

ACT ON MEASURES FOR THE SUPPRESSION OF
OFFENDERS IN AN OFFENCE RELATING TO NARCOTICS,

B.E. 2534 (1991)

BHUMIBOL ADULYADEJ, REX.

Given on the 19th Day of September B.E. 2534;

Being the 46th Year of the Present Reign.

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

Whereas it is expedient to have a law on measures for the suppression of offenders in an offence relating to narcotics;

⁽¹⁾This Act contains provisions relating to the restriction of rights and liberties of the people which section 29 together with section 48 of the Constitution of the Kingdom of Thailand allow to be done by virtue of provisions of law;

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

Section 1 This Act is called the "Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534".

Section 2 This Act shall come into force as from the day following the date of its publication in the Government Gazette. ⁽²⁾

Section 3 In this Act,

"narcotics" means narcotics under the law on narcotics, and narcotics under the law on narcotics control, as prescribed in the Ministerial Regulation;

"laws relating to narcotics" means the law on narcotics and the law on psychotropic substances;

"offence relating to narcotics" means the production, importation, exportation, disposition of or possession for disposition of narcotics, and shall also include conspiracy, aiding and abetting, assisting or attempting to commit such offence;

"properties connected with the commission of an offence" means money or properties obtained through the commission of an offence relating to narcotics, and shall include money or properties which are obtained by means of using such money or properties to purchase or by causing in any manner whatsoever to transform such money or properties irrespective of the number of such transformation and

⁽¹⁾ Added by Act on Measure for the Suppression of offenders in an Offence Relating to Narcotics (No.2) B.E.2543 (2000) published in the Government Gazette Vol.117 Part 37 Ngor., dated 28th April B.E.2543

⁽²⁾ Published in the Government Gazette Vol.108, Part 170 Special Issue, 27th September B.E.2534 (1991).

whether or not such money or properties will be in the possession of, or transferred to or apparently evidenced on the register as belonging to other persons;

"Committee" means the Properties Examination Committee;

"Member" means a member of the Committee, and shall include the Chairman;

"Fund" means the Narcotics Control Fund;

"competent official" means a person appointed by the Minister for the execution of this Act;

"Secretary-General" means the Secretary-General of the Narcotics Control Board;

"Office" means the office of the Narcotics Control Board;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 4* The Minister of Justice shall have charge and control of the execution of this Act and shall have the power to appoint competent officials and issue Ministerial Regulations and Rules for the execution of this Act.

Such Ministerial Regulations and Rules shall come into force upon their publication in the Government Gazette.

CHAPTER 1 General Provisions

Section 5 Any person who commits an offence relating to narcotics, despite the fact that the offence is committed outside the Kingdom, shall be punished in the Kingdom, if it appears that:

(1)the offender or any accomplice is a Thai person or has a place of residence in Thailand; or

(2)the offender is an alien and intends its consequence to occur within the Kingdom or the Thai Government is the injured person; or

(3)the offender is an alien and such act is an offence under the law of the State in the jurisdiction of which the offence is committed, if such offender has appeared in the Kingdom and has not been extradited under the law on extradition;

provided that, section 10 of the Penal Code shall apply *mutatis mutandis*.

Section 6 In an offence relating to narcotics, any person who does any of the following acts shall likewise be liable to the same penalty as a principal:

(1)aiding and abetting or assisting the offender before or at the time of such commission;

* Revised by the Act Amending Ministry, Sub-ministry and Department B.E.2545 (2002), Section 47, 48, 49 and Royal Decree on Transferring the Administration Duty of Government Organization according to the Act Amending Ministry, sub ministry and Department B.E.2545 (2002) Section 87

(2) providing or giving money or properties, conveyance, premises or any article for the purpose of the commission of an offence, or for facilitating the commission thereof or for preventing the offender from being punished;

(3) providing or giving money or properties, meeting place, lodging or hiding place in order to assist or facilitate the offender or to help him from being arrested;

(4) accepting money, properties or any other benefits from the offender for the purpose of the commission of an offence or for facilitating the commission thereof or for preventing the offender from being punished;

(5) concealing, hiding or taking away narcotics or any article used in the commission of an offence in order to help the offender;

(6) suggesting or contacting other persons for the purpose of the commission of an offence.

In the case where any person provides or gives money or properties, lodging or hiding place in order to help his father, mother, child, husband or wife from being arrested, the Court may impose no punishment or impose less punishment than that provided by law for such offence at his discretion.

Section 7 Any person who attempts to commit an offence relating to narcotics shall likewise be liable to the same penalty imposed for such offence as the offender who has accomplished the offence.

Section 8 Whenever two or more persons, with manifest intention, agree to commit an offence relating to narcotics, every such person is said to conspire to commit such offence, and shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand Baht or to both.

If an offence relating to narcotics has actually been committed on account of the conspiracy under paragraph one, every such conspirator shall be liable to the penalty imposed for such offence.

Section 9 Any person who commits an offence relating to narcotics by wearing uniform or dressing in such a manner as to cause any person to believe that he is an official, government official, local government official, official of a State organization or State agency, or official of a State enterprise shall be liable to additional penalty of one-half of the penalty imposed for such offence.

Section 10 Any Member, or member of the sub-committee under this Act or under the laws relating to narcotics, official, member of the National Legislative Assembly, member of the Provincial Council, member of the Municipal Council or other local assemblies, government official, local government official, official of a State organization or State agency, or official of a State enterprise who commits an offence relating to narcotics or commits the offence under section 42 shall be liable to treble penalty imposed for such offence.

Section 11 Any Member, or member of the sub-committee under this Act or under the laws relating to narcotics, official, or government official who commits an offence of malfeasance in office or commits an offence of malfeasance in judicial office as provided in the Penal Code in connection with the commission of an offence relating to narcotics shall be liable to treble penalty imposed for such offence.

Section 12 The penalty of imprisonment to be imposed upon the offender under section 9, section 10 or section 11 shall not exceed fifty years.

Section 13 In the execution of this Act, the Members, the members of the sub-committee, the Secretary-General and competent officials shall be officials under the Penal Code.

Section 14 The approval of the Secretary-General shall be obtained prior to making the arrest of the offender or informing the offender of the offence charged under section 6 or section 8. After having executed such act as approved, it shall be reported forthwith to the Secretary-General for information.

A request for approval, the approval and the report under paragraph one shall be in accordance with the rules, procedure and conditions as prescribed in the Ministerial Regulation.

CHAPTER 2 Properties Examination Committee

⁽³⁾Section 15 There shall be the Properties Examination Committee, consisting of the Permanent Secretary of the Ministry of Justice as Chairman, Attorney General as Vice Chairman, Commissioner of Thai Royal Police, Director General of Lands Department, Director General of the Legal Execution Department, Director General of Customs Department, Director General of Revenues Department and Governor of the Bank of Thailand as members, and Secretary General shall be member and secretary.

The Committee may appoint any government Official of the Office to be assistance secretary.

In case where members under paragraph one, unless the Chairman, does not attend any meeting, he shall delegate his subordinate who holding the vice position or likewise or who is acknowledgeable on the performance of the duties of the Committee to attend that particular meeting.

Section 16 The committee shall have the following powers and duties:

(1) to submit recommendations to the Minister in respect of the issuance of Ministerial Regulations under section 14, section 21, section 22, section 23 and section 33;

(2) to examine the properties connected with the commission of an offence relating to narcotics;

(3) to decide whether or not any properties of the alleged offender or other persons are the properties connected with the commission of an offence relating to narcotics;

(4) to seize or attach the properties under section 22;

(5) to issue the Rules relating to the custody, sale by auction and utilization of the properties under section 24, and the Rules relating to the Fund under section 37 and section 38.

The Committee may entrust a member of the sub-committee or the Secretary-General to examine the properties under (2) or to seize or attach the properties under (4), and then report for its information.

⁽³⁾ Repealed and replaced by the Act on Measure for the Suppression of Offenders in an Offence Relating to Narcotics (No.2) B.E.2543, section 3.

Section 17 At a meeting of the Committee, the presence of not less than two-thirds of the total number of members is required to constitute a quorum.

The Chairman shall preside over the meeting. In the case where the Chairman does not attend or is unable to perform his duty, the Vice-Chairman shall preside over the meeting. If the Vice-Chairman does not attend or is unable to perform the duty, the members present shall elect one among themselves to preside over the meeting.

The decision of the meeting shall be made by two-thirds of the votes of the members present. Each member shall have one vote.

Section 18 The committee may appoint a sub-committee to consider and submit opinions on any matter or carry out any act as entrusted, and the provisions of section 17 shall apply mutatis mutandis.

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 offence 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 are evidences 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.

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 evidences 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 Regulation.

Section 22 In examining the properties, if the examinee or the person who claims to be the owner of the properties cannot adduce evidences to prove that the properties so examined are not connected with the commission of an offence 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 moral or public charity, the Committee shall issue an order seizing or attaching such properties until the issuance of the final non-prosecution 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 exists 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 offence 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.

Section 23 When the Committee or the Secretary-General, as the case may be, has already issued an order seizing or attaching any properties, the designated competent official shall forthwith execute the seizure or attachment order and assess the value of such properties, and then report for its or his information.

The seizure or attachment of the properties, and the assessment of the value thereof shall be in accordance with the rules, procedure and conditions as prescribed in the Ministerial Regulation;

provided that, the Civil Procedure Code shall apply mutatis mutandis.

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 for information.

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 offence 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.

Section 25 For the purposes 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 night time.

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.

Section 26 If a lawful seizure or attachment of properties under section 22 causes damage to any person, the person doing such act is not personally liable to pay compensation.

⁽⁴⁾Section 27 When the Public Prosecutor has issued a prosecution and the properties seized or attached by the order of the Committee under section 22 are the properties connected with the commission of an offence 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 at any time before the Court of First Instance passes the judgment. In case where there is a reasonable ground to identified that he does not file the motion before the Court of First Instance passes the judgment, he shall be filed the motion within one years from the date that the Court of First Instance passed the judgment, unless there is the final judgment of acquit.

In case where it appears that there are additional properties connected with the commission of an offence relating to narcotics, a motion requesting the Court to issue the forfeiture order against such properties shall be filed within one year from the date that the Court of First Instance, unless there is the final judgment of acquit.

⁽⁵⁾Section 28 When the Court have an order to accepted the motion of Public Prosecutor under section 27, the Court shall be published in a newspaper which is widely distributed in the locality for at least two consecutive days in order that any person who may claim to be the owners of the properties may file the motion to entry into the case before the case becomes final. In case there is an 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 such his right, it shall be given through an A/V registered post to the most recent address of such person as appeared on evidence in the inquiry record.

The Cost on publication and inform shall be paid from the Fund.

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 offence 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 offence 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 section, if there is an evidence showing that the accused or the examinee is involved or used to involve in the commission of an offence 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

⁽⁴⁾ ⁽⁵⁾ Repealed and replaced by the Act on Measure for the Suppression of Offenders in an Offences Relating to Narcotics (No.2) B.E.2543, section 4.

in his occupation or other activities in good faith are the properties connected with the commission of an offence relating to narcotics.

⁽⁶⁾Section 30 All the instrument, equipment, conveyances, machines or any other properties used in the commission of an offence relating to narcotics or used as accessories for producing the consequence of the commission of an offence relating to narcotics or processed for use in the commission of an offence relating to narcotics 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 that hearing such case to issue an order forfeiting the properties under paragraph one. And after the Court issue an order to accept that motion the Court shall order to publish in the newspaper which is widely distributed in the locality for at least two consecutive days in order that any person who may claim to be the owners of the properties may file the motion to entry into the case before the Court of First Instance passed judgment to order, all this is due irrespective of whether or not such case shall appeared the person who may claim to be the owner of the properties.

The Cost on publication shall be paid from the Fund.

In case where there is no any person claim to be the owner of the properties before the Court of First Instance passes the judgment or order or in case where it appears the owner but the owner does not proof that he have no opportunity to acknowledge or have no reasonable ground to suspect that there shall had the commission and shall took such properties to use in the commission or used as the accessories for producing the consequence of the commission or possessed for use in the commission, the Court shall be forfeited such properties when terminated thirty days from the day that is the date published in the daily newspaper under paragraph two, and in this case the section 36 of the Penal Code shall not apply.

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 non-prosecution 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 of 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 non-prosecution order or the final judgment dismissing the charge, the properties shall devolve on the Fund.

⁽⁶⁾ Repealed and replaced by the Act on Measure for the Suppression of Offenders in an Offence Relating to Narcotics (No.2) B.E.2543, section 5.

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 can not 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.

Section 33 The application for the restitution of properties shall be submitted together with documents and evidences to the Committee.

The application for the restitution of properties and the making of the restitution thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

CHAPTER 3 Narcotics Control Fund

Section 34 There shall be established a Narcotics Control Fund in the Office for the purpose of narcotics control.

Section 35 The Fund under section 34 shall consist of the following properties:

- (1) the properties devolved on the Fund under section 31 and section 32;
- (2) the properties donated by other persons;
- (3) the Government subsidies;
- (4) the benefits arising from the properties under (1), (2) and (3).

Section 36 The Fund under section 35 shall belong to the office without being remitted as State revenue.

Section 37 The receipt, payment and the keeping of money of the Fund shall be in accordance with the Rules prescribed by the Committee with the approval of the Ministry of Finance.

Section 38 The investment, management and disposal of properties of the Fund shall be in accordance with the Rules prescribed by the Committee with the approval of the Ministry of Finance.

Section 39 Within six months as from the last day of the calendar year, the Secretary-General shall submit to the Minister for resubmitting to the Council of Ministers the balance-sheet and the report on the receipt and payment of the money of the Fund in the foregoing year which have been audited and certified by the office of the Auditor-General of Thailand.

In the case where the Council of Ministers is of the opinion that the amount of the Fund is so large that, after its utilization under its objectives, the surplus is still enormous, the Council of Ministers may pass a resolution remitting any sum thereof as State revenue.

CHAPTER 4 Penalties

Section 40 Any person who does not give his statements or give explanations in writing or submit accounts, documents or evidences under section 25 (2), or who obstructs or does not provide facilities under section 25 (3) shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 41 Any person who knows or is likely to know an official secret relating to the execution of this Act does an act in any manner causing other persons to know or likely to know such secret shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both, unless he does such act in the performance of his duties or in accordance with the law.

Section 42 Any person who, in any manner, removes, conceals, makes away with, damages, destroys, causes the loss of or renders useless, or unlawfully receives the properties which are subject to the seizure or attachment order or the properties which he knows that they will be seized or attached under this Act shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand Baht or to both.

Countersigned by:
Anand Panyarachun
Prime Minister

Certified correct translation
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