

**Organic Act on Criminal Procedure for Holders of Political Offices, B.E. 2542
(1999)**

Translation

Bhumibol Adulyadej, Rex.;

Given under our Hand this 4th Day of September, B.E. 2542 (1999);

Being the 54th Year of our Reign

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

Whereas it is desirable to bring into existence an organic law on criminal procedure for holders of political offices;

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Organic Act shall be cited as the "Organic Act on Criminal Procedure for Holders of Political Offices, B.E. 2542 (1999)".

Section 2

This Organic Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

In this Organic Act, save where the contexts otherwise indicate:

"Court" means the Supreme Court of Justice's Criminal Division for Holders of Political Offices;

"NACC" means the National Anti-Corruption Commission;

"NACC President" means the President of the National Anti-Corruption Commission;

"NACC Member" means either the President of the National Anti-Corruption Commission or a National Anti-Corruption Commissioner.

Section 4

From and after the coming into force of this Organic Act, no other court may accept to try and adjudicate the cases falling within jurisdiction of the Supreme Court of Justice's Criminal Division for Holders of Political Offices.

Section 5

In conducting a trial, the Court shall adhere to the reports of the NACC and may hold the examinations for the purpose of obtaining additional facts and evidence as it finds expedient.

In discharging its duties, the Court shall be competent to demand the relevant documents or evidence from any person, direct any person to appear and give statement, and direct other courts, judicial police officers, government agencies, state agencies, state enterprises or local government agencies to carry out certain activities for the sake of the trial.

The Court shall be competent to appoint the persons or set up the groups of persons and charge them with certain duties.

For the purpose of the expeditious and fair trial, the persons, groups of persons or agencies under paragraphs 1 and 2 shall cooperate with the Court by fulfilling the requirements or directions given by the Court.

Section 6

The Court shall be competent to issue the criminal warrants and any writs pursuant to the Code of Criminal Procedure and the Code of Civil Procedure.

Section 7

The President of the Supreme Court of Justice shall be in charge of this Organic Act.

Chapter 1 General Provisions

Section 8

There shall be in the Supreme Court of Justice a Criminal Division for Holders of Political Offices.

For the purpose of conducting the judicial proceedings under this Organic Act, the President of the Supreme Court of Justice shall appoint an appropriate number of judges or senior judges of the Supreme Court of Justice as the regular judges of the Supreme Court of Justice's Criminal Division for Holders of Political Offices who are to carry out the necessary activities pending the formation of a chamber in charge of any specific case according to Section 13.

Section 9

The Court shall be competent to address the followings:

- (1) A case the cause of action of which involves an accusation that the Prime Minister, Minister, Member of the House of Representatives, Senator or other political officer possesses unusual wealth, commits an offence against public office under the Criminal Code or commits an offence against office or corruption in office under other laws;
- (2) A case the cause of action of which involves an accusation that the person under (1) or other person is a principal, abettor or aider in the commission of the offence mentioned in (1);
- (3) A case involving a petition forwarded by the President of the Senate, requesting the Court to address an accusation that a NACC Member possesses unusual wealth, commits an offence of corruption or commits an offence against public office;
- (4) A confiscatory action against the unusually increased property of the Prime Minister, Minister, Member of the House of Representatives, Senator, other political officer, local administrator or local councilors according to the laws.

Section 10

In cases the NACC resolves that it is well grounded to bring a case under Section 9 (1), (2) or (3), the NACC President shall submit the reports, documents and evidence as well as his opinion to the Attorney General within fourteen days, so that the Attorney General may further institute the case before the Court.

The Attorney General shall enter a charge within thirty days from his receipt of the submission under paragraph 1, save where, during such time limit, he finds that the matters submitted are imperfect and informs the NACC of such imperfection.

Section 11

Within fourteen days from its receipt of the information of imperfection under Section 10, the NACC shall partake with the Attorney General in setting up a working team consisting of the representatives of both agencies in the equal number. The Office of the NACC shall serve as a secretariat. The working team shall be invested with the authority to consider the imperfection, perfect the imperfect evidence and forward such evidence to the Attorney General for further institution of case.

If the working team is unable to reach a conclusion as to the institution of case within fourteen days from its setting up, the NACC may institute the case by itself or appoint a counsel to institute the case on its behalf; prescribed that the institution must be done within fourteen days from the passage of the time limit.

Section 12

Despite the passage of the time limit under Section 10 and Section 11, a case may still be instituted if limitation is not yet effective.

Section 13

Upon institution of a case before the Court, the President of the Supreme Court of Justice shall convoke the Grand Senate of the Supreme Court of Justice and hold an election of the judges in the Supreme Court of Justice ranking not lower than judges or senior judges of the Supreme Court of Justice to form a chamber in charge of such case. The election in this respect must be conducted within fourteen days from the entry of charge.

Any judge desiring not to be elected shall declare his desire to the Grand Senate prior to the polling and the Grand Senate shall decide as to whether his desire be granted. The decision of the Grand Senate shall be final.

The election of judges forming a chamber in charge of each case shall be conducted through secret ballot. The nine judges respectively obtaining the most scores shall form the chamber, but they may not include more than three senior judges of the Supreme Court of Justice. In case of equal scores in any order which cause a surplus in the said number, the President of the Supreme Court of Justice shall conduct sortition to decide which of the persons in question is to be elected.

The judges elected to form a chamber shall have the authority to try and adjudicate the case until they are ordained by this Organic Act to discontinue their functions. In the course of the trial and adjudicate of such case, the judges may not be ordered to carry out work outside the Supreme Court of Justice.

The fact that a judge in the Supreme Court of Justice having been elected to form a chamber has his status changed to a senior judge of the Supreme Court of Justice shall not affect his functions in the chamber and the provisions of paragraph 3 shall not apply.

Section 14

A judge forming a chamber shall discontinue his functions in the chamber when:

- (1) He ceases to be a judicial officer;
- (2) He receives a proclamation appointing him to an office in another court;
- (3) He receives himself following a challenge in favor of which the chamber rules according to Section 16.

Upon any event under paragraph 1, a new judge shall be elected in compliance with the procedure under Section 13.

Section 15

Where the full chamber cannot sit due to force majeure or other inevitable necessity and the chamber finds that the adjournment of an examination of evidence would bring about delay and injustice, the new judges shall be elected in conformity to the procedure under

Section 13 to replace the judges in question. In this respect, the judges replaced shall discontinue his functions in the chamber.

Section 16

In the event that any part wishes to challenge a judge elected to form the chamber on account of certain challengeable grounds, the party shall tender a motion to the Court prior to the examination of evidence. In this respect, the chamber shall examine the motion as it finds expedient and, by ruling, grant or deny the motion. Such ruling shall be final and the provisions of the Code of Civil Procedure concerning challenge of judges shall apply *mutatis mutandis*.

The motion shall be excluded if the examination of evidence has been commenced, save where the moving party could demonstrate to the court the grounds for his inability to tender the motion before that.

Section 17

The chamber shall elect one of the nine judges to serve as a rapporteur.

The rapporteur shall be competent to execute the resolutions of the chamber and, upon approval of two other judges, deliver any orders not giving rise to the adjudication of the case.

Section 18

The President of the Supreme Court of Justice, with the approval of the Grand Senate of the Supreme Court of Justice, shall be empowered to lay down the ordinances governing the conduct of proceedings and to be applied to the activities of the Court; prescribed that the ordinances may not be contrary to or inconsistent with this Organic Act. These ordinances shall enter into operation upon their publication in the Government Gazette.

In addition to the provisions of this Organic Act, the proceedings before the Court shall be subject to the ordinances under paragraph 1. Where nothing in the said ordinances is applicable, the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to the criminal proceedings, and the Code of Civil Procedure, the cases involving the accusations of unusual wealth or unusual increase of property.

Section 19

The Court shall continuously hold the proceedings and examinations of evidence on every working day until their conclusion, save where this is debarred by force majeure or other inevitable necessity.

Section 20

In order to prepare an adjudicative order or judgment, every judge in the chamber shall draw up his personal opinion in writing and orally state it amongst a meeting prior to the passage of resolutions. A resolution shall be reached by a majority of votes. In this respect, the chamber may authorize one of its judges to prepare the order or judgment in accordance with the resolutions.

An adjudicative order or judgment of the Court shall be disclosed by publication in the Government Gazette. The personal opinions of every judge in the chamber shall be published according to the procedure determined by the President of the Supreme Court of Justice.

Section 21

A personal opinion shall at least consist of:

- (1) The names of all parties;
- (2) The subject the accusations;
- (3) The accusations and the answers;
- (4) The facts obtained from the examinations;

- (5) The grounds for decision of both the questions of fact and the questions of law;
- (6) The legal provisions cited
- (7) The operative clauses, including the administration of the relevant property, if any.

Section 22

Where it is necessary to arrest or detain an accused or defendant, since there is sufficient evidence indicating that he is likely to have committed a criminal offence and there is a reasonable belief that he is likely to abscond, tamper with evidence or otherwise cause a danger, the NACC, investigation panel or Attorney General may apply to the Court for a warrant of arrest or detention.

Where a case is instituted, whether or not the defendant has previously been detained, the chamber shall consider the grounds for his detention and render any appropriate order or grant him a provisional release.

Chapter 2 Criminal Proceedings

Section 23

The followings shall be competent to institute the criminal cases under this Organic Act:

- (1) The Attorney General;
- (2) The NACC by virtue of Section 11.

Section 24

If a criminal case is instituted on account of one act violating several laws and one of them falls within jurisdiction of the Court, the Court shall also accept to deal with the others.

Section 25

No preliminary hearing is required for a criminal case instituted under this Organic Act.

On the day of entry of charge, the prosecutor shall submit the investigation file of the NACC to the Court to be produced as evidence and placed in the archives. The Court may hold the examinations for the purpose of obtaining additional facts and evidence as it finds expedient.

Section 26

The trials and the examinations of evidence shall be conducted in open court. But in case of need to protect significant public interest, the Court may order the proceedings be held in curia.

Section 27

Upon admission of a case, the Court shall serve a copied charge upon the defendant and require the parties to appear before the Court on the day of the first trial.

From and after his receipt of a copied charge, the defendant shall be entitled to inspect and copy the documents in the investigation file of the NACC.

On the day of the first trial, when the defendant appears before the Court and the Court believes that the person appearing before it is truly the defendant, the Court shall read and explain the charge to him and ask him whether he has actually committed the offences charged and how he would assert a defense. The statements he gives shall be recorded. If he remains silent, the circumstances shall be recorded. The Court shall then appoint a day for an inspection of evidence and inform the prosecutor and the defendant thereof for not less than fourteen days.

Section 28

The prosecutor and the defendant shall submit the lists of evidence their copies in sufficient number to the Court for a period of not less than seven days prior to the day of inspection of evidence.

A list of evidence may be submitted after the period of time under paragraph 1 if it is permitted by the chamber; prescribed that such permission may only be granted when the submitting party could demonstrate his unawareness of the evidence in question, when the submission is necessary for the sake of justice or when the defendant should enjoy an opportunity to defend his case.

Section 29

On the day of inspection of evidence, the prosecutor and the defendant shall deliver their documentary evidence and material evidence to the Court to be inspected by each other, save where the chamber otherwise directs on account of the nature and necessity of the evidence in question. Following that, the prosecutor and the defendant shall demonstrate their means of evidence production to the chamber.

In cases any evidence does not meet an objection, the chamber may admit such evidence without examination. But the chamber may examine any evidence upon an objection thereto or on the chamber's own impulse.

Section 30

Where an examination is needed, the chamber shall appoint a day therefor and inform the prosecutor and the defendant thereof for not less than seven days.

Section 31

In an examination, the chamber shall interrogate the witnesses by itself. In this respect, the chamber shall inform a witness of the issues and facts to be examined and direct him to give testimony concerning therewith by relating his own accounts or answering the questions of the Court. Following that, the chamber shall allow the prosecutor and the defendant to additionally examine the witness.

Section 32

Upon completion of the examination of evidence, the prosecutor and the defendant shall be entitled to submit their closing arguments within a time limit determined by the Court. The chamber shall then render a judgment and pronounce it in open court within seven days after the trial is over. The pronouncement may be adjourned on a reasonable basis. The adjournment may not be more than fourteen days and the grounds therefor must also be recorded, save where the defendant will not be brought before the Court on the day of pronouncement.

In cases the Court appoints a day for the pronouncement of a judgment or order according to paragraph 1 and the defendant is not present at or fails to attend the pronouncement, the Court shall adjourn the pronouncement and direct a warrant of arrest for the defendant so as to seize him and compel him to attend the pronouncement. If the defendant cannot be seized within one month from the issuance of the warrant of arrest, the Court shall pronounce the judgment or order in his absence and the defendant shall be deemed to have learnt of such judgment or order.

Chapter 3 Confiscatory Proceedings

Section 33

With respect to the trial and adjudication of a confiscatory action on account of unusual wealth or unusual increase of property, the provisions of Chapter 2, save Section 24, Section 27, paragraph 3, and Section 32, shall apply *mutatis mutandis*.

Section 34

Upon receipt of a petition for confiscation, the Court shall publish it at an open place according to the procedure set forth in an ordinance under Section 18.

A third party may contend against the petition; prescribed that the contention must be done before the Court renders a judgment.

Section 35

Any person asserts that the property against which a confiscatory action is entered is not part of unusual wealth or is not unusually increased, such person bears the burden to prove his assertion before Court.

If the person with whom the burden of proof lies according to paragraph 1 cannot prove that the property in question is not part of unusual wealth or is not unusually increased, the Court shall, by order, confiscate such property.

If the accused is unfit to fulfill the burden of proof before the Court due to insanity or the contender is an heir or inheritance administrator, the Court shall, taking into account such person's ability of to prove, pass a judgment as it deems fair.

Chapter 4

Proceedings against NCCC Members

Section 36

In the event that the President of the Senate forwards a petition for instituting a case against a NCCC Member pursuant to Section 300 of the Constitution of the Kingdom of Thailand, the judges shall be elected to form a chamber according to Section 13.

Section 37

The chamber shall appoint not less than five persons to form an investigation panel bearing the duty to investigate the facts and make an opinion with respect to the case instituted by the petition.

In discharging its functions, the investigation panel shall, mutatis mutandis, enjoy the same authority as the NACC under the organic law on anti-corruption.

Section 38

The members of the investigation panel shall at least be one judicial officer of class 6 or higher and one prosecution officer of class 6 or higher class. The remaining members shall be the Thai nationals who are appropriate for the case, have attained the forty fifth year of age on the date of appointment and must possess any of the following qualifications:

- (1) Being or having been a government officer of class 10 or of an equivalent or higher class;
- (2) Being or having been a university's law lecturer for not less than ten years;
- (3) Having knowledge and expertise in the field of finance, accountancy or other professional in connection with the matters in issue, and having carried out work in such field for not less than ten years.

Section 39

No member of the investigation panel may be attacked by the following disqualifications:

- (1) Failure of good behavior or good morals;;
- (2) Having been sentenced to imprisonment by a final judgment, save where the sentence is in consequence of a negligent offence or misdemeanor

- (3) Being an incompetent or quasi-incompetent person or sustaining a mental infirmity;
- (4) Being detained by virtue of a judicial warrant or lawful order;
- (5) Being disfranchised;
- (6) Being a bankrupt and not yet released from such status by a judicial order;
- (7) Having been dismissed, discharged or removed from an office in a government agency, state enterprise or state agency by cause of corruption in office or being considered to have committed corruption and misconduct in public sector;
- (8) Having been subjected to a confiscatory judgment or order of a court due to unusual wealth or unusual increase of property.

Section 40

A member of an investigation panel shall be entitled to allowances, travel expenses, residence expenses and other remunerations pursuant to a royal decree.

Section 41

An investigation panel shall, for investigation purpose, be empowered to order the accused NACC Member to disclose his own interests and the interests of his spouse and children non sui juris, subject to the requirements, procedure and time limit determined by the panel.

The time limit under paragraph 1 shall not be less than thirty days but not longer than sixty days.

Section 42

An investigation panel must complete the investigation and making of opinion within ninety days from its appointment. But the chamber may grant an extension to the extent necessary.

In cases the investigation panel resolves that a criminal accusation against a NACC Member is well grounded or that a NACC Member is reasonably suspected to have possessed unusual wealth, the panel shall submit all existing reports and documents to the Attorney General for further institution of proceedings in Court.

The Attorney General shall institute the proceedings according to an opinion of the investigation panel within thirty days from his receipt of the case under paragraph 1.

Despite the passage of the time limit under paragraph 3, the proceedings may still be instituted if limitation is not yet effective.

The provisions of Chapter 2 and Chapter 3 shall apply *mutatis mutandis* to the conduct of the proceedings under this Chapter.

Section 43

Finding that the accusation is ill grounded, the investigation panel shall submit all existing reports and documents to the chamber for further proceedings.

Finding that evidence collected by the investigation panel does not suffice to render an order in the case, the chamber may direct the panel to collect additional evidence within a reasonable time before giving any order.

Finding that the accusation is ill grounded, the chamber shall, by judgment, dismiss the petition. Otherwise, it shall forward the case to the Attorney General for further institution of proceedings in Court, and Section 42, paragraphs 3 to 5, shall apply *mutatis mutandis*.

Section 44

In its trial and adjudication, the chamber shall conduct the examinations for the purpose of obtaining additional facts and evidence as it thinks fit. For the sake of proving the truth in the case, the chamber shall not be bound by the reasons or evidence appearing from the

petition instituting the case, from the investigations or opinions of the investigation panel or from the proceedings instituted by the Attorney General.

Chapter 5

Civil Execution

Section 45

The execution of the judgments or orders in a case shall be governed by Section 18.

The judgments and orders under paragraph 1 shall be final.

Transitory Provisions

Section 46

The cases falling within jurisdiction of the Court and being pending before other courts on the date of coming into force of this Organic Act shall continue to be dealt with by those courts until their conclusion and shall not be deemed to be subject to jurisdiction of the Court.

Countersigned by
Mr.Chuan Likphai
Prime Minister

Remarks:

The grounds for promulgation of this Organic Act are as follows:

Pursuant to the Constitution of the Kingdom of Thailand, a Criminal Division for Holders of Political Offices is required to be established in the Supreme Court of Justice and to be given the competence to deal with the cases against the holders of political offices and other offices as set forth in the Constitution, when they are accused of gaining property unusually increased, possessing unusual wealth, committing an offence against public office under the Criminal Code or committing an offence against office or corruption in office under other laws, including the cases against the principals, abettors or aiders in the commission of the said offences. So as to implement the provisions of the Constitution of the Kingdom of Thailand, there must be set up a Criminal Division for Holders of Political Offices in the Supreme Court of Justice, as well as the criteria and procedure for the conduct of the said proceedings and the civil execution. It is therefore necessary to enact this Organic Act.

Note:

- Section 8 was amended by the Act Amending the Organic Act on Criminal Procedure for Holders of Political Offices, B.E. 2542 (1999), B.E. 2550 (2007).
- Section 13 was amended by the Act Amending the Organic Act on Criminal Procedure for Holders of Political Offices, B.E. 2542 (1999), B.E. 2550 (2007).

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