

Regulation of the Attorney General
on Keeping, Taking Care of Auction, Return of Property and
Damages Appraisal under the Anti-Participation in Transnational Organized Crime Act
B.E. 2556, Section 15,
B.E. 2556

Whereas the law on the anti-participation in transnational organized crime authorizes the Attorney General to issue Regulations for every organization concerned to follow in terms of keeping and managing seized or frozen property, allowing an interested party or any person to take care of and utilize the property, auctioning and using the property for the benefit of the state, returning the property not involving with the offence to its owner or possessor, and appraising the damages and depreciation of the property for the benefit of anti-participation in transnational organized crime, it is deemed expedient to issue this Regulation.

By virtue of the power conferred by the first paragraph, the third paragraph, the fourth paragraph and the fifth paragraph of Section 15, of the Anti-Participation in Transnational Organized Crime Act B.E. 2556, which contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 32, Section 33, Section 36, Section 41 and Section 45 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Attorney General hereby issues the Regulation as follows:

Article 1. This Regulation is called the, “Regulation of the Attorney General on Keeping, Taking Care of, Auction, Return of Property and Damages Appraisal under the Anti-Participation in Transnational Organized Crime Act B.E. 2556, Section 15, B.E. 2556”.

Article 2. This Regulation shall come into force after the date of its publication in the Government Gazette.

Article 3. In this Regulation:

“State organization” means a state organization which has power and duty under the law on the anti-participation in transnational organized crime;

“Chief of a state organization” means a chief of a state organization who has power and duty under the law on the anti-participation in transnational organized crime.

Article 4. Whatever is not specified in this Regulation shall comply with rule, regulation, notification, order or instruction of the State organization.

Article 5. The Attorney General shall have authority to grant exception or alleviation of compliance with this Regulation.

Article 6. The Attorney General shall be in charge of this Regulation and have authority to interpret and adjudge issues concerning the execution of this Regulation.

Chapter 1

Keeping and maintenance of seized or frozen property

Part 1

Duty of keeping the property

Article 7. An investigator of a state organization who has duty to keep the seized or frozen property shall be as specified by that state organization.

In case the seized or frozen property is an immovable property or an enterprise, for instance, an industrial, a commercial or an agricultural enterprise, which generates proceeds therefrom, the investigator shall quickly report it to his supervisor for consideration.

When necessary and appropriate, the supervisor may set up a committee or committees to keep or to examine the keeping of any kind of property or a particular property.

The property owner or the interested party may ask the supervisor to examine the keeping of the property seized or frozen by the investigator.

Article 8. The person responsible for keeping the property in Article 7 shall have the following duties:

- (1) verify the property to be kept or delivered;
- (2) prepare a list of the kept property;
- (3) prepare a document for receiving or delivering the property;
- (4) examine the condition and the defect of the property;
- (5) keep the property in a safe place.

Part 2

Method of keeping the property

Article 9. In keeping the property, one shall conduct as follows:

- (1) make a tag or mark and attach it to the property as per the list in Article 8 for easy search and reference;

(2) keep the property according to its type, condition and size in a strong and safe place.

Article 10. In case the property to be kept is an immovable property or an inconveniently movable property, the person responsible for such keeping may conduct as follows:

(1) assign the property owner or possessor to continue to take care of the property if the owner or possessor agrees;

(2) assign someone else to take care of the property.

Article 11. In case the property to be kept is as specified in the second paragraph of Article 7, the supervisor may appoint a manager or rent out such immovable property or enterprise, and the proceeds gained shall be entirely or partially handed over to the person responsible for such keeping within the same time and condition as set forth for the keeping of the property.

Article 12. In case the property to be kept is cash, it shall be deposited in a financial institution as specified by the state organization within the date of receiving that property without delay. If such deposition cannot be made during business hours of the financial institution, it shall be deposited in the first time the financial institution reoperates.

In case the property to be kept is a large amount of foreign currency, which poses a burden to the state to keep, the person responsible for keeping such property shall consult his supervisor for consideration.

Article 13. In case the property to be kept is jewelry, shaped gold or other valuables of the like, the person responsible for keeping the property in Article 7 shall keep it in a safe place as deemed appropriate after making the list of the property in Article 8 (2) with proper details, and may take picture of such property also.

Part 3

Method of managing the property

Article 14. Moving the property out of the keeping place may be done only after receiving permission in writing from the supervisor.

Article 15. In case the person responsible for keeping the property finds that the property in Article 8 (4) is lost, destroyed, damaged, depreciates, changes or become defective later, he shall report it to the supervisor quickly.

As per the first paragraph, if the loss, destruction, damage, depreciation, change or defect is serious, such person shall report it through hierarchical supervisors specified by the state organization immediately.

Chapter 2

Allowing the interested party or any person to take care of and utilize the property, auction off, and use the property for the benefit of the state

Article 16. The investigator may order the interested party to take care of and utilize the property with a surety or collateral, or to auction off, or use the property for the benefit of the state. In case such property is not suitable to be kept or the keeping will be a burden on the state more than the use of it, for instance:

- (1) the property is perishable and can be rotten, or is vulnerable to damage in case of delay, or damages may exceed the value of the property;
- (2) the property may cause dirtiness, stain, smell, disturbance, or annoyance;
- (3) the property is heavy or oversized or inconvenient to be move or takes too much space for keeping;
- (4) the property is in condition that may easily cause hazards, such as chemicals or inflammable substances;
- (5) the property is to be kept in a particular place to maintain its quality or requires a special keeping procedure or method.

Before proceeding under the first paragraph, the investigator shall report it to the Attorney General for acknowledgement.

Part 1

Allowing the interested party to take care of and utilize the property

Article 17. Subject to the provision of Article 16, in allowing the interested party to take care of and utilize the property, the following criteria shall also be considered:

- (1) reason, necessity and urgency to take care of and utilize the property;
- (2) credibility of the person who will take care of and utilize the property;
- (3) type and value of the property and whether as well as to what extent the property will be at risk or vulnerable to damage by such taking care and utilizing;
- (4) duration to utilize the property.

Article 18. In allowing the interested party to take care of and utilize the property with a guarantee, a guarantee contract shall be made with the supervisor, and such property shall then be handed over to the permitted person.

Article 19. In allowing the interested party to take care of and utilize the property with security, a security contract shall be made, and the security shall be handed over to the supervisor. After that the property shall then be handed over to the permitted person.

Article 20. Security may be in one or more of the following forms:

- (1) cash;
- (2) Thai government bond;
- (3) a cashier cheque or draft that may be cashed on the delivery date as security;
- (4) shares or debentures issued by a juristic person established by a particular law;
- (5) immovable property;
- (6) other securities guaranteed by a state organization.

Article 21. Under Article 18 and 19, the state organization may impose any condition for the permitted interested party to comply.

Article 22. In case the permitted person violates or fails to comply with the imposed condition or the taking care of and utilizing of the property is not as permitted, the supervisor may revoke the permission, wholly or partially, or impose additional conditions.

If appropriate, the supervisor may order additional or better security within the prescribed time.

Article 23. The supervisor shall inform the permitted person of the order under Article 22 for acknowledgement and compliance of such order quickly. In case such person fails to comply with the order within the prescribed time, the permission may be wholly or partially revoked as deemed appropriate.

Article 24. In allowing any person to take care of and utilize the property, a condition that the permitted person will return the property immediately in the following instances shall also be imposed:

- (1) the permission period expires, or;
- (2) the permission-revoking order is issued.

Article 25. Unless the state organization specifies otherwise, the security shall be proceeded as follows:

(1) return the security to the person permitted to take care of and utilize the property when such person complied with the contract and returned the property. If such property is defective or damaged therefrom, the damages may or may not be deducted from the security;

(2) forfeit such security in case the permitted person fails to return the property according to the contract under any circumstances.

Part 2

Auction

Article 26. To auction off the property as stated in Article 16, the supervisor shall set up an auction committee consisting of at least three members with an officer of the state organization serving as a member and secretary to the committee, responsible for auctioning the property under the order of the supervisor.

Article 27. The auction shall be conducted openly.

Part 3

Procedure before auction

Article 28. The following procedures and details before auction shall be as specified by the state organization:

- (1) prepare an auction notification;
- (2) form of an auction notification;
- (3) auctioning schedule;
- (4) auctioning place;
- (5) delivering an auction notification to the property owner or the person claimed to be the property owner and publishing the notification;
- (6) delivering the auction notification containing details of the auction property in an official form to the related state organization.

Apart from specifications by the state organization in the first paragraph, this Regulation shall then apply.

Article 29. An auction shall be carried out within two months from the date of the supervisor's order.

In case it is unable to carry out the auction by the schedule in the first paragraph, the auction committee shall quickly report reasons to the supervisor for issuing an order as deemed appropriate.

Article 30. In case delay in the auction will cause damage to the property, due to its condition, for example, perishable goods, officer in charge shall immediately auction off the property and report it to the supervisor. Before the auction, such officer shall inform the property owner or the person claimed to be the property owner about the details of the place where the property is located, kept or auctioned, except in case of urgency and it is unable to do so as it may affect the value of the property, the auction may be done immediately.

Article 31. The auction committee shall set the threshold price of the property, based on the following criteria:

- (1) appraisal price at the time of seizure or freezing;
- (2) condition and feature of the property at the time of the auction;
- (3) market price of the property at the time of the auction;
- (4) appraisal price by the state for collection fees;
- (5) the price appraised by an expert, a specialist, a professional or a specific professional association as requested by the auction committee;
- (6) in case the property is under mortgage, the principal and interest outstanding until the auction date and fees involved with the property shall be calculated.

Article 32. In case the property to be auctioned is under mortgage or other charges, it shall be auctioned with such mortgage or charges.

Before the auction, the responsible officer shall inform the mortgagees or the rightsholders or the charge bearers by advice of receipt of the date, time and place of the auction, and inquire the mortgagees, the rightsholders or the charge bearers about the details of the mortgage or the charge, such as the principal and interest outstanding for consideration in setting the threshold price of the auction by the auction committee.

In case the auction committee consider that the auction being free of mortgage or charge, will be more beneficial to the state, such auction shall be carried out with approval by the supervisor.

Part 4

Auction procedure

Article 33. The following details about the auction shall be specified by the state organization:

- (1) beginning of the auction;
- (2) notification of the auction with related conditions;
- (3) registration of the auction;
- (4) details of the auction procedure;
- (5) auction procedure in urgent case;
- (6) giving security in the auction.

Apart from specifications by the state organization in the first paragraph, this Regulation shall then apply.

Article 34. In case the supervisor considers that the private sector, being specialized in the kind of property to be auctioned, should be tasked with handling the auction on his behalf and will possibly earn a higher price, the supervisor shall allow such private sector to carry out it. As such, the threshold price in the auction shall not be lower than as specified by the auction committee and such auction shall be supervised by the auction committee.

Article 35. In case of a suspicion that someone is not bidding honestly or unable to make a payment, the auction committee may inquire that person before the fall of the hammer.

If the bidder retracts his bid before the fall of the hammer, the auction committee shall react off the property. If the bidder does not retract as such, after the fall of the hammer, the bidder shall be deemed as the buyer of the property.

Article 36. When a normal auction is completed by the fall of the hammer, the buyer has to make a prompt payment, except when the property is priced fifty thousand Baht or more, the buyer may be allowed to give an earnest of at least twenty-five percent of the buying price and make a contract with a condition to make the balance payment in fifteen days after the auction.

In case the price is extraordinarily high or there are other special reasons, the supervisor may order the buyer to give an earnest and fix a payment period as he deems appropriate.

If the buyer does not give an earnest or make the balance payment within the period in the first or second paragraph, as the case may be, the security and the earnest shall be forfeited.

On completion of the payment, the property shall be transferred to the buyer.

Article 37. An auction committee member is not allowed to bid or employ anyone to bid in the auction he serves as an auction committee member.

Article 38. In case the auction committee considers that there is no bidder in an auction or bidders offer a price lower than the price in Article 31 or there may be a dishonest bid, the auction committee has authority to withdraw the property from the auction or suspend or postpone the auction and report it to the supervisor.

Article 39. On completion of the auction, if the buyer does not make any payment or give the earnest as stated in Article 36 or Article 40, as the case may be, that property shall be re-auctioned. In the latter auction, the original buyer shall be informed of the schedule, date, time and place of the auction. If the proceeds of the latter auction do not cover the price of the original auction, a demand, if necessary, to the original buyer to pay for the difference, shall be made. Such condition shall be imposed in the auction notification under Article 28 (1).

Article 40. In auctioning a property of which possessor must be granted permission by the officials under the law, for example, a gun, the buyer shall give an earnest of at least twenty-five percent of the buying price and present a license to the auction committee in one month from the date of the completion of the auction and make the balance payment. If the buyer cannot present the license to the auction committee by that time, the security and the earnest shall be forfeited and the reauction be proceeded by the auction committee as stated in Article 39.

In case the buyer cannot present the license, without his fault, deliberation or negligence, the auction committee may extend such duration as deemed appropriate with no more than one month.

Article 41. During an auction, the auction committee shall make a record of each auctioned property in the form specified by the state organization. After completion of the auction, the auction committee shall report it to the supervisor.

Part 5

Transferring and delivering the property

Article 42. Subject to the provision of Article 40, after the buyer has made a complete payment, the supervisor shall be reported to deliver the property to the buyer. In case the property needs a change of the registered name of the property owner, such as a gun, an automobile, a ship, the supervisor shall notify the officer concerned to proceed with such registration.

In case the property in the first paragraph is land or a building built on land with a deed or a document of title, the supervisor shall notify the officer concerned to proceed with registration.

Article 43. Expenses on the transfer and delivery of the property, for instance, taxes, fees, relocation expenses or other related expenses shall be borne by the buyer.

Article 44. In case of an auction of the property with evidence of joint ownership or under mortgage or other preferred rights, the auction committee shall notify the person responsible for keeping such property.

Part 6

Method to receive and keep a payment

Article 45. Upon receiving a payment in an auction by the buyer, the auction committee shall issue a receipt with three duplicates. The original shall be given to the buyer, and one duplicate to the person responsible for keeping, while the other two duplicates kept in the legal case file and as the counterfoil respectively.

Article 46. The payment shall usually be made in cash. In case the auction committee considers appropriate, the payment can be made by a cheque or bill of exchange. The cheque or bill of exchange number shall be recorded on the receipt. If not issued by a government agency, state organization or state enterprise, such cheque or bill of exchange, must be issued or certified by a bank.

Article 47. Upon receiving payment from the auction, whether in cash, or by cheque or bill of exchange, the auction committee shall pass it to the person responsible for keeping the property as per this Regulation.

Article 48. Where the payment by cheque or bill of exchange cannot be collected, the person responsible for keeping the property shall inform the supervisor to demand the payment from the buyer or take legal action against him.

Part 7

Use of the property for the benefit of the state

Article 49. The chief of the government agency who desires to use the property for the benefit of the state shall make a request in writing to the state organization with the following details:

- (1) duty and responsibility of that government agency, particularly concerning the use of such property;
- (2) type of the property to be used;
- (3) reason, necessity, feature and duration for using the property;
- (4) care and responsibility in case the property becomes defective, damaged, or lost.

Article 50. In case the supervisor considers that the property stated in Article 16 is beneficial to the state organization, he may allow that state organization to use such property.

Article 51. Subject to Article 16, in allowing another government agency to use the property, the following criteria shall be put into consideration:

- (1) that government agency is involved with prevention and suppression of crime under the law on the anti-participation in transnational organized crime or supporting that operation;
- (2) reason and necessity to use the property;
- (3) burdens on the state if the property is not used;
- (4) damage or risk from using the property;
- (5) circumstances of legal action concerning the property;
- (6) other circumstances as deemed appropriate.

If the government agency besides as mentioned in (1) desires to use the property, a proposal shall be made to the chief of each state organization on a case-by-case basis.

Article 52. When a government agency is allowed to use the property, the supervisor of the state organization shall prepare a delivery and reception document as evidence and inform the Office of the Auditor General for acknowledgement.

Article 53. Conditions and duties of a government agency receiving the property to take care of or utilize, the return and the extension of the period to take care of or utilize the property shall be specified by the state organization.

Chapter 3

Returning property not involved with the offence to its owner or possessor and appraisal damages and depreciation of the property

Article 54. In case the property auctioned or utilized for the benefit of the state is not involved with the offence, such property shall be returned. A damage and depreciation appraisal committee, assisting of not less than three officers from the state organization shall be set up to be responsible for appraising the damages and depreciation of such property.

When necessary or appropriate, the supervisor may appoint a person, not being an officer in the state organization to be a member of the committee in the first paragraph.

Article 55. The supervisor may set up a permanent damage and depreciation appraisal committee in Article 54, to be responsible for appraising the damages and depreciation of any particular kind of property.

Article 56. In appraising the damages and depreciation, when necessary or appropriate, the committee may ask a specialist or an expert in any particular kind of property to inspect and give opinion for his consideration.

Article 57. The following properties are not returnable:

- (1) property entirely lost, destroyed, damaged, depreciated or transformed;
- (2) property which cannot be repaired to its original condition;
- (3) property which may be repaired and recovered to its original condition but the damages and depreciation appraisal committee considers that its repairing expense is excessively high.

Article 58. The appraisal of the damages and depreciation of the property are as follows:

(1) if the property is damaged and can be repaired to its original condition, the damages shall equal the expenses necessary for such repairation;

(2) if the property is depreciated due to use, the cost of depreciation shall equal the depreciation calculated according to the state criteria to be used in price calculation in case the property of the state is damaged or lost.

Article 59. The supervisor may order the damages and depreciation appraisal committee to clarify reasons and criteria used in appraising the damages or depreciation, or order another appraisal if he considers that such damages or depreciation are too high or too low or the appraisal criteria are not appropriate.

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