

Anti-Money Laundering Act (No.2), B.E. 2551 (2008)

Translation

BHUMIBOL ADULYADEJ, REX

Given this on 19 February 2551 (2008)

Being the 63rd year of the present reign

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

Whereas it is expedient to amend the Anti-Money Laundering Act;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 41 and Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law.

Section 1

This act shall be called "Anti-Money Laundering Act (No.2), B.E. 2551 (2008)"

Section 2

This act shall come into force upon the day following its publication in the Government Gazette.

Section 3

The Following Clauses shall be added as (9) of the definition of "predicate offense" in Section 3 of the Anti-Money Laundering Act, B.E. 2542 (1999) which is amended by the Royal Ordinance in the amendment of the Anti-Money Laundering Act, B.E. 2542 B.E. 2546 (2003)

"(9) Offense relating to gambling under the law on gambling, limited to offense relating to being an organizer of a gambling activity without permission and there are more than one hundred player or gambler at one time, or the total amount of money involved exceeds ten million Baht."

Section 4

The clause in (1) of the definition of "asset involved in an offense" in Section 3 of the Anti-Money Laundering Act B.E. 2542 shall be replaced with;

"(1) Money or asset derived from a commission of a predicate offense or money laundering offense or from aiding or abetting in the commission of predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used for a commission or facilitation of the commission of predicate offense under (8) of the definition of "predicate offense".

Section 5

The clause in (5) of the definition of "financial institutions" in Section 3 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

"(5) Cooperatives under the law on cooperative, limited to a cooperative with operating capital exceeding two million Baht of total share value and having objective of its operation relating to acceptance of deposits, lending of loans, mortgage, or pawning or acquiring of money or asset by any means."

Section 6

The following definition of "Fund" shall be added between the definitions of "financial institution" and "Board" in Section 3 of the Anti-Money Laundering Act, B.E. 2542;

"Fund" means Anti-Money Laundering Fund"

Section 7

The clause in paragraph one of Section 10 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 10

Whoever, in a capacity as a public official, member of the House of Representatives, member of House of Senators, member of a local Administrative Council, Local Administrator, Government official, employee of local administration organization, public functionary, employee of organization or a public agency, member of a board, or executive official, or employee of a state enterprise, or member of a board, manager or any individual who is responsible for the management of financial institution, or member of any organization under the Constitution commits an offense under this chapter shall receive two times the punishment provided by law for such offense.”

Section 8

The following clause shall be added as paragraph two of Section 11 of the Anti-Money Laundering Act, B.E. 2542

“A political Official, member of the House of Representative, member of House of Senators, member of a local Administrative Council or Local Administrator who conspire with a person under paragraph one to commit an offense, whether as a principal, an agent provocateur or a secondary party shall receive equivalent punishment as persons in paragraph one.”

Section 9

Section 22 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 22

Unless otherwise directed by a competent official, financial institutions shall maintain information as follows;

- (1) Relating to customer identification under Section 20 for a period of 5 ears from the date that the account was closed or the termination of relationship with the customer.
- (2) Relating to financial transaction or a record of facts under Section 21 for a period of five years from the date the transaction or the recording of the facts occurred.”

Section 10

Paragraph one of Section 24 of the Anti-Money Laundering Act B.E. 2542 shall be replaced with;

“Section 24

There shall be an Anti-Money Laundering Board, consisting of Prime Minister as Chairman, Minister of Justice and Minister of Finance as Vice Chairmen, Permanent Secretary of the Ministry of Justice, Attorney General, Commissioner General f the Royal Thai Police, Secretary General of the Narcotic Control Board, Director of the Fiscal Policy Office, Director General of the Department of Land, Director General of the Royal Thai Customs, Director General of the Department of Revenue, Director General of the Department of Treaties and Legal Affairs, Governor of the Bank of Thailand, Secretary General of the Office of Insurance Commission, Secretary General of the Securities and Exchange Commission, President of the Thai Bankers' Association, and nine qualified experts appointed by the Cabinet from those who have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act with the consent of the House of Representatives and the Senate respectively as a member of the Board and the Secretary General of the Office as member and secretary of the Board.”

Section 11

Section 25 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 25

The Board shall have the duty to:

- (1) propose to the Cabinet measures to combat money laundering;
- (2) recommend to the Minister regarding Ministerial Regulations, Rules and Notifications to enforce this Act;
- (3) set rules pertaining to the returning of the asset in accordance with Section 49 and Section 51/1, the custody, maintenance, sale by public auction, optimum usage, and damage evaluation, and depreciation of the assets in accordance with Section 57 and set rules pertaining to the Fund in accordance with Section 59/1, Section 59/4, Section 59/5 and Section 59/6;
- (4) promote cooperation from the public in providing information to combat money laundering and set rules pertaining to the procedure on information or document to be used as evidence in execution of this Act;
- (5) monitor and evaluate the effectiveness of the enforcement of this Act;
- (6) perform other duties as provided in this Act or in other laws and set any other rules in execution of this Act”

Section 12

Section 32 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 32

There shall be a Transaction Committee consisting of five committee members which the Board appoint from persons whose name designated by the Judiciary of Thailand, the Court of Justice, the Auditor General of Thailand, National Human Rights Committee, and Attorney Committee. If any of the said committee could not designate a person from the respective committee to be a transaction committee member within forty five days from the date notified by the Anti-Money Laundering Office, the Board shall designate an appropriate person to be a transaction committee member instead.

A Chairman of the Committee shall be elected among the designated committee members and the Secretary General shall be a committee member and the secretary of the Committee.

The Committee members shall have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act and shall possess qualification and shall not have disqualifying attribute as follow;

- (1) Age not over 70 years old;
- (2) Be or was a Government official level 10 or equivalent or higher, or be or was official of a state enterprise or a government agency in the position of vice head of that state enterprise or that government agency or in an equivalent position or be or was a lecturer in the field and has or had the status of an assistant professor or higher;
- (3) Not a member of a political party or a committee member or an officer of a political party;
- (4) Not a member of the House of Representatives, House of Senates, member of a local Administrative Council, Local Administrator or a political official or member of a committee of a state enterprise;
- (5) Not a member of a committee of a public agency, unless approved by the Board;

- (6) Not a member, a manager, a counselor or be in the equivalent capacity or having relative beneficiary in a partnership, a company or a financial institution or having occupation or profession or undertake any activity in conflict with execution of this Act.

A member of Transaction Committee appointed by the Board under paragraph one shall serve a three year term. A member of Transaction Committee whose term is ended may be reappointed, but shall not serve more than two consecutive terms, and the provision of Section 27 and 28 shall apply mutatis mutandis, except in the case of the termination from office in accordance with Section 27 (3) the committee member appointed by the Board shall vacate the office upon the removal by the Board."

Section 13

Section 34, Section 35 and Section 36 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

"Section 34

The Transaction Committee shall have the powers and duties as follows:

- (1) to examine a transaction or property connected with the commission of an offence;
- (2) to give an order withholding the transaction under Section 35 or Section 36;
- (3) to carry out the acts under Section 48;
- (4) to submit to the Board and the National Counter Corruption Commission a report on the result of the execution of this Act;
- (5) supervise the independence and neutrality of the Office and the Secretary General;
- (6) to perform other acts as entrusted by the Board.

Section 35

In the case where there is probable cause that any transaction is involved or may be involved in the commission of a predicate offense or money laundering offense, the Transaction Committee shall have the power to issue a written order to restrain such transaction, within the time prescribed but not exceeding three business days.

In the case it is necessary or in an emergency, the Secretary General shall have the power to issue an order to restrain a transaction in accordance with the provision under first paragraph before reporting the issuance of order to the Transaction Committee.

Section 36

In the case where there is evidence to believe that any transaction is involved or may be involved in the commission of a predicate offense or money laundering offense, the Transaction Committee shall have the power to issue a written order to restrain that transaction temporarily within the time prescribed but not exceeding ten business days."

Section 14

The following clause shall be added as Section 36/1 of the Anti-Money Laundering Act, B.E. 2542

"Section 36/1

In the execution of Section 34, Section 35 or Section 36, the Transaction Committee or Secretary General shall make written record in the minutes of each Transaction Committee Meeting to indicate evidence and the requesting person of the order issued in the execution of the Act.

Section 15

Section 37 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 37

Upon receiving restraining order from Transaction Committee or Secretary General, as the case may be, under Section 35 or Section 36, the Transaction Committee shall report to the Board and the National Counter Corruption Commission.”

Section 16

The following clause shall be added as Section 38/1 of the Anti-Money Laundering Act, B.E. 2542

“Section 38/1

Under the Penal Code, in execution of this Act, Secretary General, Deputy Secretary General, and competent officials assigned in writing by Secretary General shall have power to arrest a person who committed a predicate offense or money laundering offense and record the person’s statement as preliminary evidence and transfer the person to a police investigator without delay but shall not exceed twenty-four hours.”

Section 17

The following clause shall be added as Section 39/1 and Section 39/2 of the Anti-Money Laundering Act, B.E. 2542

“Section 39/1

For the purpose of performing duties under this Act, the Transaction Committee and Secretary General shall prepare a summary report of the execution of this chapter to the National Counter Corruption Commission every four months.

The report under paragraph one shall at least state the information as follows;

- (1) Persons whose transactions or assets were examined or whose transactions were restrained or whose assets were seized or frozen.
- (2) Evidence that was use against the person under (1) (3) Requesting person, agent or a person who direct such act (4) Results of the act.

Details under this Section shall be treated as government secret.

Section 39/2

The National Counter Corruption Commission may appoint an expert to examine such report to establish the appropriateness of the action under this Act, and report to the National Counter Corruption Commission.

The provision under Section 38 shall be applied to the examination under paragraph one.

In the case that the examination under paragraph one found out that there is an act that against this Act and the National Counter Corruption Commission agreed with the examination finding, the report and the comment of the National Counter Corruption Commission shall be sent to the Transaction Committee for further action.”

Section 18

Section 40 and Section 41 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 40

There shall be an Anti-Money Laundering Office, called in short “AML Office”, as an office not under the Prime Minister Office, Ministry, or Sub-Ministry, which shall have the power to;

- (1) Act in accordance with the resolutions of the Board and the Transaction Committee, and to carry out other administrative functions;
- (2) Receive transaction reports delivered in accordance with the requirements in chapter two, and to issue an acknowledgement of such report, as well as receiving reports and other information related to financial transaction from other source;
- (3) Receive or send reports or other information related to financial transactions in execution under this Act or other laws;
- (4) Collect, trace, monitor, study, and to analyze reports, or any other information related to financial transactions;
- (5) Collect evidence in order to prosecute any violator under the provisions of this Act;
- (6) Launch an education program in order to disseminate information, educate and provide training pertaining to the undertaking of this Act, or assist or support both public and private sectors to launch such programs; and
- (7) Carry out other functions in accordance with the provisions of this Act or other laws.

Section 41

There shall be a Secretary General who has the duty and responsibility to report directly to the Minister of Justice, to oversee the performance of the Office in general independently and neutrally, and to supervise the public official of the Office. There shall be Deputy Secretary General to assist the oversight and supervision of the performance of the Office."

Section 19

Section 44 and Section 45 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

"Section 44

The Secretary General shall hold office for a term of four years as from the date of appointment by the King and shall serve for only one term. The Secretary General whose term ended shall not be re-appointed, but that Secretary General shall remain in the Office as a counselor.

The Secretary General shall be entitled to fringe benefits to ensure independence and neutrality at the rate that, when accumulated with salary and stipend, equivalent to salary and stipend of a Permanent Secretary, until the retirement.

Section 45

In addition to vacating office at the expiration of term under Section 44, the Secretary-General vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any prohibition under Section 43;
- (4) being removed by the Cabinet under the recommendation of Minister or the propose of Minister of Justice, under the recommendation of Transaction Committee because of the serious negligence in performing of his duty or lessen of capability or act of corruption evident to the public, non-independence or un-neutrality. The resolution shall state clearly of reasons to remove, and with the approval of the House of Representatives and the Senate respectively."

Section 20

The following clause shall be added as Section 45/1 and Section 39/2 of the Anti-Money Laundering Act, B.E. 2542

“Section 45/1

The former Secretary General shall not be appointed as an executive in any state enterprise or any public agency except a counselor.

The provision in paragraph one shall not be applied to a Secretary General who resigned from government service status.

Section 21

Paragraph one of Section 46 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 46

Where there are sufficient evidence that an account in a financial institution, telecommunication tool or equipment or a computer was used or may be used to benefit the money laundering offense, a competent official entrusted in writing by the Secretary-General shall file an *ex parte* application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

Section 22

Paragraph four of Section 49 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Where the Transaction Committee decides against filing a petition or where the Transaction Committee does not give any ruling within the prescribed time limit and the prosecutor’s opinion has been followed under paragraph three, the matter shall come to an end. There shall be no more motion against that individual in connection with the same asset unless new crucial evidence has arisen to convince the Court to order the forfeiture of that individual’s asset to the State. In such case, where there is no claimant to the restrained asset within two year from the date the Transaction Committee decided not to file a petition or fails to issue the decision within the prescribed time limit, the Office shall transfer the asset to the Fund and in the case where a claimant filed a petition under other law which has longer than two years of limitation, the Office shall return the asset to the claimant. If the asset is in the condition that can not be returned, instead, the money shall be paid from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund.

Rules and guidelines in custody and maintenance of asset or money that is yet to be claimed shall be in accordance with the rules prescribed by the Board”

Section 23

Section 51 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 51

If, after investigating the petition of the prosecutor in accordance with Section 49, the Court believes that the asset named in the petition is related to an offense and the petition of the claimant filed pursuant to Section 50, paragraph one, has no merit, the Court shall order the forfeiture of the asset to the State.

Asset under paragraph one, if it is money, the Office shall forward one half to the Fund and another half to Ministry of Finance. If it is other type of asset, rules of cabinet shall be followed.

According to this Section, if the claimant in Section 50, paragraph one is related to or used to be related to any person who committed the predicate offense or the

offense of money laundering, the presumption shall be that the money or asset is related to an offense or has been transferred dishonestly, whichever the case may be.”

Section 24

The following clause shall be added as Section 51/1 of the Anti-Money Laundering Act, B.E. 2542

“Section 51/1

If the court sees that asset in the petition is not related to commission of an offense, the court shall return the said asset. In such case, where there is no claimant to the restrained asset within two year from the date the Court made the return order, the asset shall fall into the Fund.

In the case where a claimant filed a petition under other law which has longer than two years of limitation, the Office shall return the asset to the claimant. If the asset is in the condition that can not be returned, instead, the money shall be paid from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund. Rules and guidelines in custody and maintenance of asset or money that is yet to be claimed shall be in accordance with the rules prescribed by the Board”

Section 25

Paragraph one of Section 57 of the Anti-Money Laundering Act, B.E. 2542 shall be replaced with;

“Section 57

The custody and maintenance of the asset seized or restrained by the order of the Transaction Committee or the Secretary General or the court, under this chapter, as the case may be, shall be in accordance with the Rules prescribed by the Board.”

Section 26

The following clauses shall be added as Chapter 6/1 the Anti-Money Laundering Fund and Section 59/1, Section 59/2, Section 59/3, Section 59/4, Section 59/5, Section 59/6, and Section 59/7 of the Anti-Money Laundering Act, B.E. 2542.

“Chapter 6/1

Anti-Money Laundering Fund

“Section 59/1

There shall be an Anti-Money Laundering Fund within the Office for the purpose of anti-money laundering as follows;

- (1) Facilitate the execution of investigation, prosecution, search, seizure or restrain, asset management, information sharing, witness protection, or other matters related to anti-money laundering, including assisting other related agencies and the public in the said actions;
- (2) Enhance cooperation with other related agencies or persons and the public in awareness raising and information sharing, meetings or trainings, domestic and international cooperation, and operation to support anti- money laundering policy.
- (3) Carry out other acts as necessary to achieve the objectives of this Act.

Under Section 59/6 the Board shall have power to set rules in using money in the Fund to achieve objectives in paragraph one.

Section 59/2

The Fund in Section 59/1 consists of assets as follows;

- (1) Asset forwarded to the Fund under Section 51
- (2) Asset that was not claimed under Section 49 and Section 51/1
- (3) Asset that was given
- (4) Asset received from Thai or foreign government agencies
- (5) Interest derived from asset under (1) (2) (3) and (4)

Section 59/3

The Fund under Section 59/2 belongs to the AMLO and not having to be transferred to the Kingdom as income.

Section 59/4

Receiving, spending, maintenance of the Fund and asset shall be in accordance with rules set by the Board and endorsed by the Ministry of Finance.

Section 59/5

The power in management and benefiting from the asset and other matters related to the Fund's operation shall be in accordance with rules set by the Board and endorsed by the Ministry of Finance.

Section 59/6

Expenditure or other remuneration necessarily paid to other agencies, competent officials, public officials or other officials that assist or aid the efficiency and effectiveness of the execution under this Act shall be spent from the Fund in accordance with rules set by the Board and endorsed by the Ministry of Finance.

Section 59/7

Within six months from the end of each fiscal year, the Secretary General shall present an account balance sheet and report on any spending from the Fund of the previous year, which were examined and endorsed by the Office of the Auditor General"

Section 27

The following clauses shall be added as Section 61/1 of the Anti-Money Laundering Act, B.E. 2542;

"Section 61/1

Prime Minister, a Minister or a political character who tells or orders the Transaction Committee, Secretary General, Deputy Secretary General or a competent official to examine transaction or asset or to restrain transaction, seize or restrain or act under this Act without reasonable evidence for the purpose of persecution or cause damage to any one or for political reason or doing so *mala fides* shall receive three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand baths or both.

Transaction Committee member, Secretary General, Deputy Secretary General or competent official who follow the order in paragraph one unlawfully under this Act shall receive three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand baths or both."

Section 28

The Secretary General under the Anti-Money Laundering Act, B.E. 2542 who is in position before this Act become effective shall remain the Secretary General under this Act and continue his functions until new Secretary General was appointed.

Countersigned by
General Surayuth Chulanondh
Prime Minister

Remarks: Some of the Anti-Money Laundering Act, B.E. 2542 (1999) (AMLA)'s provisions are not efficiently and appropriately enforced for eliminating or reducing criminal cycle and as the law targets crimes prescribed in eight predicate offenses, resulting in reducing or eliminating of crimes is not as the law's will. This is because criminals in other criminal offenses are still able to use money or asset derived from such crimes to facilitate the commission of these eight predicate offenses. Furthermore, some of procedures in enforcing the AMLA are not to be used at the desired speed. In order to break the criminal cycles effectively as the law's objectives, while the procedure in enforcement of the Anti-Money Laundering Act is smooth swift efficient and effective, it is necessary to prescribe other criminal offenses that obstruct peace and moral of the society, security and economic stability of the State as predicate offenses, this law must be issued.

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