

Confiscation Under Money Laundering Law: A Comparison Between Thai and The United State Legal Measure

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ABSTRACT

In the present day, the nature of money laundering has recently changed dramatically, it is becoming an increasingly complicated both in method and transaction. No matter how powerful the existing law, it cannot fight this serious crime with the same pattern by focusing only the tainted property which related to the offenses. Value-based confiscation is one important component of policy to against such serious crimes. This study aims to provide an overview of money laundering and the implementation of value-base confiscation from the United State compared with Thailand legal measure.

Therefore, the objective of this study is to understand the background of the confiscation and money laundering under Thailand and the United State. Moreover, this paper examine legal framework in confiscation related money laundering between the Anti-Money Laundering Act B.E. 2542 (AMLA) and the Money Laundering Control Act of 1986 (MLCA). Next, the study aims to analyse the effective of value-based confiscation implementation under the AMLA. Lastly, the study to conclude and recommends on the amendment of the AMLA.

Introduction

Thailand and the United State are facing an uneasy task of fighting against widespread criminal activities such as drug trafficking, prostitution, corruption,

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kidnapping, extortion and terrorists.¹ Since 1970, the U.S. has enacted the first legislation to address the problem of money laundering which called The Bank Secrecy Act of 1970 (BSA)² More significantly, the Money Laundering Control Act of 1986 (MLCA) has endorsed the civil forfeiture of any property involving in money laundering schemes.³ In marked contrast, Thailand enacted the Anti-Money Laundering Act B.E. 2542 (AMLA) in which provisions for civil forfeiture have been included as well. This comprehensive Act introduced a civil forfeiture system for confiscating assets relating in predicate offences into Thai legal system.⁴

The recommendations from the 2017 assessment report of Thailand⁵ about improving the property forfeiture measures are to amend the law to able the value confiscation based on the value of the predicate offence and money laundering offence because in Thailand, there is not an enough value confiscation which means there are some legal limitations and there is no clear practice measure in the case of value confiscation. In the legislation of value confiscation that gives the judicial power to confiscate the property that has the same amount of value, this power only appears in the anti-corruption law which has been amended in 2015⁶.

In marked contrast, the reason behinds that this research pointed out the MLCA as to compare with legal measure in Thailand because the US law is one of the most outstanding legal standard in the area of money laundering due to the scope of the US forfeiture mechanisms has been broadened to include terrorism following the terrorist attacks of September 2001. These confiscation processes were used more than a decade later to punish white collar criminals. The confiscation of criminal proceeds was also an

¹ Jonathan Fisher and others, “Economic crime and the global financial crisis” Law and Financial Markets Review 5(4) (2011) 276-284

² Ibid.

³ Ibid.

⁴ APG, “Anti-money laundering and counter-terrorist financing measures,” (2017): 8., at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation%20Report-Palau.pdf>, (last visited 20 October 2020).

⁵ Ibid.

⁶ Organic Act on Anti-Corruption B.E. 2542.

important part of the war against drug cartels, organized criminals, terrorism and white collar criminals in the U.S.⁷

Therefore, the confiscation of the proceeds of crime in the US has become an effective model law to the other countries which face this proceed of crime by increasing the civil liability in the property forfeiture in the U.S. which has a special measure. So, it can reduce the incentive to commit a crime for the criminal by value confiscation. This measure can prevent and suppress money laundering more effectively because it makes the transfer, concealment, transformation, sale, distribution, exhaustion of the property from the offence related to the monkey laundering less effective due to the measure that can fully track and forfeit the property involved with the offence. Even if there is not a property to confiscate, the court can order the offender to pay the money the same amount as the property value, consequently, the offender will have no property left from the offence.

Definition of Confiscation and Money Laundering

Confiscation is defined⁸ as the permanent deprivation of property by order of a court or other competent authority. Property means assets of every kind⁹. The legal authorities as the rulers, legislators and law enforcers¹⁰ should be able to identify, trace, and freeze or seize such proceeds or property for the purpose of eventual confiscation. Banking, financial or commercial records have to be made available, if necessary; bank

⁷ Nicholas Ryder, “To Confiscate or not to Confiscate? A Comparative Analysis of the Confiscation of the Proceeds of Crime Legislation in the United States and the United Kingdom”, Journal of Business Law 8 (2013): 767

⁸ United Nations Convention against Transnational Organized Crime, “The Palermo Convention” United Nations (2018), at <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (last visited 17 September 2020).

⁹ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

¹⁰ Phil Williams and Ernesto Ugo Savona, The United Nations and Transnational Organized Crime, Psychology Press, 1996.

secrecy cannot be used as grounds to refuse to do so.¹¹ As a result, confiscation is a penalty measure that results in the permanent dispossession, or removal of finances, or other resources by an order of a competent authority or court as a result of criminal or civil proceedings.¹²

Money laundering shall define as the process that disguises illegal profits without compromising the criminals who wish to benefit from the proceeds. There are two reasons why criminals; whether drug traffickers, corporate embezzlers or corrupt public officials have to launder money: the money trail is evidence of their crime and the money itself is vulnerable to seizure and has to be protected. Regardless of who uses the apparatus of money-laundering, the operational principles are essentially the same. Money-laundering is a dynamic three-stage process that requires:

1. placement, moving the funds from direct association with the crime;
2. layering, disguising the trail to foil pursuit;
3. integration, making the money available to the criminal, once again, with its occupational and geographic origins hidden from view.

These three stages are usually referred to as placement, layering and integration.¹³

Types of Confiscation

There are two systems in the confiscation of property related to the current offense which are: (1) property-based confiscation or the forfeiture system, and (2) value confiscation. Despite being different types of confiscation measures, each system has a similar purpose which deals with criminal property in an effective reduction of crime and restriction of liberty.

¹¹ Fleur Keyser-Ringnalda, “European integration with regard to the confiscation of the proceeds of crime,” European Law Review 17 (1992)

¹² United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

¹³ United Nations Office on Drug and Crime, The Money Laundering Cycle, at <https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html> (last visited 27 Sep 2020)

1. Property-based Confiscation or Forfeiture System

The property-based system is aimed at tainted properties that are connected to, or found to be, the proceeds or instrumentalities of crime. This requires a link to be established between the identified assets and an offense.¹⁴ Freezing and confiscating property that has been acquired through a criminal offence is a crucial means of combating crime. It is also a way to stop the proceeds of crime being laundered and reinvested in legal or illegal business activities¹⁵. The reason that property confiscation became commonly used to tackle the process of crimes is because property will be a frozen asset, which means temporarily retaining property, pending a final decision in the case. It means that the owner cannot dispose of their assets before the case is closed. Also, confiscation is a final measure designed to stop criminals from accessing property obtained by breaking the law. The property is taken away permanently from the criminal or their accomplices. It is a way to stop the proceeds of crime being laundered and reinvested in legal or illegal business activities.¹⁶

2. Value-based Confiscation

The value-based confiscation means that the delinquent has to pay a sum of money to the state, based on an assessment of the value of the proceeds directly or indirectly derived from offences, or their substitutes. If he does not pay, the state has the right to seize any item of his belongings, with a value up to the amount he has to pay.¹⁷ These kind of confiscation is focused on the value of benefits derived from criminal conduct and often imposes a monetary penalty equal to an equivalent value. In this

¹⁴ Jean-Pierre Brun and Larissa Gray, Asset Recovery Handbook: A Guide for Practitioners, World Bank Publications, 2011. At https://star.worldbank.org/sites/star/files/asset_recovery_handbook_0.pdf (last visited 11 Aug 2020)

¹⁵ European Department. Confiscation and freezing of assets, at https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/confiscation-and-freezing-assets_en. (last visited 31 Aug 2020)

¹⁶ Ibid.

¹⁷ Ibid.

system, there is an assessment of the amount of benefits which flowed from the offense to the offender, including increases in value due to appreciation of the assets.¹⁸

Anti-Money Laundering Act B.E.2542 (1999) in Thailand

In the AMLA primarily specifies the predicate offence as 2 offences which are drug offences and prostitution offences related to criminal code regarding the sexual offences pertaining to procuring, seducing, or taking or enticing for indecent act on women or children in order to gratify the sexual desire of another person, and offences relating to the trafficking in children or minors. Then, after the act went through the process of House of Representatives consideration, the predicate offence was additionally specified to 9 offences and there was an increase and decrease of the offences until the process of joint consideration between House of Representatives and Senates that it reduced to 7 offences. The act got approved by both houses on 19 March 1999 and the Royal Gazette announced on 10 April 1999 which it was affective after 120 days of the announcement.¹⁹

After that, there had been additions as follows:

1. The provision of the Royal Decree on Amendment to the AMLA B.E. 2564 (2003) amended 1 predicate offence
2. The AMLA (No.2), B.E. 2551 (2008) amended 1 predicate offence
3. The AMLA (No.4), B.E. 2556 (2013) amended 12 predicate offences
4. The AMLA (No.5), B.E. 2558 (2015) amended the section 3 (2) of the AMLA, B.E. 2542 that “the human trafficking based on the Anti-Money Laundering Act” is a predicate offence.

From the aforementioned amendments, there are 21 predicate offences in the Anti-Money Laundering Act. Moreover, there are other acts that are considered as predicate offences in the Anti-Money Laundering Act.

¹⁸ Ibid.

¹⁹ Weerapong boonyopat, The Full Report of Problems and Obstacles in the Procedures of the Anti-Money Laundering office based on the Limit of the Existing Laws, Bangkok: the Faculty of Political Science, Chulalongkorn university, 2003.

1. Organic Act on the Election of Members of the House of Representatives and the Acquisition of Senators in section 53, the last paragraph²⁰
2. Anti-Human Trafficking Act, B.E. 2551 (2008) section 14²¹
3. Prevention and Suppression of Financial Support to Terrorism, B.E. 2556 (2013) section 16, the last paragraph²²
4. Prevention and Suppression of Involvement in Transnational Crime Organisation Act, B.E. 2556 (2013) section 22²³

As regarded, the AMLA invited more comprehensive predicate offences in section 3 of AMLA B.E. 2542 by Amendment Number 5.²⁴ The example of predicate offences are the offence relating to narcotics; human trafficking or offense of sexuality; public fraud; misappropriation or fraud of an act of violence against assets or dishonest conduct; malfeasance in office or malfeasance in judicial office; extortion or blackmail committed by claiming an influence of a secret society or criminal association; smuggling under the customs law; terrorism under the Penal Code; gambling under the law on gambling or being an organize person of gambling through an electronic means.²⁵ In conclusion, there are 25 predicate offences in Thailand which are divided as 21 from the AMLA and 4 from other acts.

As a resulted, predicate offences under Section 3 of the Thai AMLA include meagerly 21 offences as listed below:

- (1) Narcotics
- (2) Trafficking in or sexual exploitation of children and women in order to gratify the sexual desire of another person.²⁶
- (3) Fraud on the public
- (4) Embezzlement or fraud under commercial banks and commercial institutions laws

²⁰ Section 53 Anti-Money Laundering Act B.E.2542

²¹ Section 14 Anti-Money Laundering Act B.E.2542

²² Section 16 Anti-Money Laundering Act B.E.2542

²³ Section 22 Anti-Money Laundering Act B.E.2542

²⁴ Section 3 Anti-Money Laundering Act B.E.2542

²⁵ Section 3 Anti-Money Laundering Act B.E.2542 (amended in 2015)

²⁶ Section 3 (2) Anti-Money Laundering Act B.E.2542 (amended in 2015)

- (5) Malfeasance in office or judicial office
- (6) Extortion or blackmail committed by an organized crime or an unlawful secret society
- (7) Customs evasion
- (8) Terrorism²⁷
- (9) Illegal gambling only in case of involving more than one hundred players or 83 involving more than s 10 million.²⁸
- (10) offence relating to being a member of a racketeering group under the Penal Code or participating in an organized criminal group which constitutes an offense under relevant laws;²⁹
- (11) offence relating to receiving stolen property under the Penal Code only as it constitutes assisting in selling, buying, pawning or receiving in any way property obtained from the commission of an offense with a nature of business conduct;³⁰
- (12) offence relating to counterfeiting or alteration of currencies, seal, stamp and ticket under the Penal Code with a nature of business conduct;³¹
- (13) offence relating to trading under the Penal Code only where it is associated with the counterfeiting or violating the intellectual property rights to goods or the commission of an offense under the laws on the protection of intellectual property rights with a nature of business conduct;³²
- (14) offence relating to forging a document of right, electronic cards or passports under the Penal Code with a nature of regular or business conduct;³³
- (15) offence relating to the unlawful use, holding, or possessing of natural resources or a process for illegal exploitation of natural resources with a nature of business conduct;³⁴

²⁷ Section 3 (4) Anti-Money Laundering Act B.E.2542 (amended in 2015)

²⁸ Section 3 (8) Anti-Money Laundering Act B.E.2542 (amended in 2015)

²⁹ Section 3 (10) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁰ Section 3 (11) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³¹ Section 3 (12) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³² Section 3 (13) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³³ Section 3 (14) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁴ Section 3 (15) Anti-Money Laundering Act B.E.2542 (amended in 2015)

(16) offence relating to murder or grievous bodily injury under the Penal Code which leads to the acquisition of assets;³⁵

(17) offence relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits;³⁶

(18) offence relating to theft, extortion, blackmailing, robbery, gang-robbery, fraud or misappropriation under the Penal Code with a nature of regular conduct;³⁷

(19) offence relating to piracy under the anti-piracy law;³⁸

(20) offence relating to unfair securities trading practice under the law on securities and exchange or offense relating to unfair futures trading under the law on futures contracts or offense relating to unfair practice which affect trading price of agricultural futures or the use of inside information under the law on agricultural futures trading;³⁹

(21) offence relating to arms, ammunition, explosive object, fireworks and arms equivalent, only where it is arms, ammunition and explosive object trading, and offense under the law on armaments control, only where it is trading in armaments for the purpose of terrorism, battle or war.⁴⁰

Under the AMLA, property may be vested in the State only if it is connected with the commission of a predicate offence. Consequently, if it was not associated with the commission of a predicate offense, the illegal assets could not be vested in the State. To sum up, the assets that can be confiscated by the court need to be in their original form, or not sold or transferred to other people. With this limitation, there is an attempt to focus on the concept of confiscation of assets based on their value.

³⁵ Section 3 (16) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁶ Section 3 (17) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁷ Section 3 (18) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁸ Section 3 (19) Anti-Money Laundering Act B.E.2542 (amended in 2015)

³⁹ Section 3 (20) Anti-Money Laundering Act B.E.2542 (amended in 2015)

⁴⁰ Section 3 (21) Anti-Money Laundering Act B.E.2542 (amended in 2015)

Money Laundering Control Act of 1986 (MLCA) in the United State

The MLCA established distinct money laundering offenses. The money laundering offenses in the MLCA are twofold. First, section 1956 prohibits an individual's involvement in a financial transaction when the individual knows that the property involved in the transaction represents the proceeds of specified unlawful activity ("SUA"). Secondly, section 1957 prohibits an individual from engaging or attempting to engage in a monetary transaction involving property valued at more than \$10,000 when the individual knows that the property is derived from SUA.⁴¹ This act regulates the money laundering as the offence based on the law in Federal Crimes and Criminal Procedure Title 18 U.S. Code Part 1 Chapter 95 Sector 1956⁴². Its purpose is to regulate the predicate offence to control the money laundering which broadly prohibit the money deposit got from the crime and the offender intends to support the illegal action as well as acknowledges that the transfer covers the money origin, the ownership, or control the income figures of the illegal action as well as avoiding a financial report. This act emphasize the intention of the offender as a money laundering action.⁴³

In the U.S., there is a very effective measure which is a civil forfeiture⁴⁴ which allows to use the proof measure in the civil code that is easier than the proof measure in the criminal code. The civil forfeiture can be processed if there is evidence that the property is involved with the offence, even if there is no owner or there is no criminal prosecution. Moreover, substitute asset principle⁴⁵ is brought to use to forfeit the property which is the process in the case that the property related to the offence cannot be tracked down and forfeited, the court can order to confiscate other properties of the offender in the same amount as the illegal property. This is a value based principle which the authority calculates the amount of value generated from the offence from the beginning

⁴¹ Emily J. Lawrence. Let the Seller Beware: Money Laundering Mercahnts and 18 U.S.C. 1956, 1957. Boston College Law Review Article 4 (1992). At <https://lawdigitalcommons.bc.edu/bclr/vol33/iss4/4> (last visited 9 Sep 2020)

⁴² Title 18 U.S. Code Part 1 Chapter 95 Sector 1956

⁴³ Weerapong Boonyopat, op.cit., p. 71-72.

⁴⁴ 18 U.S. Code Section 981.

⁴⁵ 21U.S. Code Section 853 (p) "Forfeiture of Substitute Property".

of the misconduct until the prosecution. After the calculation of value, the court will order the confiscation on the other properties that have an equal value. The property forfeiture that is involved with the money laundering offence is considered as a serious offence which foreign countries recognize and strictly focus on this kind of case.

Discussion of the difference of confiscation under the AMLA and MLCA

	AMLA	MLCA
The Predicate Offense	<ul style="list-style-type: none"> - There are only 21 predicate offences - does not cover the serious offense due to the narrow definition 	<ul style="list-style-type: none"> - There are more than 250 predicate offences which called “Specified Unlawful Activities” (SUAs) - cover all of illegal activities and has broadly definition of serious offense
Confiscation Method	<p>Property-based Confiscation</p> <ul style="list-style-type: none"> - aim at tainted property which connected to the proceed of crime - most useful when identified assets can be linked with evidence to an offense - difficulties occur when asset cannot be linked to an offense and when such properties are lost or transferred - to sanction a criminal activities which results in the transfer property title to the state 	<p>Value-based Confiscation or Substitute Asset</p> <ul style="list-style-type: none"> - aim at the value of benefit derived from proceed of crime and impose a monetary penalty equal to an equivalent value - both effective in law enforcement and legal protection - to deprive the offender of any economic advantage from his criminal activity

As mentioned above from this chapter, confiscation in ML offence in Thailand and the U.S. share some similarity and differences of predicate offences and confiscation schemes as mentioned in Table 2. This chapter mainly focus on the important aspects of two legislation which are the AMLA and MLCA. Unfortunately, under the AMLA of Thailand which identified an ineffective, and, consist of weakness and loopholes. It has huge obstacles to exercise the enforcement of money laundering offense especially in

predicate offenses and confiscation of asset which directly related to the property involved with the offence. From the problems of enforcement on the property related to the offence, it leads to the analysis for regulating the property forfeiture principles in the money laundering case by considering the principles of the value-based forfeiture to be a supporting principle for enforcement on the property based on the AMLA to achieve the objective of the forfeiture in the money laundering case by focusing on the property which is to suppress the criminal organization with economic punishment.

Hence, the overall problems of the AMLA will be analyzed in the next chapter in order to search for a better resolution to eliminate the weakness in the AMLA.

Analyze Problems and Obstacles Encountered With Predicate Offences under Section 3 of AMLA

Thailand falls considerably short of international standard which requires each country to include all serious offences as predicate offences. Under this Act, predicate offenses provide rise to proceeds of crime that are the object of money laundering and, most critically, civil forfeiture. It simply implies that only those people who launder the proceeds of each of the 21 predicate offenses applied to above commit a money laundering crime.⁴⁶ On top of that, under the AMLA, only properties related to any of the 21 predicate offences can be confiscated⁴⁷. As a result, the more predicate offences are included under Section 3 of AMLA, the easier for law enforcement authorities to successfully fight against money laundering.

In marked contrast, under predicate offences in the MLCA, the state will not regulate the law for a specific case, but it will broadly regulate the law to cover the money transfer generated from the crime and the offender has an intention to support the crime or acknowledge that the transfer is intended to conceal the money origin or owner or avoidance of financial report. All the aforementioned intention must be proof more than the suspicion. The MLCA specifies the predicate offences in many circumstances which cover financial transfer generated from the crime and the offender has an intention to support the crime or acknowledge that the transfer is intended to conceal the money

⁴⁶ Section 5 Anti-Money Laundering Act B.E.2542

⁴⁷ Section 51 Anti-Money Laundering Act B.E.2542

origin or owner or avoidance of financial report. It enforces the law on several people involved such as banks, financial institutes, and normal citizens.

In conclusion, the predicate offence about the MLCA of the U.S. has numerous predicate offences to enforce which, from the study, it finds that the predicate offence based on MLCA has regulated more than 250 offences by considering them by the factors; for instance, economic offences and the serious consequences of the crime that impact the society, economy, and the humanity.

Analyze Problems and Obstacles Encountered with the Court Orders the Asset to be a State Property under Section 51 of AMLA

It is a limitation in other acts such as criminal code or the Act on Measures for the Suppression of offenders in an offence relating to narcotics, B.E. 2534 (1991). However, the abovementioned method is new and has never been used before. Therefore, the civil forfeiture measures enforcement of this act has problems and obstacles in the law and legal compliance aspects which are caused from the loopholes of the act as follows

If the assets have been damaged or lost and the court orders the assets to be a public property as requested by the prosecutor based on section 51 paragraph 1, there will be a problem for the law enforcement of the Anti-Money Laundering Office which is who is responsible to find and collect the assets as well as in the damaged or lost assets case, how the officer will enforce the law by the verdict of the court. In the case that if the court believes that the assets involved in the offence and the excuse based on section 50 paragraph 1 is unreasonable, the assets will become a public property.

When the court orders the assets to become a public property using section 51 paragraph 1, there is a problem that how to enforce the law by the court order based on section 51 if the assets are lost.

After a 90-day temporary confiscation, the owner or the representative of the owner can file a request to the secretary to return some of the assets and the secretary approves that request, therefore the assets will be in the hand of the owner. However, when the court proves that the said assets are involved in the offence and orders them to be a public property based on section 51. The following is to proceed the civil forfeiture procedure which can be considered as

The owner refuses to return the assets and claims that he or she can distribute them as pleased based on section 1336 of the civil and commercial code⁴⁸. After that, the owner has used all up or lost all of them. In this case, there is not an asset or profit to forfeit which is a problem. The purpose of AMLA (No. 2), B.E. 2551 (2008) is to stop the crime cycle of money laundering by forfeiting the assets related to the offence. For this case, how can the authority enforce the law if there is nothing left.

The authority, therefore, cannot track down and forfeit the mentioned properties so that the effectiveness of forfeiture measure is not enough. Also, the authority cannot enforce the law on the assets that are not involved with the offence. As a result, it is crucial to carefully interpret the value-based confiscation principle to this act.

In foreign countries such as the USA, there is a “Substitute Asset” principle which can be enforced on the assets not related to the offence that have an equal value of the illegal assets that are lost or cannot be tracked down. In this case, the enforcement officer can easily enforce the law with a clear instruction and make the civil forfeiture more effective. For instance, in 2004, the New York City court ordered the civil forfeiture to forfeit the house of the lawyer by using the substitute asset principle because he helped his client to launder money by transferring the money to the fund even though the house was legally purchased in 1995. The property that court orders to confiscate as a substitute asset can be confiscated without consideration if the property is generated from the offence or not which makes the offender unable to avoid the punishment by selling, distributing, transferring the mentioned property to other people who have no knowledge about the crime before the prosecution. This process does not impact the ownership of the innocent people who get the legal transfer of the property after the verdict of value confiscation. Therefore, even the other people get the property that is transferred from the illegal one, but when they got the property from a legal transfer, they have the right of ownership of the property.

Amend Section 3 in term of Predicate Offences under AMLA

The problem of narrow definition and its contained merely 21 predicate offences under Section 3 of the Anti-Money Laundering Act should be solved by amend the

⁴⁸ Section 1336 The Civil and Commercial Code

extending of the scope of predicate offences in order to include all serious offences. Therefore, Thailand should identify the serious offence case which meet the standard from specified unlawful activities in Anti-Money Laundering for State benefit to using as a potential material to AML. For instance, the offence of counterfeiting currency, counterfeiting and piracy of products, environment crime, murder, grievous bodily injury etc. Because of all serious offence has affected directly to Country economy. It can be used this legal broadly and effect to the private sector for some point. In comparison, the outcome from its process, identifying the confiscation cases of money laundering broadly will be less in cost and less in crime activities as well.

Amendment of the AMLA Section 51 by Added Value-based Confiscation Method

Assets associated with criminal offences according to the AMLA include money which drug offenders obtain, no matter how many times assets have been changed or transferred to other people or registered as belonging to others. According to this Act, assets in connection with criminal offences can be confiscated. It can be seen that the extent of power of this Act is wider than that of the criminal code. Furthermore, the court may order confiscation of the right of claim, benefits, profits gained from assets, the third party's debts which are due to be paid to offenders, including other assets related to drug-related crime that they transfer within 10 years before the court orders confiscation or asset freezing afterwards.

It should be use the confiscation rule as identified in "Substitute Assets" under the U.S. law to be the measurement from the main standard, as followed;

(1) It has be sued in law process for the illegal asset as first stage.

(2) If they cannot make any process for illegal asset due to those asset has been used entirely or it means that the AMLO officer cannot track back, therefore, it should be bring the measurement of confiscation of 'Substitute Assets' to use for law enforcement as those asset has valued equally from the asset that it cannot be traced back. Besides, it has been accepted that all of money or asset that the defendant made illegal activity, has persuaded the offender make illegal activity as the center of crimes. When the government knows the weak of these crime activities that most of offender afraid to be in the law process, therefore, they brought this measurement to use in this process, by

the way, the detail has been identified in this part like how much for confiscation to cut down exactly for this crime process.

Hence, Thailand should improve its law by adding the substitute asset or value-based confiscation principle to enforce the law on the assets with no relation to the offence that has a value as equal to the lost illegal assets. When considering the purpose of the AMLA (No. 2), B.E. 2551 (2008), it is to stop the crime cycle of money laundering by forfeiting the assets because the assets received from the offence are what keep the cycle of this crime. However, the loopholes and limitations of Thai law make the civil forfeiture difficult which links to an inability to stop the cycle. If Thailand can bring the substitute assets to enforcement, there will not be any problems in the practical aspect.

In the case that the defendant refuse to pay the amount that the court orders, the authority can enforce the law on other properties of the defendant based on the right given by the verdict of the court to confiscate the property which enables the authority to choose to confiscate the property they surely know that it is the defendant's and it will reduce the risk of an impact of the enforcement on the property of other people. Consequently, the result of using a value confiscation in the money laundering case will be a supporting measure for filling loopholes and perfecting the effectiveness of the AMLA. It is an improvement on an internal law to comply with the international convention which is an international standard.

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