who will be under the obligation to submit an account showing assets and liabilities.

## **C. Scope of Declaration and Required Documents**

These assets and liabilities declared by persons holding political positions and State officials must include assets and liabilities in foreign countries and those which are not in possession of that persons, their spouses and children who have not become *sui juris*.

In the case where a person holding political positions or a State official holds more than one position, that person must submit separate accounts showing assets and liabilities for every position in accordance with the time prescribed for the submission of the account in respect of such position.

The account showing assets and liabilities must be accompanied by copies of supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return for the previous fiscal year.

## **D. Time for Submission**

(i) In the case of taking office, such person must submit within thirty days from the date of taking office.

(ii) In the case of vacating office, such person must submit within thirty days from the date of vacation.

(iii) In addition to the case of the vacating of office, the person who vacates his or her office, must also re-submit an account showing assets and liabilities within thirty days from the date of the expiration of one year after the vacation of office.

(iv) For a person holding a political position, who has already submitted the account, who dies while in office or before submitting the same after the vacation of office, an heir or an administrator of the estate of such person must submit an account showing assets and liabilities existing on the date of such person's death within ninety days from the date of the death.

## **E. Disclosure**

The account and supporting documents submitted by the Prime Minister and Ministers must be disclosed to the public without delay but not later than thirty days from the date of the expiration of the time limit prescribed for the submission of such account. The account of the persons holding other positions cannot be disclosed to any person unless the disclosure will be useful for the trial and adjudication of cases or for the making of a determination and is requested by the Court or State Audit Commission.

## **F. Sanctions**

If any person holding a political position and a state official intentionally:

- (i) fails to submit an account showing assets and liabilities and supporting documents to the N.C.C. Commission within the time prescribed by this Act; or
- (ii) submits such account and supporting documents with false statements; or
- (iii) fails to disclose facts which should have been disclosed in such account and supporting documents, that person shall vacate office from the date of the expiration of the time limit prescribed for the submission of the account showing assets and liabilities or from the date of the discovery of such act.

In addition, that person can not hold a political position or a state official position for the period of five years from the date of the vacation of office.

In this case, the N.C.C. Commission will present the case to the Constitutional Court for final decision and, when the Constitutional Court gives a final decision that it is the case of an intentional submission of the account showing assets and liabilities and supporting documents with false statements or failure to disclose facts which should have been disclosed, such person shall vacate the position currently held, without prejudice to the acts previously done by such person while in office.

## **G. Inspection Report of a Person Holding a Political Position**

In the case where the inspection report of a person holding a political position reveals an unusual change in the property owned by that person, the N.C.C. Commission will request the person holding the political position, or his or her heirs or the administrator of the estate, to explain the acquisition of such property. If that person cannot explain the source of unusual change, the N.C.C. Commission will pass the resolution that such person has had an unusual increase in his or her property.

In this case, the President of N.C.C. Commission will furnish all existing documents together with the inspection report to the Attorney General for instituting prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the unusually increased assets will devolve on the State.

## **H. Allegation of Unusual Wealth**

The allegation that any person holding a political position or any State official is unusually wealthy can be made by an ordinary person or the N.C.C. Commission

If an ordinary person files the allegation, it must at least contain the following particulars:

- (i) the name and address of the person making the allegation;
- (ii) the name or position of the alleged culprit;
- (iii) the allegation and circumstance under which the alleged culprit has allegedly become wealthy.

After the allegation, the N.C.C. Commission will make a preliminary determination. If the alleged culprit has already submitted an account showing particulars assets and liabilities, the N.C.C. Commission will take such account into consideration.

In the case where the allegation meets the requirements or where there is a reasonable cause to suspect that the alleged culprit has become unusually wealthy, the N.C.C. Commission will proceed the fact inquiry.

For the purpose of a fact inquiry, the N.C.C. Commission can order the alleged culprit to show particulars of the assets and liabilities of the alleged culprit, which must not be less than thirty days and must not be more than sixty days.

### **1. Temporary Seizure**

If the N.C.C. Commission discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer,

move, transformation or concealment, the N.C.C. Commission has the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property, the N.C.C. Commission will conduct the proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the N.C.C. Commission will have the power to continue its seizure or attachment until it passes a resolution that the allegation has no *prima facie* case, which must be within one year from the date of the seizure or attachment or until the court passes a final judgment dismissing the case. However, if the proof is successful, the property will be returned to such person.

## 2. Case Proceeding

If the N.C.C. Commission has conducted a fact inquiry and passed a resolution that the alleged culprit has become unusually wealthy, it will proceed as follows:

(i) in the case where the alleged culprit is a person holding a political position, the N.C.C. Commission will file the case to the Attorney General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions requesting the Court to order that the property devolve upon the State;

(ii) in the case where the alleged culprit is the President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, Election Commissioner, Ombudsman, judge of the Constitutional Court, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Deputy Attorney General or is the person holding a high ranking position, the N.C.C. Commission will file the case to the Attorney General for submission of a motion to the Court having competence to try and adjudicate the case, requesting the Court to order that the property devolve upon the State;

(iii) in the case where the alleged culprit is the Attorney General, the N.C.C. Commission will submit a motion to the Court having competence to try and adjudicate the case, requesting the Court to order that the property devolve upon the State;

(iv) in the case where the alleged culprit is a State official who is not a person in (i), (ii) and (iii), the N.C.C. Commission will file the case to the Attorney General for submission of a motion to the Court having competence to try and adjudicate the case, requesting the Court to order that the property devolve upon the State. Moreover, the N.C.C. Commission will notify the allegation to the superior or the person having the power to appoint or remove the alleged culprit for the purpose of issuing a punitive order of expulsion or dismissal on the deemed ground of corruption.

## 3. Time for Submission of a Motion

The Attorney General or the N.C.C. Commission must submit a motion requesting the Court to order that the property devolve upon the State within ninety days from the date the case is received from the N.C.C. Commission.

## 4. The Burden of Proof

In the case in which a request is made that the property be ordered to devolve upon the State, the burden of proof to the Court that the said property does not result from the unusual wealth is upon the alleged culprit.

## 5. Execution

If the Court gives an order that the alleged culprit's property in respect of which the N.C.C. Commission has passed a resolution confirming its representing the unusual wealth or the unusual increase devolve upon the State, but the execution is unable to be conducted in whole or in part of such property, the execution may be conducted of other property of the alleged culprit within the prescription of ten years,

but it shall not be conducted in excess of the value of the property ordered by the Court to devolve upon the State.

### **I. International Cooperation Regarding Freezing, Confiscation, and Repatriation of Proceeds of Corruption**

The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) of Thailand is the law providing assistance and seeking for assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters to/from a foreign state. The Attorney General or the person designated by him is the Central Authority of Thailand. One main function of the Central Authority is to consider and determine whether to provide assistance to a requesting state; and, whether to seek assistance from a foreign government.

Assistance to a foreign state shall be subject to the following conditions:

- (i) Assistance may be provided even if there exists no mutual assistance treaty between Thailand and the requesting state, providing that such state commits to assist Thailand under the similar manner when requested;
- (ii) The Act which is the cause of a request must be an offence punishable under Thai laws except when Thailand and the requesting state have a mutual assistance treaty otherwise specifying;
- (iii) A request may be refused if it affects national sovereignty or security, or other crucial public interests of Thailand, or relates to a political offence;
- (iv) Assistance shall not be related to a military offence.

The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state having no such treaty shall submit its request through a diplomatic channel.

The request for assistance from a foreign state to forfeit or seize property located in Thailand shall provide the description of the property and its location or the habitation of the person having it in possession, in detail sufficient to be acted upon.

In case of the request for forfeiting the property, it shall be also be accompanied by the original or the authenticated copy of the final judgment of the Court of the requesting state forfeiting such property.

In case of the request to seize the property, it shall be accompanied by the original or authenticated copy of the order of the Court of the requesting state to seize such property before the Court makes a judgment or a final judgment of its forfeiture.

Upon the receipt of the request, the Competent Authority (the Executive Director of the International Affairs Department, the Office of the Attorney General) shall apply to the Court having jurisdiction over the location of the property for the judgment of its forfeiture or the order of its seizure.

The Court may order the forfeiture of the property specified in a request if there is a final judgment of a foreign Court and it is forfeitable under Thai law.

Where the foreign Court has made a pre-judgment order seizing the property or made a forfeiture order against it but the order is not yet final, the Court, if it thinks fit, may make an order seizing it if it is seizable under Thai laws.

The Court shall have the power to order the forfeiture or seizure of property, even if the offence giving rise to forfeiture or seizure may not have taken place in Thailand.

The property forfeited by the judgment of the Court shall be devolved on the State, but the Court may give a judgment for rendering it useless or for its destruction.

In terms of asset recovery (UNCAC Chapter V), because Thailand has not ratified this Convention, there is no Thai legislation allowing the Thai Government to repatriate proceeds of corruption to the victim (requesting) country.

As mentioned above, under the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) of Thailand, the property forfeited by the judgment of the Thai Court according to the request for assistance from a foreign state shall be devolved on the requested state. However, if the treaty between Thailand and

other countries otherwise specifies, the property or proceeds of corruption forfeited shall remain to the requesting state.

## **J. Conclusion**

Asset proceeding is one of the measures and law enforcement methods to deal with corruption cases. There are also criminal prosecutions by the Office of the Attorney General and removal from office by the Senate. The N.C.C. Commission plays a leading role in fact inquiry and inspection of assets and liabilities. It has the power to issue and order of temporary seizure and attachment of the property.

However, the check and balance system will be scrutinized by the Attorney General and the Court before unusually wealthy assets devolve upon the State.

## **III. MONEY LAUNDERING**

Anti-Money Laundering Act B.E. 2542 (1999) of Thailand mainly focuses on two parts: offence and asset measures which closely rely on each other.

In terms of the offence, any person who will be said to commit an offence of money laundering is:

(i) transfer, accept a transfer of or convert the asset connected with the commission of an offence for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offence; or

(ii) act in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution, or transfer of the asset connected with the commission of a predicate offence or the acquisition of rights therein.

It could be noticed that the elements of the charge as mentioned above must link to a predicate offence. This means that there must be any person committing a predicate offence and the person who commits the offence of money laundering is doing one of the elements of the charge relating to predicate offence for the purpose specified by the law. These two persons (predicate offence and offence of money laundering) probably could be the same. In this case, he will be prosecuted for both the predicate offence and offence of money laundering.

In Thailand, there are eleven predicate offences of which nine offences are in the Anti-Money Laundering Law (Appendix A) and other two 13 predicate offences are in the Human Trafficking Law and the Election Law which is deemed to be predicate offences under the Anti-Money Laundering Law.

Therefore, there are eleven predicate offences in Thailand. The burden of proof in both eleven predicate offences and offence of money laundering is beyond reasonable doubt. If a public prosecutor cannot meet that requirement, the court will dismiss the case and the offender will be freed. However, Anti-Money Laundering Act B.E. 2542 (1999) separates offence from the asset measures. The case of predicate offences and the case of money laundering are in the jurisdiction of Criminal Court and the case of asset measures is in the jurisdiction of Civil Court. If the Criminal Court dismisses the case, it will not affect the case of asset measures in the Civil Court. This means that the Civil Court can give an order that the asset be devolved on the State if it is satisfied that the asset is connected with the commission of the offence.

## **A. Measures to Prevent Money-Laundering**

### **1. Report and Identification**

#### *(i) Financial Institutions*

When a transaction is made with a financial institution, the financial institution has the duty to report

that transaction to the Anti-Money Laundering Office when it appears that such transaction is:

- (i) a cash transaction exceeding two million Baht;
- (ii) a transaction connected with the asset worth more than five million Baht;
- (iii) a suspicious transaction, whether it is the transaction under (i) or (ii) or not

In the case where there subsequently appears a reasonable ground to believe that any transaction already made without being reported is a transaction required to be reported by a financial institution, that financial institution has to report it to the Anti-Money Laundering Office without delay.

*(ii) Land Offices*

Any land office has to report to the Anti-Money Laundering Office when it appears that an application is made for registration of a right and juristic act related to an immovable asset to which a financial institution is not a party and which is of any of the following descriptions:

- (i) requiring cash payment in a larger amount than two million Baht;
- (ii) involving a greater value of an immovable asset than five million Baht, being the assessment value on the basis of which fees for registration of the right and juristic act are levied, except in the case of a transfer by succession to a statutory heir; or
- (iii) being made in connection with a suspicious transaction.

*(iii) Professions*

Some professions stated below have the duty to report to the Anti-Money Laundering Office any transaction when it is carried out in cash of a value exceeding the amount prescribed in the Ministerial Regulation (No Ministerial Regulation issued so far) or is a suspicious transaction:

- Professions that undertake provision of advice or being an adviser in transactions relating to the investment or movement of funds, under the law governing securities and stock exchange;
  - Professions relating to trading of precious stones, diamonds, gems, gold, or ornaments decorated with precious stones, diamonds, gems, or gold;
  - Professions relating to trading or hire-purchase of cars;
  - Professions acting as a broker or an agent in buying or selling immovable property;
  - Professions relating to trading of antiques under the law governing selling by auction and trading of antiques;
  - Professions relating to personal loan under supervision for business that are not a financial institution under the Ministry of Finance Notification relating to Personal Loan Business under Supervision or under the law governing financial institution business;
  - Professions relating to electronic money card that are not a financial institution under the Ministry of Finance Notification relating to electronic money card or under the law governing financial institution business;
- Professions relating to credit card that are not a financial institution under the Ministry of Finance Notification relating to credit card or under the law governing financial institution business;
- Professions relating to electronic payment under the law governing the supervision of electronic payment service business.

## 2. Asset Proceedings

*(i) Provisional Seizure*

In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any asset connected with the commission of an offence may be transferred, distributed, moved, concealed or hidden, the Transaction Committee have the power to order a provisional seizure or attachment of such asset for the duration of not more than ninety days.

The person having made the transaction in respect of which the asset has been seized or attached

or the stakeholders in the asset can present evidence that the money or asset in such transaction is not the asset connected with the commission of the offence in order that the seizure or attachment order may be revoked.

*(ii) Case Proceeding*

In the case where there is convincing evidence that any asset is the asset connected with the commission of an offence, the Secretary-General of the Anti-Money Laundering Office will refer the case to public prosecutor for consideration and filing a petition to the Court for an order that such asset be devolved on the State without delay.

After filing a petition, if there is a reasonable ground to believe that the asset connected with the commission of the offence will be transferred, distributed or taken away, the Secretary-General will refer the case to the public prosecutor for filing a petition to the Court for provisional seizure or attachment of such asset prior to an order. The Court has to consider this petition as a matter of urgency. If there is a convincing evidence that the petition is justifiable, the Court will give an order as requested without delay.

Upon the receipt of the petition filed by the public prosecutor, the Court will order the notice thereof to be posted at that Court and the same will be published for at least two days in a newspaper widely distributed in the locality in order that the person who may claim ownership or interest in the asset may file an application before the Court has an order.

The Court will also order the submission of a copy of the notice to the Secretary-General for posting at the Anti-Money Laundering Office and at the police station where the asset is located. If there is evidence that whoever may claim ownership or interest in the asset, the Secretary-General will notify in writing to that person for the exercise of rights therein. The notice will be sent by registered post to such person's most recent recorded address as shown in the evidence.

*(iii) The Owner and the Beneficiary of Assets*

Before the Court gives an order, the person claiming ownership in the assets in respect of which the public prosecutor has filed a petition for it to be devolved on the State can file an application satisfying that:

- (i) the applicant is the real owner and the asset is not connected with the commission of the offence, or
- (ii) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity.

In addition, before the Court gives an order, the person claiming to be a beneficiary of the asset in respect of which the public prosecutor has filed a petition for it to be devolved on the State can file an application for the protection of his rights. For this purpose, that person has to satisfy that he is a beneficiary in good faith and for the value or has obtained benefit in good faith and approximately in the course of good morals or public charity.

However, if the person claiming to be the owner or transferee or beneficiary of the asset is the person who is, in the past, associated with an offender of a predicate offence or an offence of money laundering, it shall be presumed that such asset is the asset connected with the commission of the offence or transferred in bad faith, as the case may be.

*(iv) The Court Order*

When the Court has conducted an inquiry into the petition filed by the public prosecutor, if the Court is satisfied that the asset to which the petition relates is connected with the commission of the offence and that the application of the person claiming to be the owner or transferee is not tenable, the Court will give an order that the asset be devolved on the State.

If the asset is cash, the Anti-Money Laundering Office has to forward one half to the Anti-Money Laundering Fund and another half to the Ministry of Finance. If it is the other type of asset, rules of the

cabinet will be followed.

If the Court deems that the asset in the petition is not related to the commission of an offence, the Court will order return of the said asset. In this case, where there is no claimant to the restrained asset within two years from the date the Court made the return order, the asset will be transferred into the Fund.

## APPENDIX A

“State official” means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State’s administrative power in the performance of a particular act under the law, whether established under the government bureaucratic channel or by a State enterprise or other State undertaking.

“Person holding a political position” means Prime Minister, Minister, Member of the House of Representative, Senator, Political parliamentary official under the law on parliamentary officials, Governor of Bangkok Metropolitan, Deputy Governor of Bangkok Metropolitan and member of the Bangkok Metropolitan Assembly, Local administrator or member of a local assembly of a local government organization the income or budget of which is not lower than that prescribed in the Government Gazette by the National Counter Corruption Commission.

## APPENDIX B

- In Anti-Money Laundering Act B.E. 2542 (1999), “predicate offence” means any offence
- relating to narcotics under the law on narcotics control or the law on measures for the suppression of offenders in offences relating to narcotics;
  - relating to sexuality under the Penal Code in respect of procuring, seducing or taking away for an indecent act a woman and a child for sexual gratification of others, offences of taking away a child and a minor, offences under the law on measures for the prevention and suppression of women and children trading or offences under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offences relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;
  - relating to public fraud under the Penal Code or offences under the law on loans of a public fraud nature;
  - relating to misappropriation or fraud or exertion of an act of violence against assets or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for, or interested in, the operation of such financial institutions;
  - relating to malfeasance in office or malfeasance in judicial office under the Penal Code, offence under the law on offences of officials in State organizations or agencies or offence of malfeasance in office or corruption under other laws;
  - relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the Penal Code;
  - relating to smuggling under the customs law;
  - relating to terrorism under the Penal Code;
  - relating to gambling under the law on gambling, limited to offences relating to being an organizer of a gambling activity without permission and there are more than one hundred players or gamblers at one time, or the total amount of money involved exceeds ten million Baht.