



Anti-Participation in Transnational Organized Crime Act B.E. 2556

BHUMIBOL ADULYADEJ, REX;

Given on the 18th day of June, B.E. 2556,

Being the 68th year of the present Reign.

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to have a law on the anti-participation in transnational organized crime;

Whereas this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 32, Section 33, Section 36, Section 41 and Section 45 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the Parliament, as follows:

Section 1. This Act is called the “Anti-Participation in Transnational Organized Crime Act B.E. 2556”.

Section 2. This Act shall come into force ninety days after the date of its publication in the Government Gazette.

Section 3. In this Act:

“Organized criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, financial, property or other material benefit;

“Transnational organized crime” means an organized criminal group committing a crime having one of the following characteristics:

- (1) it is committed in more than one State;
- (2) it is committed in one State but a substantial part of its preparation, planning, direction, support or control takes place in another State;
- (3) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State;
- (4) it is committed in one State but has substantial effects in another State.

“Serious crime” means conduct constituting a criminal offence punishable by a maximum imprisonment of at least four years or a more serious penalty;

“Investigator” means an inquiry official according to the Criminal Procedure Code;

“Officer” means a person whom the Attorney General or the Commissioner General of the Royal Thai Police has appointed to provide assistance to an investigator in investigation, prevention and suppression of an offence of participating in transnational organized crime of this Act.

Section 4. The Prime Minister, the Minister of Justice and the Attorney General shall be in charge of this Act, concerning each one’s power and duty.

The Attorney General has authority to issue Regulations in the execution of this Act.

The Regulations once published in the Government Gazette shall come into force.

Chapter 1

General Clauses

Section 5. Whoever commits one of the following:

- (1) become a member or network of transnational organized crime;
- (2) conspire among two or more persons to commit a serious crime concerning transnational organized crime;
- (3) directly or indirectly involve with an activity or operation of transnational organized crime, being aware of the objectives and operation or the deliberation of committing such serious crime by transnational organized crime;

(4) manage, order, assist, instigate, facilitate or provide consultation in committing a serious crime of a transnational organized crime, being aware of the objectives and operation or the deliberation of committing such serious crime by transnational organized crime,

shall be considered having committed an offence of participating in transnational organized crime.

Section 6. Whoever commits an offence in Section 5 outside the Kingdom, shall be punished in the Kingdom as specified in this Act.

For the purpose of the first paragraph, Section 10 of the Criminal Code shall be applied *mutatis mutandis*.

Section 7. Any person who commits an offence of participating in transnational organized crime has committed a serious crime according to the objectives of transnational organized crime; other persons committing an offence of participating in transnational organized crime who exist while the serious crime is being committed or participate in a meeting, but do not object to commission of that serious crime as well as the chief, the manager or the person holding other position in that transnational organized crime, shall all be punished according to the legal provisions concerning such serious crime.

Section 8. A member of the House of Representatives, a member of the Senate, a member of the local assembly, a local administrator, a government official, an official in a local administrative organization, an official of a state organization, a director or executive officer or official in a state enterprise, an official, a director, a manager or any person responsible for the operation of a financial institution or directors of organizations specified in the Constitution, who have committed an offence under this Chapter, shall be punished two times of the penalties specified therein.

Section 9. An officer or an investigator according to this Act who has committed an offence against his position concerning an offence in this Chapter, shall be punished three times of the penalties specified therein.

Chapter 2

Investigation into Cases for Offence of Participating in Transnational Organized Crime

Section 10. In case an offender of participating in transnational organized crime is a state official according to the Organic Law on Anti-Corruption and is under the power and duty of the National Anti-Corruption Commission, the responsible investigator shall continue with the case according to this Act, and inform the National Anti-Corruption Commission for its acknowledgement.

The responsible investigator's action in the first paragraph does not deprive the National Anti-Corruption Commission of the authority to execute as follows:

(1) fact finding by themselves. In such a case, the responsible investigator shall pass the investigation report and evidence acquired from his investigation concerning the offence under the responsibility of the National Anti-Corruption Commission to the National Anti-Corruption Commission. Then the National Anti-Corruption Commission may consider that investigation report as part of the fact finding; or

(2) assigning an inquirer according to the Organic Law on Anti-Corruption to join with the responsible investigator.

Section 11. In case of an offence of participating in transnational organized crime, the investigator shall continue to investigate, except the Special Investigation Board has considered that the case must be handled by the Department of Special Investigation. Then, the investigator shall pass the matter to the Department of Special Investigation.

Section 12. For the benefit of coordination to prevent and suppress an offence of participating in transnational organized crime, the Attorney General, the Commissioner General of the Royal Thai Police and chiefs of the related state organizations shall agree upon how to perform their duties in cases among the related state organizations as follow:

(1) procedure among related organizations concerning receiving complaints or accusations, operations about a summon or criminal warrant, arrest, detention, apprehension, search or temporary release, investigation, fining, case hand-over and other operations concerning criminal cases among state organizations, having the power and duty in prevention and suppression of criminal offences;

(2) scope of responsibilities of an administrative official or a police officer, other state officials, an investigator and an officer according to this Act in relation to investigation to be suitable for the duties of each state organization, specialization, impact from the offence and efficiency in thorough prevention and suppression of criminal offence. Certain cases may be specified to be handled jointly by related state organizations;

(3) exchange of data concerning prevention and suppression of offence of participating in transnational organized crime;

(4) support among state organizations and state officials in performing ones' duties relating to investigation;

(5) other matters in connection with investigation into an offence of participating in transnational organized crime.

Where there is an agreement as stipulated in the first paragraph, the state organizations shall comply with that agreement. If the agreement identifies duties among state officials who are administrative officials, police officers or investigators in performing their duties according to the Criminal Procedure Code, the concerned operations of those state officials shall be considered the operations of the persons with investigative authority under the Criminal Procedure Code.

Section 13. In prevention and suppression of an offence of participating in transnational organized crime, the Attorney General, the Commissioner General of the Royal Thai Police or his designated person, as the case may be, may urge chiefs of state organizations or other state officials to provide assistance, support or participation in the operation as deemed necessary.

The chiefs of state organizations or other state officials in the first paragraph shall have the duty to provide assistance, support or participation in the operation, as the case may be.

Section 14. For the benefit of investigation into an offence of participating in transnational organized crime, an investigator or an officer shall have authority as follows:

(1) enter into any dwelling or place to search where there is a reasonable ground to believe that there is property hidden therein, the possession of which is an offence, or which is acquired by committing an offence, or which is used or will be used in committing an offence, or used to gain benefit from an offence, or there is a person, an object and an article which may be used as evidence in litigation hidden in that dwelling or place, while there is also a reasonable ground to believe that by reason of the delay in obtaining a search warrant, the said property or evidence may be relocated, hidden, destroyed or transformed from its original condition;

(2) issue a letter of inquiry or summon any person to give a statement or submit any list, document, or object for examination or consideration;

(3) search a person or a conveyance with a reasonable ground to suspect that it contains property hidden therein, the possession of which is an offence, or which is acquired by committing an offence, or which is used or will be used in committing an offence, or may be used as evidence;

(4) seize or freeze the property found or submitted as stated in (1), (2) and (3).

When exercising the power in (1) of the first paragraph, the investigator or the officer who makes a search shall comply with the Attorney General's Regulation by showing his sincerity prior to the search and presenting his officer's identification card, a search permit and a record of a reasonable ground to believe that the search is authorized, to the possessor of the searched dwelling or place. In case there is no possessor of the searched dwelling or place, a search may be made before at least two persons requested to be witnesses by the investigator or the officer. In such a case, the investigator or the officer who makes the search shall submit the copy of such permit and record to the possessor of that dwelling or place as soon as possible. If the search takes place during nighttime, a public prosecutor at Level 3 or higher or a civil servant at the professional level or higher or a police officer holding the position of an inspector or equivalent or higher shall be the search leader.

The investigator or the officer who leads the search shall submit, as evidence, a copy of the record of reasonable ground in the second paragraph and a copy of the search record and a list of seized or frozen property to the provincial court having jurisdiction over the searched area or the Criminal Court in Bangkok within forty-eight hours after the end of the search.

Whether the investigator or the officer of any position or level will have entire or partial authority as provided in the first paragraph, or from whom he must get permission before any execution, shall be as specified by the Regulation of the Attorney General and an assigning document shall be issued to such investigator or officer.

Section 15. The maintenance and keeping of the property seized or frozen by an investigator according to Section 14 shall be in line with the Regulation issued by the Attorney General.

In case the property in the first paragraph is not suitable to be kept or the keeping of the property will be more burden on the State than the making use of it, the investigator may order the interested party or any person to take care of and utilize the property with a surety or collateral, or auction off the property or use the property for the state's benefit, and report to the Attorney General for acknowledgement.

Allowing the interested party or any person to take care of and utilize the property, auction off the property or use the property for the state's benefit in the second paragraph, shall be in line with the Regulation issued by the Attorney General.

Where it is found out later that the property being auctioned off or utilized for the state's benefit in the second paragraph is not the property involved with the offence, such property shall be returned to the owner or the possessor along with compensation for the damage and depreciation in line with the Regulation issued by the Attorney General. If the property cannot be returned, the property price as assessed on the seizure or freezing date or as acquired in the auction, as the case may be, shall be compensated. The owner or the possessor shall receive the interest on the amount returned or compensated, as the case may be, equivalent to the maximum interest rate for a fixed deposit account of the Government Savings Bank.

Assessing damages or depreciation in the fourth paragraph shall be in line with the Regulation issued by the Attorney General.

Section 16. Subject to the law pertaining to guns, bullets, explosives, fireworks and gun replicas and the law pertaining to armament control, for the benefit of the execution of investigation into an offence of participating in transnational organized crime, the public prosecutor, the investigator and the officer according to this Act shall use guns, bullets, armaments and other related equipment for necessary safety only. Having in possession and use of guns, bullets, armaments and other related equipment shall be in line with the Regulation issued by the Attorney General.

Section 17. Where there is a reasonable ground to believe that a document or information sent by mail, telegraph, telephone, fax, computer, communications tool or equipment, electronic or technological devices, has been used or may have been used to gain benefit from the offence of participating in transnational organized crime, the investigator permitted by the Attorney General, the Commissioner General of the Royal Thai Police or his designated person, as the case may be, may lodge a petition to the Chief Justice of the Criminal Court to issue a permission order to obtain that document or information.

To grant permission in the first paragraph, impacts upon personal rights or other rights shall be taken into consideration together with the reasons and necessities as follows:

(1) a reasonable ground to believe that an offence of participating in transnational organized crime has been committed or will be committed;

(2) a reasonable ground to believe that information about the offence of participating in transnational organized crime will be obtained if that information is accessed;

(3) unable to use any other more appropriate or efficient method.

Regarding the permission in the first paragraph, the Chief Justice of the Criminal Court shall grant permission not exceeding ninety days for each petition and may set any conditions; any person involved with the communicated information pertaining to the order shall cooperate in accordance with the provision of this Section. After the permission was granted, if the stated necessity is not as claimed or the circumstances have changed, the Chief Justice of the Criminal Court may change the permission order or extend the permission as deemed appropriate.

After the investigator has executed the said order, the record of the execution shall be reported to the Chief Justice of the Criminal Court.

Of all the information acquired in the first paragraph, only the information relevant to the offence as permitted in the first paragraph shall be kept and used for the benefit of investigation or as evidence in that particular case. Other irrelevant information shall be destroyed according to the Regulation issued by the Attorney General.

Section 18. Any person who has executed the order as stipulated in Section 17 is prohibited from disclosing the acquired information, except the information concerning the offence of participating in transnational organized crime, as permitted in Section 17, and in performing as to the power and duty, or in complying with the law or the court order.

Section 19. Where it is necessary and for the benefit of investigation into an offence of participating in transnational organized crime, the Attorney General, the Commissioner General of the Royal Thai Police or his designated person, as the case may be, shall assign any person to prepare any document or evidence or take undercover operation for the benefit of investigation in accordance with the criteria and procedures, as specified in the Regulation of the Attorney General.

“Undercover operation” means any operation to conceal one’s status or the purpose of that operation by luring another person to misunderstand or to hide the facts about the officer’s performance.

Preparation of any document or evidence of the undercover operation taken in the first paragraph shall be deemed lawful.

Section 20. Where it is necessary and for the benefit of investigation into an offence of participating in transnational organized crime, the investigator or the officer permitted in writing by the Attorney General, the Commissioner General of the Royal Thai Police or his designated person, as the case may be, shall have authority to permit the execution of controlled delivery.

“Controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more states, with the knowledge and under the supervision of their competent authorities, with a view to the investigation into an offence and the identification of persons involved with the commission of the offence.

Criteria, procedures and conditions in applying for permission, granting permission and using controlled delivery shall be in line with the Regulation issued by the Attorney General with the approval of the Cabinet of Ministers. That Regulation shall at least contain measures to control and check the exercise of power.

Actions or evidence derived from the execution of the investigator or the officer under this Section shall be admissible.

Section 21. An investigator or an officer may use telecommunication or electronic devices, or any other method, particularly in trailing a suspect having committed an offence or being about to commit an offence of participating in transnational organized crime to investigate, arrest, search for and compile evidence as specified in the Regulation of the Attorney General.

Section 22. The offence of participating in transnational organized crime under this Act shall be considered a predicate offence according to the anti-money laundering law.

Chapter 3

Cooperation Beneficial to Litigation

Section 23. During an investigation into an offence of participating in transnational organized crime, if the alleged offender willingly provides the investigator or the public prosecutor with information which is significant and greatly beneficial to the investigation of the activity and commission of the offence of transnational organized crime, which can be used as evidence for litigation against the leader or the key person in transnational organized crime, the investigator shall record that information in his investigation report and submit the report to the Attorney General.

Where the Attorney General considers that the information derived from the alleged offender is significant and greatly beneficial as per the first paragraph, the Attorney General shall have discretion to issue a non-prosecution order of all or certain charges to the accused.

Once the case has been filed to the court and if the information as per the first paragraph is provided during the court hearing, the Attorney General, subject to the Criminal Procedure Code, shall have the authority to issue an order to withdraw a lawsuit as well as an appeal to the Appeal Court or the Supreme Court or an order not to appeal to the Appeal Court or the Supreme Court, entirely or partially, as the case may be.

Section 24. Where the court deems that any offender has given significant and greatly beneficial information to suppress an offence of participating in transnational organized crime to an administrative official, a police officer, an investigator or a public prosecutor, the court may impose less punishment to any extent than the minimum penalty provided for such offence by this Act.

Chapter 4

Penalties

Section 25. Whoever commits an offence of participating in transnational organized crime, shall be liable to imprisonment for a term of four years to fifteen years or a fine of eighty thousand Baht to three hundred thousand Baht, or both.

Section 26. Whoever obstructs an investigation, a prosecution or litigation of an offence of participating in transnational organized crime by committing any of the following, so that the case may not proceed peacefully, shall be liable to imprisonment for a term not exceeding ten years or a fine of not exceeding two hundred thousand Baht, or both:

(1) grant, offer to grant or promise to grant any property or benefit to the injured person or the witness to induce such person not to see an officer, an investigator, a public prosecutor, or not to be present before the court to give facts or testify, or to give false information or false testimony, or not to give facts or testify in litigation against an offender;

(2) use physical force, coerce, threaten, extort, deceive or commit other wrongful acts to prevent the injured person or the witness from seeing an officer, an investigator, a public prosecutor, or from being before the court to give facts or testify; or to make such person give false information or false testimony, or not give facts or testify in litigation against an offender;

(3) cause damage, destroy, lose or make the uselessness of, take away, change, alter, cover or conceal any document or evidence, or forge, fabricate or use any false document or evidence in litigation against an offender;

(4) grant, offer to grant, or promise to grant any property or benefit to an officer, an official in the position of a judge, a public prosecutor or an investigator, or demand, accept or agree to accept any property or benefit to induce such person to do or not to do or to delay any act, which is against his duty; or

(5) use physical force, coerce, threaten, extort, or commit other wrongful acts against an officer, an official in the position of a judge, a public prosecutor or an investigator, to induce such person to do or not to do or to delay any act, which is against his duty.

Section 27. An owner or a possessor of any dwelling or place in Section 14 (1), who resists or does not allow an investigator or an officer to enter into such dwelling or place, without any reasonable cause or excuse, shall be liable to imprisonment for a term not exceeding one year or a fine of not exceeding twenty thousand Baht, or both.

Section 28. Whoever fails to give a statement or submit any list, document or object as per Section 14 (2), shall be liable to imprisonment for a term not exceeding six months or a fine of not exceeding ten thousand Baht, or both.

Section 29. Whoever violates Section 18, shall be liable to imprisonment for a term not exceeding three years or a fine of not exceeding sixty thousand Baht, or both.

Where the offence in the first paragraph is committed by an investigator, an officer or a public prosecutor, who has participated in an investigation or an operation, or the person who has participated in the operation in accordance with Section 13 or Section 17, the offender shall be punished three times of the punishment set forth in the first paragraph.

Section 30. Whoever in performing his duty in Section 19 or Section 21 has acted over the objectives of investigation under this Act to seek any wrongful benefit for himself or others, shall not be protected by this Act. If the said action is a criminal offence, the offender shall be punished two times of the penalties specified therein.

Section 31. Whoever removes, causes damage, destroys, conceals, takes away, loses or makes the uselessness of any document, record or property that an investigator or an officer has seized or frozen, shall be liable to imprisonment for a term not exceeding three years or a fine of not exceeding sixty thousand Baht, or both.

Section 32. Any legal person who has committed an offence of participating in transnational organized crime shall be liable to a fine from two hundred thousand Baht to one million Baht.

In case an offence of the legal person in the first paragraph is caused by an order or an action of a person, or failure to order or to take action in the duty of a director, a manager or any person responsible for the operation of that legal person, such person shall be liable to imprisonment for a term of four years to fifteen years or a fine of eighty thousand Baht to three hundred thousand Baht, or both.

Countersigned by
Yingluck Shinawatra
Prime Minister

Note: Reasons for the promulgation of this Act are as follows: As Thailand is currently facing the problem of transnational organized crime which badly affects the nation's peace, order and stability, while the current law cannot be efficiently enforced to take legal action against offenders participating in transnational organized crime, and as Thailand has signed the United Nations Convention against Transnational Organized Crime, it is appropriate to impose legal offences to criminalize such acts as well as to set forth procedures for investigation into those offences. Enacting this Act thus becomes necessary.