



Anti-Terrorist Financing Act, BE 2556 (2013)

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Anti-Terrorist Financing Act, BE 2556 (2013)

Bhumibol Adulyadej, R.

Given under Our Hand this 1st Day of February, BE 2556 (2013);

Being the 68th Year of Our Reign.

Phra Bat Somdet Phra Paramintra Maha Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is desirable to bring into existence a law against the financing of terrorism;

And whereas it is aware that this Act contains certain provisions giving rise to the restriction of personal rights and freedoms which section 29 incorporating sections 33, 35, 36, 41 and 43 of the Constitution of the Kingdom of Thailand permit to be done by virtue of the legal provisions;

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

§ 1

This Act shall be cited as the "Anti-Terrorist Financing Act, BE 2556 (2013)".

§ 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.^[1]

§ 3

In this Act:

"Property" means money, thing or incorporeal object which is valuable and capable of being appropriated, and includes the fruits of such money, thing or object, and the legal documents or instruments of whatever kinds, whether embodied in written form, electronic form or any other media, which bear evidence of ownership, possession, claim or any other benefit concerning the property in question;

"Terrorism" means the acts constituting an offence of terrorism under the Criminal Code or the criminal acts within the scope of a terrorism-related international convention or protocol to which Thailand is a party or which is recognised by Thailand, whether the acts are committed inside or outside the Kingdom;

"Designated person" means a person, group of persons, legal person or organ designated as a terrorist by a United Nations Security Council resolution or announcement, or a person, group of persons, legal person or organ listed as a designate person under this Act upon a judicial examination and adjudication;

"Reporter" means a person required to report the financial transactions pursuant to the law against money laundering;

"Suspend a property-related action" means to prohibit the transfer, sale, removal, disposal, conversion or use of property or the performance of whatever act on property in the manner likely to change its amount, value, quantity, location or nature;

"Commission" means the Anti-Money Laundering Commission under the law against money laundering;

"Transactional Commission" means the Transactional Commission under the law against money laundering;

"Office" means the Anti-Money Laundering Office.

§ 4

Where any person, group of persons, legal person or organ has been listed as a terrorist by a United Nations Security Council resolution or announcement, the Office shall without delay submit the name of such person or organ to the Minister of Justice to further be entered in the list of designate persons, subject to the criteria and procedure set forth in a ministerial regulation.

The removal of an entry in the list of designate persons under paragraph 1 may only be made when there is a United Nations Security Council resolution or announcement leading to such removal.

§ 5

In cases there is a reasonable suspicion according to the circumstances that any person is in connection with terrorism or the financing of terrorism, or that any person acts on behalf of, upon instructions of or under control of such person, the Office, upon approval of the Transactional Commission, shall submit the name of the person in question to a public prosecutor to further ex parte seek a judicial order adjudging the person as a designate person. The court shall rule in favour of the request when reasonable evidence supports the following believes:

- (1) the person being in connection with terrorism or the financing of terrorism;
- (2) the person acting on behalf of, upon instructions of or under control of a designate person under (1) or under section 4.

The circumstances indicating the connection with terrorism or the financing of terrorism or the acting on behalf of, upon instructions of or under control of another person as described in paragraph 1 must exist on the day the court adjudges the person in question as a designate person.

The Office shall review the list of designate persons under paragraph 1. Should it find that certain circumstances have changed, it shall, upon approval of the Transactional Commission, refer the matter to a public prosecutor to further ex parte seek a judicial order permitting the removal of the names of the relevant persons from the list.

The criteria and procedure for the deliberations of the Office and the Transactional Commission with respect to the matters under paragraphs 1 and 2 shall be set forth in a ministerial regulation. In holding its deliberations under such ministerial regulation, the Office shall set up a panel to examine the names concerned before forwarding them to the Transactional Commission for further approval.

The Office, Transactional Commission, public prosecutors and court shall expeditiously conduct the proceedings under this section.

§ 6

The Office shall publish the list of designated persons under sections 4 and 5 and shall require the designated persons and the reporters or the persons possessing property of the designated persons to carry out the following activities without delay:

- (1) to suspend the property-related actions of the designate persons or of the persons who act on their behalves, upon their instructions or under their control;
- (2) to provide to the Office the information concerning certain property the actions relating to which have been suspended;
- (3) to inform the Office of the current or former clients of the designated persons or the persons conducting or having conducted certain transactions with these designated persons.

The criteria and procedure for the dispatch of the list and requirement to the persons under paragraph 1 and for the activities under (1), (2) and (3) shall be set forth in the rules of the Commission.

The reporters shall determine a risk assessment policy or any guidance with a view to preventing the financing of terrorism. Otherwise, they shall take any other measures as necessary for the implementation of this Act. This shall, however, be subject to the criteria and procedure laid down by the Commission.

§ 7

The safekeeping and administration of property the actions relating to which have been suspended shall be governed by the rules of the Commission.

§ 8

Any person who carries out the activities under section 6 in good faith, even thereby exposing another to injury, shall incur no liability, save where he is proven to have acted by gross negligence.

§ 9

A designate person under section 5 or a person whose property-related action has been suspended pursuant to section 6 as a result of having been adjudged as a designate person according to section 5 may seek judicial permission:

- (1) to remove his name from the list of designate persons;
- (2) to cancel the suspension of the property-related action;
- (3) to perform any act in respect of property the action relating to which has been suspended.

In the event that permission is to be granted for the purpose of (3), the court may also indicate certain conditions as necessary for preventing the use of property in the financing of terrorism. If the facts later indicate that the permission would give rise to the use of property in the financing of terrorism, the court may indicate additional conditions or revoke such permission.

§ 10

Any other person than a designated person under section 4 or 5 may seek judicial permission:

- (1) to perform a due obligation in favour of a person whose property-related action has been suspended under section 6; prescribed the contract or dealing has been concluded or formed prior to the suspension;
- (2) to make a necessary payment of interest or fruits by transferring a sum to an account of a person whose property-related action has been suspended under section 6;
- (3) to demand performance from a person whose property-related action has been suspended by reason of having been adjudged as a designated person under section 5; prescribed that there is a final judgment placing the duty of such performance upon that person;

(4) to carry out any activity concerning property the actions relating to which have been suspended as a result of any person having been adjudged as a designate person under section 5.

When permission is to be granted for the purpose of paragraph 1, if it is necessary to render performance to, demand performance out of, transfer a sum to or withdraw a sum from an account of a person whose property-related action has been suspended under section 6, the court may also indicate certain appropriate conditions for preventing the use of property in the financing of terrorism.

§ 11

The judicial proceedings under sections 5, 9 and 10 shall be instituted before the Civil Court and the Code of Civil Procedure shall apply *mutatis mutandis*.

§ 12

For the purpose of executing this Act, the Commission shall be invested with the authority:

- (1) to lay down the criteria, rules and announcements in keeping with this Act;
- (2) to determine the guidance for supervision, examination, monitoring and assessment of the execution of this Act;
- (3) to determine the necessary guidance for the reporters or any other persons in complying with this Act;
- (4) to monitor and assess the execution of this Act.

§ 13

For the purpose of executing this Act, the Office shall be given the authority:

- (1) to provide advice or explanations to the persons bearing the duty to execute this Act;
- (2) to monitor, assess, examine and supervise the activities under this Act, as well as to prosecute the persons contravening or failing to abide by the provisions of this Act;
- (3) to receive or forward reports or information likely to be of use to the execution of this Act or other laws;
- (4) to collect information and evidence for the sake of the seizure, attachment or confiscation of property under this Act or other laws.

§ 14

Any person who contravenes or fails to abide by section 6 (1) or (2) shall be liable to imprisonment for not more than three years, or a fine of not exceeding three hundred thousand baht or both.

Any reporter who contravenes or fails to comply with section 6 (1) or (2) shall be liable to a fine of not exceeding one million baht and a daily fine for ten thousand baht throughout the time of contravention or until the section is correctly complied with.

In cases the offence under paragraph 2 is in consequence of an instruction or act of any person, or the failure of any director, manager or person in charge of a relevant legal person to give any instruction or do any act as necessary, such person shall be liable to imprisonment for not more than three years, or a fine of not exceeding three hundred thousand baht or both.

§ 15

Any reporter who contravenes or fails to observe section 6 (3) shall be liable to a fine of not exceeding five hundred thousand baht and a daily fine of five thousand baht throughout the time of contravention or until the section is correctly observed.

Should the offence under paragraph 1 ensue from an instruction or act of any person, or the failure of any director, manager or person in charge of a pertinent legal person to give any instruction or do any act as necessary, that person shall be liable to imprisonment for not more than one year, or a fine of not exceeding one hundred thousand baht or both.

§ 16

Any person who provides or collects money or property, or conducts a transaction concerning money or property, or carries out whatever action, with the knowledge that the beneficiary is a designate person, or with the intention to allow such money, property or action to be used in support of any activity of a designate person or a terrorist person or organ, is said to commit an offence of financing terrorism and shall be liable to imprisonment from two years to ten years, or a fine from forty thousand baht to two hundred thousand baht or both.

The secondary participant, aider or abettor in the commission of the offence under paragraph 1 shall be dealt with in the same manner as the principal.

The attempt to commit the offence under paragraph 1 shall be sentenced to two third of the penalties provided therefor.

Any legal person who commits the offence under paragraph 1, 2 or 3 shall incur a fine from five hundred thousand baht to two million baht.

In cases the criminal act of the legal person under paragraph 4 is the result of an instruction or act of any person, or the failure of any director, manager or person legally in charge of the legal person to give any instruction or do any act as necessary, such person shall undergo imprisonment from two years to ten years, or a fine from forty thousand baht to two hundred thousand baht or both.

The offences under this section shall constitute the predicate offences under the law against money laundering.

§ 17

The Prime Minister shall be in charge of this Act and be empowered to issue ministerial regulations for the execution of this Act.

Those ministerial regulations shall take effect upon their publication in the Government Gazette.

Countersigned.

Yingluck SHINAWATRA,
Prime Minister.

Statement of Grounds

The grounds for promulgation of this Act are as follows: Now the offences of terrorism seriously affect the security of many nations. Although terrorism has been criminalised under the Criminal Code of Thailand and constitutes a predicate offence under the law against money laundering, no measures against the financing and funding of terrorism are yet in place. It is needed to establish certain measures for preventing and suppressing those acts, by creating a list of designate persons, suspending the designate persons' property-related actions, requiring the persons obliged to report the transactions under the law against money laundering to suspend the property-related actions of the designate persons, as well as determining the authority of the Anti-Money Laundering Commission and the Anti-Money Laundering Office in line with the aforementioned missions, so that the relevant activities would effectively be carried out in pursuance of certain international standards on cooperation against terrorist acts, including the providing of money, property or any other support for terrorist purposes. It is therefore necessary to enact this Act.

Footnotes

- ↑ Published in the Government Gazette: volume 130/part 11 A/page 1/1 February 2013.

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