

# **An Overview of Asset Forfeiture System in Thailand**

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## **An Overview of Asset Forfeiture System in Thailand\***

### **1. General description**

There are mainly five pieces of legislation providing for confiscation of ML-FT-connected property in Thailand:

1. The Penal Code;
2. The Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics 1991;
3. The Anti-Money Laundering Act (AMLA) 1999;
4. The Organic Act on Counter Corruption 1999; and
5. The Act on Mutual Assistance in Criminal Matters 1992.

#### **1.1 Penal Code**

The Thai Penal Code provides for conviction-based forfeiture schemes. Forfeiture provisions in the Penal Code are applicable to any offense including money laundering offenses.

##### **1.1.1 Forfeitable property**

Sections 32 and 33 of the Penal Code authorize the court to forfeit property as follows:

- (1) Property of which possession is illegal;
- (2) Property used or intended for use in the commission of an offense; and
- (3) Property acquired by a person through the commission of an offense.

It must be noted that property is forfeitable as property acquired by the offense if it is directly acquired through an offense. Also note that forfeiture of property in 1 is to be made without regard to any person being criminally punished. Property in 2 and 3 may only be forfeited if a conviction is obtained. Lastly, forfeiture provisions in the Penal Code are applicable to any offense, not just predicate offenses or terrorist financing.

##### ***Section 32***

*Any property as provided by the law that any person makes or possesses to be an offense shall be forfeited wholly, whether it belongs to the offender and has the person inflicted with the punishment according to the judgment or not.*

##### ***Section 33***

*For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:*

- (1) a property used or possessed for use in the commission of an offense by a person; or*
- (2) a property acquired by a person through the commission of an offense, unless such property belongs to the other person who does not connive at the commission of the offense.*

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Section 34 of the Penal Code deals with the forfeiture of property related to corruption.

**Section 34**

*All properties:*

- (1) *which have been given under Section 143, Section 144, Section 149, Section 150, Section 167, Section 201 or Section 202;(all for corruption) or*
  - (2) *which have been given in order to induce a person to commit an offense, or as a reward to a person for committing an offense,*
- shall be forfeited wholly, unless those properties belong to the other person who does not connive at the commission of the offense.*

**1.1.2 Order of confiscation**

Section 33 of the Penal Code (Please see above) deals with the order of confiscation.

**1.1.3 Disposal of confiscated property**

Section 35 vests forfeited property in the State unless the Court orders the property to be destroyed.

**Section 35**

*The properties forfeited by the judgment of the Court shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed.*

Section 36 empowers the Court to deal with the submission by the real owner of the property that is considered to be forfeited and that was not involved in the commission of the offense that resulted in the forfeiture order.

**Section 36**

*In the case where the Court has already given order for the forfeiture of the properties according to Section 33 or Section 34, if it appears afterwards by the submission of the real owner that he has not connived at the commission of such offense, the Court shall give order for the return of the properties if such properties are still in the possession of the official. But the submission of the real owner shall be made to the Court within one year reckoning from the day of the final judgment.*

**1.1.4 Corresponding value**

Section 37 gives the Court power to enforce forfeiture orders either by seizure of property or by ordering the payment of an amount equivalent to the value of the property ordered to be forfeited. It also allows the Court to imprison a person who does not comply with a forfeiture order.

**Section 37**

*If the person who is ordered by the Court to deliver the forfeited property does not deliver it within the time determined by the Court, the Court shall have the power to give order as follows:*

- (1) *to seize such property;*
- (2) *to pay its value, or to seize other property of such person to compensate for its value in full; or*

- (3) *in the case where the Court is of opinion that such person can deliver the property ordered to be delivered, but does not deliver it, or such person can pay its value, but does not pay, the Court shall have the power to confine such person until such person complies with the order, but the period of confinement shall not exceed one year. But, if, afterwards, it appears to the Court itself or by the submission of such person that such person cannot deliver the property or pay its value, the Court may give order to release such person before the expiration of such period.*

## **1.2 Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics 1991**

The Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics 1991 provides for both conviction-based and non-conviction-based forfeiture schemes. A conviction-based system applies to forfeiture of property connected with the commission of an offense of which the definition is

*Money or property derived from the commission of a drug-related offense, and money or property derived from using such money or property to purchase or from taking action in any manner to convert such money or property, notwithstanding the number of conversion, in possession of others it is entrusted, or to ownership of others it is transferred, or under the name of others it is registered. [Office of Attorney General]*

A non-conviction-based system governs forfeiture of instruments, equipment, conveyances, or other property used in the commission of a drug-related offense or used as accessories for producing the consequence of the commission of such offense or possessed for use in the commission of such offense.

### **1.2.1 Forfeitable property**

Section 22 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics defines the property as follows:

#### ***Section 22***

*For the purpose of this Section, the expression “properties” shall include:*

- (1) the properties which have been transformed, claims, benefits and fruits thereof;*
- (2) the debts due to be paid by the third person to the alleged offender;*
- (3) the properties connected with the commission of an offence relating to narcotics which the alleged offender has acquired, sold, disposed of, transferred or removed within the period of 20 years before the issuance of the order of seizure or attachment and thereafter unless the transferee or beneficiary can prove to the Committee that such transfer or legal transaction has been made in good faith and for value.*

### **1.2.2 Order of confiscation**

Section 27 of the Act allows the Public Prosecutor to request the Court to order the confiscation of the properties relating to narcotics.

**Section 27**

*After the Public Prosecutor has issued a prosecution order and the properties seized or attached by the order of the Committee under Section 22 are the properties connected with the commission of an offense relating to narcotics, the Public Prosecutor shall file a motion with the Court to order the forfeiture thereof. The motion may be filed together with the charge or before the Court of First Instance passes the judgment.*

*After the Public Prosecutor has filed the motion with the Court, the Secretary-General shall make a publication in order that any person who may claim to be the owner of the properties may apply by motion to associate himself in the case before the case becomes final. If there is evidence showing that any person may claim to be the owner of the properties, the Secretary-General shall give a written notice to that person to exercise his right.*

*In the case where the Court of First Instance has already passed the judgment, if it appears that there are additional properties connected with the commission of an offense relating to narcotics, a motion requesting the Court to issue the forfeiture order against such properties shall be filed at any time before the case becomes final, and the provisions of paragraph two shall apply mutatis mutandis.*

Section 29 empowers the court to issue the confiscation order of properties and Section 30 deals with confiscation of all instruments, equipment, vehicles, machineries or any other properties used in the commission of an offense relating to narcotics, or used as accessories for producing the consequence of the commission of an offense or possessed for use in the commission of an offense.

**Section 29**

*The Court shall conduct a trial in respect of all the properties which the Public Prosecutor has filed the motion under Section 27 paragraph one. If there is a prima facie case that they are the properties connected with the commission of an offense relating to narcotics, the Court shall issue an order forfeiting the properties, unless the person who claims to be the owner of such properties submits an application for the restitution thereof before the case becomes final and proves to the Court that:*

- (1) he is the true owner and the properties are not connected with the commission of an offense relating to narcotics; or*
- (2) he is the transferee or the beneficiary, and has acquired the properties in good faith and for value or has reasonably acquired them on account of good moral or public charity.*

*For the purpose of this action, if there is evidence showing that the accused or the examinee is involved or used to involve in the commission of an offense relating to narcotics, it shall be presumed that all money or properties possessed or acquired by him beyond his status or his capability of engaging in his occupation or other activities in good faith are the properties connected with the commission of an offense relating to narcotics.*

**Section 30**

*All the instruments, equipment, conveyances, machinery or any other properties used in the commission of an offense relating to narcotics or used as accessories for producing the consequence of the commission of an offense or possessed for use in the commission of an offense shall be forfeited, irrespective of whether or not any person is convicted by the judgment.*

*The Public Prosecutor shall file a motion with the Court to issue an order forfeiting the properties under paragraph one. Upon the filing thereof, the competent official shall publish for at least two consecutive days in a daily newspaper which is widely distributed in such locality in order that the person who may claim to be the owner of the properties may apply by motion to associate himself in the case before the Court of First Instance passes the judgment or issues the order, irrespective of whether or not in such case any person who might be the owner will appear.*

*In the case where no person claims to be the owner of the properties before the Court of First Instance passes the judgment or issues the order, or where the owner appears but fails to prove that he has no means to know or no reasonable ground to suspect that the offense would be committed and such properties would be used in the commission of the offense or used as the accessories to produce the consequence of the offense or possessed for use in the commission of the offense, the Court may issue the order forfeiting such properties on the lapse of thirty days as from the first day of the publication in the daily newspaper under paragraph two, and in such case Section 36 of the Penal Code shall not apply.*

### **1.2.3 Disposal of confiscated property**

Sections 31 and 32 of the Act deal with disposal of forfeited property.

#### **Section 31**

*The properties forfeited by the order of the Court under Section 29 and Section 30 shall devolve on the Fund.*

#### **Section 32**

*In the case where there is a final nonprosecution order or where there is a final judgment dismissing the charge against any alleged offender or any accused, the seizure or attachment of his properties including the properties of other persons which have been seized or attached on account of their connection with the commission of the offence by the alleged offender or the accused shall terminate. With respect to the properties seized or attached on account of the commission of an offence by the alleged offender or the accused, the owner of which is not known, if no person makes an application for their restitution within one year as from the date of the final nonprosecution order or the final judgment dismissing the charge, the properties shall devolve on the Fund.*

*In the case where the criminal prosecution cannot be instituted within two years as from the date of the commission of an offence and the alleged offender or the accused cannot be arrested, the properties seized or attached on account of the commission of the offence by the alleged offender or the accused shall devolve on the Fund. If the criminal prosecution cannot continue owing to the death of any alleged offender or accused, the properties shall devolve on the Fund, unless, within two years as from the date of his death, his heirs can prove that the properties are not connected with the commission of an offence relating to narcotics or the alleged offender or the accused had acquired such properties in*



*good faith and for value or had reasonably acquired them on account of good moral or public charity, such properties shall be returned to his heirs.*

### **1.3 Anti-Money Laundering Act (AMLA) 1999**

The AMLA provides for the non-conviction-based forfeiture system for proceeds of predicate offenses.

#### **1.3.1 Forfeitable property**

The AMLA defines the forfeitable property in Section 3<sup>1</sup> as follows:

*“Asset connected with the commission of an offense” means:*

- (1)<sup>2</sup> money or asset obtained from the commission of an act constituting a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used for the commission or aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense under (8) of the definition of “predicate offense”;*
- (2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or*
- (3) fruits of the money or asset under (1) or (2).*

*Provided that it is immaterial whether the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.*

#### **1.3.2 Order of confiscation**

The process is not termed “forfeiture” but the proceeding for vesting property in the State. This proceeding is conducted in a Court of Civil Jurisdiction. Section 51 of the AMLA allows the Court to issue an order to forfeit the asset;

##### ***Section 51<sup>3</sup>***

*When the Court has conducted an inquiry into an application filed by the public prosecutor under Section 49, if the Court is satisfied that the asset to which the application relates is the asset connected with the commission of the offense and that the application of the person claiming to be the owner or transferee thereof under Section 50 paragraph one is not tenable, the Court shall give an order that the asset be vested in the State.*

.....

<sup>1</sup> Section 3 of the amended AMLA that came into force on 2<sup>nd</sup> March 2008 defines 9 predicate offences under the AMLA including terrorism and gambling and the human trafficking law was approved by the NLA and it was published in the Government Gazette on 6 February 2008, becoming effective 120 days after publication thereof on 5 June 2008.

<sup>2</sup> Section 3 definition of “asset connected with the commission of an offense” (1) amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>3</sup> Section 51 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

### **1.3.3 Disposal of confiscated property**

Property is capable of being vested in the State if it is connected with the commission of an offense of which the definition is

1. Money or property derived from the commission of an act constituting a predicate offense, or from aiding and abetting or rendering assistance in the commission of such offense;
2. Money or property derived from the distribution, disposal or transfer in any manner of the money or property in 1; or
3. Fruits of the money or property in 1 or 2. (*Section 51, see above.*)

Notwithstanding on how many occasions the property in 1, 2, or 3 has been distributed, disposed of, transferred, or converted, and in whose possession that property is, to whom it has been transferred, or in whose ownership it is registered.

In Section 51 of the amended AMLA, a new paragraph was added as the second paragraph prescribing arrangements of forfeited assets as follows:

- § If it is money, the Office is to forward one half to the Fund and the other half to the Ministry of Finance.
- § If it is any other type of asset, the rules of the Cabinet are to be followed.

A new Section – Section 51/1 – of the amended AMLA deals with matters relating to unclaimed seized assets, return of assets or payment of compensation in cash, and devolution of unclaimed assets on the Fund.

#### ***Section 51***

.....

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

*For the purpose of this Section, if the person claiming to be the owner or transferee of the asset under Section 50 paragraph one is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such asset is the asset connected with the commission of the offense or transferred in bad faith, as the case may be.*

#### ***Section 51/1<sup>4</sup>***

*If the Court sees that the asset in the petition is not related to the 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 years 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 another 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 cannot be returned, instead, the money shall be paid from the Fund. If there is no claimant within twenty years, the asset shall*

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<sup>4</sup> Section 51/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

*fall into the Fund. Rules and guidelines in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the rules prescribed by the Board.*

Sections 52 and 53 of the AMLA empower the court to conduct further proceeding relating to ordered forfeited property.

**Section 52**

*In the case where the Court has ordered that the asset be vested in the State under Section 51, if the Court conducts an inquiry into the application of the person claiming to be the beneficiary under Section 50 paragraph two and is of the opinion that it is tenable, the Court shall give an order protecting the rights of the beneficiary with or without any conditions.*

*For the purpose of this Section, if the person claiming to be the beneficiary under Section 50 paragraph two is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such benefit is the benefit the existence or acquisition of which is in bad faith.*

**Section 53**

*In the case where the Court has ordered that the asset be vested in the State under Section 51, if it subsequently appears from an application by the owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of Section 50, the Court shall order a return of such asset or determine conditions for the protection of the rights of the beneficiary. If the return of the asset or the protection of the right thereto is not possible, payment of its price or compensation therefor shall be made, as the case may be.*

*The application under paragraph one shall be filed within one year as from the Court's order that the asset be vested in the State becoming final and the applicant must prove that the application under Section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause.*

*Before the Court gives an order under paragraph one, the Court shall notify the Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and present an opposition to the application.*

Section 54 empowers the Court to order to forfeit additional property.

**Section 54**

*In the case where the Court has given an order that the asset connected with the commission of the offense be vested in the State under Section 51, if there appears an additional asset connected with the commission of the offense, the public prosecutor may file an application for a Court's order that such asset be vested in the State, and the provisions of this Chapter shall apply mutatis mutandis.*

#### **1.4. Organic Act on Counter Corruption 1999**

The Organic Act on Counter Corruption provides for both conviction-based and non-convention-based forfeiture systems for proceeds of predicate offenses.

### **1.4.1 Forfeitable property**

Section 4 of the Organic Act on Counter Corruption defines the assets related to corruption as follows:

*"unusual increase of assets" means the phenomenon where the assets and liabilities listed in the account showing assets and liabilities submitted by the person holding a political position upon vacation of office differ from the account showing assets and liabilities submitted at the time of taking office, in the manner that the assets unusually increase or liabilities unusually decrease;*

*"unusual wealthiness" means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty.*

### **1.4.2 Order of confiscation**

Section 78 allows the NCC Commission to issue an order of temporary seizure or attachment of the assets.

#### ***Section 78***

*In the case where the NCC Commission discovers that any property of the alleged culprit is connected with the unusual wealthiness and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NCC Commission shall have 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 of security.*

*When there occurs a temporary seizure or attachment of the property under paragraph one, the NCC Commission shall cause to be conducted 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 wealthiness, the NCC Commission shall have the power to continue its seizure or attachment until the NCC Commission passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.*

Section 81 empowers the Prosecutor-General or the President of the NCC Commission to submit a motion requesting the Court to order that the property devolve upon the State.

#### ***Section 81***

*The Prosecutor-General or the President, as the case may be, shall submit a motion requesting the Court to order that the property devolve upon the State under Section 80 within ninety days as from the date the matter is received from the NCC Commission.*

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

### **1.4.3 Disposal of confiscated property**

Section 83 allows the Court to provide an order to devolve the confiscated property on the State.

**Section 83**

*If the Court gives an order that the alleged culprit's property in respect of which the NCC Commission has passed a resolution confirming its representing the unusual wealthiness or the unusual increase devolve upon the State .....*

#### **1.4.4 Corresponding value**

Section 83 deals with corresponding value. It provides the NCC Commission with the power to confiscate the other property which is equivalent to the value of the property ordered to be forfeited.

**Section 83**

*..... but the execution is unable to be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the prescription of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the Court to devolve upon the State.*

### **1.5 Act on Mutual Assistance in Criminal Matters 1992**

In general, Thailand provides mutual legal assistance in criminal matters on the basis of the Act on Mutual Assistance in Criminal Matters (Mutual Legal Assistance Act) and bilateral or multilateral treaties on mutual assistance in criminal matters.

#### **1.5.1 Forfeitable property**

If a foreign State requests Thailand to forfeit property in Thailand, the property may be forfeited by the judgment of the Court if it has been forfeited by the final judgment of a foreign court and it is forfeitable under Thai laws (Section 33 of the Act).

**Section 33**

*The properties specified in the request for assistance from a foreign state may be forfeited by the judgment of the Court if such properties have been priorly adjudicated to be forfeited by the final judgment of a foreign court and they are forfeitable under Thai laws.*

*If the properties were adjudged to be seized by a foreign court before the Court passed its judgment or after the passing of the judgment to forfeit such properties but the judgment has not become final yet, the Court may deem it appropriate to order the properties to be seized provided that they are seizable under Thai laws.*

*The forfeiture or seizure of properties by the judgment or order of the Court under this Section shall be effective even the offense which is the cause of such forfeiture or seizure may not have taken place in the territory of Thailand.*

#### **1.5.2 Order of confiscation**

Section 23 of the Act empowers the Competent Authority to issue a search warrant, conduct search and seizure of the article, if there is a reasonable ground to do so under Thai laws.

**Section 23**

*Upon receipt of the request for assistance from a foreign state to search or seize and deliver any article, the Competent Authorities shall have the power to search or issue a warrant of search and seize in accordance with the law, if there shall be a reasonable ground to do so.*

Section 32 of the Act empowers the Competent Authority to apply to the Court having jurisdiction over the location of the property for the judgment of its forfeiture or the order of its seizure.

**Section 32**

*Upon receipt of the request for assistance from a foreign state to forfeit or seize properties located in Thailand, the Competent Authorities shall apply to the Court having jurisdiction over the location of the properties for passing the judgment forfeiting such properties or for the issuance of an order seizing them. Under paragraph one, the Competent Authorities shall, if it is necessary, conduct an inquiry himself or authorizes any inquiry official to conduct an inquiry on his behalf.*

### **1.5.3 Disposal of confiscated property**

According to Section 35 the forfeited property shall become the property of Thailand, or the Court may pass the judgment for it to be rendered useless or to be destroyed.

**Section 35**

*The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed.*

## **2. Legal provisions**

### **2.1 Forfeiture of property used for money laundering**

#### **2.1.1 Forfeitable property**

Laws in Thailand provide for the confiscation of property that has been laundered or which constitutes (a) proceeds from, (b) instrumentalities used in, and (c) instrumentalities intended for use in the commission of any money laundering, terrorist financing or other predicate offenses, and property of corresponding value (Penal Code Section 37 and Organic Act on Counter Corruption Section 83). It also equally applies (a) to property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime; and (b) subject to FATF Recommendation 3 criterion 3.5 to all the property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third party.

### 2.1.2 Dual forfeiture

Laws in Thailand cover dual forfeiture as Section 59 of the AMLA deals with civil forfeiture and Section 33 of the Penal Code deals with criminal forfeiture.

#### **Section 59**

*Lawsuit under this Chapter shall be brought to the Civil Court and the Civil Procedure Code shall apply mutatis mutandis.*

*For this purpose, the public prosecutor shall be exempted from all fees.*

#### **Section 33**

*For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:*

- (1) a property used or possessed for use in the commission of an offense by a person; or*
- (2) a property acquired by a person through the commission of an offense, unless such property belongs to the other person who does not connive at the commission of the offense.*

### 2.1.3 Protection of the owner of the property and bona fide third party

Section 36 of the Penal Code and Section 50 of the AMLA protect the owner of the property sought to be vested in the State where he proves that he is the real owner and such property is not connected with the commission of an offense or he 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.

#### **Section 36**

*In the case where the Court has already given order for the forfeiture of the properties according to Section 33 or Section 34, if it appears afterwards by the submission of the real owner that he has not connived at the commission of such offense, the Court shall give order for the return of the properties if such properties are still in the possession of the official. But the submission of the real owner shall be made to the Court within one year reckoning from the day of the final judgment.*

#### **Section 50**

*The person claiming ownership in the asset in respect of which the public prosecutor has filed an application for it to be vested in the State under Section 49 may, before the Court gives an order under Section 51, file an application satisfying that:*

- (1) the applicant is the real owner and the asset is not the asset connected with the commission of the offense, or*
- (2) 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.*

*The person claiming to be a beneficiary of the asset in respect of which the public prosecutor has filed an application for it to be vested in the State under Section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or*

*she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.*

Protection is also given to the beneficiary of such property where he establishes that he is its beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

It should be noted that Section 50 is concerned with the case where the owner or the beneficiary files an application with the Court before the Court gives an order vesting the property in the State.

Section 53 of the AMLA governs the protection accorded after the Court has already vested the property in the State. In this case, the owner or beneficiary has to file an application with the Court within one year as from the finality of the Court's order vesting the property in the State and also to prove why he has not filed such application before was due to lack of knowledge of the publication or written notice or other reasonable causes.

**Section 53**

*In the case where the Court has ordered that the asset be vested in the State under Section 51, if it subsequently appears from an application by the owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of Section 50, the Court shall order a return of such asset or determine conditions for the protection of the rights of the beneficiary. If the return of the asset or the protection of the right thereto is not possible, payment of its price or compensation therefor shall be made, as the case may be.*

*The application under paragraph one shall be filed within one year as from the Court's order that the asset be vested in the State becoming final and the applicant must prove that the application under Section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause.*

*Before the Court gives an order under paragraph one, the Court shall notify the Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and present an opposition to the application.*

Where he can establish the same conditions as in the case of Section 50, protection would be given to him. Where the return of the property or protection of the right of the beneficiary is not possible, payment of price or compensation thereof will be made instead.

In Sections 22 and 29 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics is provided protection for the rights of bona fide third parties. By means of Section 22, first paragraph, third parties are given the rights to establish the genuine ownership in the presence of the Asset Management Division. If they can prove that they are not involved in any offense relating to narcotics, or they have honestly received the property transferred in the proper manner, the Division shall not give an initial freezing order.



## **Section 22**

*In examining the properties, if the examinee or the person who claims to be the owner of the properties cannot adduce evidence to prove that the properties so examined are not connected with the commission of an offense relating to narcotics, or he has accepted the transfer of such properties in good faith and for value, or has reasonably acquired them on account of good morals and public charity, the Committee shall issue an order seizing or attaching such properties until the issuance of the final nonprosecution order which shall be no longer than one year as from the date of such seizure or attachment or until the passing of a final judgment dismissing the charge.*

*For the purpose of examining the properties, if there is a reasonable ground to believe that any properties may be transferred, removed, concealed, or there exist any other reasons and necessities, the Committee shall have the power to issue a provisional order seizing or attaching such properties until the decision under Section 16 (3) is made; provided that, the examinee or the person who claims to be the owner of the properties shall not be prevented from submitting an application for staying the execution of the order in order to take the property back for utilization with or without bail or with bail and security, and the provisions of Section 19 paragraph two shall apply mutatis mutandis.*

*After such provisional seizure or attachment, the Committee shall forthwith make an arrangement for the proof under paragraph one. In the case where the examinee or the person who claims to be the owner of the properties is able to prove under paragraph one, the properties shall be returned to such person. If such person is unable to prove, it shall be deemed that the seizure or attachment under paragraph two is the seizure or attachment under paragraph one.*

*The submission of an application for staying the execution of the order under paragraph two shall be in accordance with the rules, procedure and conditions as prescribed in the Ministerial Regulation.*

*For the purpose of this Section, the word "properties" shall include:*

- (1) properties which have been transformed, claims, benefits and the fruits of such properties;*
- (2) debts due to be paid by the third person to the alleged offender;*
- (3) the alleged offender's properties connected with the commission of an offense relating to narcotics which have been obtained, sold, disposed of, transferred or removed within the period of ten years before the issuance of the seizure or attachment order and thereafter, unless the transferee or beneficiary can prove to the satisfaction of the Committee that such transfer or such act has been made in good faith and for value.*

And as regards Section 29 (Please see page 7 above.), it provides that the Court shall not give an initial freezing order if a person who may purport to be a property owner files a motion of restitution of property before a prosecution comes to an end, or shows in a proper manner in any respect as follows:

- (1) he is a genuine owner and the property is not connected with an offense relating to narcotics; or
- (2) he is a transferee or beneficiary who has honestly received the property in the proper manner.

Section 82 of the Organic Act on Counter Corruption deals with protection of the owner of the property.

**Section 82**

*A transfer or any act in connection with the property of the State official which is done after the NCC Commission has ordered such State official to declare particulars of assets and liabilities under Section 79 may, if the NCC Commission or the Prosecutor-General, as the case may be, files an application by way of motion, be cancelled or suspended by an order of the Court, unless the transferee or the beneficiary satisfies the Court that the property or benefit has been transferred to or acquired in good faith and in return for remuneration.*

2.1.4 Custody of the property

Thailand's laws and other measures provide for the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. Section 24 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics provides authority to the Asset Management Division or the Secretary-General of the Office of Narcotics Control Board for maintenance of assets in custody, and accounting system.

**Section 24**

*The keeping in custody of the properties seized or attached by the order of the Committee shall be in accordance with the Rules prescribed by the Committee.*

*In the case where the properties under paragraph one are unsuitable for keeping in custody, or if the keeping in custody of such properties will be more burdensome to the official service than the utilization thereof for other purposes, the Secretary-General may issue an order for a sale by auction or for the utilization of such properties for official purposes, and then report to the Committee.*

*A sale by auction or the utilization of the properties under paragraph two shall be in accordance with the Rules prescribed by the Committee with the approval of the Ministry of Finance.*

*If it appears thereafter that the properties utilized for official purposes under paragraph two are not the properties connected with the commission of an offense relating to narcotics, such properties shall be returned to their owners or possessors together with the compensation and the depreciation value which shall be paid from the Fund in an amount determined by the Committee. If the restitution of the properties is impossible, the price of the properties as assessed on the date of seizure or attachment or as received at the auction, as the case may be, shall be reimbursed.*

*The assessment of the compensation and the depreciation value under paragraph four shall be in accordance with the Rules prescribed by the Committee.*

The Penal Code (Section 35) and the Organic Act on Counter Corruption (Section 83) (Please see above.) deal with the custody of the forfeited properties. Section 57 of the AMLA also deals with the custody of the forfeited properties.

**Section 57<sup>5</sup>**

*The retention and management of the asset seized or attached by an 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.*

*In the case where the asset under paragraph one is not suitable for retention or will, if retained, be more burdensome to the Government service than its usability for other purposes, the Secretary-General may order that the interested person take such asset for his or her retention and utilization with a bail or security or that the asset be sold by auction or put into official use and a report thereon be made to the Board accordingly.*

*The permission of an interested person to take the asset for retention and utilization, the sale of the asset by auction or the putting of the asset into official use under paragraph two shall be in accordance with the rules prescribed by the Board.*

*If it subsequently appears that the asset sold by auction or put into official use under paragraph two is not the asset connected with the commission of the offense, such asset as well as such amount of compensation and depreciation as prescribed by the Board shall be returned to its owner or possessor. If a return of the asset becomes impossible, compensation therefor shall be made by reference to the price valued on the date of its seizure or attachment or the price obtained from a sale of that asset by auction, as the case may be. For this purpose, the owner or possessor shall be entitled to the interest, at the Government Savings Bank's highest rate for a fixed deposit, of the amount returned or the amount of compensation, as the case may be.*

*The evaluation of compensation or depreciation under paragraph four shall be in accordance with the rules prescribed by the Board.*

Section 57, paragraph one, was slightly amended, adding the court in addition to the Transaction Committee or the Secretary-General that ordered seizure or attachment of the asset.

**2.1.5 Examination**

The law enforcement agencies or other competent authorities have been given adequate powers to identify and trace property that is or may become subject to confiscation or suspected of being the proceeds of crime. Section 34 of the AMLA gives the Transaction Committee the powers and duties in relation to identifying and tracing as follows:

- (1) to examine a transaction or property connected with the commission of an offense
- (2) to give an order withholding the transaction under Section 35 or 36

**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 offense;*
- (2) *to give an order withholding the transaction under section 35 or section 36;*

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<sup>5</sup> Section 57 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

- (3) to carry out the acts under section 48;
- (4) to submit to the Board a report on the result of the execution of this Act;
- (5) to perform other acts as entrusted by the Board.

Section 40 establishes the AMLO to principally perform duties in relation to the examination of transaction reports.

**Section 40<sup>6</sup>**

*There shall be an Anti-Money Laundering Office, called in short “AMLO”, as an office not under the Prime Minister Office, Ministry, or Sub-Ministry, to function independently and neutrally, which shall have the powers and duties as follows:*

- (1) to carry out acts in the implementation of resolutions of the Board and the Transaction Committee and perform other administrative tasks;
- (2) to receive transaction reports submitted under Chapter II and acknowledge receipt thereof as well as receive reports and information related to transactions from other sources;
- (3) to receive or send reports or information related to transactions in order to comply with this Act or other laws;
- (4) to collect, compile, trace, examine, study, evaluate and analyze reports and information in connection with the making of transactions;
- (5) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;
- (6) to conduct projects with regard to the dissemination of knowledge, the giving of education and the training in the fields involving the execution of this Act, or to provide assistance or support to both Government and private sectors in organizing such projects; and
- (7) to perform other activities under this Act or under other laws.

Sections 19, 20 and 21 of the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics allow the Committee or the Secretary-General to order the examination of the assets of the offender who committed an offense relating to narcotics.

**Section 19**

*In the case where there exists a reasonable ground to suspect that the properties of any alleged offender are the properties connected with the commission of an offense relating to narcotics, the Committee shall order the examination of the properties of such person.*

*In case of urgent necessity, the Secretary-General may issue a provisional order for the examination of the properties of the alleged offender, and then report to the Committee.*

**Section 20**

*In conducting the examination of the properties of the alleged offender, if there is evidence to believe that the properties of other persons are the alleged offender’s properties connected with the commission of an offence relating to narcotics, and such persons have gratuitously obtained them or have obtained them knowingly that they are the properties connected with the commission of an offence relating to narcotics, the Committee shall also have the power to order the examination of the properties of such persons, and the provisions of Section 19 paragraph two shall apply mutatis mutandis.*

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<sup>6</sup> Section 40 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

**Section 21**

*The Committee or the Secretary-General may entrust the competent official to conduct the examination of the properties on its or his behalf, and then report thereto. For this purpose, the publication shall be made in order that a person who may claim to be the owner of the properties may submit an application together with the documents and evidence to the Committee for the restitution thereof.*

*The examination of the properties and the publication under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed in the Ministerial Regulations.*

Section 69 of the Organic Act on Counter Corruption gives the NCC Commission the power to conduct a fact inquiry in accordance with the provisions (from Section 43 to Section 57) of the Act when the request is correctly and duly received.

**2.1.6 Stages of seizure**

The Committee or the Secretary-General is authorized to seize or attach an asset for the purpose of preventing the transfer, hiding, or change of the form of an asset involved in the commission of an offense, according to the provision of Section 22 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics, second paragraph (Please see above).

Under the AMLA, provisional seizing or attaching order may be made in two stages:

*The investigation stage:* Section 48 authorizes the Transaction Committee or the Secretary-General of the AMLO to make a provisional seizure or attachment order against the property connected with the commission of an offense for not more than ninety days where there is a reasonable ground to believe that such property may be transferred, distributed, moved, or concealed, or hidden.

**Section 48**

*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 offense may be transferred, distributed, moved, concealed or hidden, the Transaction Committee has the power to order a provisional seizure or attachment of such asset for the duration of not more than ninety days.*

*In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the asset under paragraph one for the time being and then report it to the Transaction Committee.*

*The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.*

*The person having made the transaction in respect of which the asset has been seized or attached or the person interested in the asset may produce evidence that the money or asset in such transaction is not the asset connected with the commission of the offense in order that the seizure or attachment order may be*

*revoked, in accordance with the rules and procedure prescribed in the Ministerial Regulation.*

*When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the asset or ordered revocation thereof, the Transaction Committee shall report it to the Board.*

*The Court stage:* Section 55 authorizes the Secretary-General of the AMLO to refer the case to the Public Prosecutor, after an application for vesting property in the State has been filed with the Court, for filing ex parte application with the Court for a provisional seizing or attaching order of such property where there is a reasonable ground to believe that it may be transferred, distributed or taken away.

**Section 55**

*After the public prosecutor has filed an application under Section 49, if there is a reasonable ground to believe that the asset connected with the commission of the offense may be transferred, distributed or taken away, the Secretary-General may refer the case to the public prosecutor for filing an ex parte application with the Court for its provisional order seizing or attaching such asset prior to an order under Section 51. Upon receipt of such application, the Court shall consider it as a matter of urgency. If there is convincing evidence that the application is justifiable, the Court shall give an order as requested without delay.*

**2.1.7 Freezing or seizure of property without prior notice or ex-parte**

Section 22 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics and Section 48 of the AMLA (Please see above.) provide for freezing or seizure of property subject to confiscation to be made ex-parte or without prior notice.

**2.1.8 Restraining the conduct of an ML-connected transaction**

Sections 35 and 36 of the AMLA are concerned with cases where the Transaction Committee is authorized to make an order withholding the conduct of a transaction reasonably believed to be connected with the commission of money laundering. In case of urgency the Secretary-General of the AMLO can give an order to withhold the conduct of the transaction.

**Section 35<sup>7</sup>**

*In the case where there is a reasonable ground and sufficient evidence to believe that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offense, the Transaction Committee shall have the power to give a written order withholding such transaction for a fixed period of time which shall not be longer than three working days.*

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<sup>7</sup> Section 35 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

*In case of compelling necessity or urgency, the Secretary-General may give an order withholding the transaction under paragraph one for the time being and report it to the Transaction Committee.*

**Section 36<sup>8</sup>**

*In the case where there is convincing evidence that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offence, the Transaction Committee shall have the power to give a written order withholding such transaction for the time being for a fixed period of time which shall not be longer than ten working days.*

**Section 36/1<sup>9</sup>**

*In the execution of Section 34, Section 35 or Section 36, the Transaction Committee or the 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.*

### 2.1.9 Inquiry

Section 38 gives the powers to the Transaction Committee or the Secretary-General of the AMLO:

- (1) to address a written inquiry towards or summon a financial institution, a Government agency, a State organization, or agency or State enterprise to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;
- (2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration; and
- (3) to enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offense or evidence connected with the commission of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed, or converted from its original state.

**Section 38**

*For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:*

- (1) *to address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;*

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<sup>8</sup> Section 36 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>9</sup> Section 36/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

- (2) *to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;*
- (3) *to enter any dwelling place, place or vehicle reasonably suspected to have the asset connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the asset or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such asset or evidence to be moved, hidden, destroyed or converted from its original state.*

*In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorization and the identification.*

*The identification under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.*

*All information obtained from the statements, written explanations or any account, document or evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.*

Moreover, Section 38/1 of the AMLA gives the power to the Secretary-General, Deputy Secretary-General or competent officials assigned in writing by the Secretary-General to arrest a person who committed a predicate offense or money laundering offense.

***Section 38/1<sup>10</sup>***

*Under the Penal Code, in the execution of this Act, the Secretary-General, Deputy Secretary-General, and competent officials assigned in writing by the Secretary-General shall have the 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 40 (Please see above.) establishes the Anti-Money Laundering Office with the powers and duties in relation to identifying and tracing as follows:

- (1) to receive transaction reports;
- (2) to gather, monitor, examine, study, and analyse reports, and information in connection with the making of transactions;
- (3) to send information related to transactions in order to comply with this Act or other laws;
- (4) to gather evidence for the purpose of taking legal proceedings against offenders under the AMLA.

Lastly, the Secretary-General of the AMLO can file an ex parte application with the Court for permission to have access to the account, communicated data, or computer data, or for acquisition thereof when there is a reasonable ground to believe that any account of

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<sup>10</sup> Section 38/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)



a financial institution customer, communication device or equipment or computer is used or possibly used in the commission of money laundering.

Pursuant to Section 25 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics, only the committee, subcommittee and Secretary-General are authorized under Section 25 (2) to make an inquiry or call any relevant person for giving statements, written explanations, documentary, or any other evidence for investigation or consideration. Thus the authorities mentioned above have the power to investigate all financial institutions including banks and stock markets.

**Section 25**

*For the purpose of the consideration, examination, seizure or attachment of properties under this Act, the Members, the members of the sub-committee and the Secretary-General shall have the following powers:*

- (1) to issue a letter of inquiry requesting or issue an order requiring an official of a Government agency, State organization, State agency or State enterprise to give his statements or give explanations in writing, or to submit any account, document or evidence for examination or supplementing the consideration;*
- (2) to issue a letter of inquiry requesting or issue an order requiring any person concerned to give his statements or give explanations in writing, or to submit any account, document or evidence for examination or supplementing the consideration which also includes the examination by the banks, the Securities Exchange and the financial institutions;*
- (3) to enter, during day time and between sunrise and sunset, any dwelling place, premises or conveyance where there is a reasonable ground to suspect that an offence relating to narcotics is committed or the properties under Section 22 are hidden therein, for the purposes of searching or examining, seizing or attaching the properties. In the case where there is a reasonable ground to believe that if a prompt action is not taken, the properties are likely to be removed, the entry may be made during nighttime.*

*In the case under (3), the Chairman of the Committee or the Secretary-General may entrust the competent official to act on his behalf, and then report to him.*

*In the performance of duty, the competent official entrusted under paragraph two shall produce the instrument of authorization to the person concerned each time.*

As mentioned earlier, the Transaction Committee, the Secretary-General of the AMLO or the Court can make a provisional seizing or attaching order against the property connected with the commission of an offense. The property subject to seizure or attachment cannot be moved or transferred.

**2.1.10 Non-conviction-based forfeiture system**

Section 59 of the AMLA, moreover, prescribes the mutatis mutandis application of the Civil Procedure Code to a proceeding for vesting property in the State.

**Section 59**

*Lawsuit under this Chapter shall be brought to the Civil Court and the Civil Procedure Code shall apply mutatis mutandis.*

*For this purpose, the public prosecutor shall be exempted from all fees.*

Thus, where the Court has made a provisional seizing or attaching order, Section 305 or 314, as the case may be, of the Civil Procedure Code will apply.

Section 305 reads:

*Seizure of the property of a judgment debtor as provided by the two foregoing Sections has the following effects:*

- (1) no creation, transfer or alteration of rights in the seized property made by the judgment debtor after the seizure can be set up against the judgment creditor or the executing officer, even if the value of such property exceeds the amount of the judgment debt and costs of action and execution, and the judgment debtor has disposed of only such part of the property as is in excess of such amount;*
- (2) where the judgment debtor is entrusted with the custody of the seized corporeal movable property or is in possession of the seized immovable property, he is entitled to the reasonable use of such property, provided that the executing officer is of opinion, either of his own accord or upon the application by the judgment creditor or any person interested in the execution against such property, that the judgment debtor will cause damage or is likely to cause damage to the property which is entrusted to his custody or which is in his possession, the executing officer may take charge of such property himself or appoint an administrator thereof.*

Section 314 reads:

*An attachment of a claim as provided by the two foregoing Sections shall have the following effects:*

- (1) no creation, transfer or alteration of the attached claim made by the judgment debtor after the attachment can be set up against a judgment creditor or the executing officer, even if the value of the claim exceeds the amount of the judgment debt and costs of action and execution and the judgment debtor has disposed of the claim only as to the part in excess of such amount;*
- (2) where the value of an attached claim is impaired by the fault of a judgment creditor, such judgment creditor shall be liable to compensate the judgment debtor for any damage so caused to the latter;*
- (3) a performance by a third person, as prescribed by the order of attachment, shall be deemed to be performance according to law.*

The AMLA does not provide laws for the confiscation of the property of organizations that are found to be primarily criminal in nature but confiscation is possible under the Penal Code.

#### 2.1.11 Assets disposal

Section 35 of the Penal Code, Sections 51 and 59 of the AMLA, Section 81 of the Organic Act on Counter Corruption, Section 32 of the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, and Section 35 of the Act on Mutual Assistance in Criminal Matters deal with assets disposal.

Under the AMLA, property is capable of being vested in the State if it is connected with the commission of a predicate offense. Property so connected is defined as money or property derived from the commission of such offense. Thus, property of an organization found to be primarily criminal in nature, if it is not derived from a predicate offense, cannot be vested in the State. The proceeding for vesting property in the State is civil (Section 59).

**Section 59/1<sup>11</sup>**

*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 restraint, 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 training courses, 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 the power to set the rules in using money in the Fund to achieve the objectives in paragraph one.*

**Section 59/2<sup>12</sup>**

*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<sup>13</sup>**

*The Fund under Section 59/2 belongs to the Office without having to be transferred to the Kingdom as income.*

**Section 59/4<sup>14</sup>**

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

**Section 59/5<sup>15</sup>**

*The power of managing the benefit from the assets and other matters related to the Fund's operation shall be in accordance with the rules set by the Board and endorsed by the Ministry of Finance.*

**Section 59/6<sup>16</sup>**

*Expenditure or other remuneration necessarily paid to other agencies, competent officials, public officials or other officials that assist or aid in the efficiency and effectiveness of the execution under this Act shall be spent from*

<sup>11</sup> Section 59/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>12</sup> Section 59/2 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>13</sup> Section 59/3 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>14</sup> Section 59/4 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>15</sup> Section 59/5 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

<sup>16</sup> Section 59/6 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

*the Fund in accordance with the rules set by the Board and endorsed by the Ministry of Finance.*

**Section 59/7<sup>17</sup>**

*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.*

Under the Penal Code, property used or intended for use in the commission of an offense is forfeitable. This is commonly known as “instrumentality confiscation”. As long as it was used or intended for use to commit an offense, it is forfeitable irrespective of whether its origin is lawful or illegal. Property of an organization whose principal function is to perform or assist in the performance of illegal activities is arguably property intended for use to commit an offense and thus, it is capable of being forfeited under the Penal Code. However, unlike the vesting of property in the State under the AMLA which is non-conviction-based or civil, this type of forfeiture is conviction-based.

Under Sections 51 and 52 of the AMLA (Please see above.), if the person claiming to be an owner or a transferee or a beneficiary of property sought to be vested in the State is or was associated with the perpetrator of a predicate offense or an offense of money laundering, it is presumed that such property is connected with the commission of an offense or transferred in bad faith or is acquired in bad faith. Thus, if this is the case, such person would have to prove that the property is not connected with the commission of an offense.

#### 2.1.12 Statistics

Section 25 (5) and Section 47 of the AMLA provide laws for maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for AML-CFT

**Section 25**

*The Board shall have powers and duties as follows:*

.....

(5) *to monitor and evaluate the execution of this Act;*

.....

**Section 47**

*The Office shall prepare an annual report on the result of its work performance for submission to the Council of Ministers. The annual report on the result of work performance shall at least contain the following material particulars:*

(1) *a report on the result of the performance with regard to property and other performance under this Act;*

.....

The Office of the Attorney General keeps an annual statistics on cases of asset forfeiture.

## 2.2 **Forfeiture of funds used for financing of terrorism**

As the financing of terrorism (FOT) is criminalized in the Penal Code, the term “predicate offenses” under the AMLA is expanded to include offenses of terrorism under

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<sup>17</sup> Section 59/7 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

the Penal Code. Therefore, property connected with the commission of terrorism under the Penal Code will be capable of being vested in the State under the AMLA. Section 3 of the amended AMLA that came into force on 2<sup>nd</sup> March 2008 defines 9 predicate offences under the AMLA including terrorism and gambling.

The freezing procedures explained previously apply equally with respect to terrorist funds. Thus, property connected with the commission of offenses of terrorism under the Penal Code is capable of being seized or attached. It must be emphasized that property capable of being frozen under the AMLA must have a criminal origin which means, in this context, that it must be derived from offenses of terrorism under the Penal Code. As a result, the freezing procedure under the law cannot be used against lawful funds of terrorists or terrorist organizations. It should be noted in this regard that the AMLA provides for the presumption of property being of a criminal origin (Please see Sections 51 and 52.). Specifically, the presumption comes into operation if the person claiming to be the owner, the transferee, or the beneficiary of property is or was associated with an offender of a predicate offense or an offense of money laundering. Thus, those individuals or entities designated by the UN's Al-Qaeda and Taliban Sanctions Committee would surely be considered as persons associated with terrorists or terrorist organizations. It follows that the property of those individuals would be presumed to have come from offenses of terrorism and therefore is capable of being seized or attached. If those persons can show that the property is lawfully derived, then seizure or attachment cannot be made. As explained previously, the seizing or attaching order is made *ex parte* and without delay; prior notice is not given.

Persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, or entities owned or controlled by such persons, or persons and entities acting on behalf of, or at the direction of such persons and entities may be considered as those who are or were associated with terrorists or terrorist organizations.

Where a seizing or attaching order is made by the Transaction Committee or the Secretary-General of the AMLO, Section 48 of AMLA (Please see above.) allows the person concerned to produce evidence that the money or property is not the property connected with the commission of the offense in order that the seizing or attaching order may be revoked.

As explained previously, where the Public Prosecutor has filed an application for vesting the property in the State, if there is convincing evidence of dissipation risk, the Court can make a seizing or attaching order against the property. In this case, the owner, the beneficiary, or the transferee of such property may not contest only the seizing or attaching order. He or she has to challenge the application for vesting the property in the State. As presumption of the property being of terrorism origin, he or she has to demonstrate that such property is not; otherwise, it will be vested in the State.

Regarding terrorist financing, under the Penal Code, forfeiture is generally made against the property of the convicted criminal. However, the property of a third party may be forfeited too if it was used or intended for use to commit an offense but this is done in a criminal proceeding wherein the criminal is charged. If the criminal is convicted,

forfeiture will be made against such property. A third party has a right to obtain it back where he did not consent or condone the use of his property for criminal purposes. Thus, it can be said that bona fide third parties are always protected<sup>18</sup>.

### **3. International cooperation**

The aim of the Act on Mutual Assistance in Criminal Matters is to cooperate with and to assist other countries in fighting international and transnational crimes. Thailand has tried to assist the world community to the best of the country's ability within the limit of the law.

#### **3.1 Central Authority**

According to the Act, the Attorney General or the person designated by him is the Central Authority of Thailand (Section 6) whose main function is to consider and determine whether to provide assistance to a requesting State; and, whether to seek assistance from a foreign government.

*Section 6*

*The Central Authority shall be the Attorney General or the person designated by him.*

The processing unit of all the requests for the Central Authority is the International Affairs Department, Office of the Attorney General. Section 33 of the Act on Mutual Assistance in Criminal Matters (Please see above.) governs the process for international cooperation in criminal matters in Thailand, besides the 1929 Extradition Act.

#### **3.2 Condition for assistance**

In addition, it should be noted that Thailand can render mutual assistance even without the mutual assistance treaty with the requesting State. However, reciprocity and double criminality conditions must be fulfilled. It should also be noted that although Section 33 speaks only of the seizure, the term "seizure" also includes "attachment" as well. There is a case where the Supreme Court has decided that "seizure" includes "attachment".

Thus, where there is a foreign Court's freezing order, the only issue for consideration by a Thai Court is whether or not funds or other assets subject to the freezing order are capable of being seized or attached under Thai laws. As explained previously funds or other assets of a terrorist are seizable or attachable under the AMLA. It follows that a Thai Court would be able to issue an order seizing or attaching such funds or other assets. There need not be any consideration whether there is a reasonable basis to initiate a freezing action under Thai laws.

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<sup>18</sup> In the amended AMLA, the definition of asset has been expanded in scope as follows:

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

One of the conditions for assistance is that the offense to which the request relates must be punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty that otherwise specifies. Note that no minimum punishment for the offense is required for this condition to be fulfilled (Section 9). The request may only be refused in the circumstances provided in Section 9 of the Act on Mutual Assistance in Criminal Matters.

**Section 9**

*The providing of assistance to a foreign State shall be subject to the following conditions:*

*(1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provided that such State commits to assist Thailand under the similar manner when requested;*

*(2) The act which is the cause of a request must be an offense punishable under Thai laws unless when Thailand and the Requesting State have a mutual assistance treaty between them and the treaty otherwise specifies provided, however, that the assistance must be conformed to the provisions of this Act;*

*(3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offense;*

*(4) The providing of assistance shall not be related to a military offense.*

### **3.3 Search or seizure**

The Competent Authority shall have the power to issue a search warrant, conduct search and seizure of the article, if there is a reasonable ground to do so under Thai laws (Please see Section 23 mentioned above.). A request shall describe facts or evidence for issuing a search warrant for, conducting the search of, or carrying out the seizure of the article, and the identity and location of the article or the habitation of the person having it in possession in detail sufficient for being acted upon, including the purpose for which the said article will be used (Article 9 of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1992).

### **3.4 Forfeiture or seizure of property**

The Competent Authority 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. A request shall provide the description of the property and its location or the habitation of the person having it in possession, in detail sufficient for being acted upon (Article 13 paragraph one of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters).

The forfeited property shall become the property of Thailand, or the Court may pass the judgment for it to be rendered useless or to be destroyed (Please see Section 35 mentioned

above.). Thailand does not have arrangements for coordinating seizure and confiscation actions with other countries.

Thailand executes foreign forfeiture orders on certain conditions. Apart from general conditions for executing a foreign request for assistance, the foreign forfeiture order must be final and the property concerned must be forfeitable under Thai laws (Please see Section 33 mentioned above.). If these are not met, execution will be refused. Section 35 (mentioned above) of the Act on Mutual Assistance in Criminal Matters provides for the forfeited property pursuant to a foreign request to become the property of the Kingdom of Thailand. The Mutual Assistance in Criminal Matters Act does not allow for asset sharing. The sharing of confiscated assets with other countries is not currently authorized. However, Thailand has taken into account the importance of the sharing of confiscated proceeds and is now considering implementing it in the future.

For execution of the request for seizure or forfeiture, the Mutual Assistance in Criminal Matters Act requires that the property to which the request relates must be seizable or forfeitable under Thai laws. Seizure or forfeiture under the AMLA is property-based. In other words, property must be somehow connected with the offense or it must be the tainted property, whether instrumentality used or intended for use in the commission of an offense, or proceeds from an offense. However, the seizure or forfeiture of property of corresponding value can be made according to Section 37 of the Penal Code and Section 83 of the Organic Act on Counter Corruption. It follows that assistance in relation to property of corresponding value can be given as well.

The Act on Mutual Assistance in Criminal Matters does not separately provide for mutual legal assistance in the case of terrorism. As terrorism is a crime under the Penal Code, it falls within the scope of the Act on Mutual Assistance in Criminal Matters.

When providing assistance between States as part of international cooperation, all States are required to follow and implement UN Security Council Resolutions 1267 (1999) and 1373 (2001). While under UNSC Resolution 1267 (1999) all persons and entities are obligated to freeze the funds or other assets of designated persons, UNSC Resolution 1373 (2001) prohibits all persons and entities from providing any financial service or any form of support to any designated person.

#### **4. Strengths and weaknesses**

Thailand's asset forfeiture system has its strengths and weaknesses. Measurement of strengths and weaknesses may be based on the following criteria:

- (a) whether Thailand's system can meet the requirements of international standards by –
  - (i). effectively freezing or forfeiting of ML-FT-related property in its locally-initiated legal proceeding;
  - (ii). effectively freezing or forfeiting of ML-FT- related property in the case of a foreign request;
  - (iii). expeditiously freezing or forfeiting funds or assets of persons designated in the UN sanctions lists.



- (b) whether Thailand's system can cover property of corresponding value as required under FATF Recommendations; and
- (c) whether Thailand's system permits asset-sharing with other foreign counterparts concerned.

If strengths and weaknesses are measured against the abovementioned criteria, we can easily find out the situation as in the following table.

<b>Criteria</b>	<b>Strengths</b>	<b>Weaknesses</b>
(a) (i)	<p>§ AMLA provides civil forfeiture system.</p> <p>§ Penal Code provides conviction-based forfeiture.</p> <p>§ Narcotics Suppression Act provides both conviction-based and non-conviction-based forfeiture systems.</p> <p>§ Counter Corruption Act provides for criminal forfeiture system for political office holders. But for other civil servants the Act provides for civil forfeiture system.</p>	<p>§ Instrumentalities are not covered by AMLA but by Penal Code.</p> <p>§ Penal Code does not cover proceeds of crime.</p>
(a) (ii)	<p>§ Mutual Assistance Act requires mutual assistance treaty.</p> <p>§ But it can also provide assistance on the basis of reciprocity in the absence of a mutual assistance treaty.</p>	
(a) (iii)	<p>§ Obligations under UN sanctions lists have been implemented through Mutual Assistance Act as well as a number of bilateral and multilateral treaties.</p>	
(b)	<p>§ Forfeiture under Penal Code and Counter Corruption Act does cover property of corresponding value.</p>	<p>§ Forfeiture under AMLA does not cover property of corresponding value.</p>
(c)	<p>§ Amendments to AMLA became effective from 2 March 2008, providing,</p>	<p>§ But the purpose of the Fund set out in Section 59/1 is silent on asset</p>

Criteria	Strengths	Weaknesses
	among others, setting-up of Anti-Money Laundering Fund.	sharing matters.

With the coming into existence of the Anti-Money Laundering Fund under the amended AMLA, it can be expected that there will gradually be a substantial improvement in Thailand's forfeiture system especially in the area of international cooperation.

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