ความจำเป็น และแนวทางปฏิบัติตามมาตรการสากลของ ประเทศไทยในการป้องกันปราบปรามการฟอกเงินและต่อต้าน การสนับสนุนทางการเงินแก่การก่อการร้าย

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ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

THE NEED AND COMPLIANCE ISSUES OF THAILAND'S REGIME ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Police Colonel Seehanat Prayoonrat

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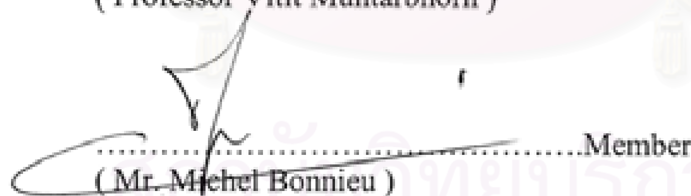
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สีหนาท ประยูรรัตน์ : ความจำเป็น และแนวทางปฏิบัติตามมาตรการสากลของประเทศไทยในการป้องกันปราบปรามการฟอกเงินและต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย (THE NEED AND COMPLIANCE ISSUES OF THAILAND'S REGIME ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM) อาจารย์ที่ปรึกษา : ศาสตราจารย์วีระพงษ์ บุญโญภาส 558 หน้า.

ในปัจจุบันคำศัพท์เฉพาะทางกฎหมายที่ใช้กันอย่าง "การป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย (Anti-Money Laundering and Combating the Financing of Terrorism, AML-CFT)" นั้นอาจทำให้บุคคลทั่วไปรู้สึกฉงนว่าคำดังกล่าวนั้นหมายถึงอะไร หรือเกี่ยวพันกับเรื่องใด ภายหลังจากเหตุการณ์ 9/11 ที่ผู้ก่อการร้ายโจมตีสหรัฐอเมริกา การใช้คำดังกล่าวก็เริ่มแพร่หลายมากขึ้น กระนั้นก็ดีผู้ที่เข้าใจความหมายของคำดังกล่าวก็จำกัดวงอยู่ในหมู่ผู้เชี่ยวชาญทางกฎหมายและนักการทูตเท่านั้น หน่วยงานภาครัฐของไทยเพิ่งจะได้มีการนำคำดังกล่าวมาใช้ในภาคราชการและในส่วนของภาคอุตสาหกรรมการเงินในภาคเอกชน ทั้งนี้ หลังจากที่ได้มีการออกพระราชบัญญัติป้องกันและปราบปรามการฟอกเงิน พ.ศ. 2542 เป็นต้นมา ภาคเอกชนก็ได้มีการตื่นตัวขึ้นเป็นลำดับ ในขณะที่ความสนใจของของประชาชนทั่วไปนั้นยังไม่มีมาก นักวิทยานิพนธ์ฉบับนี้ นำเสนอส่วนประกอบของข้อมูลที่เกี่ยวพันกับกรอบการดำเนินงานด้านการป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย โดยแบ่งเป็นสองส่วน ส่วนแรกนำเสนอถึงพื้นความรู้เดิมในเรื่องการฟอกเงินและการสนับสนุนทางการเงินแก่การก่อการร้าย ตลอดจนประเด็นอื่นที่เกี่ยวข้อง หลักเกณฑ์มาตรฐานสากล และกรอบการดำเนินงานด้านการป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย ให้เป็นไปอย่างมีประสิทธิภาพ ซึ่งอธิบายอยู่ในบทที่ 1 ถึงบทที่ 3 และในส่วนที่สองจะมุ่งเน้นที่ภาพรวมของกรอบการดำเนินงานของประเทศไทยในการป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย

ในส่วนที่สองของวิทยานิพนธ์นั้น เน้นการศึกษาและติดตามร่องรอยประวัติศาสตร์การพัฒนา หลักเกณฑ์ของประเทศไทยที่เกี่ยวข้องกับการป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้าย โดยเริ่มจากการตรากฎหมายว่าด้วยการป้องกันปราบปรามการฟอกเงินตลอดไปจนถึงการประเมินระบบกฎหมายป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้ายของไทยโดยทีมผู้ประเมินอิสระนานาชาติ จากนั้นจะได้พิจารณาถึงการปฏิบัติตามข้อบทกฎหมายป้องกันและปราบปรามการฟอกเงิน โดยเปรียบเทียบกับ ข้อแนะนำของศูนย์ปฏิบัติการสากลเพื่อต่อต้านการฟอกเงิน โดยมีการเน้นเป็นพิเศษเกี่ยวกับประเด็นข้อแนะนำของทีมประเมิน ที่ระบุว่ากฎหมายป้องกันและและปราบปรามการฟอกเงินของไทยนั้นไม่มีประสิทธิภาพ ขณะเดียวกันก็ได้มีการวิจารณ์ถึงมุมมองของทีมประเมินด้วย นอกจากนั้นวิทยานิพนธ์ฉบับนี้ยังได้มีการวิเคราะห์ และให้ข้อสังเกตต่อความเห็นเชิงวิจารณ์ของทีมประเมินที่มีต่อประสิทธิภาพของมาตรการป้องกันปราบปรามการฟอกเงินและต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้ายของไทย อีกทั้งยังได้มีการนำประเด็นที่สำคัญจากความเห็นของผู้ประเมินมาพิจารณา และวิเคราะห์เพิ่มเติม ซึ่งบางประเด็นก็เป็นประเด็นที่มีข้อโต้แย้งและมีความเห็นแตกต่างกันไป ท้ายสุดเป็นการสรุปพร้อมทั้งมีการวิเคราะห์เสนอแนวทาง และความคิดเห็นสำหรับการพัฒนา การป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้ายของไทย ไว้ในบทที่ 4 ถึงบทที่ 10

อนึ่งเนื่องจากในประเทศไทยยังมีการศึกษาวิจัยที่มีผลงานในระดับสากลในเรื่องนี้ไม่มากนัก ตลอดจนจากประสบการณ์ ที่ผู้เขียนได้เคยไปร่วมประชุมสัมมนากับนานาประเทศและองค์กรระหว่างประเทศ พบว่า ประเทศไทยยังขาดองค์ความรู้ที่มีความครบถ้วนสมบูรณ์ที่จะใช้เป็นพื้นฐานในการทำความเข้าใจให้กับนานาประเทศและองค์กรระหว่างประเทศในด้านนี้ วิทยานิพนธ์ฉบับนี้จึงได้จัดทำขึ้นเป็นภาษาอังกฤษเพื่อเพิ่มพูนคุณค่าทางวิชาการ เพื่อให้เกิดประโยชน์อย่างแท้จริงในการนำไปใช้ในการศึกษาต่อเนื่อง และเพื่อเสริมสร้างความร่วมมือระหว่างประเทศ รวมทั้งทำให้เกิดองค์ความรู้ และความเข้าใจ ในการพัฒนาการป้องกันปราบปรามการฟอกเงินและการต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้ายของประเทศไทย ให้เป็นที่ยอมรับในระดับสากลต่อไป

สาขาวิชา กฎหมายอาญา ลายมือชื่อนิสิต....................

ปีการศึกษา 2550 ลายมือชื่ออาจารย์ที่ปรึกษา....................

4886801434 : MAJOR CRIMINAL LAW
KEY WORD : COMPLIANCE ISSUES OF THAILAND'S REGIME ON ANTI-MONEY LAUNDERING / COMBATING OF TERRORISM / AML-CFT

SEEHANAT PRAYOONRAT : THE NEED AND COMPLIANCE ISSUES OF THAILAND'S REGIME ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM. THESIS ADVISOR : PROF. VIRAPONG BOONYOBHAS, 558 pp.

These days, the legal jargon "Anti-Money Laundering/Combating the Financing of Terrorism" ("AML-CFT") has baffled ordinary laymen so much so that they have no clues what the phrase actually stands for. Its usage has gained widespread circulation following the terrorist attacks on the US in September 2001. And yet its meaning is understood only in limited circle of mostly diplomats and legal experts. Thai authorities have started introducing this phrase more frequently to the private sector—financial industry in particular—after the passage of the Anti-Money Laundering Act 1999. Awareness within the private sector has since shown appreciable increase whereas the level of public awareness has remained much to be desired.

In this research paper earnest attempts have been made to present a composite of information about the AML-CFT legal framework. Roughly the paper can be divided into two parts—one part dealing with the background information on the subject of money laundering and terrorist financing and related issues, international efforts at combating ML and FT, international legal instruments, methodologies, international standards and elements of an effective AML-CFT framework. These are described in Chapters I to III, and another part focusing on Thailand's AML-CFT regime as a whole.

In the latter part, the paper traces the history of development of Thailand's AML-CFT regime, starting from the enactment of the AMLA to the assessment of Thailand's AML-CFT legal system by various independent international assessment teams. Then compliance issues are discussed in relation to the AMLA provisions against the FATF Recommendations. Points of recommendations of the assessment teams to address the deficiencies in Thailand's AML laws are highlighted in order that the recommendations are duly taken care of. At the same time, the paper ventures to make its own comments on the merits or otherwise of the assessment teams' points of view. Where necessary the paper attempts to defend the validity or capability of Thailand's AML-CFT legal framework against the critical views expressed by the assessment teams in respect of the particular issue or issues. From among the assessors' views some selective crucial issues are singled out for separate discussion because these crucial issues do deserve a special treatment on account of their critical or serious nature of criticism. Some issues are even found to be quite controversial. Then the paper concludes with its own specific suggestions for improvement of Thailand's AML-CFT legal framework. These matters are extensively covered in Chapters IV to X.

It may be observed that in Thailand there still is less number of studies and researches on this subject-matter at the international level. From the personal experiences of the writer, who has frequently attended numerous seminars of international organizations in various countries, the writer has found out that Thailand still lacks expertise that could serve as a basis for understanding of other countries and international organizations towards Thailand. Therefore, this thesis is written in English in order to enhance the academic value and to contribute to the true benefit of further studies or implementation. At the same time, it is aimed at strengthening the level of international cooperation in understanding and developing an overall AML-CFT system in Thailand acceptable to the international community.

Field of Study ....Criminal Laws............Student's Signature..........................

Academic Year..............2007.....................Advisor's Signature..........................

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My plan to write a dissertation was initially motivated by Thailand's decision of November 2003 to have its legal and institutional frameworks with particular focus on the financial sector assessed by the IMF team of experts against existing international standards and practices in relation to the combat against money laundering and terrorist financing. And the dissertation could not have been completed without the enthusiastic help and valuable guidance of Professor Virapong Boonyobhas, who also served as my advisor in addition to his membership of the Ph.D. Thesis Committee. Remaining members of the Committee, namely, Professor Dr. Arun Panupong, Professor Dr. Nantawat Boramanand, Professor Vitit Muntarbhorn, Mr. Michel Bonnieu, Dr. Prasong Vinaipat and Dr. Kittipong Kittayarak all not only encouraged me but guided me with their enlightening pieces of advice and challenging comments throughout the dissertation course. Besides, I sincerely appreciate academic support given by Professor Dr. Apirat Petchsiri and related staff of the Faculty of Law, Chulalongkorn University.

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สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

Abbreviations

ADB	Asian Development Bank
AFTC	Agricultural Futures Trading Commission
AG	Attorney General
AIMC	Association of Investment Management Companies
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Act
AMLB	Anti-Money Laundering Board
AML-CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AMLO	Anti-Money Laundering Office
APEC	Asia Pacific Economic Cooperation
APG	Asia/Pacific Group on Money Laundering
ARS	Alternative Remittance System
ASC	Association of Securities Companies
ASC	Assets Scrutiny Committee
ASEAN	Association of South East Asian Nations
ASEM	Asia-Europe Meeting
BAAC	Bank for Agriculture and Agricultural Cooperatives
BAHTNET	Bank of Thailand Automated High-Value Transfer Network
B.E.	Buddhist Era
BOT	Bank of Thailand
BIS	Bank for International Settlements
C	Compliant
CA	Customs Act
CAD	Cooperative Auditing Department
CBA	Commercial Banking Act
CCC	Commission of Counter Corruption
CCC	Civil and Commercial Code
CD	Customs Department
CFT	Combating the Financing of Terrorism
CIB	Central Investigation Bureau
CPC	Criminal Procedure Code
CPD	Cooperative Promotion Department
CTR	Cash Transaction Reporting
DAQ	Detailed Assessment Questionnaire
DAR	Detailed Assessment Report (on Thailand)
DIEA	Department of International Economic Affairs
DNFBP	Designated Non-Financial Business and Profession
DOE	Department of Employment
DOI	Department of Insurance
DOL	Department of Lands
DOP	Department of Provincial Administration
DSI	Department of Special Investigation
DTLA	Department of Treaties and Legal Affairs
ED	Excise Department
EDI	Electronic Data Interchange
EIBT	Export-Import Bank of Thailand

FAP Federation of Accounting Professions
FATF Financial Action Task Force
FBA Foreign Banks' Association
FBI Federal Bureau of Investigation
FIU Financial Intelligence Unit
FOT Financing of Terrorism
FPO Fiscal Policy Office
FPO Foreign Private Organization
FSAP Financial Sector Assessment Program
FSRB FATF-Style Regional Bodies
FT Financing of Terrorism
GHB Government Housing Bank
GIA General Insurance Association
GSB Government Savings Bank
GTAT Gold Traders Association of Thailand
IAC Information Analysis Centre
IAIS International Association of Insurance Supervisors
IBT Islamic Bank of Thailand
ICP Insurance Core Principle
ICSA International Council of Securities Associations
IMF International Monetary Fund
IOSCO International Organization of Securities Commissioners
IT Information Technology
JA Jewelry Association
JAEME Joint Asia-Europe Money Laundering Data Exchange Project
KYC/CDD Know Your Customer/Customer Due Diligence
LC Largely Compliant
LD Land Department
LEA Law Enforcement Agency
LO Liaison Officer
ME Mutual Evaluation
MEQ Mutual Evaluation Questionnaire
MFA Ministry of Foreign Affairs
ML Money Laundering
MLA Mutual Legal Assistance
MLAT Mutual Legal Assistance Treaty
MLO Money Laundering Offense
MNC Ministry of National Culture
MOC Ministry of Commerce
MOF Ministry of Finance
MOI Ministry of Information
MOJ Ministry of Justice
MOU Memorandum of Understanding
MSDHS Ministry of Social Development and Human Security
NA Not Applicable
NC Non-Compliant
NCATTC National Coordinating Agency for Terrorist and Transnational Crimes
NCCC National Counter Corruption Commission (Thailand)

ศูนย์วิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

NCC-CTTC	National Coordination Center for Combating Terrorism and Transnational Crimes
NCCT	Non-Cooperative Countries and Territories
NCGC	National Corporate Governance Committee
NDNFBP	Non-Designated Non-Financial Business and Profession
NGO	Non-Governmental Organization
NIA	National Intelligence Agency
NLA	National Legislative Assembly
NPO	Non-Profit Organization
NSC	National Security Council
OAG	Office of the Attorney General
OECD	Organization for Economic Cooperation and Development
OEM	Other Enforceable Means
OFC	Offshore Financial Centre
ONCB	Office of Narcotics Control Board
ONCC	Office of the National Culture Commission
ONSC	Office of the National Security Council
OPS	Office of the Permanent Secretary
ORFT	Online Retail Fund Transfer
OSEC	Office of Securities and Exchange Commission
PC	Penal Code
PC	Partially Compliant
PEP	Politically Exposed Person
PO	Predicate Offense
R	Recommendation (FATF)
RD	Revenue Department
REMA	Real Estate and Marketing Association
RTG	Royal Thai Government
RTP	Royal Thai Police
ROSCs	Reports on the Observance of Standards and Codes
SAC	Specially Attended Customer
SEC	Securities and Exchange Commission
SET	Securities and Exchange of Thailand
SMART	System for Management Automated Retail Funds Transfer
SMC	Secondary Mortgage Corporation
SMEDBT	Small and Medium Enterprise Development Bank of Thailand
SR	Special Recommendation (FATF)
SRO	Self-Regulatory Organization
STR	Suspicious Transaction Reporting/Report
TA	Technical Assistance
TBA	Thai Bankers' Association
TC	Transaction Committee
TCC	Thai Chamber of Commerce
TF	Terrorist Financing
THPA	Thai Hire- Purchase Businesses Association
TOC	Transnational Organized Crime (Convention)
TLAA	Thai Life Assurance Association
UN	United Nations
UNGA	United Nations General Assembly

UNGPML	United Nations Global Program against Money Laundering
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
WB	World Bank

สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

CHAPTER I
INTRODUCTION

1 Growing threats and international response

Never in the history of the world have we witnessed such amazing advances in science and technology to the extent that we are benefiting today. Modern technologies make it possible for people to communicate with one another faster, their life more comfortable and their business more sophisticated. For example, in banking business a transaction can be concluded within a few seconds, no matter what distance that may separate the transacting parties. Convenient facilities abound and people are eager, more than ever, to use to their utmost advantage the fruits of advanced technologies in all spheres of their life.

However, the use of modern technology is not confined only to good cause. It has gone beyond the good use and fallen into the hands of those who are unscrupulously employing sophisticated means in their illegal transactions. Today, the term "cyber crime" has come into existence and is one among many crimes that are threatening the world. Technology-related crimes are many and varied; each type of crime poses different degree of threat to humanity. In the early nineties, *money laundering* (ML) started to draw attention and the world community has since begun taking serious action against it. In the late nineties, one more threat has come onto the world stage; *financing of terrorism* (FT) has assumed a major role in continued survival of terrorists and their organizations as well as in their atrocious operations against targets – soft and hard alike. It is noticeable that the links between terrorism, transnational organized crime, the international drug trade and money laundering are strong. The tragic events of September 11, 2001, have not only sparked worldwide condemnation but also fostered concerted action against terrorism on a scale that has never been known before.

Now that the world has come to realize that money laundering and financing of terrorism – *the twin evils* – could not and should not be allowed to exist any more, to that end, the world nations must pool their resources together to launch a concerted campaign against the common enemy. The United Nations has taken the lead in combating ML and FT by promoting the harmonization of countermeasures and strengthening of international cooperation. The international response can be seen in two distinct areas: legal measures and political measures. Legal measures include enactment of laws and enforcement of law by civil and criminal proceedings. As for political measures, sanctions and military means are applied. An example is the drastic military action against the Taliban government of Afghanistan, who harbored the most infamous terrorist leader Osama Bin Laden or Usama Bin Laden following the terrorist attacks on the United States in September 2001.

Despite political measures and legal measures, apart from the terrorist attacks throughout the world before the 9/11 incidents, there have been terrorist attacks in different parts of the world after the adoption of various UN conventions concerning anti-money laundering (AML) and combating the financing of terrorism (CFT) and UNSC resolutions. International terrorism is one of the most serious national security

threats that we face today. The following are some examples.

The incidents of bombing two nightclubs in Bali, Indonesia in 2002 killed 202 people, including 88 Australians, 38 Indonesians and 26 British citizens. There were two more terrorist attacks in Jakarta, Indonesia. One was a suicide car bomb strike on the Marriott Hotel in 2003 and the other was a suicide bomb exploded outside the Australian Embassy in September 2004. In addition, in the same year, a devastating terrorist attack in which a string of powerful bombs were detonated on packed commuter trains took place in Madrid, Spain. The blasts killed 192 people and more than 1,500 were injured. The London terrorist attacks on 7 July 2005 that killed 56 people including 4 suicide bombers and injured 700 made the world community deeply shocked. The London bombings consisted of a series of coordinated bomb blasts that struck London's public transport system during the morning rush hour. Furthermore, on 21 July 2005, a second series of four explosions took place on the London Underground and a London bus. The detonators of all four bombs exploded but none of the main explosive charges detonated, and there were no casualties: the single injury reported at the time was later revealed to be an asthma sufferer. All suspected bombers from this failed attack escaped from the scenes but were later arrested. The 2006 transatlantic aircraft plot was an alleged terrorist plot to detonate liquid explosives carried on board several airliners, as many as 10 passenger jets leaving Britain for the United States, over the Atlantic and kill thousands. Britain thwarted the plot possibly just days away to blow up U.S. bound jetliners. Approximately 24 suspects were arrested in and around London on the night of August 2006; 11 were charged with terrorism offenses on 21 August, and a further three on 30 August. Trials are expected to start in January 2008 at the earliest.[1] Britain's air transportation network, in particular, was plunged into chaos, with long lines jamming airport terminals. Terror threat levels were raised to their highest levels and hundreds of flights were cancelled worldwide. The United Kingdom remained at its highest threat level in 2006. In India on 11 July 2006, bombs concealed in gift boxes were placed on the luggage racks of Mumbai's seven packed commuter trains timed to detonate within a few minutes of each other during the rush-hour attacks that killed more than 200 people and injured over 700.

Regarding terrorism in Thailand, there exist brutal and destructive movements of certain insurgent groups in Muslim dominated provinces in the deep South of Thailand, threatening public safety and attempting to destabilize the region. Their notorious acts are murder committed by planting bombs at public places or by ambushing security troops or by kidnapping people to be decapitated or shooting innocent civilians from a running motorcycle, and arson committed on public schools and selected targets. Since the separatist groups have conducted the destructive activities without announcing the groups' ideology or platform publicly and without claiming responsibility it is hard to say which particular group has conducted the activities.

On the other hand, the separatist groups or insurgent groups, who have one common objective "establishment of a separate independent Islamic State in the deep South",

[1] "2006 Transatlantic Aircraft Plot" Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/2006_transatlantic_aircraft_plot [Read October 2007]

are generally categorized into six groups[2]. They are:

1. **RKK** (Runda Kumplan Kecil): a separatist group alleged to be responsible for staging a series of violent attacks in some places in Narathiwat province.
2. **BRN** (Barisan Revolusi Nasional Melayu Pattani): a separatist alleged to be a splinter group of BNPP (Barisan Nasional Pembe-Basan Pattani or Pattani Islamic Liberation Front); established in 1963, fighting for a pan-Malay independent republic composed of three southernmost Muslim provinces; BNPP later changed its name to BIPP (Barisan Islam Pembe-Basan Pattani, organized into three main factions in the 1980s – BRN Congress (military wing), BRN Coordinate (political wing) and BRN Uram (religious wing). (According to a New York-based Human Rights Watch (HRW) report, the BRN-Coordinate group appears to mastermind the unrest in the deep South.
3. **PULO** (Pattani United Liberation Organization): a separatist group established in 1965 in India; its goal is to build an independent Islamic State: formed to represent the Malay people of the southern predominantly Malay provinces; became weakened by different campaigns by government during the 70s; splintered and many leaders left to set up new organizations.
4. **Bersatu** (It's completed name is "United Front for the Independence of Pattani"): a separatist group established by exiles in Malaysia; an umbrella organization variously referred to as "Payong Organization", "Ber Satu", "Pattani Malay's People Consultative Council" (Majelis Permesyuaratan Rakyat Melayu Pattani, MPRMP), etc.; it includes elements of several groups such as BRN, PULO, PNPP.
5. **GMIP** (Gerakan Mujahidin Islam Pattani): a separatist group established in 1995 by Afghan veterans; its goal is establishing an independent Pattani; it is the derivative of the first GMIP founded in 1986.
6. **New PULO** (New Pattani United Liberation Organization): a separatist group founded in 1995 by two ex-members of PULO; its goal is an independent Pattani State.

Since the beginning of 2004 till August 2007, the death toll is over 2,400 civil servants and innocent people in the deep South of Thailand according to the reports in late August 2007.

On 4 January 2004, a group of young men raided an army depot in Narathiwat, where they killed four soldiers and stole about 300 war weapons. They simultaneously attacked police checkpoints and schools. Starting from that time young separatists occasionally attacked police stations and other public offices. When the army tried to seize them they took refuge in the Kru-se Mosque. More than 32 young separatist suspects were brutally killed in a gun fight with the military at the Kru-se Mosque on 27 April 2004. Due to the maltreatment of suspect detainees, not only the insurgents but also the sympathizers participated in the demonstration against the maltreatment. The security forces broke up the demonstration and detained the demonstrators. More than 78 detainees died of suffocation while being transported from Narathiwat by military trucks for detention at an army camp in Pattani. Perhaps the incidents

[2] Seehanat Prayoonrat (Police Col.) "The Situation in Thailand's Deep South and International Security Issues" November 2007

mentioned above stirred up the almost dormant insurgent movements.

Due to the lack of identification of separatist groups and the fact that they had carried out crimes – murders, arsons, bombings, kidnappings, etc – almost every day without coming forward to take responsibility, the government responded by imposing an emergency rule in selective areas of the southern provinces. Consequently, international human rights organizations expressed their deep concerns about the freedom and safety of the people in the deep South.

In particular, the Islamic World is very much worried about the situation in the southernmost provinces. The delegation from the Organization of the Islamic Conference (OIC) led by its Secretary-General Professor Ekmeleddin Ihsanoglu visited Thailand from 30 April to 1 May 2007. Another two prominent Islamic leaders, the Secretary-General of the Muslim World League and the Grand Iman of Al-Azhar (University located in Cairo, Egypt) visited Thailand in June 2007 on a fact-finding mission. They praised the government for its conciliatory approach to solving the continuing violence in the deep South of Thailand and denounced militants who have created unrest in Thailand. Similarly, the Thailand's top Muslim leader said the current problems in the South could not be used as a pretext by insurgent groups to seek independence.

According to the newspaper, "the Bangkok Post"[3], three intelligence officials and seven policemen were arrested for having spied for militants. It is still not clear how many more accomplices were involved in supplying classified information to the insurgents who responded to the arrests with deadly attacks on army personnel. This included an ambush in Chanae district of Narathiwat province which killed eight soldiers a few days ago. The article also states the insurgents and their supporters have a lot of money which comes from various groups inside and outside the country, and it is easy for the militants to pay as much as 10 million baht for a person who can supply top-secret information. It shows that the system of terrorist financing in the deep South obviously exists and the authorities should, therefore, place more emphasis on elimination of this system.

Although the government forces have been performing their duties to maintain internal peace and stability of the citizenry in the South, the brutal and destructive activities have been going on. The southern insurgency has remained localized and a strictly internal affair of Thailand. On the other hand if the government could not control the escalation of brutal and destructive activities it might affect regional or international peace and security, especially, in terms of maritime safety.

The destructive, violent and brutal incidents all over the world show how devastating the terrorist attacks are and how vulnerable the world is to international terrorism. Not only national coordination and cooperation but also international cooperation – the catalyst without which the objectives of the anti-money laundering and combating the financing of terrorism (AML-CFT) cannot be achieved – are indispensable in the AML-CFT activities in accordance with legal measures.

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[3] Songpol Kaopatumtip and Suraphan Boonthanom, "Intelligence Breakdown", The Bangkok Post (20 January 2008), p.12

Legal measures, as the term implies, are the legal basis on which any legal action is based. For any international concerted action an international legal instrument is required and it can be fulfilled by means of a convention, a multilateral treaty, a protocol, a pact, an agreement, or whatever nomenclature that may be attached to it. Based on this instrument, domestic laws are enacted in order to implement the objectives. While the international instrument sets principles and guidelines for States parties thereto, the national law adapts such principles and guidelines to suit the specific internal situation and incorporates them into it so that States parties may be able to fulfill their international obligations in accordance with the legal maxim *pacta sunt servanda*[4].

In this respect, Thailand already has anti-money laundering and related laws (AML laws) in place. The collective application of Thailand's AML laws in matters relating to money laundering and terrorist financing in the areas of both compliance and enforcement constitutes Thailand's anti-money laundering and combating the financing of terrorism (AML-CFT) system. In other words, it is called in short "AML-CFT regime"[5]. Thailand's AML laws are described and discussed in the following chapters.

What is important to see is (1) whether or not there is a strong and effective legal framework in Thailand to combat ML-FT, and (2) whether or not the existing system is adequate to meet the international standards. To find out the real situation in AML-CFT activities in Thailand, the role of independent assessment has become necessary. The authorities therefore sought and obtained external technical assistance to assess Thailand's entire AML-CFT system between 2002 and 2007.

2 Thesis statement

Thailand being a member of the international community, it is very important to see what position Thailand occupies and what stand Thailand is taking vis-à-vis the twin evils. It is common knowledge that Thailand has been viewed as a breeding ground of laundering dirty money notably derived from drugs trafficking, human smuggling, weapons trading and, lately, terrorist financing in Southeast Asia. For quite some time Thailand has been subjected to international pressure to put in place an effective legal and administrative mechanism to deal with the complex problems of money laundering and terrorist financing.

Besides, expert assessments on Thailand's national capability to combat money laundering and terrorist financing are not that positive. For instance, the report of the Asia Pacific Group on money laundering (APG) – 2002, the Asia-Europe Meeting anti-money laundering project (ASEM AML) consultants' report – 2003, the International Monetary Fund (IMF) legal team's report – 2005, the Asian Development Bank (ADB) team's report – 2006, the IMF technical team's report – 2006, the World Bank mission's aide-memoire – 2006, the UK Charity

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[4] A Latin phrase meaning "Agreements (and stipulations) of the parties (to a contract) must be observed" as defined in the Black's Law Dictionary, fifth edition, West Publishing Company, 1979.

[5] The term "regime" in ML and FT literature does not carry the political meaning as in the fascist regime or military regime, authoritarian regime, etc. but denotes a method or system of organizing or managing something such as a tax regime, sanction regime, or reporting regime, etc.

Commission's analysis report – 2007 and the IMF mission's detailed assessment report – 2007 all found Thailand's national capability as weak or deficient, one way or another, thereby shedding somewhat negative light on Thailand's image in the international community. The main criteria the experts used are those contained in the *methodology* for assessing compliance with the FATF 40+9 Recommendations. The question therefore is:

> ***Given the need for an effective legal framework, would Thailand be able to cope with the growing international pressure as well as to comply with the international standards in order to assume its international obligations in combating money laundering and terrorist financing fully and effectively?***

Undoubtedly, the answer to this question basically lies in Thailand's national laws governing suppression of money laundering and terrorist financing activities. Review and reassessment of the existing laws in relation to international standards and conventions will then reveal the extent of Thailand's compliance and, at the same time, it will also measure how effective Thailand's AML-CFT regime is.

3 Thesis objectives and procedures

3.1 Objectives

Findings of the experts' reports in respect of Thailand's existing AML-CFT legal framework as a whole have opened up an opportunity for the researcher to review and reassess Thailand's Anti-Money Laundering Act (AMLA) and related legislation vis-à-vis the international standards with three objectives:

1. To find out how sound and valid the experts' assessments are;
2. To examine the areas where we are deficient; (if any), and
3. To make appropriate recommendations aimed at formulating a more effective AML-CFT regime in full compliance with the international standards.

3.2 Procedures

As the thesis statement would clearly indicate, the research being conducted and involved in this thesis is qualitative and exploratory in nature, and the research problem centers on the most sensitive issues of State sovereignty and national capability to fulfill the State's international obligations in relation to the international conventions and standards.

Accordingly, in order to assess correctly the capability of Thailand to establish a more effective AML-CFT regime or to find resolutions to the existing inadequacies of Thailand's legal framework vis-à-vis the requirements of the international standards, it is planned:-

§ To conduct an analytical study of Thailand's laws relating to money laundering aspects of criminal offenses as well as terrorism offenses;

§ To conduct a detailed analysis of the provisions of the AMLA and related ministerial regulations, notifications, etc;

§ To conduct a comparative study of international conventions, United Nations resolutions and international standards and criteria relating to money laundering and terrorist financing as well as related literature (documents or sources); and

§ To conduct a thorough review of the following reports.

1. APG's Mutual Evaluation Report, June 2002
2. ASEM's AML Project Consultants' Report, 2003
3. IMF Legal Team's Report, September 2005
4. ADB Consultants' Analysis Report, 2006
5. IMF Technical Team's Report, April 2006
6. World Bank Mission's Aide-Memoire, April, 2006
7. UK Charity Commission's Analysis Report , 2006 – 2007
8. IMF Mission's Detailed Assessment Report, 2007

In carrying out such a task, the methodology will employ a 4-step process as listed below:

(1) *Identifying data*: What data to collect will be determined for measuring each of the crucial issues involved;

(2) *Finding data*: In addition to existing data, additional relevant data will be collected from all available sources;

(3) *Evaluating data*: Data collected will be critically evaluated as to its origin and quality; and

(4) *Analyzing data*: Once data has been evaluated in terms of itself, it will be analyzed in terms of the overall research question.

The research process will then practically begin by collecting, collating and compiling information and data relating to the subject matter by means of search in databases, verifying and interviewing wherever necessary with agencies concerned that are responsible for combating money laundering and terrorist financing, studying similar legislation and practices of other countries in the areas of research subject, analyzing and drawing conclusions on the research subject. In citing reference materials, necessary permission will be sought from the copyright owners concerned.

Of the 4-step process, the researcher's first and foremost task was to identify data that would form the basis of research work. The data are classified into the following categories:

(a) Relevant domestic laws, rules and regulations, taken as references from among Thailand's existing legislation[6] and judicial decisions relating to

[6] See Appendix (A)

anti-money laundering and anti-terrorist financing;

(b) Relevant international conventions, UN resolutions, multilateral and bilateral treaties, and memorandums of understanding (MOUs);

(c) Established standards and norms of international standard-setters;

(d) Reports of independent consultants and regional bodies on Thailand's AML-CFT activities;

(e) Reports of domestic regulatory agencies on Thailand's AML-CFT activities;

(f) UN model laws and laws of selective foreign jurisdictions concerning AML-CFT activities;

(g) Sanitized cases of domestic and foreign financial intelligence units (FIUs); and

(h) Books, publications of international experts and website materials including mutual evaluation and country reports on AML-CFT issues.

As regards category (a), the following legislation will be taken for references.

(i) The Extradition Act – 1929,

(ii) The Commercial Banking Act – 1962,

(iii) The Psychotropic Substances Act – 1975,

(iv) The Narcotics Act – 1979,

(v) The Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics – 1991,

(vi) The Act on Mutual Assistance in Criminal Matters – 1992,

(vii) The Thai Organic Act on Counter Corruption – 1999,

(viii) The Anti-Money Laundering Act – 1999,

(ix) The Special Case Investigation Act – 2004,

(x) The Penal Code of Thailand, and

(xi) Ministerial Regulations, Rules, Notifications, Announcements issued by the Prime Minister's Office, Ministry of Justice, Bank of Thailand (BOT) and Anti-Money Laundering Office (AMLO) related to AML-CFT matters.

With regard to category (b), the researcher's collection focuses on:

(i) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;

(ii) International Convention for the Suppression of the Financing of Terrorism, 1999;

(iii) United Nations Convention against Transnational Organized Crime, 2000,

(iv) United Nations Convention against Corruption, 2003;

(v) United Nations Security Council (UNSC) Resolutions No 1267 of 15 October 1999, No. 1368 of 12 September, 2001, No. 1373 of 28 September 2001, No. 1617 of 29 July 2005 and other relevant UNSC resolutions;

(vi) Bilateral extradition treaties with 11 countries;

(vii) Bilateral treaties on mutual legal assistance in criminal matters with 14 countries;

(viii) Association of South East Asian Nations (ASEAN) regional treaty for mutual legal assistance in criminal matters, 2004; and

(ix) AMLO's MOUs with **31 foreign FIUs** as of 17-07-2007.

Regarding category (c), the researcher makes appropriate reference to:

(i) Financial Action Task Force (FATF) 40 Recommendations (R) and 9 Special Recommendations (SR);
(ii) FATF methodology for assessing compliance;
(iii) Basel Committee Core Principles, September 1997;
(iv) Statement of Principles by International Organization of Securities Commissioners (IOSCO);
(v) Statement on Regulatory and Self-Regulatory Consultation Practice by International Council of Securities Associations (ICSA);
(vi) Insurance Core Principles and Methodology by International Association of Insurance Supervisors (IAIS); and
(vii) Wolfsberg Group's Statements (2000 – 2003) on AML-CFT.

As for category (d), the researcher bases the analysis on:

(i) APG Mutual Evaluation Report on Thailand, June 2002;
(ii) ASEM AML Project Consultants' Report on Thailand, February, 2003;
(iii) Thailand Country Report to UN Crime Congress, April 2005;
(iv) ASEM AML Project Report on Research Paper 2, April 2005;
(v) IMF Legal Team's Report on Thailand, September 2005;
(vi) ADB Consultants' Analysis Report on Thailand, April 2006;
(vii) IMF Technical Team's Report on Thailand, April 2006;
(viii) World Bank (WB) Mission's Aide-Memoire, April 2006;
(ix) UK Charity Commission's Analysis Report (2006 – 2007); and
(x) IMF Mission's Detailed Assessment Report (2007).

With respect to category (e), the researcher has managed to have access to the AMLO's annual reports from 2000 to 2005.

In regard to category (f), the researcher has studied UN model laws and laws of selective foreign jurisdictions such as (i) United Nations Office on Drugs and Crime (UNODC) Model Money-laundering, Proceeds of Crime and Terrorist Financing Bill 2003, (ii) USA Patriot Act, (iii) Australia's Financial Transactions Reports Act, 1988, (iv) Philippines' Anti-Money Laundering Act, 2001, and (v) Myanmar's Control of Money Laundering Law, 17 June 2002.

Why and on what basis the selection was made can be explained as follows:

§ *Comprehensiveness*: UN model laws come in two types – one meant for civil law jurisdictions and another meant for common law jurisdictions.

§ *Initiation*: The USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, 2001, HR 3162), passed by the US Congress in October 2001 following the September 2001 terrorist attacks on the US, is the very Act that exhorted worldwide adoption of measures to combat terrorism, including terrorist financing.

§ *Law-making by developed countries:* In making AML-CFT laws it is important to see how laws detect and deter potential loopholes in financial

systems of developed countries. Hence, Australia's AML-CFT law was selected.

§ *Law-making by developing countries:* It is equally important to see how laws promote public awareness about ML-FT risks and protect the financial sector from being abused in developing countries. That's why the Philippines' AML-CFT law was chosen.

§ *Law-making by least-developed countries (LDC):* It is widely known that Myanmar's economic infrastructure is being fuelled by dirty money – particularly in the financial and real estate sectors. It is vitally important to see how laws cope with ML-FT activities in an LDC.

Study of those AML-CFT laws will help a great deal with formulating recommendations and suggestions for improvement of Thailand's AML-CFT legislation.

In respect of category (g), the researcher would, where appropriate, make use of a sizable number of sanitized cases dealing with various types of money laundering and terrorist financing activities as provided by the Egmont Group of FIUs and the AMLO. Such cases, in fact, have proven linkages not only between money laundering and predicate offenses but also between predicate offenses themselves in some cases.

In connection with category (h), the researcher has collected and studied selective books such as:

(i) The Threat of Terrorism (edited by Juliet Lodge, 1988);
(ii) Suppressing the Financing of Terrorism (IMF handbook, 2003);
(iii) Financial Intelligence Units: An Overview (IMF and WB, 2004);
(iv) Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (WB, 2004);
(v) A Compendium of Anti-Money Laundering Laws and Regulations (AMLO, 2005);
(vi) Anti-Money Laundering: International Practice and Policies (by John Broome, 2005);
(vii) Dirty Money: The Evolution of International Measures to Counter Money Laundering and Financing of Terrorism (by William C. Gilmore);
(viii) Combating Organized Crime: Best Practice Surveys of the Council of Europe (Council of Europe, 2004);
(ix) Comparative Study on Anti-Terrorism Legislative Developments in Seven Asian and Pacific Countries: Columbia, Cambodia, Indonesia, Laos, Malaysia, Philippines, East Timor and Vietnam (UNODC, January 2006);
(x) ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Curbing Corruption in Public Procurement in Asia and the Pacific Progress and Challenges in 25 Countries; and
(xi) Writing Research Paper: A Complete Guide (by James D. Lester, 1993).

Additionally, the following website materials are also referred to:

(i) State Sovereignty and International Cooperation (by Ravindra Wickre Masinghe, 6 March 2005, Useless-Knowledge.com;

(ii) Developing Legal Research Methodology to Meet the Challenge of New Technologies (by Dr Christine Cnossen and Veronica M. Smith, 30 June 1997, http://elj.warwick. ac.uk/jilt/resmeth/ 97_2cnos ;
(iii) Writing and Presenting Your Thesis or Dissertation (by Dr. S. Joseph Levine, 10/19/2004, http://www. learnerassociates.net/dissthes/ ; and
(iv) How to Write a PhD Thesis (by Joe Wolfe, www.phys.unsw.edu.au/~jw /**thesis**.html .

Furthermore, such selective APG's mutual evaluation reports and country reports on Australia, Canada, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Myanmar, Pakistan, Philippines, Taipei and USA are also taken as references.

Next, the researcher had to search on the Internet for additional data and found, amongst others, numerous reference materials pertaining to AML-CFT issues contributed by individual experts, academic organizations, regional bodies and international agencies. Of these, most relevant materials were selected for the research work.

Having collected and collated the needed data, the researcher then embarked on evaluating each material as to its origin and quality. The sources of data chiefly are of two kinds – official and private. Where the official source is concerned, the researcher had to rely mostly on sanitized cases as well as classified documents for which permission, where necessary, was sought prior to utilization. In some cases, the researcher, by virtue of his official position in charge of academic task involving both technical and legal aspects of AML-CFT issues, had to use his own discretion. As regards private documents, special care had to be taken as to the level of expertise of the respective author. As a general rule, only materials of those with established academic fame were mostly selected and cited.

Finally comes the most critical part of the process – i.e. analysis of evaluated data. The materials selected have direct relevance to the subject matter of the research. For instance, the domestic law of Thailand, namely the Anti-Money Laundering Act 1999, and the international legal instruments, viz. the Vienna and Palermo Conventions and UNSC Resolutions Nos.1368 and 1373 have direct relationship. It is vitally important to note that the level of interaction between the domestic law and the international instruments will determine the degree of impact on global combat against ML and FT. In addition, the analysis of these data will also help determine the extent to which the national capability of Thailand complies in relation to the international standards and norms.

In order to conduct a good research on AML-CFT, one must have background knowledge of ML and FT plus international efforts in combating those twin evils. The next chapter deals with the linkage between ML and FT, money laundering methods, international efforts in countering ML and FT, international legal instruments, methodology of assessing compliance, and international standard setters.

CHAPTER II
REVIEW OF LITERATURE (RELEVANT SOURCES)

1 Money laundering and financing of terrorism

Money laundering and financing of terrorism have been topics of great concern to the world leaders, in other words the highest authorities in the world, not only as serious and highly sophisticated forms of crime but also as threats to human rights, democracy and the rule of law. Evolution of technology is one factor that has contributed to the growth of ML and FT activities and deficiency in international cooperation and coordination is another factor to weaken the AML-CFT mechanism.

1.1 Definitions of money laundering

The term "money laundering" started to draw attention in the early nineties and it has been defined in different ways. Regardless of definitions, the core meaning of the term is the process of turning illegally gained money into legal and lawful money with the purposes (i) to disguise original source of criminal or illegal money and (ii) to eliminate the trail of flowing illicit money. In fact the term "money laundering" was applied not only to financial transactions related to criminal activities but to any financial transaction which generates an asset as the result of illegal acts – corruption, tax evasion, false accounting, etc. It seems that the process of ML has long ago been used by criminals such as robbers and pirates although the money laundering has come to the attention of the international community only in the nineteenth century. Although the definition of money laundering is not stated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention, 1988), the concept of money laundering can be inferred from Article 3 of the Convention that defines criminal offenses and the laundering of proceeds of crime. It reads:

> *1. Each Party shall adopt such measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally:*
>
> *(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention and the 1961 Convention as amended or the 1971 Convention;*
>
> *(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;*
>
> *(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;*
>
> *(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of*

narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offenses enumerated in (i), (ii), (iii) or (iv) above.

(b) (i) The conversion or transfer of property, knowing that such property is derived from any offense or offenses established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offense or offenses.

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from an offense or offenses established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offense or offenses;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offenses established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offenses established in accordance with this article.

Besides, the United Nations Convention against Transnational Organized Crime (2000) – known as the Palermo Convention – Article (6) defines the criminalization of the laundering of proceeds of crime. It reads:

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

> *(b) Subject to the basic concepts of its legal system:*
> *(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
>
> *(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offenses established in accordance with this article.*

Money laundering is a process of three stages – placement stage, layering stage and integration stage – which may occur simultaneously or stage by stage or they may overlap. As the process of money laundering has become the centre of attention, money laundering cases have been analyzed seriously, thoroughly and systematically. The common features of money laundering are hiding the true ownership and origin of the funds, taking care of the proceeds in good condition, transforming the proceeds using sophisticated methods and constant pursuit of profit or financial gain with elevated motivation. Money laundering has taken place in one form or another as long as profit has existed. The most prominent methods used by money launderers are use of the advanced technological means, professional assistance and transnational movement of funds by taking advantage of differences in language and criminal justice systems in different countries.

1.2 Definitions of financing of terrorism

Despite the fact that a definition of terrorism is highly controversial, it is generally accepted that terrorism is use of violence for political gain or ideological or ethnic struggle by such groups as separatists, freedom fighters, liberators, militants, paramilitaries, guerrillas, rebels, jihadists and mujaheddins or fedayeens[1]. Acts of terrorism can be committed by individuals acting alone or carried out by groups of clandestine or semi-clandestine actors outside the framework of legitimate wars through their psychology and social circumstances, regardless of religion and nationality.

The following are the proposed definitions[2] for the term “terrorism”.

§ League of Nations Convention (1937):

All criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.

§ UN Resolution language (1999):

1. *Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;*
2. *Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic,*

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[1] “Terrorism” Wikipedia, the free encyclopedia – http://en.wikipedia.org/wiki/Terrorism ,[Read September, 2005]

[2] UNODC, “Definitions of Terrorism” http://www.unodc.org/unodc/terrorism_definitions.html, [Read September 2005]

religious or other nature that may be involked to justify them (GA Res. 51/210 Measures to eliminate international terrorism).

§ Short legal definition proposed by A.P. Schmid to United Nations Crime Branch (1992):

Act of Terrorism = Peacetime Equivalent of War Crime

§ Academic consensus definition:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat – and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought(Schmid, 1988).

The legal definition for terrorist financing predicate offense stated in the 1999 International Convention for the Suppression of the Financing of Terrorism (Article 2) is:

1. *Any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*

   (a) An act which constitutes an offense within the scope of and as defined in one of the treaties listed in annex; or

   (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. *(a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the Sate Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact.*

   (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. *For an act to constitute an offense set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b).*

> 4. *Any person also commits an offense if that person attempts to commit an offense as set forth in paragraph 1 of this article.*
>
> 5. *Any person also commits an offense if that person:*
>
>   (a) *Participates as an accomplice in an offense as set forth in paragraph 1 or 4 of this article;*
>
>   (b) *Organizes or directs others to commit an offense as set forth in paragraph 1 or 4 of this article;*
>
>   (c) *Contributes to the commission of one or more offenses as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:*
>
>   (i) *Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offense as set forth in paragraph 1 of this article; or*
>
>   (ii) *Be made in the knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this article.*

In summary the term terrorist financing refers to the act of providing the funds or something of value to individual terrorists or terrorist groups or persons and groups engaged in terrorist activities or engaging in financial transactions with terrorist groups knowingly and unlawfully. FATF Special Recommendation II encourages countries to criminalize the financing of terrorism, terrorist acts and terrorist organizations – consistent with Article 2 of the Convention against Financing of Terrorism – and ensure that such offenses are designated as money laundering predicate offenses.

Terrorism includes not only the incidents happened in different parts of the world (Please see Chapter 1, heading 1 – Growing threats and international response.) but also the substantive offenses for unsuccessful violent attacks whose nature is extremely serious about violent attacks. For example, the terrorist plot to blow up US-bound jetliners, as many as 10 passenger jets leaving Britain for the United States, over the Atlantic and kill thousands in 2006, was disrupted by British police and quite a number of terrorist suspects were arrested and the police have continued surveillance on potential terrorist attacks.

Tracking terrorist financial transactions seems more difficult than following the money trails of criminal groups for two reasons, among others, (i) the amount of funds required for terrorist attacks is comparatively small and (ii) the financing of terrorism is overshadowed by the larger financial resources allocated for the group's political and social activities.

1.3 Processes with different destinations

Even though the 3-stage-process of FT is almost the same as that of ML – placement, layering and integration – terrorist organizations put more emphasis on an adequate financial infrastructure, rather than financial gain, through which to support their performances financially. Another difference between ML and FT is that individual

terrorists or terrorist groups may sometimes rely on legitimate, generated sources of income as terrorist groups use fund-raising methods and it is common practice to obtain financial support as a charity from the affluent people, especially from many religious communities. Bank accounts, especially in jurisdictions with low level of effective regulation and corrupt governance are used by terrorist groups to support themselves with funding from both legitimate and non-legitimate sources.

ML as well as FT is not a single act but a process whose prominent stages as stated earlier are: placement; layering; and integration.

Placement refers to the beginning stage of entry into legal financial systems. Various criminal groups endeavor to place large amounts of illegitimate cash into the legitimate financial systems. They choose any State, regardless of distance far or near, which is poorly regulated and that has lax banking system to deposit their illicit money. Sanitization or whitewashing is done to clean up the portrayal of particular issues and facts that may conflict with the official point of view.

Layering refers to the creation of complex and sophisticated networks and transactions which attempt to blur the link between the initial stage and the end of the laundering cycle. Having entered the proceeds into the legitimate financial systems, money launderers and the criminals who finance the terrorists attempt to obscure the entry point of legal financial systems and evade scrutiny by regulators or law enforcements by using sophisticated methods such as smurfing, using different bank accounts, buying gold bullions, etc. In other words, in order to shrink the huge volumes of cash generated by the initial criminal activity, a large amount of money is transformed into various forms of property, for example, buying precious stones that have less attraction to the authorities concerned.

Integration, which is the final stage in the process, refers to the return of funds to the legitimate economy for later extraction. Integration of laundered money into the legitimate economy is accomplished by the money launderer and terrorist financier by making it appear to have been legally earned. It is, therefore, extremely difficult to distinguish legal and illegal wealth from the integrated affluence.

The process of terrorist financing seems to be similar to that of money laundering carried out by criminal organizations but in principle the financing of terrorism is different from criminal organizations' performance of money laundering. The destination of the dirty money owned by money launderers, after being disguised, is the legitimate financial system. On the other hand, terrorist financing involves the funds that come from a legal or illegal source and the destination of the funds is a place where the funds are available to the terrorist organizations whenever they want. In a way, terrorist financing is a branch of ML but their destinations are different.

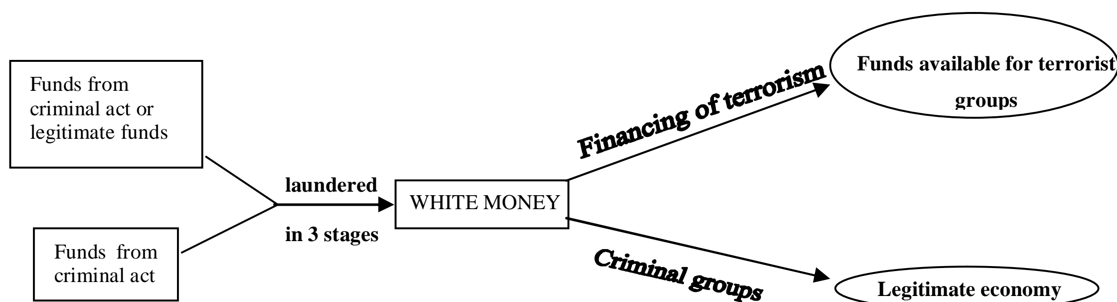

Figure 1 : Showing processes of ML and FT

In one way or another, these two processes are sometimes connected. There appears to be little difference between the methods – connected accounts, bank drafts and similar instruments, bureaux de change, remittance services, credit and debit cards, cash couriers, companies, professionals, and so forth – to hide or obscure the links between the source of the funds and their eventual destinations or purposes. In fact criminalities – smuggling, different types of fraud, misuse of non-profit organizations (NPOs) and charity fraud, drug trafficking – provide a much more consistent revenue stream to criminal organizations and terrorist organizations. There has been a tug of war between global criminals, and international regulators, legal professionals and/or law enforcement agencies due to advances in science and technology. Criminals are always intellectually alert to invention of new methods and ready to overcome the obstructions of their money laundering process.

1.4 Money laundering methods

The APG, as one of the FATF-style regional bodies (FSRB) on money laundering, has studied and analyzed the methods, techniques and trends of money laundering and terrorist financing since its establishment in 1997. Findings from typologies work enable the regulatory, supervisory and law enforcement agencies to understand the current and emerging trends of money laundering and terrorist financing. The following are a few key money laundering and terrorist financing methods, techniques, schemes and instruments[3].

1. Association with corruption (bribery, proceeds of corruption and instances of corruption undermining AML-CFT measures)
2. Currency exchanges / cash conversion
3. Cash couriers / currency smuggling
4. Structuring / smurfing
5. Use of credit cards, checks, promissory notes, etc)
6. Purchase of portable valuable commodities (gems, precious metals, etc)
7. Purchase of valuable assets (real estate, race horses, vehicles, etc)
8. Commodity exchanges (barter)
9. Use of wire transfers
10. Underground banking / alternative remittance services (hawala / hundi, etc)
11. Trade-based money laundering and terrorist financing

[3] APG, " Typologies", http://www.apgml.org/frameworks/ , [Read October, 2005]

12. Gaming activities (casinos, horse racing, internet gambling, etc)
13. Abuse of non-profit organizations (NPOs)
14. Investment in capital markets
15. Mingling (business investment)
16. Use of shell companies / corporations
17. Use of offshore banks / businesses, including trust company service providers
18. Use of nominees, trusts, family members or third parties, etc.
19. Use of foreign bank accounts
20. Identified fraud / false identification
21. Use of "gatekeepers" professional services (lawyers, accountants, brokers, etc)
22. New payment technologies

More description of certain money laundering typologies will be seen in Chapter 3, heading 5.4 – "knowledge of untraceable ML-FT" of this paper.

1.5 International efforts

World leaders have realized that international efforts are indispensable to counter money laundering and terrorist financing. Governments create agencies to serve as the national centre for AML programs and provide the exchange of information between financial institutions and law enforcements. These agencies are called financial intelligence units (FIUs). Eventually FIUs have become focal points not only for national AML programs but also for CFT programs because money laundering and terrorist financing are mingled. In June 1995, the Egmont Group of Financial Intelligence Units (Egmont Group) – a worldwide network of 106 financial intelligence units (as of July 2007)[4] to fight money laundering and terrorist financing – was established. A completely effective, multi-disciplined approach for combating and preventing financial crime is often beyond the reach of any single law enforcement or prosecutorial authority.

The Palermo Convention (2000), article 7 (1) (b), states that each country should establish an FIU to serve as a national centre for the collection, analysis and dissemination of information regarding money laundering related crimes. It says:

> *Each State Party shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

It is obvious that the world will be insecure and extremely dangerous if there is a place where the funds are available for future terrorist financing activities regardless of legitimate or illegitimate source. It is, therefore, critical to cut off the financing of terrorism from either source. UNSC resolutions 1333 and 1373 call on all Member States to freeze the funds and financial assets not only of the terrorist Usama Bin

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[4] FinCEN, "The Egmont Group – Financial Intelligence Units of the world" http://www.fincen.gov/int_egmont.html [Read 23 January 2008]

Laden and his associates, but terrorists all over the world. Countries are required to ratify the United Nations Convention on the Suppression of Terrorist Financing (1999) and to make legal professionals work within their governments to consider additional measures and share lists of terrorists for it is necessary to ensure that the entire network of terrorist financing is addressed. Sharing of information among FIUs is also critical to cut off the flow of resources to terrorist organizations and their associates. All countries have been encouraged to establish asset-tracking centers or similar mechanisms and to share the information on a cross-border basis. Governments are unified to deny terrorists access to the resources that are needed to carry out the twin evil acts, money laundering and terrorist financing. International concerted effort is essential to freeze terrorist assets, to enact legislation to criminalize terrorist financing, and to improve information sharing between the financial intelligence units of the world.

With the guidance of the Basel Committee on Banking Supervision, financial supervisors and regulators around the world have exerted control on financial sectors making sure that they are not abused by terrorists. The International Monetary Fund (IMF) has assessed the adequacy of supervision in offshore financial centers and is providing the necessary technical assistance to strengthen their integrity.

The role of enhanced international cooperation and coordination in AML-CFT system based on two important factors – creation of a robust law enforcement body and exchange of police intelligence – is crucial on the worldwide political agenda. Concerning the maintenance of international peace and security and friendly relations among nations, countless international conventions have been conducted since the end of the Second World War. Only the most prominent conventions related to money laundering and terrorist financing, however, are to be discussed in this chapter.

2 International legal instruments

Due to the growing threat of money laundering and financing of terrorism, the world leaders – including confronted governments and policy makers worldwide – had to meet and find out the means to combat the sophisticated transnational criminal activity. They adopted the international conventions, and the United Nations had to make appropriate resolutions and act as depository thereof. Owing to international efforts a number of invaluable international conventions have come into existence since December 1988.

2.1 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

What can be regarded as the first international legal instrument for suppression of money laundering is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), which was adopted on 19 December 1988 and came into force on 11 November 1990. The number of the

parties is 183[5] and it is composed of 34 Articles: Article 5 focuses on confiscation; Articles 6 – 13 on international cooperation; Articles 14 – 20 and 24 on measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances; and Articles 21-23 deal with mechanisms for implementation of measures.

The Convention is restricted to drug trafficking and does not use the term money laundering. It, however, implies the concept of money laundering – Article 3, paragraph 1-b (i), (ii), 1-c (i), (ii) – and cooperation in respect of confiscation, extradition and mutual legal assistance is described in Articles 5, 6 and 7 respectively. It also calls upon world nations to criminalize the activity, whereas only drug-related offenses are predicate offenses under this Convention. What then is the extent of the threat? To cite the ADB's 2003 Manual[6] where it states that the IMF estimated the aggregate size of money laundering worldwide as somewhere between 2% and 5% of global gross domestic product, adding that, using 1996 estimates, these percentages would indicate that money laundering ranged between US$590 billion and US$1.5 trillion.

One reason, among many others, for the world leaders concluding the Vienna Convention is that although, prior to this convention, there were two major treaties – the UN Single Convention on Narcotic Drugs (1961) amended by 1972 Protocol and the UN Convention on Psychotropic Substances (1971) – they were inadequate to the task of dealing with sophisticated modern international drug trafficking. The drug cartels use all possible means to disguise the sources of great amount of drug-related money that can be easily noticed by law enforcement officials. Consequently, dirty money derived from drug is laundered by the mentioned three basic stages. Criminals from different regions of the world – regardless of educational qualification, sex, age, religion, or nationality – are organized at the behest of powerful and affluent drug cartels. Above all, legitimate business corporations with highly educated, disciplined and skilled professionals who can disguise the illegal nature and origin of the drug-related money are used by the drug cartels.

Another reason is that some outcomes of drug trafficking have a negative impact on national economy, health and welfare of people, domestic political stability, etc. In the first preamble of the Convention, the States Parties clearly state:

> *Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society.*

Thirdly, the world leaders have noticed that however much the international conventions have done to combat ML and FT, as far as corruption exists in the AML-CFT system, the objectives of the system will never be fully achieved. The extremely profitable illicit drug trade tempts the leading politicians, judges, etc. and some

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[5] UN, "The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)", www.unodc.org/pdf/treaty_adherence_convention_1988.pdf , [Read 29 August 2006, January 2008]

[6] ADB, "Asian Development Bank Manual on Countering Money Laundering and Financing of Terrorism", 2003: pp.4 – 5

politically exposed persons are involved in the many differing levels of the trade. As a result, it corrupts the central organs of State power. Since corruption is the major factor to hinder the combating of money laundering related to various types of serious crimes, the preamble of the Convention (paragraph 5) hints:

> *Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.*

Accordingly, the United Nations Convention against Corruption (UNCAC) was adopted on 31 October 2003 and came into force on 14 December 2005. (Please see heading 2.4 – UN Convention against Corruption.)

Last but not least, one of the most alarming features of drug trafficking which make the international community vigilant is that the movement of drugs from producers (developing countries in South America, Southeast Asia and Southwest Asia) to consumers (developed countries located in advanced industrialized economies, such as the United States, North America and Western Europe) by using transit countries (Caribbean, Central America) can pose an indirect threat to the maintenance of international peace and security. In addition, Europe has been an exporter of psychotropic substances to different parts of the world. During the convention the States Parties, including drug-producing countries, drug-consuming countries and transit countries, expressed their determination to improve international cooperation in the combating of money laundering[7].

Although the initial concern over money laundering began with drug trafficking, nowadays, illicit monies are produced from a vast range of criminal activities – sales of weapons, cyber crime, homicide, human trafficking, and corruption. Regardless of the crime, money launderers use the same process – placement, layering and integration – to legitimize the proceeds derived from the criminal activities. Despite the fact that the Vienna Convention lacks the term "money laundering", this convention is now widely regarded as constituting the foundation of the international anti-money laundering regime. Countries, therefore, have taken appropriate steps to ratify and implement the Vienna Convention in order to combat money laundering effectively.

2.2 International Convention for the Suppression of the Financing of Terrorism (1999)

Starting with the Vienna Convention the world community had developed over the years measures to address the problem of proceeds of serious crimes and money laundering. Having observed the connection between money laundering and financing of terrorism, the world leaders recalled the previous conventions and treaties related to terrorist financing and were all geared up for a convention for the suppression of terrorist financing.

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[7] UN, "The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)", Articles 5 – 10.

Long before the attacks on the United States in September 2001, the financing of terrorism had been an international concern. There were several United Nations General Assembly (UNGA) and UNSC Resolutions such as GA Resolution 49/60 of 9 December 1994, GA Resolution 50/6 of 24 October 1995, GA Resolution 51/210 of 17 December 1996 (paragraph 3a to 3f), GA Resolution 52/165 of 15 December 1997, GA Resolution 53/108 of 8 December 1998, and SC Resolution 1189 of August 1998 on international terrorism.

France proposed a convention for the suppression of terrorist financing at the United Nations General Assembly on 23 September 1998. UNGA Resolution 53/108 of 8 December 1998 empowered an *ad hoc* committee to elaborate a draft of international convention for the suppression of terrorist financing to supplement related existing international instruments.

Consequently the International Convention for the Suppression of the Financing of Terrorism – the Convention against FT – was adopted by the UN on 9 December 1999 and came into force on 10 April 2002. As of 1 January 2006, the number of the parties[8] is 154 and it is composed of 28 Articles; Article 2 defines the predicate offense of terrorism (Please see Chapter 2, heading 1.2 – Definition of financing of terrorism), Articles 4-9 deal with measures against terrorist acts and financing of terrorism, and Articles 10-22 with international cooperation.

The following are nine international treaties made between 1970 and 1997 set out in the Annex to the Convention.

1. *Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.*
2. *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.*
3. *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.*
4. *International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.*
5. *Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.*
6. *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.*
7. *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.*
8. *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.*
9. *International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.*

Regarding the universal instruments against terrorism, please see Chapter 4, heading

[8] Inventory of International Nonproliferation Organizations and Regimes, Center for Nonproliferation Studies, "International Convention for the Suppression of the Financing of Terrorism",8-10-2006:p.1

4.7 – Thailand and universal instruments.

It requires ratifying States (1) to criminalize terrorism, terrorist organizations and terrorist acts, (2) to engage in wide-ranging cooperation with other States Parties and provide them with legal assistance in the matters covered by the Convention, and (3) to enact appropriate requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts. The significance of the definition of financing of terrorism is seen in the combination of two elements – the *mental element* and the *material element* of the offense in Article 2 (1) – where it says: "Any person commits an offense within the meaning of the Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out…." Thus, this single provision covers the material element of providing or collecting funds or financing the terrorist acts as well as the mental element of intent or knowledge of the funds being used for terrorist activities.

The mental element covers willfully providing or collecting funds as well as the intent or knowledge, whereas the material elements relate to financing and terrorist acts defined in the Convention.

The UN actively undertook the significant action to fight money laundering and terrorist financing as it has the ability to adopt international treaties or conventions that have the effect of law in a country once that country has signed, ratified and implemented the Convention, depending on the country's constitution and legal practice.

2.3 United Nations Convention against Transnational Organized Crime (2000)

As the threats posed by the activities of crime groups are regarded as both serious and increasing, both developed and developing countries are vulnerable. Although some organized crime groups are involved in one form of criminal activity, others engage in various illicit activities. Even though the criminal organizations initially pose the threats in their own countries, coordination and cooperation among crime groups have increased and they are tempted to operate across international frontiers in the pursuit of profit. One research project[9], among many others, conducted by the AMLO (Thailand) in 2005 proves that there is a strong linkage between organized crime groups in Asia and Europe.

The Vienna Convention and the Convention against FT were followed by the United Nations Convention against Transnational Organized Crime. This convention known as the Palermo Convention was adopted on 15 November 2000 and came into force on 29 September 2003. The number of parties[10] is 135 and 147 countries have signed the convention. It is composed of 41 Articles: Articles 5, 6 and 8 deal with

[9] AMLO - The Asia Europe Meeting (ASEM) Anti-Money Laundering Project – Research Paper(2), "Case Studies on the Links between Organized Crime Groups in Asia and Europe" 2005: p.74

[10] UNODC, "Signatories to the UN Convention against Transnational Crime and its Protocols" http://www.unodc.org/unodc/crime_cicp_signatures.html , [Read 3 September 2007]

criminalization (1) of participation in an organized criminal group, (2) of the laundering of proceeds of crime and (3) of corruption respectively; Articles 7 and 9 deal with measures to combat ML and against corruption. Similar to the Vienna Convention and the Convention against the Financing of Terrorism, Articles 13-29 of this Convention emphasize international cooperation.

The purpose of this Convention is to promote international cooperation to prevent and combat transnational organized crimes more effectively. It for the first time mentions the term "laundering of proceeds of crime", i.e. money laundering, and urges the countries to criminalize money laundering as a predicate offense. Article 6 defines the predicate offenses including, among others, money laundering as follows:

> *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action.*

With respect to the scope of application, unlike the Vienna Convention, the Palermo Convention deals with predicate offenses inclusive of money laundering, whether committed within one's jurisdiction or outside of the country. In Article 3(2) it says:

> *For the purpose of paragraph 1 of this article, an offense is transnational in nature if: (a) it is committed in more than one State; (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) it is committed in one State but has substantial effects in another State.*

Although transnational organized crime was restricted to drug trafficking and related money laundering initially, later it has been broadened to include a large number of serious crimes including financing of terrorism.

2.4 UN Convention against Corruption (2003)

The links between corruption and organized crime are now universally recognized. Corruption, connecting with different types of crime, such as terrorism, human rights abuses, environmental degradation and poverty, and economic crime – including money laundering, malfeasance and price collusion – is not only a local but also a transnational phenomenon that affects the political stability, the stability and security of societies, and national economies. Preventing and combating corruption must, therefore, be seen as part of an overall effort to create the foundation for democracy, development, justice and effective governance.

In order to implement and maintain effective, coordinated anti-corruption policies – that promote the participation of society and reflect the principles of law, proper management of public affairs and public property, integrity, transparency and accountability – countries must not only establish and promote effective practices aimed at the prevention of corruption but also periodically evaluate legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. The existence of an anti-corruption body is one crucial factor in combating corruption. Each country should grant the body/bodies the necessary

independence to enable them to carry out its/their functions effectively and free from any undue influence.

There have been cases of corruption, locally and internationally, that involve vast quantities of assets, which may constitute a substantial proportion of the resources of countries. In order to prevent and detect international transfers of illicitly acquired assets, and strengthen international cooperation in asset recovery, a comprehensive and multidisciplinary approach is required. Since all States are responsible to prevent and eradicate corruption, they must cooperate with one another in combating corruption effectively.

Consequently, there are several conventions on combating corruption and UN Resolutions concerning corruption. The conventions are:

- § the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,

- § the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 21 November 1997,

- § the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,

- § the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and

- § the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.

The famous UN Resolutions are:

- § A/RES/55/61 in 2000 – An Effective International Legal Instrument against Corruption and
- § A/RES/55/186 in 2000 – Preventing and Combating Corrupt Practices and Illegal Transfers of Funds and Repatriation of funds to the countries of origin.

As corruption strikes at the core of the priority concerns of the UN, the Convention against Corruption was adopted by the UN on 31 October 2003 in Vienna, Austria, and came into force on 14 December 2005. Its critical focus is prevention of the corruption and the purposes of this convention are:

1. to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
2. to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in

asset recovery; and

3. to promote integrity, accountability and proper management of public affairs and public property.

This Convention applies to the prevention, investigation and prosecution of corruption including freezing, seizure, confiscation and return of the proceeds of offenses. The UN Convention against Corruption consists of the following major points.

§ General provisions
§ Preventive Measures for Public Sector: ethics and anti-corruption policies, ethics and anti-corruption bodies, codes of conduct, public procurement and finance, public reporting, and political party funding
§ Preventive Measures for Private Sector and Civil Society: accounting standards, combating money laundering, society participation
§ Punishment of Corruption: identification and criminalization of corrupt acts, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witness and victim, and law enforcement
§ Promoting and Strengthening International Cooperation: mutual legal assistance, law enforcement cooperation, and joint investigation
§ Recovery of Assets: preventing money laundering, cooperation on confiscation and return of assets.
§ Measures for International Cooperation: technical cooperation and monitoring implementation.

Ratifying this Convention, countries have legal obligations of the Convention:

§ to criminalize an array of corrupt practices;
§ to develop national institutions to prevent corrupt practices and to prosecute offenders;
§ to cooperate with other governments to recover stolen assets; and
§ to help each other, including with technical and financial assistance, to fight corruption, reduce its occurrence and reinforce integrity.

Domestic legislative framework of each country must reflect the provisions of the Convention in combating corruption. United Nations Information Services (UNIS/CP/484, 10 May 2004) states[11]**:**

> *Quantifying the magnitude of the corruption both at the national and international level is a challenge. Some studies have suggested that the cost of corruption exceeds by far the damage caused by any other single crime. More than US$ 1,000 billion is paid in bribes each year, according to ongoing research at the World Bank Institute (WBI). This figure is an estimate of actual bribes paid worldwide in both rich and developing countries. The World Bank estimates that one Asian country has lost US$ 48 billion over the past 20 years to corruption, surpassing its entire foreign debt of US$ 40.6 billion.*

Since the UNODC, as the custodian of this convention, has maximized the impact of international assistance, its program of technical assistance is being expanded to those countries whose needs are the greatest. In order to achieve corruption-free countries, technical cooperation projects focus on four areas:

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[11] UN Information Service, "United Nations Convention against Corruption", (Fact sheet) UNIS/CP/484, http://www.unis.unvienna.org/unis/pressrels/2004/uniscp484.html , 10 May 2004.

1. providing national anti-corruption policies and mechanisms;
2. strengthening judicial integrity and capacity;
3. promoting integrity in the public and private sectors, and
4. denying the proceeds of corruption and facilitating the recovery of illicit assets

2.5 United Nations resolutions

Since 1945, the United Nations, as the world leader, has taken an active role to promote the harmonization of countermeasures and the strengthening of international cooperation.

In 1998, ten years after the Vienna Convention (1988), the UNGA Special Resolution S-20/4d "Countering Money Laundering" upgraded and updated the Convention to strengthen the action of the international community against the global criminal economy. As a result of UNGA Resolution 53/108 of 8 December 1998, the International Convention for the Suppression of Financing of Terrorism was adopted by the United Nations on 9 December 1999. The scope of money laundering under the terms of the Palermo Convention (2000) includes proceeds derived from all serious crimes. It urges the countries to cooperate with each other in the detection, investigation and prosecution of money laundering, terrorist financing and other serious money laundering related criminalities.

Following the tragic events of September 2001 the United Nations Security Council acted promptly by deliberating on the issues of terrorism and terrorist financing and passing two resolutions – UNSC Resolution No. 1368, dated 12 September 2001, and UNSC Resolution No. 1373 (2001), dated 28 September 2001. While Resolution 1368 is a quick political response to the terrorist attacks by condemning them in the strongest term, the other – Resolution 1373 – is a legal response to tackle the issues of terrorist financing. In its preamble the Resolution calls on all States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions against terrorism. Furthermore, it recognizes the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism. Measures to be taken by States are shown in detail in paragraphs 1 to 9 of the Resolution.

The Resolution obligates member States to criminalize actions to finance terrorism, deny all forms of support for terrorist groups, suppress the provision of safe haven or support for terrorists, prohibit active or passive assistance to terrorists, and cooperate with other States in criminal investigations and sharing information about planned terrorist acts. In fact, this crime has been recognized officially since long before this particular incident – the tragic event of September 11, 2001 – took place. Most of the UNSC resolutions reaffirm the UNGA Resolution 2625 (adopted on 24 October1970) which affirms the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. In addition to this, the UNSC Statement S/2350 (31 January 1992) focuses on commitment to collective security, peacemaking and disarmament, arms control and

weapons of mass destruction. Pursuant to the UNSC Resolution 1373 (2001), there are a number of resolutions adopted by the UNSC.

2.6 FATF 40 + 9 Recommendations

Aside from the aforesaid conventions and resolutions, much earlier effort has been made by international bodies and regional bodies to combat money laundering. The Financial Action Task Force on Money Laundering (FATF), an intergovernmental policy-making-body, is one of such organizations. The FATF designed a comprehensive framework, in 1990, for countries throughout the world to use in developing their own efforts against ML covering the criminal system and its regulation, and international cooperation. The framework based on the Vienna Convention (1988), the Palermo Convention, and the Statement of Principles for the bank supervisors issued on 12 December 1988 by the Basel Committee on Banking Supervision as cornerstones is known as the forty Recommendations on Money Laundering. In response to the 9/11 attacks and other terrorist attacks around the world the FATF mandate was expanded to include measures to combat financing of terrorism. Experts from various ministries, law enforcement authorities, bank supervisory and regulatory agencies worked together with concerted effort to obtain a fruitful and expressive report of the Recommendations.

2.6.1 Forty Recommendations

The major purpose of the 1990 Forty Recommendations is to develop and promote policies at both national and international levels to combat money laundering especially firmly rooted in the issue of the financial power of inveterate drug trafficking syndicates and other organized crime groups whereas none of the Recommendations was terrorist specific. The Recommendations were to focus on 3 areas[12]:

1. Improvements to national legal systems;
2. Enhancement of the role of the financial system; and
3. Strengthening of international cooperation.

The Forty Recommendations – revised for the first time in 1996 to take into account changes in money laundering trends and to anticipate potential future threats – have since been revised to take account of new developments in the world. A questionnaire was contributed to the members of the FATF to collect their views on what sorts of alternation should be made to the Recommendations and Interpretative Notes. The results of the consultation questionnaire were prepared and it was agreed to focus on eight major issues[13] of substances identified by the consultation exercise in order to facilitate the progress. The eight major issues are as follows:

1. The extension of the predicate offenses for money laundering beyond drug trafficking;

[12] Gilmore, W.C., "Dirty Money, the Evolution of International Measures to Counter Money Laundering and Financing of Terrorism", third edition, Council of Europe Publishing, November 2004 : pp. 94 - 98

[13] ibid.: p. 100

2. The expansion of the financial recommendations to cover non-financial businesses;
3. The expansion of treatment of customer identification;
4. The imposition of a requirement for the mandatory reporting of suspicious transactions;
5. Cross-border currency monitoring;
6. Asset-seizure and confiscation;
7. Shell corporations; and
8. Controlled delivery.

Since terrorism has emerged again as an influential actor in the criminal world, the FATF standards were updated and reinforced. Among some other issues, terrorist financing is integrated into the overall anti-money laundering in the 2003version of the Revised FATF Recommendations, which is flexible for any country to implement the principles in accordance with its own circumstances and constitutional requirements. The FATF has also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations and to provide additional guidance. The 2004 Revised FATF Recommendations essentially cover the following areas:

(a) Legal systems (Recommendations 1 – 3);
(b) Measures to be taken by financial institutions and non-financial businesses and professions (NFBPs) to prevent money laundering and terrorist financing (Recommendations 4 – 25);
(c) Institutional and other measures necessary in systems for combating money laundering and terrorist financing (Recommendations 26 – 34); and
(d) International cooperation (Recommendations 35 – 40).

2.6.2 Nine Special Recommendations

Growing attention has been paid to combating international terrorism and CFT has thrust to the top of the political agenda in the aftermath of the 9/11 attacks. Prior to the attacks in New York, Washington D.C. and Pennsylvania, the issue of terrorist financing was mentioned neither in the 1990 nor in the 1996 Recommendations of the FATF on money laundering. Immediately after those incidents, in October 2001 the FATF extended its mission to include the fight against the financing of terrorism and to that effect the FATF issued Eight Special Recommendations and revised the Forty Recommendations to include specific treatment of terrorist funding.

The Special Recommendations combined with the 2003 Forty Recommendations provide a framework for the prevention, detection and suppression of the financing of terrorism. The context of the first five Special Recommendations is similar to that of the 1999 Palermo Convention and UNSC Resolution 1373, whereas the remainder emphasizes alternative remittance systems, wire transfers and non-profit organizations.

In its introduction, the FATF clearly defines its purpose as "the development and promotion of policies to combat money laundering – the processing of criminal proceeds in order to disguise their illegal origin" – and states that "these policies aim to prevent such proceeds from being utilized in future criminal activities and from affecting legitimate economic activities." On 22 October 2004, the FATF issued one

more criterion known as Special Recommendation IX related to cash couriers. In its Interpretative Note, it states that "Special Recommendation IX was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments …."

3 Methodology of assessing compliance

It is essential to monitor the effectiveness of applying the FATF 40 + 9 Recommendations to financial institutions, businesses and professions, and non-financial businesses and professions in AML-CFT regimes and to assess the implementation of criminal laws, plus performance of authorities concerned in the legal and institutional AML-CFT framework. Much as countries wish to work very hard to have effective and robust AML-CFT regimes, there might be loopholes without proper guidance, or criteria for how to assess their AML-CFT regimes. These criteria are clearly identified in the text of the AML-CFT methodology.

3.1 FATF assessment methodology for AML-CFT

The international effort against ML and FT has been highlighted and assessments that measure compliance with the FATF 40 + 9 Recommendations have been conducted by the FATF in cooperation with the IMF and the World Bank (WB). Before the FATF assessment methodology was endorsed by the FATF, a number of versions were prepared: August 2001, February 2002, April 2002 and September 2002 which is a draft of an integrated comprehensive methodology. In 2002, the IMF adopted the FATF methodology to apply in a 12-month pilot program of AML/CFT assessments that would be conducted in accordance with the comprehensive and integrated methodology based on the FATF 40 + 8 Recommendations.

After the revision of the FATF 40+8 Recommendations in June 2003, the revised assessment methodology was adopted by the FATF in February 2004 that consists of more than 200 criteria[14]. Having been revised several times, the 2004 Methodology (updated as of February 2005) consists of 250 criteria – 212 essential criteria and 38 additional elements – against which countries will be assessed for their compliance with the FATF 40 + 9 Recommendations. On the other hand, the 2004 Methodology updated as of October 2005, June 2006 and February 2007 consists of 249 criteria – 211 essential criteria and 38 additional elements for the essential criterion 16.4 does not exist in those updated versions.

The AML Assessment Methodology[15] focuses on the criteria necessary for an effective AML regime that has been developed by the Basel Committee on Banking Supervision, the IOSCO, and the IAIS. The draft AML Assessment Methodology – piloted in four Financial Sector Assessment Programs (FSAPs) in Luxembourg, the Philippines, Sweden and Switzerland – was circulated in August 2001.

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[14] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p III-12

[15] Joint Progress Report on the Work of the IMF and World Bank, "Intensified Work on AML-CFT", 17 April 2002. http://www.imf.org/external/np/mae/aml/2002/eng/091002.htm , [Read October 2006; 4 September 2007]

3.2 Mutual evaluation

Since a regular assessment of progress is the best instrument for any system, a decision was made to perform three rounds of mutual evaluation to monitor implementation by FATF member countries for assessing compliance with the FATF Forty Recommendations.

- § The initial round of mutual evaluation was completed in 1995. The major purpose of the evaluation was to assess the degree of formal compliance with the Recommendations.
- § The second round was initiated in early 1996 and was completed in late 1999. The emphasis was placed on the effectiveness of practicing the measures taken by members.
- § The third round of evaluation commenced in late 2004. The focus was placed exclusively on compliance with the revised parts of the Recommendations, the areas of significant deficiencies identified in the second round, and generally the effectiveness of the countermeasures.

The 1990 Recommendations were used in the first round and the second round evaluation, whereas the 2003 Revised 40 Recommendations and 8 Special Recommendations were used in the third round evaluation. Annual assessments and two rounds of mutual evaluations showed most jurisdictions' insufficient compliance with the Forty Recommendations in AML-CFT regimes.

3.3 List of Non-Cooperative Countries and Territories (NCCT list)

Measures regarding confiscation are treated in Article 5 of the Vienna Convention. On the other hand, without international cooperation no confiscation can be successful and effective. Since international cooperation in ML and FT is critical, Articles 6 – 13 of the Vienna Convention deal with international cooperation. Being a dynamic process, neither ML nor FT is that easy to be fought to the end. Competent authorities, therefore, are responsible to obtain documents and information that can be used in investigations and prosecutions of ML-FT predicate offenses. On the other hand, if competent authorities or governments of countries provide their territories as havens for the criminals, that will create hazardous situations in combating ML and FT. Services provided in the ever-growing number of the financial havens and offshore centers are serious hindrances to combating money laundering and terrorist financing.

One of the most important factors to combat the crimes effectively is enhanced international forfeiture cooperation supported by operative and productive mechanisms to promote international cooperation, such as, mutual legal assistance in investigations, prosecutions and judicial proceedings relating to money laundering and terrorist financing, including arrest, extradition and asset seizure. As far as there are some jurisdictions with corrupt governance and lax AML-CFT frameworks, the world cannot be secure from the crimes and it is difficult to achieve the effective implementation of agreed anti-money laundering measures. As money launderers continuously seek new ways to achieve their illegal ends they exploit weaknesses in lax jurisdictions to continue their illegal activities.

In order to eliminate those countries – havens for criminals, reduce the vulnerability of the financial system to money laundering and financing of terrorism, and increase the worldwide effectiveness of AML-CFT regimes with every single country's cooperation, the FATF initiated the NCCT exercise based on 25 criteria in June 2000 to assess whether non-FATF jurisdictions are cooperating in the fight against money laundering. The assessments are based on the principles of ROSC and NCCT's 25 criteria. Besides, the AML-CFT issues are broadly addressed in FSAP and OFC (Offshore Financial Centers) assessments. The FATF set up four regional review groups: (1) Americas, (2) Asia/Pacific, (3) Europe, and (4) Africa and Middle East to analyze the anti-money laundering frameworks of the jurisdictions against twenty five criteria.

The FATF also published, in February 2000, the initial report on NCCTs which included the twenty five criteria. In October 2004, the FATF consolidated the four review groups into two: (1) the Review Group on Asia/Pacific and (2) the Review Group on the Americas, Europe and Africa/Middle East.

A non-cooperative county/territory was informed, beforehand, of the work to be carried out by the FATF review group. When the review group is satisfied that the NCCT has taken adequate steps to have effective implementation of AML measures, the jurisdiction will be recommended to be removed from the NCCT list. This initiative has been successful and made significant progress as all of the twenty three NCCTs identified initially by the FATF have gradually been removed from the list.

3.4 Financial Sector Assessment Program (FSAP)

The Financial Sector Assessment Program[16] (FSAP) was launched in May 1999 with the aim to increase the effectiveness of efforts to promote the soundness of financial systems in member countries. That is the fruitful result of a significant effort exerted by the IMF and the WB. The FSAP supported by experts from a range of national agencies and international standard setters emphasizes on prevention and mitigation rather than crisis resolution. The objectives of the FSAP are:

§ To identify the strengths and vulnerabilities of a country's financial system;
§ To determine how key sources of risk are being managed;
§ To ascertain the sector's developmental and technical assistance needs; and
§ To help prioritize policy responses.

Detailed assessments of observance of relevant financial sector standards and codes are a key component of the FSAP. The FSAP also forms the basis of Financial System Stability Assessments (FSSAs) and Financial Sector Assessments (FSAs). The Detailed Assessment Questionnaire (DAQ) forms are provided to individual countries. All evaluations of financial sector strengths and weaknesses conducted under the FSAP include an assessment of the jurisdiction's AML-CFT regime. The country is

[16] Bank of Thailand, "Financial Sector Assessment Program (FSAP)" http://www.bot.or.th/BoThomepage/BankAtWork/Financial_Supervision/FSAP/FSAPindex.asp , [Read December 2006]

assessed against the following core principles[17]:

- Core principles for effective banking supervision
- Insurance core principles
- Objectives and principles of securities regulation
- Core principles for systematically important payment systems
- Code of good practices on transparency of monetary and financial policies
- Recommendations for securities settlement systems
- Standards for anti-money laundering
- Countering terrorist financing

3.5 Reports on the Observance of Standards and Codes (ROSCs)

International financial stability, essential for healthy international financial system, can be imperiled by financial crises in individual countries in the world of integrated capital markets. In this regard, international standards that can help identify vulnerabilities as well as provide guidance on how to reform policy in individual country are set and applied to both international and individual national AML-CFT systems. In order to serve the objectives of the international standards effectively, the scope and application of such standards needs to be assessed in each individual country in the context of the country's overall development strategy.

Considering this, the IMF and the WB initiated a joint pilot program "*Reports of the Observance of Standards and Codes" (ROSCs)* that relate to policy transparency, financial sector regulations and supervisions, and market integrity. The objectives[18] of the program include: to assist countries in making progress in strengthening their economic situations; to inform WB and IMF work; and to inform market participants. The two institutions have undertaken a large number of summary assessments of the observance of selected standards relevant to private and financial sector development and stability that are collected as "ROSC modules".

An ROSC module is a summary assessment of a member's observance of an internationally recognized standard in one of the areas endorsed by the IMF and the WB Boards. All modules follow a common structure with a description of country practice, an assessment of the extent to which the member meets the standard, and a list of prioritized recommendations for reform. In other words, Reports on the Observance of Standards and Codes – prepared and published at the request of the member countries – summarize to what extent countries have complied with certain international standards and codes. They are used to help sharpen the institutions' policy discussions with national authorities, and in the private sector (including rating agencies) for risk assessment. Short updated modules are produced regularly and new reports are produced every few years.

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[17] HM Treasury, "Financial Stability, The IMF Financial Sector Assessment Program (FSAP)" http://www.hm- treasury.gov.uk/documents/financial_services/fin_stability/fin_finstability_fsap.cfm, [Read December 2006]

[18] IMF and WB, "The Standards and Codes Initiative – Is It Effective? And How Can It Be Improved", approved by Mark Allen and Danny M. Leipziger, 1 July 2005: pp. 5 – 7 http://www.imf.org/external/np/pp/eng/2005/070105a.pdf ,[Read 6 September 2007]

The following 12 areas and associated standards are used to assess AML-CFT regimes.

1. Accounting,
2. Auditing,
3. Anti-money laundering and countering the financing of terrorism (AML-CFT),
4. Banking supervision,
5. Corporate governance,
6. Data dissemination,
7. Fiscal transparency,
8. Insolvency and creditor rights,
9. Insurance supervision,
10. Monetary and financial policy transparency,
11. Payment systems, and
12. Securities regulations.

Modules for the financial sector are derived from FSAPs, and the World Bank has been asked to lead in three areas – corporate governance, accounting and auditing, and insolvency regimes and creditor rights – covered by Reports on Observance of Standards and Codes (ROSCs).

4. International standard setters

As national legal systems of countries vary according to constitutional requirements of respective countries it is hard to adopt specific laws that are identical to those of another country. International standards, therefore, are necessary to be set for facilitation in combating money laundering and financing of terrorism. The prominent international standard setters are:

(1) The United Nations (UN)
(2) The Financial Action Task Force on Money Laundering (FATF)
(3) The Basel Committee on Banking Supervision
(4) International Association of Insurance Supervisors (IAIS)
(5) International Organization of Securities Commissioners (IOSCO)
(6) International Council of Securities Associations (ICSA)
(7) The Egmont Group of Financial Intelligence Units
(8) Regional bodies and relevant groups

Without the cooperation between the above-mentioned international standard setters it would be quite tough in combating money laundering and financing of terrorism. The UN initiated to take steps to fight money laundering and financing of terrorism. As a result of an increased concern about ML, the UN adopted the Vienna Convention in 1988 and the FATF – established in 1989 with the purpose to develop and promote policies for combating ML in accordance with the Vienna convention – issued Forty Recommendation on how to combat ML, but no specific measures for financing of terrorism were included.

Due to the ever-increasing terrorist attacks around the world, the UN adopted the International Convention for the suppression of the Financing of Terrorism in 1999 and the Palermo Convention – more wide-ranging than the Vienna Convention – in

2000. In 2001, the FATF issued eight Special Recommendations on terrorist financing and included specific measures for financing of terrorism in the revision of the FATF 40 Recommendations in accordance with the Convention against Financing of Terrorist and the Palermo Convention. The FATF Special Recommendation IX related to cash couriers was issued in 2004. Consequently, FATF 40+9 Recommendations exist as international standards for the global AML-CFT regime. The UN strongly urges all member states to implement the FATF 40+9 Recommendations (UNSC Resolutions 1617, paragraph 7) on July 2005.

Since money launderers use both banking system and non-banking system through which great amounts of money are transmitted, and they use financial institutions and non-financial institutions as focal points for financial misuse, regulations for those systems are crucial in implementing AML-CFT standards. It would therefore be impossible to combat money laundering and terrorist financing without financial institutions' assistance. The Basel Committee on Banking Supervision is one of the key international banking regulators and issues guidelines on international standards for the banks and systematizes supervisory standards and guidance to implement the AML-CFT standards in accordance with their own national systems. The International Organization of Securities Commissioners (IOSCO) and the International Association of Insurance Supervisors (IAIS) are two important standard-setting bodies for the non-banking system. Considering AML-CFT as a high priority, the bodies revise and provide globally accepted frameworks for the securities industry and the insurance sector. The International Council of Securities Associations (ICSA) regulates the vast majority of the equity, bond and derivatives markets.

Regarding implementation of AML-CFT standards, the performance of FIUs – central agencies to receive, analyze, and disseminate financial information to combat money laundering and terrorist financing – is extremely important. The Egmont Group provides FIUs of countries and jurisdictions with guidance on exchange of information among themselves in order to have efficient and effective international cooperation in combating money laundering and financing of terrorism.

Last but not least, the regional FATF-style bodies (FSRB) play a key role, as facilitators, in the implementation of AML-CFT standards within their respective regions. The work of the FATF has been supported by FSRBs by encouraging implementation and enforcement of FATF Recommendations 40+9. They are fundamental in the global fight against ML and FT. They help their members in different ways: sharing the information on ML trends and methods, and other developments for ML; assessing the effectiveness of AML-CFT systems; and identifying the weaknesses of their members in order to enable the member countries to take remedial action. Membership is open to any country within the region as far as it is willing to abide by their rules and objectives. Similarly, the FATF earnestly wish to help its FSRB. The FATF, with the intention of strengthening its partnerships with the regional groups, has organized and will organize yearly joint plenary meetings of the FATF typologies with one of the regional groups.

4.1 United Nations

The United Nations (UN) founded after the end of the Second World War in 1945 by 51 States is a global association of governments, which consists of 192 member States

as of 2006. The UN is divided into such principal organs as – the UN General Assembly (UNGA), UN Security Council (UNSC), UN Economic and Social Council, UN Trusteeship Council, UN Secretariat, the International Court of Justice – and specialized agencies , such as WHO, UNICEF and so forth.

The United Nations Global Program against Money Laundering[19] (GPML), the key instrument of the United Nations Office on Drugs and Crime (UNODC), is a program which encourages anti-money laundering policy development, monitors and analyses the problems and responses, and raises public awareness about money laundering. The UN helps the States, through GPML, not only to introduce legislation against money laundering and terrorist financing but also to develop and maintain the mechanisms that combat the twin evils with the goal of increasing the effectiveness of international action against money laundering by offering technical expertise, training and advice to member countries upon request.

The UNGA and the UNSC are the two administrative bodies of the UN to produce the resolutions for combating ML and FT. The following are twelve universal instruments[20] related to the prevention and suppression of international terrorism adopted by the United Nations.

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Aircraft Convention)
  Signed :14 September 1963 (Tokyo)
  Came into force :4 December 1969
- Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention)
  Singed :16 December 1970 (The Hague)
  Came into force :14 October 1971
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention)
  Signed :23 September 1971 (Montreal)
  Came into force : 26 January 1973
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (Diplomatic Agents Convention)
  Signed : 14 December 1973 (New York)
  Came into force : 20 February 1977
- International Convention against the Taking of Hostages (Hostage Taking Convention)
  Signed : 17 December 1979 (New York)
  Came into force : 3 June 1983
- Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention)[21]

[19] International Money Laundering Information Network (IMOLIN), "United Nations Global Program against Money Laundering" http://www.imolin.org/imolin/gpml.html, [Read August 2006]

[20] UNODC, "Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols", 2004: pp.2 http://www.unodc.org/pdf/Legislative%20Guide%20Mike%2006-56981_E_Ebook.pdf [Read September 2006]

[21] International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)

Signed : 26 October 1979 (Vienna)
Came into force : 8 February 1987

§ Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (Airport Protocol)
Signed : 24 February 1988 (Montreal)
Came into force : 6 August 1989

§ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Maritime Convention)[22]
Singed : 10 March 1988 (Rome)
Came into force : 1 March 1992

§ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol)[23]
Signed : 10 March 1988 (Rome)
Came into force : 1 March 1992

§ Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention)
Signed : 1 March 1991 (Montreal)
Came into force : 21 June 1998

§ International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention)
Signed : 15 December 1997 (New York)
Came into force : 23 May 2001

§ International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)
Signed : 9 December 1999 (New York)
Came into force :10 April 2002

In addition to the twelve instruments, some United Nations Security Council Resolutions[24] play the crucial roles in combating money laundering and terrorist

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Signed: 13 April 2005 (New York)
Came into force: (Not yet[21])
Amendment to the Convention on the Physical Protection of Nuclear Material (Amendment to the Nuclear Material Convention)
Signed: 8 July 2005 (IAEA, Vienna)
Came into force: (Not yet.)

[22] Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Protocol 2005 to the Maritime Convention)
Signed: 14 October 2005 (London)
Came into force: (Not yet.)

[23] Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Protocol 2005 to the Fixed Platforms Protocol)
Signed: 14 October 2005 (London)
Came into force: (Not yet.)

[24] UNSC Resolution 1189 (1998)
UNSC Resolution 1267 (related to Usama Bin Ladin – 1999)
UNSC Resolution 1269 (1999)
UNSC Resolution 1368 (2001)
UNSC Resolution1373 (2001)
UNSC Resolution 1377 (2001)
UNSC Resolution 1617 (2005)

financing. Although the United Nations Security Council may not be successful in restoring international peace and security in most cases, it nonetheless has passed a number of resolutions dealing with terrorism, including terrorist financing, in addition to a host of terrorism-related international conventions and protocols.

4.2 Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) established by the G-7 Summit in Paris in 1989 – an organization without having a tightly defined constitution or an unlimited life span[25] – has been working efficiently, effectively and fruitfully since 1989. Its responsibility initially was to analyze money laundering methods and set out the measures to be taken to combat money laundering and later has expanded to the matters related to terrorist financing. The main purpose of the FATF comprised of 33 member jurisdictions[26] is to develop and promote policies for combating money laundering and terrorist financing.

Due to the general commitment made by G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States), and the Commission of European Communities to define a strategy to combat money laundering, i.e. the FATF 40 + 9 Recommendations – revised several times to ensure that they remain up to date and relevant to evolving threats of money laundering – the FATF has become the spearhead of the global combat against money laundering and financing of terrorism. (Please see heading 2.6 FATF 40 + 9 Recommendations). There are seven FSRBs which have committed to implement the FATF Recommendations and agreed to undergo a mutual evaluation of their AML-CFT systems.

The FATF was established in 1989 and it was unanimously agreed, during 1993-1994 round, that the FATF should remain in being until 1998-1999. Again in April 1998, a ministerial meeting of members held in Paris extended the FATF's span of life until 2004. In May 2004, the life of the Task Force was extended again for eight more years until December 2012[27].

The major tasks[28] the FATF has performed are:

- *Setting international AML/CFT standards: The FATF develops international AML/CFT standards (The "FATF 40+9 Recommendations") as well as additional interpretation or guidance and best practices.*

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[25] FATF-GAFI, "What is the FATF?", http://www.fatf-gafi.org/document/57/0,3343,en_32250379_32235720_34432121_1_1_1_1,00.html, [Read December 2005]

[26] Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; the European Commission; Finland; France; Germany; Greece; The Gulf Cooperation Council; Hong Kong; China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Netherlands; New Zealand; Norway; Portugal; Russia; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States.

[27] Gilmore, W.C., "Dirty Money, the Evolution of International Measures to Counter Money Laundering and Financing of Terrorism", third edition, Council of Europe Publishing, November 2004 : p. 91

[28] FATF, "FATF 2004-2005 Annual Report", http://www.oecd.org/dataoecd/41/25/34988062.pdf, 10 June 2005: pp. 6 – 7 [Read October 2006]

- *Monitoring compliance with AML/CFT standards: The FATF monitors the compliance of its members with the FATF 40 + 9 Recommendations through a peer or mutual evaluation process.*

- *Promoting worldwide application of the FATF standards: The FATF encourages the universal implementation of FATF standards by supporting FATF-style regional bodies (FSRBs) in all parts of the world and through partnerships with international and regional organizations.*

- *Encouraging compliance of non-FATF members with FATF standards: The FATF urges non-member countries to implement AML/CFT standards through its cooperation with the FSRBs, as well as through various mechanisms designed to encourage countries to adhere to international standards, such as the NCCT initiative and technical assistance needs assessments (TANAs).*

- *Studying the methods and trends of money laundering and terrorist financing: The FATF examines current typologies on an ongoing basis to ensure that its AML/CFT policy making is relevant and appropriate in dealing with the evolving ML/FT threat.*

Apart from the 40 + 9 Recommendations, the FATF has undertaken a review of the NCCT initiative. After examining 47 countries and territories, 23 jurisdictions were on the NCCT list[29]. All listed countries have made legislative reforms and placed concrete measures as required in order to comply with international anti-money laundering standards as of 13 October 2006 and there are no Non-Cooperative Countries and Territories[30]. And yet there are some questions: (1) Are the AML-CFT regimes in the de-listed countries compliant with international anti-money laundering standards?; (2) Does the FATF realize the real situation of money laundering process in those countries?; and (3) Are all the de-listed countries not safe havens?.

4.3 Egmont Group

Over the past years, governments have created financial intelligence units to deal with the problem of ML. In the early 1990s, despite the fact that FIUs were created in jurisdictions their performances were isolated and not as effective as they should be due to lack of international cooperation. In order to overcome this problem, the Egmont Group (named for the location of the first meeting at the Egmont Arenberb Palace in Brussels), a global organization of FIUs established in 1995, with the mission of development, cooperation, and sharing of expertise, has developed five working groups[31] and an Egmont Committee that serves as the consultation and coordination mechanism for the Heads of FIUs. The Egmont Committee consisting of five working groups[32] holds meetings three times a year.

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[29] FATF, "FATF 2004-2005 Annual Report", http://www.oecd.org/dataoecd/41/25/34988062.pdf, 10 June 2005: p.5

[30] FATF, "Non-Cooperative Countries and Territories" www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html, [Read November 2006]

[31] US Department of Treasury - Financial Crimes Enforcement Network, " Egmont Working Groups/Committee" http://www.fincen.gov/int_fius.html

[32] 1.The Legal Working Group
2.The Outreach Working Group
3.The Training Working Group
4.The Operational Working Group
5.The IT Working Group

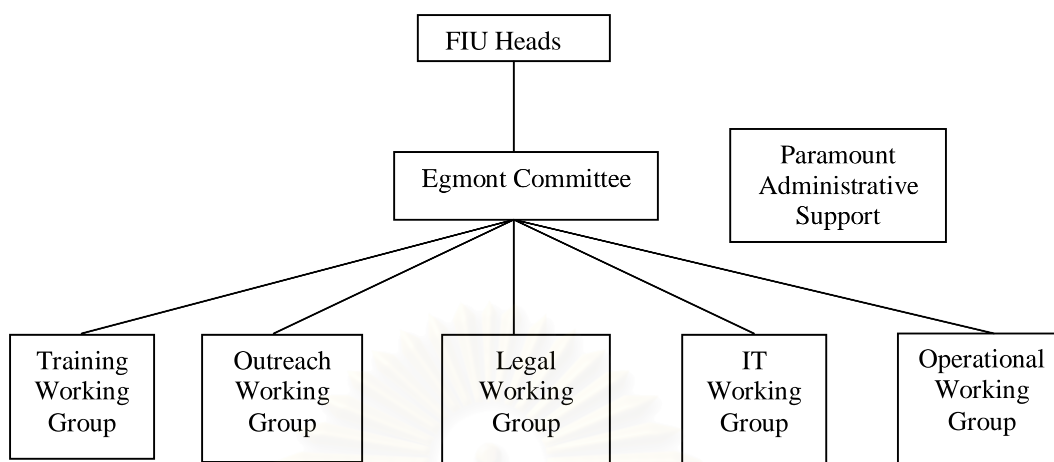

Figure 2 : Showing organization of Egmont Group

The major purpose of the Egmont Group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programs, such as expanding and systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel of FIUs and fostering better communication among FIUs through the application of advanced technology. Member-FIUs of the Egmont Group affirm their commitment to encourage the development of FIUs and cooperation among and between them in the interest of combating ML and assisting with the global fight against terrorist financing.

The two documents relating to ML and FT, among others, the Egmont Group has published are:

1. Principles for information exchange between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases (Annex to "Statement of Purpose"[33]): this document contains 5 parts.

   A. Introduction
   B. General framework
   C. Conditions for the exchange of information
   D. Permitted uses of information
   E. Confidentiality – Protection of privacy

   Allowing countries necessary flexibility to foster the development of FIUs and information exchange, this provides the principles to overcome the obstacles preventing cross-border information sharing, including the conditions for the exchange of information, the permitted uses of information, as well as confidentiality issue.

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[33] Egmont, http://www.ctif-cfi.be/nl/intorg/egmont/statpurpen.pdf

2. Best Practices for the Exchange of Information between Financial Intelligence Units: this document contains two parts: (1) legal issues for some countries where there might be restrictions that limit the free exchange of information with other FIUs or the access to information relevant to a requesting FIU, and (2) practical issues which provide guidelines regarding (i) request, (ii) processing the request, (iii) reply, and (iv) confidentiality to be taken into account for the exchange of information between FIUs.

As the major purpose of the Egmont Group is to strengthen the exchange of financial intelligence information between FIUs and its commitment is to development of FIUs, it should find out periodically whether the FIUs in the developing countries have carried out their duties effectively and efficiently and accordingly give guidance and assistance to the FIUs, especially the countries that lack advanced technology.

4.4 Basel Committee

One of the key international banking regulators is the Basel Committee on Banking Supervision, which was established in 1974 to promote the supervision of internationally active banks. The Basel Committee is made up of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States[34]that are represented by their central-bank or the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. Its Secretariat is located at the Bank for International Settlements in Basel, Switzerland. The Committee has recognized its work under four subcommittees[35]: (i) the accord implementation group; (ii) the policy development group; (iii) the accounting task force; and (iv) the international liaison group. The Basel Committee meets regularly four times a year and its four main working groups - subcommittees also meet regularly.

The Committee is responsible for issuing guidelines on supervisory standards which the international community expects from banks and bank supervisors. It systematizes supervisory standards and guidelines without intending to have supervisory and enforcement authorities and recommends statements of best practice to implement them in accordance with their own national systems, and it does not have these authorities.

One of its objectives is to improve supervisory standards and the quality of supervision worldwide in three ways: exchanging information on national supervisory arrangements; improving the effectiveness of techniques for supervising international banking business; and setting minimum supervisory standards in areas where they are considered desirable.

Since the Committee has been concerned with money laundering issues, in June 2003, it participated in a joint issuance – a statement of what each of the three sectors

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[34] Bank for International Settlements (BIS), "History of Basel Committee and its membership" http://www.bis.org/bcbs/history.htm [Read December 2006 , 7 August 2007]

[35] Bank for International Settlements (BIS), "About the Basel Committee", http://www.bis.org/bcbs/ , [Read August 2007]

(banking, insurance, and securities) has done and should do in the future to deter ML and combat the FT – along with the IAIS and the IOSCO.

4.4.1 Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering, 1988

The Committee issued its "*Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering"* in 1988. It encourages banks' management to put in place effective procedures to ensure that all customers are properly identified for their legal financial transactions but not to give active assistance in transactions associated with money laundering. It also suggests to banks to cooperate with enforcement authorities according to the policies and procedures consistent with this Statement focusing on four crucial points:

- Customer identification
- Compliance with law
- Cooperation with law enforcement authorities
- Adherence to the Statement

4.4.2 Core principles for effective banking supervision

The Committee introduced twenty five Core Principles for Effective Banking Supervision, the most important global standard for prudential regulation and supervision, in 1997. It was revised and published in 2006. The intention of the revision was not to radically rewrite the Core Principles but rather to focus on those areas where adjustments to the 1997 framework were required to ensure their continued relevance.

The Core Principles[36] are divided into 7 categories:

- Objectives, independence, powers, transparency and cooperation (Principle 1)
- Licensing and structure (Principles 2 to 5)
- Prudential regulations and requirements (Principles 6 to 18)
- Methods of ongoing banking supervision (Principles 19 to 21)
- Accounting and disclosure (Principle 22)
- Corrective and remedial powers of supervisors (Principle 23)
- Consolidated and Cross-border banking (Principles 24 to 25)

Core Principle 18 deals with an important part of AML-CFT institutional framework which is known as "Know Your Customer" or "KYC" policies and procedures.

> *Supervisors must be satisfied that banks have adequate policies and processes in place, including strict "know-your-customer" rules, that [which] promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.*

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[36] Basel Committee on Banking Supervision, "Core Principles for Effective Banking Supervision", October 2006.

4.4.3 Core principles methodology

Since the Principles may be interpreted in different and incorrect ways there may be inconsistencies among assessments. In order to be objective and as uniform as possible, the Basel Committee also issued a "Core Principles Methodology" in May 1999 and revised it in 2006.

It describes under what conditions assessments should be made and the preconditions for effective banking supervision that should be taken into account when forming an assessment. It also raises a few basic considerations for conducting an assessment and compilation of the results. Two categories of criteria – essential criteria and additional criteria – for each Core Principle are discussed in the document. The essential criteria must be met without any significant deficiencies. On the other hand, when the essential criteria are insufficient to achieve the objective of the Principle, the additional criteria may also be needed in order to strengthen banking supervision.

4.4.4 Customer due diligence for banks

Customer due diligence (CDD) is a key part of controlling a bank. According to the review of the findings of an internal survey of cross-border banking in 1999, the Basel Committee identified deficiencies in many countries' KYC policies. Concerning KYC, the Committee issued "Customer Due Diligence for Banks" in October 2001 and "Consolidated KYC Risk Management" in October 2004.

The extent of KYC robustness is closely associated with the field of anti-money laundering and combating the financing of terrorism. There are four types of interrelated risks[37] banks can have owing to the inadequacy of KYC standards. They are:

1. *Reputational risk*
2. *Operational risk*
3. *Legal risk*
4. *Concentration risk*

Reputaional Risk

Reputational risk poses a major threat to banks, since the nature of their business requires maintaining the confidence of depositors, creditors and the general market place. Reputational risk is defined as the potential that adverse publicity regarding a bank's business practices and associations, whether accurate or not, will cause a loss of confidence in the integrity of the institution. Banks are especially vulnerable to reputational risk because they can so easily become a vehicle for or a victim of illegal activities perpetrated by their customers. They need to protect themselves by means of continuous vigilance through an effective KYC program. Assets under management, or held on a fiduciary basis, can pose particular reputational dangers.

Operational Risk

Operational risk can be defined as the risk of direct or indirect loss resulting from inadequate or failed internal processes, people and systems or from external events. Most operational risk in the KYC context relates to weaknesses

[37] Basel Committee on Banking Supervision, "Customer Due Diligence for Banks" , October 2001 http://www.bis.org/publ/bcbs85.pdf, [Read October 2006, 8 September 2007]

in the implementation of banks' programs, ineffective control procedures and failure to practice due diligence. A public perception that a bank is not able to manage its operational risk effectively can disrupt or adversely affect the business of the bank.

Legal Risk

Legal risk is the possibility that lawsuits, adverse judgments or contracts that turn out to be unenforceable can disrupt or adversely affect the operations or condition of a bank. Banks may become subject to lawsuits resulting from the failure to observe mandatory KYC standards or from the failure to practice due diligence. Consequently, banks can, for example, suffer fines, criminal liabilities and special penalties imposed by supervisors. Indeed, a court case involving a bank may have far greater cost implications for its business than just the legal costs. Banks will be unable to protect themselves effectively from such legal risks if they do not engage in due diligence in identifying their customers and understanding their business.

Concentration Risk

Supervisory concern about concentration risk mostly applies on the assets side of the balance sheet. As a common practice, supervisors not only require banks to have information systems to identify credit concentrations but most also set prudential limits to restrict banks' exposures to single borrowers or groups of related borrowers. Without knowing precisely who the customers are, and their relationship with other customers, it will not be possible for a bank to measure its concentration risk. This is particularly relevant in the context of related counterparties and connected lending.

On the liabilities side, concentration risk is closely associated with funding risk, particularly the risk of early and sudden withdrawal of funds by large depositors, with potentially damaging consequences for the bank's liquidity. Funding risk is more likely to be higher in the case of small banks and those that are less active in the wholesale markets than large banks. Analyzing deposit concentrations requires banks to understand the characteristics of their depositors, including not only their identities but also the extent to which their actions may be linked with those of other depositors. It is essential that liabilities managers in small banks not only know but maintain a close relationship with large depositors, or they will run the risk of losing their funds at critical times.

The document explains in detail on four essential elements: customer acceptance policy, customer identification (general identification requirements and specific identification issues), ongoing monitoring of high risk accounts, and risk management.

Specific identification issues include the following topics.

1. Trust, nominee and fiduciary accounts
2. Corporate vehicles
3. Introduced business
4. Client accounts opened by professional intermediaries
5. Politically exposed persons
6. Correspondent banking

The Committee has produced more than 100 documents on a variety of subjects[38] concerning the improving of international standards of banking supervision that can be seen on the BIS websites.

One of the key international banking regulators is the Basel Committee on Banking Supervision,

There is no doubt to say that the Basel Committee on Banking Supervision has made every effort to improve supervisory standards and the quality of supervision worldwide in three ways: exchanging information on national supervisory arrangements; improving the effectiveness of techniques for supervising international banking business; and setting minimum supervisory standards in areas where they are considered desirable. On the other hand, what could be done if the authorities in certain countries – such as Zimbabwe, Myanmar, Iraq, etc – cannot implement the guidelines on supervisory standards issued by the Basel Committee due to certain factors? Money launderers and financiers of terrorists/terrorism may use those countries as their strongholds for the regions.

4.5 International Association of Insurance Supervisors (IAIS)

The International Association of Insurance Supervisors (IAIS), an organization that sets out principles fundamental to effective insurance supervision on which standards are developed, was established in 1994. Its membership includes insurance regulators and supervisors from over 190 jurisdictions in nearly 140 countries[39]. Its objectives[40] are:

§ To cooperate to ensure improved supervision of the insurance industry on a domestic as well as on an international level in order to maintain efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders.
§ To promote the well development of well-regarded insurance markets.
§ To contribute to global financial stability.

The IAIS revised and expanded its *Insurance Core Principles and Methodology* and it was adopted in October 2003 – that provides a globally-accepted framework for the regulation and supervision of insurers and re-insurers – with the purpose to contribute towards the creation of a sound insurance system. Considering AML-CFT as a high priority, the ICP deals with AML-CFT, and in accordance with the ICP 28, the FATF Recommendations applicable to the insurance sector and insurance supervision must be satisfied to reach this objective.

ICP 28

The supervisory authority requires insurers and intermediaries, at a minimum

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[38] Bank for International Settlements (BIS), History of Basel Committee and its membership http://www.bis.org/bcbs/history.pdf , [Read August 2006]

[39] IAIS, "Annual Report 2006-07" http://www.iaisweb.org/__temp/2006-2007_Annual_report.pdf , [Read October 2007]

[40] IAIS, "Annual Report 2006-07" http://www.iaisweb.org/__temp/2006-2007_Annual_report.pdf , [Read October 2007]

those insurers and intermediaries offering life insurance products or other investment related insurance, to take effective measures to deter, detect and report money laundering and financing of terrorism consistent with the Recommendations of the Financial Action Task Force on Money Laundering(FATF).

Essential Criteria

a. *The measures required under the AML-CFT legislation and the activities of the supervisors should meet the criteria under those FATF Recommendations applicable to the insurance sector*[41].

b. *The supervisory authority has adequate powers of supervision, enforcement and sanction in order to monitor and ensure compliance with AML-CFT requirements. Furthermore, the supervisory authority has the authority to take the necessary supervisory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in an insurer or an intermediary.*

c. *The supervisory authority has appropriate authority to cooperate effectively with the domestic Financial Intelligence Unit (FIU) and domestic enforcement authorities, as well as with other supervisors both domestic and foreign, for AML-CFT purposes.*

d. *The supervisory authority devotes adequate resources – financial, human and technical – to AML-CFT supervisory activities.*

e. *The supervisory authority requires insurers and intermediaries, at a minimum those insurers and intermediaries offering life insurance products or other investment related insurance, to comply with AML-CFT requirements, which are consistent with the FATF Recommendations applicable to the insurance sector, including:*

   § *performing the necessary customer due diligence (CDD) on customers, beneficial owners and beneficiaries*

   § *taking enhanced measures with respect to higher risk customers*

   § *maintaining full business and transaction records, including CDD data, for at least 5 years*

   § *monitoring for complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose*

   § *reporting suspicious transactions to the FIU*

   § *developing internal programs (including training), procedures, controls and audit functions to combat money laundering and terrorist financing*

   § *ensuring that their foreign branches and subsidiaries observe appropriate AML-CFT measures consistent with the home jurisdiction requirements.*

[41] FATF Recommendations 4-6, 8-11, 13-15, 17, 21-23, 25, 29-32 and 40 as well as Special Recommendations IV, V and the AML-CFT Methodology for a description of the complete set of AML-CFT measures that are required.

ICP 5 states the supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.

In November 2005, The IAIS issued a comprehensive compendium entitled "*Insurance Principles, Standards and Guidance Papers*[42]" that includes the following documents for insurance companies to comply with the anti-money laundering and counter-terrorist financing standards.

1. IAIS supervisory standard on the exchange of information (January, 2002)
2. Insurance Core Principles and Methodology (October, 2003)
3. Guidance paper on anti-money laundering and combating the financing of terrorism (October, 2004)
4. Examples of money laundering and suspicious transaction involving insurance (October 2004)
5. Supervisory standard on fit and proper requirements and assessments for insurers (October, 2005)
6. Guidance paper on combating the misuse of insurers for illicit purposes (October, 2005)

The IAIS has observer status in the FATF plenary meetings and is also closely involved in the FATF Working Group on Typologies (Insurance Project) with a number of IAIS members participating in the working group.

It would be better if the IAIS has more seminars or conferences where insurance companies can share their experiences and the IAIS also has opportunities to provide assistance to solve their problems.

4.6 International Organization of Securities Commissioners (IOSCO)

The Inter-American regional association created in 1974 was transformed into the International Organization of Securities Commissioners (IOSCO) consisting of eleven securities regulatory agencies from North and South America in Quito, Ecuador in April 1983. Securities regulator from France, Indonesia, Korea and the United Kingdom were the first agencies to join the membership from outside the Americas in 1984. In July 1986, the IOSCO Paris Annual Conference decided to create a permanent General Secretariat for the Organization that is based in Madrid, Spain.

It is one of the world's key international standard-setting bodies – an organization of securities commissioners and administrators from more than 100 different countries.

[42] IAIS: "Insurance Principles, Standards and Guidance Paper", November 2005, http://www.iaisweb.org/133_ENU_HTML.asp > [Read 17 Jan 2006]

The primary objectives[43] of the organization are:

- § to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;
- § to exchange information on their respective experiences in order to promote the development of domestic markets;
- § to unite their efforts to establish standards and an effective surveillance of international securities transactions; and
- § to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

The IOSCO Statement of Principles provides a comprehensive framework relating to CDD requirements complementing the FATF Forty Recommendations on anti-money laundering. It also provides guidance to industry on the following issues.

1. Identification and verification requirements with respect to omnibus accounts.
2. Ongoing due diligence obligations; record keeping requirements for client identification information.
3. Third party reliance.

Regarding money laundering, in its report "objectives and principles of securities regulations" (May 2003), the IOSCO states[44]:

> *Securities regulators should consider the sufficiency of domestic legislation to address the risks of money laundering. The regulators should also require that market intermediaries have in place policies and procedures designed to minimize the risk of the use of an intermediaries business as a vehicle for money laundering.*

The following are the prominent achievements of the IOSCO[45].

- § A comprehensive set of Objectives and Principles of Securities Regulation (IOSCO Principles, 1998) – International benchmark for all markets.
- § A multilateral memorandum of understanding (IOSCO MOU, 2002) – Designed to facilitate enforcement and exchange of information among the international community of securities regulators.
- § A comprehensive methodology (IOSCO Methodology, 2003) – To enable the objective assessment of the level of implementation of the IOSCO Principles in the jurisdictions of IOSCO members and the development of practical action plans specifically designed to correct identified deficiencies.

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[43] OICV-IOSCO, "General Information on IOSCO" http://www.iosco.org/about/, [Read 17 January 2006]

[44] IOSCO, "Objectives and principles of securities regulations", May 2003, p.16 [Read October 2007] http://www.apgml.org/documents/docs/15/IOSCO%20Principles.pdf

[45] OICV-IOSCO, "IOSCO Historical Background" http://www.iosco.org/about/index.cfm?section =history, [Read 17 January2006]

4.7 International Council of Securities Associations (ICSA)

The International Council of Securities Associations (ICSA), established in 1988 is now comprised of 15-member associations[46] that are engaged in a wide variety of regulatory and policy issues that affect both national and international securities markets. The members of the ICSA meet every year at the annual general meeting to discuss critical issues related to the international securities market. The ICSA's Secretariat is domiciled in the New York offices of the Securities Industry Association.

The objectives of the International Council of Securities Associations are:

- § To aid and encourage the sound growth of the international capital market by promoting and encouraging harmonization and, where appropriate, mutual recognition in the procedures and regulation of that market; and
- § To promote the mutual understanding and exchange of information among ICSA members.

The ICSA published a *Statement on Regulatory and Self-Regulatory Consultation Practice,* important elements of which are included in the IOSCO's recently approved public consultation program.

Being international organizations consisting of governmental regulatory and supervisory entities, guidelines or recommendations or suggestions of both the International Organization of Securities Commissioners (IOSCO) and the International Council of Securities Associations (ICSA) are mostly of mandatory nature. Therefore, once a member country has approved or accepted any recommendation or suggestion, that member is bound to comply with it. That is why their recommendations or suggestions are usually highly professional and mostly comprehensive.

4.8 Regional bodies and relevant groups

In addition to the above-mentioned international standard setters there are other regional organizations organized continent-wise that play vital roles in the combating of money laundering and terrorist financing.

4.8.1 FATF-style regional bodies (FSRBs)

The development of FATF-style regional bodies, the global network committed to combating money laundering and terrorist financing, that have the potential to enhance regional cooperation in the fight against terrorist financing is an important complement to the work of the FATF. There are seven FATF-style regional Bodies (FSRBs)[47] that effectively take part in AML-CFT performance.

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[46] ICSA, "About ICSA", http://www.icsa.bz/html/history.html [Read October 2007]

[47] 1. Asia/Pacific Group on Money Laundering (APG) for Asia-Pacific region.
2. Caribbean Financial Action Task Force (CFATF) for Latin America and Caribbean.
3. Council of Europe (MONEYVAL) for Europe, including countries in Caucasus.
4. Eurasian Group (EAG) for countries in Europe and Asia-Pacific region.
5. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) for Africa.
6. Financial Action Task Force on Money Laundering in South America (GAFISUD) for South America.

4.8.1.1 Asia/Pacific Group (APG)

As Thailand is the member of the Asia/Pacific Group, only this FATF-style regional body on money laundering is to be described in this chapter. The APG was established as an FATF-style regional body for the Asia-Pacific region on money laundering in February 1997 to assist member countries and other jurisdictions in the Asia Pacific region to implement anti-money laundering standards. The APG consists of 36 members and it has 6 observers[48]. The major purpose of the APG is to ensure the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF Forty Recommendations and Nine Special Recommendations. The responsibilities of the APG include[49]:

- § Providing secretariat services to and serving as a focal point for the APG;
- § Providing expertise and material concerning money laundering to member jurisdictions and other interested parties;
- § Organizing and conducting the APG's annual and other meetings;
- § Preparing, conducting and chairing specialist law enforcement typology workshops (methods, trends and case studies on money laundering);
- § Reporting to and advising the APG Annual Meeting and APG Working Groups;
- § Attending FATF meetings and liaising regularly with the FATF Secretariat;
- § Providing advice and information to and linkages between agencies regionally and internationally (especially financial, legal and law enforcement agencies) on anti-money laundering matters;
- § Establishing and maintaining effective working relationships with relevant international and regional organizations in order to advance the APG's work and its regional strategy;
- § Implementing the APG's technical assistance and training strategy; and
- § Preparing assessment mechanisms and coordinating the conduct of mutual evaluations of APG members.

The first meeting regarding anti-money laundering matters of the APG was held in Tokyo in 1998 and then annually thereafter. Following the 9/11 events in 2001, the APG expanded its scope to include the countering of terrorist financing. The APG enables regional factors to be taken into account in the implementation of anti-money laundering and counter-terrorist financing measures while assisting countries and territories of the region. In order to achieve fruitful results, the APG is supported by a Secretariat in Australia – the focal point for its activities.

The first joint plenary meeting between the FATF and the APG, one of its regional

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7. Middle East and North Africa Financial Action Task Force (MENAFATF) for Middle East and North Africa.

[48] APG, "APG overlapping memberships of multilateral institutions", September 2007 http://www.apgml.org/jurisdictions/ http://www.apgml.org/jurisdictions/docs/36/APG%20Overlapping%20Memberships%20Sept07.pdf [Read November 2007]

[49] APG, "Asia Pacific Group on Money Laundering Secretariat" http://www.apgml.org/about/secretariat.aspx, [Read: 8 September 2006]

partners, was held on 10 June 2005 in order to keep with the objective of strengthening the global network against money laundering and terrorist financing. During this meeting the members of the two groups discussed issues of effective measures to be put in place to combat money laundering and terrorist financing. They agreed to further cooperation on issues related to: (1) the links between corruption and the fight against ML-FT; and (2) the implementation of anti-money laundering and counter-terrorist financing measures for alternative remittance systems.

Working as a facilitator for the adoption of international standards and norms to help prevent the financing of terrorism and money laundering in the Asia-Pacific region, the APG plays vital roles. The APG has a number of roles that include: (1) assessing APG member jurisdictions' compliance with international AML-CFT standards through a program of mutual evaluations; (2) supporting implementation of the international AML-CFT standards, including coordinating technical assistance and training with donor agencies; (3) conducting research and analysis into money laundering and terrorist financing trends and methods; and (4) participating in, and co-operating with, the international AML-CFT network and contributing to the global policy development of the standards through associate membership in the FATF.

Among these core roles, the first two roles are related to the assessment of compliance with international AML-CFT standards and the follow-up support in implementation of the standards. The third role is related to money laundering typologies used by criminals. However, the general feeling is that the APG should exert more effort in relation to implementation of the recommended suggestions.

Besides the FATF-style regional bodies, there are some other relevant groups[50] that take part in the combating of money laundering and terrorist financing.

4.8.2 Asia-Europe Meeting (ASEM)

The Asia-Europe Meeting (ASEM) – a process of dialogue initiated in Bangkok in March 1996 – is indeed a historic occasion. It is the prime forum for dialogue between the twenty five States of Europe[51] plus the European Commission, and thirteen Asian countries[52]. The ASEM is a unique process to enable the two regions to engage in international and inter-regional issues of common interest, including anti-money laundering and counter-terrorism. Key characteristics of the ASEM process include[53]:

1. Informality (complementing rather than duplicating the work already

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[50] 1. ASEM
2. IMF and World Bank
3. Wolfsberg Group of Banks
4. The Commonwealth Secretariat
5. Organization of American States' CICAD (Inter-American Drug Abuse Control Commission)
6. ASEAN

[51] Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom

[52] Brunei, China, Cambodia, Indonesia, Japan, Korea (South), Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam

[53] ASEM, "External Relation" http://europa.eu.int/comm/external_relations/asem/intro/ , [Read May 2007]

being carried out in bilateral and multilateral fora);
2. Multidimensionality (devoting equal weight to political, economic and cultural dimensions);
3. Equal partnership (emphasis on equal partnership, eschewing any "aid-based" relationship in favor of a more general process of dialogue and cooperation); and
4. Meeting at a High-level (focus on fostering people-to-people contacts in all sectors of society)

The ASEM is a gathering of leaders from Asia and Europe who have come to talk together to discuss any topic of mutual interest and talk about a common vision for the future. Their collective presence shows the political will and commitment to construct a strong foundation for closer and more productive relations between the two regions. The two main aims of the ASEM are:

1. To encourage greater understanding between the peoples of the two regions, providing a unique opportunity for the parties to explore new avenues of cooperation in the political, economic and social fields; and
2. To provide the leaders with an opportunity to get to know one another, hoping that the ensuing close consultations will allow the leaders to build rapport.

In the political area, leaders from the two regions are provided with an opportunity to exchange views on current regional and global issues and consultations on political and security issues at the highest levels serve to generate greater trust and confidence amongst the jurisdictions between the two regions so that global stability can exist. In the area of economic corporation, economic relations between the two regions are strengthened by promoting greater economic growth and development. The Head of State and Government summits are held every second year and there are also a range of several ministerial and other meetings and activities at the working level.

Much has changed in the two parts of the world – Asia and Europe – in which the ASEM operates. There are significant developments in the two regions that have direct impact on how the ASEM should evolve. Yet the international norms and institutions built are under stress and unable to cope with the increasing demands and insecurity of the twenty-first century. It is therefore timely to review whether the existing ASEM and its management and coordination methods are still appropriate. If yes, how can the methods be improved and if not, what needs to be done to ensure the continued relevance of the ASEM in an increasingly interdependent world?

Increasing public awareness of the process and its benefits would be necessary for the support for and commitment to the ASEM process. There should be overall consensus on whether the ASEM should be developed as a state-to-state or a region-to-region structure.

4.8.3 International Monetary Fund and the World Bank

The International Monetary Fund (IMF) that came into existence in December 1945 has been working since then to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable

economic growth, and reduce poverty. Because of its influence on the global economy the IMF, which started with 29 countries, has grown into an organization of 184 countries at present.

The World Bank (WB) whose activities are focused on developing countries – in particular, human development, agricultural and rural development, environmental protection, infrastructure and governance – came into formal existence in December 1945 as well. The WB is a group of five international organizations[54].

Regarding combating money laundering and terrorist financing, both the IMF and the WB have the same goals and recognized that money laundering is a global problem that affects not only major financial markets but smaller ones as well. They also recognized the FATF Forty plus Nine Recommendations as the relevant international standards for anti-money laundering and counter-terrorist financing and started a successful 12-month pilot program using a universal, comprehensive AML-CFT assessment methodology in 33 countries in 2002.

Moreover, they have made the following resolutions[55]:

- § To make AML-CFT work a permanent part of their activities;
- § To continue their collaboration with the FATF;
- § To endorse the FATF Recommendations as the new standard for which Reports on the Observance of Standards and Codes (ROSCs) are prepared and the revised methodology to assess that standard; and
- § To devote additional resources to this work in the future.

As mentioned above, the IMF and the World Bank have recognized that money laundering is a global problem and accepted the FATF 40+9 Recommendations as the relevant international standards for AML-CFT. The most important factor to be considered by the IMF and the World Bank is how to improve technocracy of developing countries regardless of their governments' policies in order to eliminate alternative remittance systems. People in certain developing countries have no choice to use these systems. Money launderers and financiers of terrorists/terrorism who are seeking for places where only these systems can be used grab the opportunity to transfer the illegal money. If a country has advanced technology the innocent people of the country will use the formal financial institutions conveniently to transfer money. Consequently, it may be easier to tackle the illegal informal remittance systems.

4.8.4 Wolfsberg Group of Banks

The Wolfsberg Group of Banks was named after Chateau Wolfsberg in north-eastern

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[54] 1. International Bank for Reconstruction and Development (IBRD);
2. International Finance Corporation (IFC);
3. International Development Association (IDA);
4. Multilateral Investment Guarantee Agency (MIGA); and
5. International Centre for Settlement of Investment Disputes (ICSID).
"World Bank Group", Wikipedia - the free encyclopedia ,
http://en.wikipedia.org/wiki/World_Bank_Group [Read September2006]

[55] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. X-3

Switzerland where it was formed in 2000[56]. It is an association of twelve global banks, which aims to develop financial services industry standards, and related products, for KYC and AML-CFT policies.

The Wolfsberg Group has published AML-CFT related guidelines and principles particularly for the private banking sector known as Wolfsberg Standards. They are:

1. Global AML guidelines for private banking (October 2000, revised in May 2002)
2. Wolfsberg statement – the suppression of the financing of terrorism (January 2002)
3. Wolfsberg AML principles for correspondent banking (November 2002)
4. Wolfsberg statement – monitoring, screening and searching (September 2003)
5. Wolfsberg statement –guidance on a risk-based approach for managing ML risks (March 2006)
6. Wolfsberg statement – AML guidance for mutual funds and other pooled investment vehicles (March 2006)
7. Wolfsberg statement against corruption (early 2007[57])

The article "Wolfsberg AML Principles –Global Banks: Global Standards" [58] by the Wolfsberg Group states that it has established four sets of principles for private banking.

1. Anti-money laundering principles for private banking – 11 principles
2. Statement on the suppression of the financing of terrorism
3. Anti-money laundering principles for correspondent banking – 14 principles
4. Monitoring screening and searching Wolfsberg Statement

The first three sets have stated the need for appropriate monitoring of transactions and customers to identify potentially unusual or suspicious activities and transactions, and for reporting such activities and transactions to competent authorities. The last one deals with the roles of financial institutions, risk-based approach and standards for risk-based transaction monitoring.

The Wolfsberg Group believes that a risk-based approach that may require a differentiated level of implementation of *real time screening, retroactive searches and transaction monitoring systems* should be embedded in an integrated anti-money laundering program. Real-time transaction screening can effectively be used for filtering of payment instructions prior to their execution or for enforcing embargoes and sanctions. Retroactive searches are used to search for specific data. Clarity and uniformity among financial institutions and governmental authorities regarding how retroactive searches should be conducted are two important factors to be effective searches. Risk-based transaction monitoring approach is used to accomplish unusual

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[56] The Wolfsberg Group, "Global Banks: Global Standards" http://www.wolfsberg-principles.com/, [Read May 2006]
[57] The Wolfsberg Group, "Global Banks: Global Standards" http://www.wolfsberg-principles.com/, [Read May 2006]
[58] The Wolfsberg Group, "Global Banks: Global Standards" http://www.wolfsberg-principles.com/, [Read May 2006]

and potentially suspicious activities.

An effective risk-based transaction monitoring process should have the following standards.

- § Compare the client's account/transaction history to the client's specific profile information and a relevant peer group and/or compare the clients account/transaction history against established money laundering criteria/scenarios, in order to identify patterns of suspicious activities or anomalies;
- § Establish a process to compare customer or transaction specific data against risk scoring models;
- § Be capable of recognizing patterns and of "learning" which transactions are normal for a client rather than designating certain transactions exceeding as unusual (for example, not all large transactions are unusual and may easily be explained);
- § Issue alerts if unusual transactions are identified;
- § Track those alerts in order to ensure that they are appropriately managed within the institution and that a suspicious activity is reported to the authorities as required;
- § Maintain an audit trail for inspection by the institution's audit function and by bank supervisors; and
- § Provide appropriate aggregated information and statistics.

Regarding AML-CFT, the Wolfsberg Group of Banks has issued principles and guidelines for the private banking sector whereas the Basel Committee has produced the principles and guidelines for the public banking sector. Therefore they complement each other in AML-CFT programs for the whole banking sector of the world.

4.8.5 Commonwealth countries

The Commonwealth is an association of 53 countries whose citizens make up approximately 30 percent of the world's population. The Commonwealth Secretariat was established in London in 1965. Regarding AML-CFT, the association provides assistance to governments to implement the FATF Forty plus Nine Recommendations. It has published "A Manual for Best Practices for Combating Money Laundering in the Financial Sector" [59] for government policy makers, regulators and financial institutions.

Commonwealth Countries is an organization exclusively dealing with 53 member countries. It means that their AML-CFT programs may not have a universal coverage like those of international standard setters.

4.8.6 Inter-American Drug Abuse Control Commission (CICAD)

The Inter-American Drug Abuse Control Commission, known by its Spanish acronym

[59] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p.IV-9

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as CICAD, is an agency of the Organization of American States (OAS). The CICAD's core mission is to strengthen the human and institutional capabilities and harness the collective energy of its member states to reduce the production, trafficking and use and abuse of drugs in Americas. In other words, its mission is to control the growing problem of drug-trafficking in the Western Hemisphere.

The article "CICAD and European Commission Join Forces to Address Consequences of Drug Dependency" [60] states:

> *In an age of globalization, no part of the planet is immune to substance abuse and drug addiction, and no one region has all of the answers to this very complex problem," said James F. Mack, CICAD Executive Secretary. "Through this program, we will establish partnerships that will help us share ideas and experiences that have been shown to be effective in tackling these difficult problems.*

Its responsibilities relating to all aspects of the drug problem are:

- To serve as the Western Hemisphere's policy forum;
- To foster multilateral cooperation;
- To execute action programs;
- To promote drug-related research; and
- To develop and recommend minimum standards.

As the AML-CFT program is global, each and every part of the world has to perform its duty effectively and efficiently in combating money laundering and financing of terrorism. The Inter-American Drug Abuse Control Commission, therefore, is a regional organization for the western hemisphere of the world.

4.8.7 Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN) whose members are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam was born on 8 August 1967 in Bangkok[61]. The purposes of the Association are:

- To accelerate the economic growth; and
- To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

The following are the fundamental principles of the ASEAN.

- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- The right of every State to lead its national existence free from external

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[60] CICAD (Inter-American Drug Abuse Control Commission) "CICAD and European Commission Join Forces to Address Consequences of Drug Dependency" http://www.cicad.oas.org/en/default.asp>, 2006http://www.cicad.oas.org/en/news/default.asp

[61] Association of South East Asian Nations (overview) http://www.aseansec.org/64.htm

interference, subversion or coercion;
- Non-interference in the internal affairs of one another;
- Settlement of differences or disputes by peaceful manner;
- Renunciation of the threat or use of force; and
- Effective cooperation among themselves.

The ASEAN – a successful association – with a population of more than 500 million people has a total area of 4.5 million square kilometers.

The organization has taken gradual steps in matters of AML-CFT. Some of its members, however, have demonstrated far more active roles than the organization itself at both national and international levels. Most of the ASEAN's AML-CFT activities are largely based on the recommendations and guidelines set by such international standard setters as the FATF and the APG. Evidently, on the issues of money laundering, the ASEAN's 2002 Work Program[62] states as follows:

> *Action Line: ASEAN Member Countries to refer to typologies and trends available on the Asia/Pacific Group on Money Laundering and the Financial Action Task Force on Money Laundering websites.*

With regard to the issue of terrorism and terrorist financing, the ASEAN has adopted 9-point practical measures[63] since November 2001, which, among others, calls for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism. As a result of the 2002 Work Program, the ASEAN has taken an initiative by signing a regional pact on 29 November 2004 – known as the Treaty on Mutual Legal Assistance in Criminal Matters. This treaty streamlines the process by which

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[62] ASEAN, "Work Program to Implement the ASEAN Plan of Action to Combat Transnational Crime", Kuala Lumpur, 17 March 2002

[63] ASEAN, "2001 ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan", 5 November 2001.

1. Review and strengthen our national mechanisms to combat terrorism;
2. Call for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism;
3. Deepen cooperation among our front-line law enforcement agencies in combating terrorism and sharing "best practices";
4. Study relevant international conventions on terrorism with the view to integrating them with ASEAN mechanisms on combating international terrorism;
5. Enhance information/intelligence exchange to facilitate the flow of information, in particular, on terrorists and terrorist organizations, their movement and funding, and any other information needed to protect lives, property and the security of all modes of travel;
6. Strengthen existing cooperation and coordination between the AMMTC and other relevant ASEAN bodies in countering, preventing and suppressing all forms of terrorist acts. Particular attention would be paid to finding ways to combat terrorist organizations, support infra structure and funding and bringing the perpetrator to justice;
7. Develop regional capacity building programs to enhance existing capabilities of ASEAN member countries to investigate, detect, monitor and report on terrorist acts;
8. Discuss and explore practical ideas and initiatives to increase ASEAN's role in and involvement with the international community including extra-regional partners within existing frameworks such as the ASEAN + 3, the ASEAN Dialogue Partners and the ASEAN Regional Forum (ARF), to make the fight against terrorism a truly regional and global endeavor;
9. Strengthen cooperation at bilateral, regional and international levels in combating terrorism in a comprehensive manner and affirm that at the international level the United Nations should play a major role in this regard.

member States could request from and render to each other assistance in the collection of evidence to be used in investigations or proceeding of criminal matters such as drug trafficking, human smuggling and terrorism.

The following table shows what the ASEAN has done in relation to transnational crime and international terrorism[64].

Table 1: ASEAN's joint declarations on transnational crime and international terrorism

Joint Communiques	Press Releases	Declarations	Other Documents
Joint Communique of the Fifth ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Ha Noi, 29 November 2005	Joint Press Statement of the Informal ASEAN Ministerial Meeting on Transnational Crime Plus China Consultation, Ha Noi, 30 November 2005	Joint Declaration on Cooperation to Combat Terrorism, 14th ASEAN-EU Ministerial Meeting, Brussels, 27 January 2003	Treaty on Mutual Legal Assistance in Criminal Matters, Kuala Lumpur, 29 November 2004
Joint Communique of the Second ASEAN Plus Three Ministerial Meeting on Transnational Crime (AMMTC+3), Ha Noi, 30 November 2005	"ASEAN Strongly Condemns Terrorist Attacks in Bali, Indonesia", Statement by the 39th Chair of the ASC, Kuala Lumpur, 2 October 2005	Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues, Phnom Penh, 4 November 2002	Agreement on Information Exchange and Establishment of Communication Procedures
Joint Communique of the 25th ASEAN Chiefs of Police Conference, Bali, Indonesia, 16-20 May 2005	Statement by H.E. Somsavat Lengsavad, Deputy Prime Minister and Minister of Foreign Affairs of the Lao People's Democratic Republic, Chairman of the 38th ASEAN Standing Committee in connection with the terrorist bombing in Jakarta on 9th September 2004	Declaration on Terrorism by the 8th ASEAN Summit, Phnom Penh, 3 November 2002	Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, 17 May 2002
Joint Communique of the 24th ASEAN Chiefs of Police Conference, Chiang Mai, Thailand, 16-20	Co-Chairs' Statement of the Bali Regional Ministerial Meeting on Counter-Terrorism, Bali, Indonesia, 5 February	2001 ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan, 5	Memorandum of Understanding between the Governments of the Member Countries of the Association of

[64] ASEAN, "Transnational Crime and Terrorism" http://www.aseansec.org/4964.htm , November 2006

Table 1: ASEAN's joint declarations on transnational crime and international terrorism

Joint Communiques	Press Releases	Declarations	Other Documents
August 2004	2004	November 2001	Southeast Asian Nations (ASEAN) and the Government of the People's Republic of China on Cooperation in the Field of Non-traditional Security Issues
Joint Communique of the First ASEAN Plus Three Ministerial Meeting on Transnational Crime (AMMTC+3), Bangkok, 10 January 2004	Statement by the Chairman of the ASEAN Regional Forum (ARF) on the Tragic Terrorist Bombing Attacks in Bali, Phnom Penh, 16 October 2002	Manila Declaration on the Prevention and Control of Transnational Crime (1998)	ASEAN Efforts to Counter Terrorism
Joint Communique of the Fourth ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Bangkok, 8 January 2004	ARF Statement on Measures Against Terrorist Financing, Bandar Seri Begawan, 30 July 2002	ASEAN Declaration on Transnational Crime, Manila, 20 December 1997	ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, Bandar Seri Begawan, 1 August 2002
Joint Communique of the Special ASEAN Ministerial Meeting on Terrorism (AMMTC), Kuala Lumpur, 20-21 May 2002	Statement by the Chairman of the ASEAN Regional Forum (ARF) on the Terrorist Acts of the 11th September 2001, Bandar Seri Begawan, 4 October 2001		ASEAN Standing Committees Chairman's Letter to US Secretary of State Colin Powell on Terrorists Attack, Bandar Seri Begawan, 13 September 2001
Joint Communique of the Third ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Singapore, 11 October 2001			ASEAN Plan of Action to Combat Transnational Crime
Joint Communique of the Second ASEAN Ministerial Meeting			

Table 1: ASEAN's joint declarations on transnational crime and international terrorism

Joint Communiques	Press Releases	Declarations	Other Documents
on Transnational Crime (AMMTC), Yangon, 23 June 1999			

Despite the joint declarations on transnational crime and international terrorism, there may be some obstacles to implement the ASEAN Plan of Action to Combat Transnational Crime because of the ASEAN's principles and political situations in certain countries. Cooperation in the ASEAN has progressed based on 3 key principles: (1) consensus decision-making; (2) respect for national sovereignty; and (3) non-interference in the domestic affairs of member countries.

First, it is really hard to obtain cooperation in fighting ML and FT between countries if the political situation of a certain country is not stable and even if the members of the association cannot provide any suggestion to improve the political situation in that particular country because of those principles.

Second, although the process of consultations and consensus is supposed to be a democratic approach to decision making, the actual process has been managed through close interpersonal contacts among the top leaders only.

Last but not least, since international cooperation is essential to obtain an effective AML-CFT framework and also essential to cope with the growing international pressure as well as to comply with the international standards fully and effectively, the ASEAN countries should exert more to have cooperation among the ASEAN countries. The principle of non-interference has made the leaders share a reluctance to institutionalize and legalize cooperation.

International observers have criticized the ASEAN for being too "soft" in its approach to promoting human rights and democracy in the junta-led Myanmar. Lately, 121 Myanmar migrant workers were smuggled – human trafficking – into Thailand and 54 of which died of suffocation in a container truck on the way. If there had been law enforcement cooperation and information sharing between the two countries concerned this particular tragic incident would not have happened.

Having known what money laundering and terrorist financing are, policy makers are encouraged to implement the requirements stated in the international conventions relating to AML-CFT in their respective countries in fighting against money laundering and terrorist financing. In addition, AML-CFT regimes must find out how much they are compliant with international standards set by the FATF and other international standard setters including regional bodies and relevant groups. In order to measure the degree of compliance, AML-CFT regimes should focus on the AML-CFT framework.

CHAPTER III
THE ELENENTS OF AN EFFECTIVE AML-CFT FRAMEWORK

1. Legal system requirements

The degree of emphasis on certain areas of legal system of jurisdictions may vary although the legal system requirements for AML-CFT for a country should be based upon the FATF 40 + 9 Recommendations that are mandates for all countries and, countries should consult the FATF methodology for AML-CFT, June 2006 for further explanations of these requirements. Different countries have different history of vigorous action against criminal activities involving the monetary system. Depending on the problems they have faced, policy makers of countries should heavily focus on their systems and measures. For example, in the countries like Saudi Arabia affected by terrorist attacks, authorities put more emphasis on the measures to counter terrorism and the financing of terrorism whereas in the countries like Thailand with drug-trafficking and human-trafficking problems, authorities are more attentive to the measures against money laundering related to drug-trafficking and human-trafficking. As Singapore, the fifth-biggest currency trading center in the world and the second biggest in Asia after Tokyo, has figured on a US State Department list since 2004 as a center of "primary concern" for money laundering[1] it emphasizes introducing more new measures to try to detect money laundering and terrorism financing effectively. Lessons through experiences and recommendations produced by the evaluation teams from standard setters help policy makers improve and upgrade the standards of their respective AML-CFT systems to be more effective and efficient.

1.1 AML-CFT system

In order to establish a strong and effective AML-CFT system with comprehensive rules covering anti-money-laundering and counter-terrorist financing requirements for both banking and non-banking sectors, it is essential to set up an adequately operational legal and institutional or administrative framework not only with the regulatory power that provides competent authorities with the necessary duties, powers and sanctions but also with the laws that create money laundering and terrorist financing offenses, plus enforcement power that provides for freezing, seizing and confiscation of the proceeds of crime and terrorist funding. The effective AML-CFT system also includes laws and regulations that impose the required obligations on financial institutions and designated non-financial businesses and professions, and other enforceable means that give a country the ability to provide the widest range of international cooperation.

The criminalization of money laundering and financing of terrorism, in accordance with Article 3(1) (b) and (c) of the Vienna Convention (1988) and Article 6 (1) of the Palermo Convention (2000), and the criminalization of terrorist financing in line with Article 2, read in conjunction with Article 7 of the Convention against Financing of

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[1] "New rules aim to detect money laundering"- News report on business section, The Bangkok Post, 29 October 2007

Terrorism (1999), focus on 3 important factors: (1) Compliance with AML-CFT preventive measures, (2) Acting against offenders and (3) international cooperation in this critical law enforcement function.

Since the UNSC Resolution 1617 (2005), paragraph 7 strongly urges all Member States to implement the FATF Forty Recommendations on money laundering and Nine Special Recommendations on terrorist financing, they are mandates for action by every country. Although there are 20 designated categories of offenses according to the FATF Glossary of the Forty Recommendations, countries are encouraged to go beyond this[2]. The essential requirement is to criminalize the proceeds derived from any type of conduct related to the 20 designated categories. A country must include "a range of offenses" within each of the designated categories of offenses in accordance with its domestic laws, and the specific legal method of criminalization is left to the discretion of the country concerned.

According to the findings from the AML-CFT assessments[3] by the IMF and the WB, overall level of compliance in all assessed countries is low.

> *21 percent of all recommendations were rated fully compliant, 24 percent were rated largely compliant, 29 percent were rated partially compliant, and 26 percent non-compliant.*

The findings also show that compliance for the FATF Forty Recommendations (47 % fully or largely compliant) is better than that for the Nine Special Recommendations (33% fully or largely compliant).

Regarding legal system, although all assessed countries have criminalized ML, the list of ML offenses in 42% of the assessed countries does not fully comply with the FATF standard as it does not cover all the relevant circumstances reflected in the standard. Besides, 44% of assessed countries were rated non-compliant on criminalizing the FT.

A vital attribute of any legal frame is to have laws and regulations working together without contradiction. In order to effectuate AML-CFT requirements, it must be ensured that the financial secrecy laws do not inhibit implementation of the FATF Recommendations[4].

Most of the assessed countries' bank secrecy laws were positively assessed as not inhibiting the implementation of the FATF Recommendations in AML-CFT assessments[5].

1.2 Competent authorities

Although the legal and institutional or administrative framework with regulatory

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[2] Recommendation 1, Essential Criteria 1.3

[3] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

[4] FATF Recommendation 4

[5] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

power provides the competent authorities with necessary powers, if they cannot avoid corruption, that particular AML-CFT regime will become an ineffective regime. The competent authorities, therefore, take an important role in fighting money laundering and terrorist financing. The 2004 FATF Forty Recommendation 30 states:

> *Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.*

As mentioned above, since competent authorities are crucial in combating money laundering and terrorist financing, significant cooperation between competent authorities is an effective factor to support their performance. Regarding cooperation and coordination among competent authorities, the 2004 FATF Recommendation 31 says:

> *Countries should ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to cooperate, and where appropriate co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.*

1.3 Investigation and confiscation

The AML-CFT laws and mechanisms should facilitate cooperation and coordination among competent authorities who are responsible for money laundering and terrorist financing investigations and to obtain effective international cooperation including mutual legal assistance. Special investigative techniques and mechanisms should be developed and should exert effort in cooperative investigations with other countries as well. According to the AML-CFT assessments[6], none of the assessed countries were considered fully compliant with the FATF standard although it was generally rated favorably.

It is needless to say that fighting against international crime and terrorist financing will not lead to the achievement without effective confiscation laws. The Vienna and the Palermo Conventions define the term “proceeds of crime” and prescribe laws that permit the confiscation of the proceeds of laundering and predicate offenses without mentioning “terrorist financing”. The revised FATF Special Recommendation II, however, encourages countries to ensure that the financing of terrorism and associated money laundering predicate offenses are designated as money laundering predicate offenses. The FATF also encourages countries to adopt confiscation laws relating to property laundered and proceeds from money laundering or predicate offenses[7] and terrorist assets[8] in accordance with the Vienna and the Palermo Conventions, and the UN Resolutions relating to the prevention and suppression of the financing of terrorist acts.

For the enforcement of confiscated property, the Vienna Convention –Article 5 (3) states:

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[6] ibid.: [Read November 2006]

[7] FATF Recommendation 3

[8] FATF Special Recommendation III

> *In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of the paragraph on the ground of bank secrecy.*

The international law on confiscation does not preclude the rights of *bona fide* third parties (the third parties in good faith). The Vienna Convention [Article 5 (8)] and the Palermo Convention [Article 12 (8)] clearly state:

> *The provision of this Article shall not be construed as prejudicing the rights of bona fide third parties.*

There are 2 necessary steps[9] to eliminate the profitability of international money laundering activities:

1. Establishing an effective confiscation regime for domestic purposes
2. Creating cooperative mechanisms for enforcing cross-border confiscation order

The Vienna Convention [Article 5-5(a) and 5(b)] and the Palermo Convention [Article 14-1, 14-3(a) and 3(b)] state that confiscated proceeds or property shall be disposed by that party according to its domestic law and administrative procedures.

Regarding freezing and confiscation, according to the findings from the AML-CFT assessments[10] by the IMF and the WB, the report states:

> *Compliance regarding SR III on freezing and confiscation of terrorist assets is weak. No countries were fully compliant, 11 percent largely compliant, 50 percent partially compliant and 39 percent non-compliant. Despite identified flaws in the legal framework, the assessed countries have adopted transitional measures to implement UN Security Council Resolution 1267 and successor resolutions on terrorist financing.*

1.4 Financial institutions

According to the FATF, financial institutions are defined as "any person or entity who conducts as a business one or more of the following activities or operations on behalf of a customer."

1. *Acceptance of deposits and other repayable funds from the public*[11].
2. *Lending*[12].
3. *Financial leasing*[13].
4. *The transfer of money or value*[14].

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[9] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p.V-9

[10] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

[11] This also captures private banking .

[12] This includes *inter alia*: consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).

[13] This does not extend to financial leasing arrangements in relation to consumer products.

5. *Issuing and managing means of payment (e.g. credit and debit cards, checks, traveler's checks, money orders and banker's drafts, electronic money).*
6. *Financial guarantees and commitments.*
7. *Trading in:*
   (a) *Money market instruments (checks, bills, CDs derivatives, etc);*
   (b) *Foreign exchange;*
   (c) *Exchange, interest rate and index instruments;*
   (d) *Transferable securities; and*
   (e) *Commodity futures trading.*
8. *Participation in securities issues and the provision of financial services related to such issues.*
9. *Individual and collective portfolio management.*
10. *Safekeeping and administration of cash or liquid securities on behalf of other persons.*
11. *Otherwise investing, administering or managing funds or money on behalf of other persons.*
12. *Underwriting and placement of life insurance and other investment related insurance*[15]*.*
13. *Money and currency changing.*

1.5 Non-financial institutions

There are 2 types of non-financial institutions apart from the aforementioned financial institutions. They are designated non-financial businesses and professions (DNFBPs) and non-designated non-financial businesses and professions (NDNFBPs).

1.5.1 Designated non-financial businesses and professions

The 2004 revised FATF Recommendations include certain designated non-financial businesses and professions (DNFBPs) within coverage of the Forty Recommendations[16] as follows:

a) *Casinos (which also includes internet casinos).*
b) *Real estate agents.*
c) *Dealers in precious metals.*
d) *Dealers in precious stones.*
e) *Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.*
f) *Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:*
   - § *acting as a formation agent of legal persons;*
   - § *acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;*
   - § *providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;*
   - § *acting as (or arranging for another person to act as) a trustee of an express trust;*

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[14] This applies to formal and informal sectors, such as, alternative remittance activity.
[15] This applies to both insurance undertakings and intermediaries, such as agents and brokers.
[16] Data attachment 1 (A)

> § *acting as (or arranging for another person to act as) a nominee shareholder for another person.*

These institutions are categorized into two[17]: (1) casinos, and (2) all other non-financial businesses and professions. The following points are strictly required for the casinos.

- § Licensing;
- § Measures to prevent casinos being owned, controlled or operated by criminals; and
- § Supervision of their compliance with AML-CFT requirements.

For all other non-financial businesses and professions such as lawyers, notaries, auditors and accounts, trust and company service providers, real estate agents, and dealers in precious metals and stones, effective systems for monitoring – carried out either by a government agency or a self-regulatory organization – and ensuring compliance on a risk-sensitive basis are to be put in place.

Regardless of the types of financial institutions, countries have to make sure that financial institutions are not controlled by the criminals. The financial institutions, consequently, are subject to comprehensive supervisory regimes as set out in the standards issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, and the International Organization of Securities Commissioners. The requirements applicable to DNFBPs are more limited and they are not normally subject to the same stringent requirements as Core Principles Institutions for the same prudential issues do not arise.

1.5.2 Non-designated non-financial businesses and professions

FATF Recommendation 20 states that the FATF 40+9 Recommendations should be applied to businesses and professions, other than designated non-financial business and professions that pose a money laundering or terrorist financing risk. Businesses relating to high value and luxury goods and pawnshops are some examples of non-designated non-financial businesses and professions (NDNFBPs).

2. Preventive measures

In order to prevent financial institutions from being used by criminals, internal policies which vary depending on the type and size of a particular financial institution and the scope and nature of its operation need to be in place. Internal policies should include ongoing training that keeps employees well-informed of the latest developments on AML and CFT. One important point, among others, is that adequate screening procedures should be done when hiring employees. Recommendation 15 states:

> *Financial institutions should develop programs against money laundering and terrorist financing. These programs should include:*
>
> *a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate*

[17] WB, “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism”, second edition, 2004: pp.V-25 – V-26

screening procedures to ensure high standards when hiring employees.
b) *An ongoing employee training program.*
c) *An audit function to test the system.*

Above all, as long as criminals control financial institutions or hold senior management positions in financial institutions, it is extremely difficult for countries not only to prevent but also to detect the crimes, and consequently they tend to pose dangerous obstacles to combating money laundering and financing of terrorism. Integrity standards can help prevent criminal from participation in AML-CFT efforts. Countries should not only impose AML-CFT preventative measures in legislation but also make sure that the requirements are implemented in practice. Recommendation 23, paragraph 1, reads:

> *Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.*

Measures to prevent the unlawful use of legal entities by money launderers and terrorist financiers are crucial to be taken. Moreover, appropriate measures to ensure that bearer shares of securities, trust and similar legal arrangements are not misused by the criminals involved in the twin evils, money laundering and financing of terrorism. Recommendation 33 states:

> *Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.*

More emphasis should be placed on preventive measures than seizure, confiscation and forfeiture of assets. Authorities should prevent the occurrence of money laundering and financing of terrorism in the first instance rather than let the criminals carry out illicit performance to obtain dirty profits at the highest magnitude and confiscate the proceeds. FATF Recommendations 5 – 25 are for preventive measures.

2.1 Know your customer/Customer due diligence (KYC/CDD)

The importance of Know Your Customer/Customer Due Diligence (KYC/CDD) has been recognized by supervisors of financial institutions in the world community and they have been working hard to have adequate policies and procedures in place, including “Know Your Customer” / “Customer Due Diligence”, which will ensure compliance with the money laundering legislation in force and promote high ethical standards in the financial sector and prevent the financial institutions being used intentionally or unintentionally by criminals.

It is essential to find out if the customer is acting on his/her own or on behalf of

another person. Core Principle 18 deals with an important part of AML-CFT institutional framework "Know Your Customers". The following are 12 essential criteria and 1 additional criterion for Core Principle 18[18].

Essential criteria

1. *Laws or regulations clarify the duties, responsibilities and powers of the banking supervisor and other competent authorities, if any, related to the supervision of banks' internal controls and enforcement of the relevant laws and regulations regarding criminal activities.*
2. *The supervisor must be satisfied that banks have in place adequate policies and processes that promote high ethical and professional standards and prevent the bank from being used, intentionally or unintentionally, for criminal activities. This includes the prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities.*
3. *In addition to reporting to the financial intelligence unit or other designated authorities, banks report to the banking supervisor suspicious activities and incidents of fraud when they are material to the safety, soundness or reputation of the bank.*
4. *The supervisor is satisfied that banks establish "know-your-customer" (KYC) policies and processes which are well documented and communicated to all relevant staff. Such policies and processes must also be integrated into the bank's overall risk management. The KYC management program, on a group-wide basis has as its essential elements:*
    - § *a customer acceptance policy that identifies business relationships that the bank will not accept;*
    - § *a customer identification, verification and due diligence program; this encompasses verification of beneficial ownership and includes risk-based reviews to ensure that records are updated and relevant;*
    - § *policies and processes to monitor and recognize unusual or potentially suspicious transactions, particularly of high-risk accounts;*
    - § *escalation to the senior management level of decisions on entering into business relationships with high-risk accounts, such as those for politically exposed persons, or maintaining such relationships when an existing relationship becomes high-risk; and*
    - § *clear rules on what records must be kept on consumer identification and individual transactions and their retention period. Such records should have at least a five-year retention period.*
5. *The supervisor is satisfied that banks have enhanced due diligence policies and processes regarding correspondent banking. Such policies and processes encompass:*
    - § *gathering sufficient information about their respondent banks to understand fully the nature of their business and customer base, and how they are supervised; and*
    - § *not establishing or continuing correspondent relationships with foreign banks that do not have adequate controls against criminal activities or that are not effectively supervised by the relevant authorities, or with those banks that are considered to shell banks.*
6. *The supervisor periodically confirms that banks have sufficient controls and systems in place for preventing, identifying and reporting potential abuses of financial services, including money laundering.*
7. *The supervisor has adequate enforcement powers (regulatory and /or criminal prosecution) to take action against a bank that does not comply with its obligations related to criminal activities.*

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[18] Basel Committee on Banking Supervision, "Core Principles Methodology", October 2006: pp. 25 – 26

8. *The supervisor must be satisfied that banks have:*
   - *requirements for internal audit and/or external experts to independently evaluate the relevant risk management policies, processes and controls. The supervisor must have access to their reports;*
   - *established policies and processes to designate compliance officers at the management level, and appointed a relevant dedicated officer to whom potential abuses of the bank's financial services (including suspicious transactions) shall be reported;*
   - *adequate screening policies and processes to ensure high ethical and professional standards when hiring staff; and*
   - *ongoing training programs for their staff on KYC and methods to detect criminal and suspicious activities.*
9. *The supervisor determines that banks have clear policies and processes for staff to report any problems related to the abuse of the banks' financial services to either local management or the relevant dedicated officer or to both. The supervisor also confirms that banks have adequate management information systems to provide managers and the dedicated officers with timely information on such activities.*
10. *Laws and regulations ensure that a member of a bank's staff who reports suspicious activity in good faith either internally or directly to the relevant authority cannot be held liable.*
11. *The supervisor is able to inform the financial intelligence unit and, if applicable, other designated authority of any suspicious transactions. In addition, it is able, directly or indirectly, to share with relevant judicial authorities information related to suspected or actual criminal activities.*
12. *The supervisor is able, directly or indirectly, to cooperate with the relevant domestic and foreign financial sector supervisory authorities or share with them information related to suspected or actual criminal activities where this information is for supervisory purposes.*

Additional criteria

1. *If not done by another authority, the supervisor has in-house resources with specialist expertise for addressing criminal activities.*

The FATF's KYC/CDD based on the Basel Committee's KYC/CDD is more closely associated with combating ML and FT, not like the Basel Committee's approach to KYC/CDD where sound KYC/CDD procedures are seen as a critical element in the effective management of banking risks and they are critical in protecting the safety and soundness of banks and the integrity of banking systems. Nonetheless, the Committee supports the adoption and implementation of the FATF Recommendations. One of the purposes to review the Core Principles is to enhance consistency between the Core Principles and the corresponding standards for securities and insurance as well as for anti-money laundering and transparency, and the Basel Committee and the FATF have been working together and will continue to maintain close contact with each other.

Customer Due Diligence – adequate due diligence on new or existing customers – is a key part of AML-CFT policy without which banks can become subject to reputational, operational, legal and concentration risks in banking systems. It is also stated in Provision 30 of the Basel Committee "Customer Due Diligence for Banks" that a numbered account – the name of the beneficial owner known to the financial institution only that is substituted by an account number – should be subject to exactly the same KYC/CDD procedures as all other customer accounts. It reads:

Banks should never agree to open an account or conduct ongoing business with

a customer who insists anonymity or who gives a fictitious name. Nor should confidential numbered[19] account function as anonymous accounts but they should be subject to exactly the same KYC procedures as all other customer accounts, even if the test is carried out by the selected staff. Whereas a numbered account can offer additional protection for the identity of the account holder, the identity must be known to a sufficient number of staff to operate proper due diligence. Such accounts should in no circumstances be used to hide the customer identity from a bank's compliance function or from the supervisors.

FATF Recommendation 5 also states that financial institutions should not keep anonymous accounts or accounts in fictitious names and when they should undertake CDD measures.

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:

- *establishing business relations;*
- *carrying out occasional transactions: (i) above the applicable designated threshold; or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII;*
- *there is a suspicion of money laundering or terrorist financing; or*
- *the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.*

The customer due diligence (CDD) measures to be taken are as follows:

a) *Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.*
b) *Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.*
c) *Obtaining information on the purpose and intended nature of the business relationship.*
d) *Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.*

2.2 Record keeping requirements

The CDD and record-keeping requirements for financial institutions, non-financial institutions and designated non-financial businesses and professions are set out in FATF Recommendations 5 to 12. Institutions are required to keep customer identity and transaction records for at least 5 years following the termination of an account[20].

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[19] In a numbered account, the name of the beneficial owner is known to the bank but is substituted by an account number or code name in subsequent documentation.

[20] FATF Recommendation 10

When a new customer is non-resident, special attention should be exercised[21]. Provision 23 of the Basel Committee CDD for banks reads:

> *Banks should 'document and enforce policies of identification for customers and those acting on their behalf[22]'. The best documents for verifying are those most difficult to obtain illicitly and to counterfeit. Special attention should be exercised in the case of non-resident customers and in no case should a bank short-circuit identity procedures just because the new customer is unable to present himself for interview. The bank should always ask itself why the customer has chosen to open an account in a foreign jurisdiction.*

Having ensured that the financial secrecy laws do not inhibit implementation of the FATF Recommendations, financial institutions must collect the information of the customers as much as they can. Neither an account should be opened without verifying the new customer's identity satisfactorily[23] nor should a customer be permitted to open or maintain an account using an anonymous or fictitious name[24]. The Basel Committee CDD for banks, Provision 22, reads:

> *Banks should establish a systematic procedure for identifying new customers and should not establish a banking relationship until a new customer is satisfactorily verified.*

The financial institution needs to take measures to verify the identity of the beneficial owner when an agent represents a beneficiary via corporations or other intermediaries. In order to verify the legality of the entity the financial institution should collect the following information from the potential customer[25].

1. Name and legal form of customer's organizations;
2. Address;
3. Names of the directors;
4. Principal owners or beneficiaries;
5. Provisions regulating the power to bind the organization;
6. Agent(s) acting on behalf of the organization; and
7. Account number (if applicable).

The Committee developed a series of recommendations that provide a basic framework for supervisors around the world to be used as guidelines in the development of KYC/CDD practices in their supervised financial institutions. A financial institution should develop and enforce a clear customer acceptance policy and tiered customer identification program that involves more extensive due diligence for high risk accounts and includes proactive account monitoring for suspicious activities[26]. In accordance with international standards set by the Basel Committee on Banking Supervision and by the FATF, countries must ensure that their financial

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[21] Basel Committee on Banking Supervision, "Customer Due Diligence for Banks", Provision 23

[22] Basel Committee on Banking Supervision, "Core Principles Methodology", essential criteria 2

[23] Basel Committee on Banking Supervision, "Customer Due Diligence for Banks", Provision 22

[24] Ibid, Provision 30 and FATF Recommendation 5

[25] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. VI-6

[26] Basel Committee on Banking Supervision, "Customer Due Diligence for Banks", Provision 20

institutions have appropriate customer identification and due diligence procedures in place.

It seems that countries should extremely work hard in order to comply with Recommendation 5 due to the report on the AML-CFT assessments[27] by the IMF and the WB. It states:

> *For customer due diligence (CDD) (Recommendation 5), no countries were rated compliant, 33 percent were considered largely compliant, 67 percent were partially compliant or non-compliant.*

2.3 High risk accounts and transactions

Enhanced due diligence measures should be taken into account on the following high risk accounts and transactions[28].

- § Politically exposed persons (PEPs)
- § Transactions from the countries on the NCCT list
- § Shell banks
- § Non-face-to-face customers
- § Correspondent banking
- § Customers introduced by intermediaries
- § Insurance sector measures
- § Securities sector measures
- § Designated non-financial businesses and professions
- § Suspicious transactions

2.3.1 Politically exposed persons

Politically exposed persons (PEPs) abuse their public powers for their own illicit enrichment through the receipt of bribes, embezzlement, etc. in countries where corruption is widespread. The definition of PEPs stated in the Glossary of 2004 FATF Forty Recommendations is:

> *PEPs are individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.*

Although the definition does not apply to the domestic PEPs the 2004 FATF Assessment Methodology relating to Recommendation 6, additional element 6.5, encourages the countries to extend extra due diligence to domestic PEPs. Recommendation 6 encourages the financial institutions to perform the additional

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[27] IMF and WB, “Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information”, 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

[28] WB, “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism”, second edition, 2004: pp. VI-8 – VI-13

measures consisting of the following:

> *Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:*
>
> *a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.*
> *b) Obtain senior management approval for establishing business relationships with such customers.*
> *c) Take reasonable measures to establish the source of wealth and source of funds.*
> *d) Conduct enhanced ongoing monitoring of the business relationship.*

Provisions 41 to 44 in the Basel Committee Customer Due Diligence for Banks discuss the matters related to the funds from corrupt PEPs and how to tackle them effectively. Among them, Provision 44 states:

> *Banks should gather sufficient information from a new customer and check publicly available information in order to establish whether or not a customer is a PEP. Banks should investigate the source of funds before accepting a PEP. The decision to open an account for a PEP should be taken at a senior management level.*

The report on the AML-CFT assessments[29] by the IMF and the WB states:

> *All assessed high- and middle-income countries have adopted a range of preventive measures applicable to the prudentially-regulated financial sectors (the banking, securities, and insurance sectors), but implementation is uneven. No countries were fully compliant, and a large percentage of the countries were non-compliant with the Recommendation requiring enhanced due diligence for politically exposed persons. Many of the assessed low-income countries had only begun the process of creating regulatory frameworks. Where such frameworks were present, they only covered the banking sector.*

2.3.2 Countries on the NCCT list and shell banks

The PEPs within the NCCTs might create vulnerabilities of the banking system to money laundering since they abuse the power to use the banking system of their own country. Besides the PEPs, criminals might use the banks in the countries on the NCCT list that have weak AML-CFT regimes. It is, therefore, important to carry out adequate due diligence on the transactions from the countries on the NCCT list.

The main objective of the NCCT initiative is to reduce the vulnerabilities of the financial system to money laundering. Countries on the NCCT list are the countries that have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF. In other words, implementation of measures for the prevention, detection and punishment of ML and FT is not sufficient in accordance with international standards. It is required to identify clients or beneficial owners from these countries before business relationships are established and to enhance surveillance and report financial transactions and other relevant actions involving the countries on the NCCT list.

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[29] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

In addition, if a bank is incorporated in a country but it has no physical presence in that country and is not affiliated with a regulated financial group, transactions from those banks (shell banks) should not be undertaken.

2.3.3 Non-face-to-face customers and correspondent banking

Some of the customers do not present themselves at the financial institutions for their interview when conducting transactions. Financial institutions should, therefore, be aware of non-face-to-face customers and should take necessary steps to deal with them[30]. The topics related to non-face-to-face customers[31] and correspondent banking[32] are discussed in detail in the Basel Committee Customer Due Diligence for Banks, (October 2001).

Recommendation 7 states that financial institutions should not only gather sufficient information about the respondent institutions but also assess the respondent institution's AML-CFT controls. In addition, financial institutions should obtain approval from their senior management before establishing new correspondent relationships and document the respective responsibilities of each institution. It reads:

> *Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:*
>
> a) *Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.*
> b) *Assess the respondent institution's anti-money laundering and terrorist financing control.*
> c) *Obtain approval from senior management before establishing new correspondent relationships.*
> d) *Document the respective responsibilities of each institution.*
> e) *With respect to 'payable-through accounts', be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.*

Non-face-to-face customers usually use postal services and telecommunications networks to obtain financial services for their convenience. However, electronic banking currently incorporates a wide array of products and services delivered over telecommunications networks. Although developing technologies provide the customers with luxurious convenience the nature of electronic banking creates difficulties in customer identification and verification[33]. Recommendation 8 states:

> *Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favor*

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[30] FATF Recommendation 8

[31] Basel Committee on Banking Supervision, "Customer Due Diligence for Banks", Provisions (45 to 48) and FATF Recommendation 8

[32] ibid.: Provisions (49 to 52) and FATF Recommendation 7

[33] ibid.: Provision (46)

anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.

Provision 48 of the Basel Committee CDD for Banks states:

In accepting business from non-face-to-face customers:

- *banks should apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview; and*

- *there must be specific and adequate measures to mitigate the higher risk.*

Examples of measures to mitigate the higher risk include:

- *certification of documents presented;*
- *requisition of additional documents to complement those which are required for face-to-face customers;*
- *independent contact with the customer by the bank;*
- *third party introduction, e.g. by an introducer subject to the criteria established in paragraph 36;or*
- *requiring the first payment to be carried out through an account in customer's name with another bank subject to similar customer due diligence standards.*

2.3.4 Intermediaries

When the client account is opened by a professional intermediary that client must be identified[34]. Although the funds held by a professional intermediary or lawyer on behalf of entities are not co-mingled, if there are sub-accounts that can be attributable to each beneficial owner, all beneficial owners of the sub-accounts by the intermediary or lawyer must be identified[35]. When the funds are co-mingled the financial institution should look through to the beneficial owners unless the intermediary has engaged in a sound due diligence process and has the systems and controls to allocate the assets in the pooled accounts to the relevant beneficiaries[36]. Regarding customers who are introduced to financial institutions via domestic or international intermediaries, three things should be done[37].

1. Ensure that the intermediary is subject to CDD requirements that its compliance with such due diligence requirements is subject to supervision.
2. Ensure that the intermediary has collected sufficient information about identity and other relevant due diligence documentation about the customer.
3. Ensure that the intermediary can make that information available on request without delay.

2.3.5 Securities firms and insurance companies

The securities firms and the insurance industry can follow and adhere to the relevant

[34] Basel Committee Customer Due Diligence for Banks, Provision 37 and the 2004 FATF Recommendation 9

[35] ibid.: Provision (38)

[36] ibid.: Provision 39

[37] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. VI-11

requirements stated in the FATF Methodology and CDD requirements and guidelines established and provided by the IOSCO and the IAIS respectively. An Insurance entity must obtain the following information[38].

- § Location completed;
- § Client's financial assessment;
- § Client's need analysis;
- § Payment method details;
- § Benefit description;
- § Copy of documentation used to verify customer identity;
- § Post-sale records associated with the contract through its maturity; and
- § Details of maturity processing and claim settlement.

When the transaction seems to be unusual and/or when the source of funds cannot be inquired, the financial institutions including insurance sector and securities sector should submit a suspicious transaction report to the authorities for further investigation in accordance with the 2004 FATF Recommendation 13. Insurance companies and securities firms should report suspicious activities to the respective financial intelligence unit or other national centralized authority. The institution is not supposed to investigate the transaction or to obtain the evidence of connection between the funds and any criminal activity, including fiscal crimes.

2.3.6 Designated non-financial businesses and professions (DNFBPs)

The Glossary of the FATF 40 Recommendations defines designated non-financial businesses and professions. (Please see the heading 1.5.1 Designated non-financial businesses and professions.)

Not only the scope and organization of DNFBPs greatly differ from those of the supervised financial institutions but also the scope and responsibilities of lawyers, notaries, auditors and accountants, and the extent of their regulation, vary considerably from country to country. In some countries, entry into the professions is strict and subject to demanding qualifications whereas in others, it is more flexible to come into a profession subject to light regulation. At the same time, they are not familiar with AML-CFT obligations.

Generally real estate agents and dealers in precious metals and stones that offer a range of financial services are very lightly regulated as they are informally organized. Since the AML-CFT obligations have been recently extended to DNFBPs, jurisdictions have to introduce the necessary legal and regulatory framework for their AML-CFT regimes. Likewise, some countries provide a range of financial services (foreign exchange, credit, and payments transfer) in casino operation and some do not even permit casinos at all. In fact, the legal casinos are regulated and have started to apply AML-CFT requirements.

Regardless of their countries, all DNFBPs must follow CDD procedures that apply to casinos, real estate agents, dealers in precious metals and stones, professionals, and

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[38] IAIS, "Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities", January 2002. http://www.sigortacilik.gov.tr/02YD/24USDBD/USDBD_Dosyalar/Rehber-4.pdf

trust and company service providers. Recommendation 12 states:

> *The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:*
>
> *a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.*
> *b) Real estate agents – when they are involved in transactions for their client concerning the buying and selling of real estate.*
> *c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.*
> *d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:*
> - *buying and selling of real estate;*
> - *managing of client money, securities or other assets;*
> - *management of bank, savings or securities account;*
> - *organization of contributions for the creation, operation or management of companies; and*
> - *creation, operation or management of legal persons or arrangements, and buying and selling of business entities.*
>
> *e) Trust and company service providers – when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.*

According to the report on the AML-CFT assessments[39] by the IMF and the WB, for Recommendation 12, on extending customer due diligence procedures to DNFBPs, no country was rated either fully or largely compliant; 56 percent achieved a partially compliant rating, and 44 percent were non-compliant. It also states:

> *No countries were fully compliant and a large percentage of assessed countries were non-compliant with the Recommendations concerning DNFBPs. Even where AML-CFT requirements had been fully extended to DNFBPs, implementations was weak.*
>
> *Breaking down the findings by income groups, the assessed low-income countries were universally non-compliant on Recommendations 12 and 16 (CDD and STR respectively) and 83 percent non-compliant on Recommendation 24 (supervision). The assessed middle-income countries were 80 percent partially compliant and 20 percent non-compliant on R 12 and 16, and 20 percent largely, 20 percent partially, and 60 percent non-compliant on R 24. The assessed high-income countries received ratings on R 12 similar to those of the middle-income countries (71 percent partially and 29 percent non-compliant), did somewhat better on R 16 (14 percent largely, 57 percent partially, and 29 percent non-compliant), and on R 24 (14 percent largely, 43 percent partially and 43 percent non-compliant).*

Regulatory and supervisory measures for DNFBPs were set out in Recommendation 24 while Recommendation 25 states that the competent authorities should establish guidelines, and provide feedback which will assist FIs and DNFBPs in applying national measures to combat ML and FT, especially in detecting and reporting suspicious transactions.

[39] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

Regarding suspicious transaction reports Recommendation 16 states:

> *The requirements set out in Recommendations 13 to 15 and 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:*
>
> *(a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.*
> *(b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.*
> *(c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).*
>
> *Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.*

2.3.7 Suspicious transactions

A suspicious transaction is any complex, unusual large transaction and all unusual patterns of transactions, without apparent economic or visible lawful purpose as defined in FATF Recommendation 11 essential criteria 11.1.

> *Financial institutions should be required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.*

These transactions may represent proceeds of crime and it could involve money laundering and/or terrorist financing. The following are some general signs of suspicious transactions[40].

(Banks + DNFBPs)

- § Assets withdrawn immediately after they are credited into an account.
- § A dormant account suddenly becomes active without any plausible reason.
- § The high asset value of a client is not compatible with either the information concerning the client or the relevant business.
- § A client provides false or doctored information or refuses to communicate required information to the bank.
- § The arrangement of a transaction either insinuates an unlawful purpose, is economically illogical or unidentifiable.

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[40] WB, “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism”, second edition, 2004: pp. VI-18 – VI-24

(Insurance Companies)

- Unusual or disadvantageous early redemption of an insurance policy;
- Unusual employment of an intermediary in the course of some usual transaction or financial activity (e.g. payment of claims or high commission to an unusual intermediary);
- Unusual payment method; and
- Transactions involving jurisdictions with lax regulatory instruments regarding money laundering and/or terrorist financing.

Signs regarding suspicious *cash transactions* are summarized below:

- Frequent deposit of cash incompatible with either the information concerning the client or his business.
- Deposit of cash immediately followed by the issuance of checks or transfers towards accounts opened in other banks located in the same country or abroad.
- Frequent cash withdrawal without any obvious connection with the client's business.
- Frequent exchange of notes of high denomination for smaller denominations or against another currency.
- Cashing checks, including travelers' checks, for large amounts.
- Frequent cash transactions for amounts just below the level where identification or reporting by the financial institution is required.

Signs regarding *transactions on deposit accounts* are as follows:

- Closing of an account followed by the opening of new accounts in the same name or by members of the client's family.
- Purchase of stocks and shares with funds that have been transferred from abroad or just after cash deposit on the account.
- Illogical structures (numerous accounts, frequent transfers between accounts).
- Granting of guarantees (pledges, bonds) without any obvious reason.
- Transfer in favor of other banks without any indication of the beneficiary.
- Unexpected repayment, without a convincing explanation, of a delinquent loan.
- Deposit of checks of large amount incompatible with either the information concerning the client or the relevant business.

2.4 Suspicious transaction reporting/report (STR)

Special attention should be paid to unusual patterns of transactions and complex and unusual large transactions[41]. These transactions should be examined thoroughly and the findings should be recorded systematically. Financial institutions should record the following information for each and every transaction and keep the records for a minimum of five years following the termination of the account[42].

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[41] The 2004 FATF Recommendation 11
[42] The 2004 FATF Recommendation 10

- § Name of the customer and/or beneficiary;
- § Address;
- § Date and nature of the transaction;
- § Type and amount of currency involved in the transaction;
- § Type and identifying number of account; and
- § Other relevant information typically recorded by the financial institution.

If the findings are not satisfactory, the financial institution should consider declining the business and/or making a suspicious transaction report.

Recommendation 13 reads:

> *If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).*

In addition, Special Recommendation IV states:

> *If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorists organizations, they should be required to report promptly their suspicions to the competent authorities.*

Countries are encouraged to develop modern and secure techniques of money management providing accurate and complete record keeping. These modern money management and payment methods, therefore, are very helpful to competent authorities and less vulnerable to money laundering.

Each jurisdiction has its own reporting threshold amount of money for each transaction established by a statute depending on its own circumstances. Financial institutions should be required to undertake customer due diligence (CDD) measures for any cash transaction that exceeds the threshold amount. On the other hand, certain entities that are assumed to be crime-free, such as government agencies, designated financial institutions and established businesses[43] make frequent, large transactions due to the nature of their businesses. They represent a low risk for engaging in money laundering and they may be eligible for exemption, but should be reviewed on a regular basis.

In order to avoid detection, criminals and terrorists use the method known as "smurfing" or "structuring" – multiple transactions below the national threshold using multiple accounts or a single account. Therefore, even a single transaction just below the threshold can be considered suspicious. With respect to multiple transactions, if the total transaction amount exceeds the threshold, the financial institutions need to report the entire series of transactions. Dealers in precious metals and stones are required to file STRs only when they engage in cash transactions with a customer equal to or exceeding the USD/EUR 15,000 threshold. It is one type of risk-based non-financial business and profession.

The reporting of suspicious transactions and cash transactions or the disclosure of

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[43] IMF and WB , "Financial Intelligence Units: An Overview", 2004: p.50

records by a financial institution to a competent authority must be confidential under a country's bank secrecy laws. For combating money laundering and financing of terrorism purposes, Recommendations 4 and 8 encourage the countries to make appropriate exceptions in their bank secrecy or privacy laws but confidentiality must be observed.

The report on the AML-CFT assessments[44] by the IMF and the WB states:

> *For suspicious transaction reporting (STR) (Recommendation 13), only 6 percent were considered compliant, 22 percent largely compliant, 33 percent partially compliant, and 39 percent non-compliant.*

It also states:

> *61 percent of assessed countries were non-compliant with the FATF Recommendation (SR IV) that compels reporting of transactions when there is suspicion that there are funds linked to terrorism.*

3. Financial intelligence unit (FIU)

Countering money laundering effectively requires knowledge of banking, finance, accounting and other related economic activities in addition to that of laws and regulations, investigation and analysis. There may be insurmountable obstacles not only to obtaining the information from financial institutions but also to rapid exchanges of information with foreign counterparts without the assistance of a financial intelligence unit that provides possibility of rapidly exchanging information between financial institutions and law enforcement/prosecutorial authorities, as well as among jurisdictions.

In the simplest form, a financial intelligence unit (FIU) – a central agency to receive, analyze, and disseminate financial information to combat money laundering and terrorist financing – serves as a crucial element in an AML-CFT program to provide for the exchange of information between financial institutions and law enforcement agencies.

According to the Egmont Group's definition[45],

> *A central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:*
> *(i) concerning suspected proceeds of crime, or*
> *(ii) required by national legislation or regulation, in order to counter money laundering*

The following diagram[46] of the basic FIU concept shows that efficient FIUs provide

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[44] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

[45] Adapted from "Information paper on Financial Intelligence Units and the Egmont Group" http://www.egmontgroup.org/info_paper_final_092003.pdf , (December 2006)

[46] "Information Paper on Financial Intelligence Units and the Egmont Group" http://www.egmontgroup.org/info_paper_final_092003.pdf, (December 2006)

assistance in exchanging information between financial institutions and law enforcement / prosecutorial authorities and between jurisdictions.

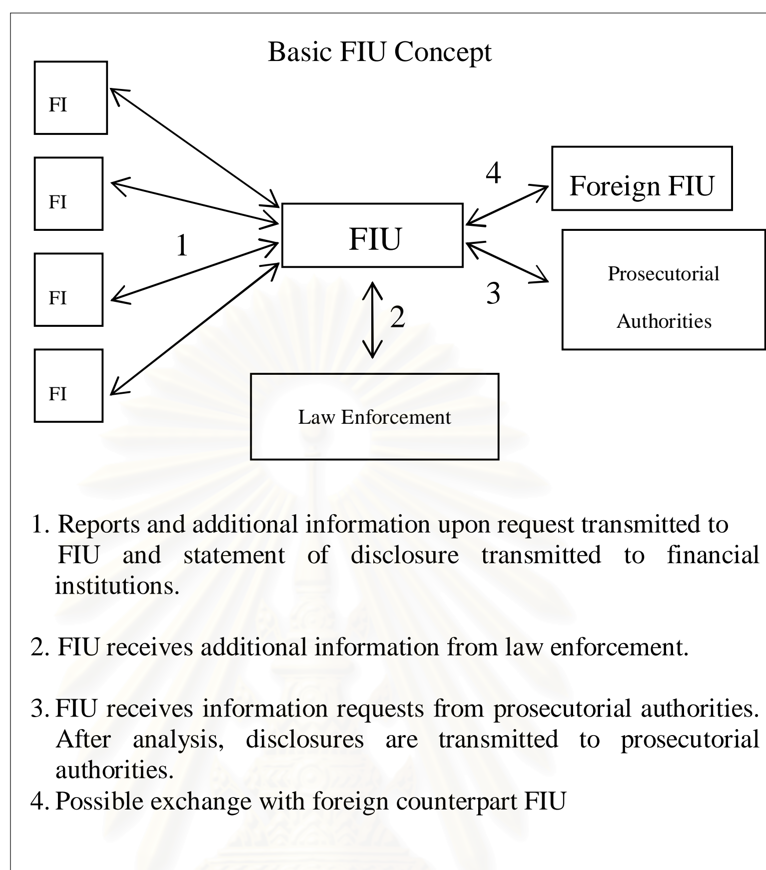

Figure 3: Showing basic FIU concept

3.1 Types of FIU

The basic features of an FIU should be consistent with the supervisory framework of that particular country as well as its legal and administrative systems and its financial and technical capabilities. The four basic FIU models recognized by the Egmont Group are Law Enforcement Model, Judicial Model, Administrative Model and Hybrid-Administrative Model[47].

- ***Law Enforcement-type FIUs***: Authorities that implement anti-money laundering measures alongside already existing law enforcement systems, supporting the efforts of multiple law enforcement agencies or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.

- ***Judicial or Prosecutorial-type FIUs*** : The judicial model is established within the judicial branch of government wherein "disclosures" of suspicious financial activity are received by the investigative agencies of a country from its financial sector such that the judiciary powers can be

[47] "Information paper on Financial Intelligence Units and the Egmont Group" http://www.egmontgroup.org/info_paper_final_092003.pdf, (2006)

brought into play e.g. seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches, etc.

§ ***Administrative-type FIUs***: Centralized, independent, administrative authorities that receive and process information from the financial sector and transmit disclosures to judicial or law enforcement authorities for prosecution. That type of FIU functions as a "buffer" between the financial and the law enforcement communities.

§ ***Mixed or Hybrid FIUs***: The hybrid model serves as a disclosure intermediary and a link to both judicial and law enforcement authorities. It combines elements of at least two of the FIU models.

3.2 Structure of FIU

The possible structure of a typical FIU is shown in the following Figure[48]

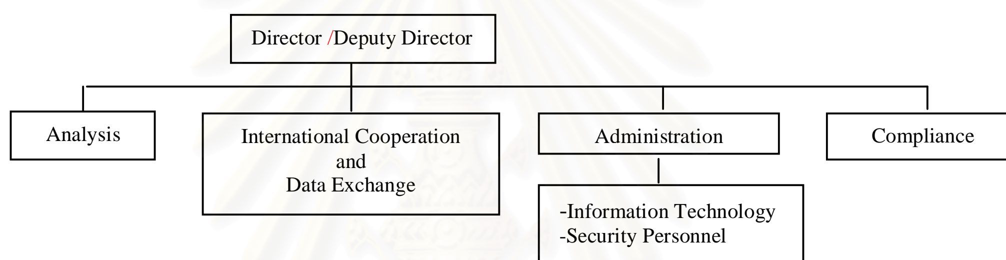

Figure 4 : Showing structure of a typical FIU

The internal organization of an FIU varies depending on its functions and size. A sound internal organization is essential to efficiency and success. Most FIUs have analysis departments which are the key departments that receive and analyze the suspicious transaction reports. The department for international cooperation and data exchange – authorized to communicate directly with counterpart FIUs and other foreign bodies– usually covers multilateral and bilateral cooperation matters. If an FIU reaches a certain size it should have a department of administration to supervise the compliance of reporting entities with AML-CFT requirements. The department of compliance that carries out regulatory and supervisory functions monitors compliance with AML-CFT requirements and initiates the sanctions mechanism in case of serious failures to report transactions. Since information technology facilitates the work of the FIU organizations the maintenance of the supporting computing infrastructure becomes a vital component of the FIUs' operations. The department of information technology and security personnel takes care of this matter.

3.3 Core functions

The Egmont Group formalized the definition of FIU based on 3 core functions[49] regarding money laundering and terrorist financing in 1996. Similar definitions have been incorporated in the 2004 FATF Recommendations and in the two UN

[48] Source: IMF and WB Group, "Financial Intelligence Units :An Overview", (2004): p. 28
[49] IMF and WB, "Financial Intelligence Units :An Overview", 2004: p. 33

international conventions – the Palermo Convention and the Convention against Corruption.

3.3.1 Receiving information

The first core function is receiving information from the following sources.

The first source is from the financial institutions. Banking systems through which great amounts of money can be transmitted likely become focal points for financial misuse. Besides, not only the banking system is vulnerable to ML due to its ability to move funds rapidly, but also insurance companies and securities firms are also vulnerable to ML because of the variety of services that can be used to conceal the sources. Reports of financial institutions, therefore, are the most important data to be received by FIUs. Financial institutions have to know their obligations and are encouraged to provide necessary information to the authorities concerned. Otherwise, they are reluctant to provide the information for not to loose customers and in the long run, they will not have any concern about the results of ML related transactions that will affect the reputation of financial institutions. They also have to know that there is no more anonymous account and the information must be made available for law enforcement agencies and judges.

The second source is non-financial institutions. Criminals' use of non-financial institutions – casinos, lawyers, notaries, other independent professionals, accountants, trust and company service providers, and dealers in precious metals and stones – should not be ignored. They may attempt to use non-financial institutions which have less sophisticated systems to detect money laundering crimes than financial institutions. Non-financial institutions should also know their obligations and should be given necessary guidance relating to AML-CFT matters.

Accordingly, FIUs have to receive STRs from both financial institutions and non-financial institutions.

The third source is an entity concerned that reports transactions suspected of being related to terrorism. Almost all counties have implemented the FATF Special Recommendations (except SR IX which was issued on 22 October 2004) by amending the law in which the reporting obligation is contained.

Fourthly, large-scale transactions – above the threshold amount – are to be reported[50].

Finally, reports of cross-border transportation of currency and bearer negotiable instruments take an important role in fighting money laundering and terrorist financing. The customs authorities are required to report to the FIU. One of the most important obligations of an FIU, under the first core function "receiving information" is the exchange of financial data and intelligence with other FIUs[51]. FIUs are to receive suspicious transaction reports and data from other FIUs. In some countries, an FIU is responsible to decide the form and contents of reports. The reports can be filed in paper forms or electronically depending on the circumstances. In most cases, the report includes the particulars of the transaction and the customer, and the reason(s)

[50] The 2004 FATF Recommendation 19
[51] Annexed to the Egmont Group's Statement of Purpose

why the transaction is considered suspicious.

3.3.2 Analyzing the information

The analysis of reports received from reporting entities is the second core function of an FIU. If the number of reports is too large for the FIU to be able to analyze all of them in time, the FIU may use internal criteria to prioritize reports and deal only with the most important ones. After collecting additional related information for a particular case, the process goes through different stages of analysis and ends with the result – a detailed file concerning an ML/FT case. The file is forwarded to one of the three destinations: (1) the law enforcement authorities; (2) the prosecutors; and (3) the reaching of a conclusion that no suspicious activity was found.

There are three levels of analysis: tactical analysis, operational analysis and strategic analysis. They are defined[52] as follows:

> *Tactical analysis is the process of collecting data needed to build up a case establishing wrong-doing and accompanying facts that clarify the reasons behind the commission of a criminal offense.*
>
> *Operational analysis consists of using tactical information to formulate different hypothesis on the possible activities of the suspect to produce operational intelligence.*
>
> *Strategic analysis is the process of developing knowledge ("strategic intelligence") to be used in shaping the work of the FIU in the future. The main characteristic of strategic intelligence is that it is not related to individual cases, but rather to new issues and trends.*

3.3.3 Disseminating the information

The third core function of an FIU is the dissemination of the received information and sharing of the analysis domestically and internationally. Rapid dissemination and sharing of information or reliable financial intelligence is extremely important for the effectiveness of national AML-CFT regime and its ability to cooperate internationally. There are 3 aspects to the dissemination function[53]:

1. Transmitting reports for investigation or prosecution.
2. Sharing information with other domestic agencies and requesting information from an FIU.
3. International information sharing
   - § Legal basis for exchange of information between FIUs
   - § Exchange of information
   - § Special arrangements for terrorist financing cases
   - § Egmont Group principles of information exchange in money laundering cases

3.4 Additional non-core functions

In addition to the three core functions, FIUs are also entrusted with additional non-

[52] IMF and WB, "Financial Intelligence Units: An Overview", 2004: pp. 57 – 61
[53] IMF and WB, "Financial Intelligence Units: An Overview", 2004: pp. 61 – 70

core functions. They are:

- § Monitor the compliance of certain entities with AML-CFT rules and standards
- § Block reported suspicious transactions for limited time
- § Train reporting-entity staff on reporting and other AML-CFT obligations
- § Conduct research
- § Enhance public awareness

Financial institutions have their own bank secrecy laws and the criminal justice system has laws against money laundering and terrorist financing. There may be a policy tension between these two frameworks of laws. FIUs, intermediaries between the reporting entities and the criminal justice system, are required to exert their power to reduce the tension between privacy and efficiency. Recommendation 4 helps FIUs to push against the extreme limits of financial privacy laws, raising legitimate concerns about the potential for the abuse. It states:

> *Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.*

In addition, Principle 7 of the Egmont Group's Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases (2001) states:

> *FIUs should work to encourage that national legal standards and privacy laws are not conceived so as to inhibit the exchange of information, in accordance with these principles, between or among FIUs.*

FIUs that take a crucial role in AML-CFT regimes need to be vigilant as they are repositories and guardians of highly sensitive information relating to the crime of money laundering and terrorist financing. Confidentiality is one factor to institute stringent procedural safeguards for their important financial evidence gathering and information sharing functions.

Confidentiality requirements should be drafted according to Principle 13 of the Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases (the Egmont Group 2001) that states:

> *All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner consistent with national provisions on privacy and data collection. At a minimum, exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving FIU.*

Independence and accountability support the trust between the reporting entities and the justice system. FIUs should be independent from political influence and other supervisory bodies regarding analysis of cases and dissemination of the resulting financial intelligence. At the same time, there should be a certain measure of accountability that is essential for the three core functions, but FIUs should not be influenced by other government authorities.

It is important for FIUs to give back general information to financial institutions about

their reports. FIUs need to give back general feedback to reporting entities about the usefulness of their reports as well as suggestions on how to improve their way of reporting suspicious transactions. FIUs should share the information about money laundering and terrorist financing trends and typologies with reporting entities. Recommendation 25 states:

> *The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.*

FIUs should maintain comprehensive statistics on STRs received, analyzed and disseminated for further reference in AML-CFT assessments. Recommendation 32 states:

> *Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems. This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation.*

4. International cooperation

International cooperation is needed at all stages of AML-CFT procedures especially in obtaining information related to money laundering and terrorist financing from abroad as preventive measures. All of the three conventions - the Vienna Convention (1988), the Convention against FOT and the Palermo Convention – and the 2004 FATF 40+9 Recommendations give explicit recognition to the fact that international cooperation should be supported by a network of mutual assistance. Laws and procedures should, therefore, encourage and facilitate mutual legal assistance in obtaining evidence for use in AML-CFT investigations and prosecutions. FATF Recommendation 36 states:

> *Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings. In particular, countries should:*
>
> *(a) Not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance.*
> *(b) Ensure that they have clear and efficient processes for the execution of mutual legal assistance requests.*
> *(c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offense is also considered to involve fiscal matters.*
> *(d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions to maintain secrecy or confidentiality.*
>
> *Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.*

> *To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country."*

Special Recommendation V also reads:

> *Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquires and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations.*
>
> *Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organizations and should have procedures in place to extradite, where possible, such individuals.*

4.1 Effective international cooperation mechanism

The UN has been used as a place for leaders of the countries to speak freely of their grievances since the end of World War II. It has evolved as things have changed and different types of problems have emerged. Currently we have problems of money laundering and international terrorism. A country has to identify priorities, build up its efficient domestic capacity, and determine the means for combating ML and FT taking into account its economic and environmental needs. A country's capacity-building depends on its people and institutions, technological capabilities, ecological and geographical conditions and so forth. In order to strengthen international cooperation, endogenous capacity is essential and the efforts of the countries in partnership with relevant UN organizations are required to obtain endogenous capacity.

In order to construct an effective international cooperation, countries should meet three prerequisites[54]. They are:

1. Building a comprehensive and efficient domestic capacity.
2. Ratifying and implementing the international conventions.
3. Complying with the FATF Recommendations and other sector-specific international standards.

All necessary administrative and supervisory authorities as well as an FIU with necessary powers and responsibilities should be in place adequately provided with staff, budget and other useful resources to carry out their duties efficiently[55], especially to oversee financial institutions. In addition, criminal justice system and judicial/prosecutorial system are two crucial factors to obtain an effective AML-CFT regime.

Having established an effective AML-CFT regime, countries need to sign and ratify

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[54] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. VIII-2

[55] FATF Recommendation 30

the relevant international conventions, especially the three conventions – the Vienna Convention (1988), the Convention against Financing of Terrorism (1999) and the Palermo Convention (2000). It is also necessary to sign and ratify the other AML-CFT conventions adopted by their respective regional organizations. All provisions of the aforementioned conventions should be fully implemented in their domestic laws. Provisions related to the criminalization of money laundering and international cooperation will help the countries obtain effective international assistance.

In order to obtain complementary effectiveness, apart from the international conventions, countries should comply with international standards. In particular, emphasis should be placed on the FATF 40+9 Recommendations; the Core Principles (the Basel Committee); Customer Due Diligence (the Basel Committee); the Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases (the Egmont Group 2001); and other international standards set by the IAIS and the IOSCO.

4.2 Fundamentals of international cooperation mechanism

Money laundering and international terrorism remains a great threat to peace and security in the world today and all governments, particularly the major powers, need to strengthen anti-money laundering and counter-terrorism cooperation internationally, regionally, and bilaterally to overcome the common and growing threat of international terrorism.

According to the international conventions and standards, the following principles are prominent[56].

1. When competent authorities in one country officially request those in another to provide the information relating to money laundering and terrorist financing obtained by the latter, the requested authorities should provide the information promptly to the requesting authorities.
2. When competent authorities in one country officially request assistance on the sole ground that the request is also considered to involve fiscal matters, the requested authorities should not refuse the request for assistance.
3. When competent authorities in one country know that certain information would be useful to those in another country the former should provide the information spontaneously to the latter without being asked.
4. Competent authorities in one country should be able to conduct inquiries and investigations, and perform other requested actions on behalf of its foreign counterparts.

The following points[57] are essential to obtain effective international cooperation between law enforcement agencies and judicial authorities.

1. Countries should sign, ratify and implement all the relevant conventions[58] conducted by the UN and regional international organizations as they provide necessary legal basis for international cooperation.

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[56] FATF Recommendation 40

[57] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: pp. VIII-11 – VIII-13

[58] FATF Recommendation 35

2. Effective laws and clear and efficient procedures should encourage and facilitate mutual legal assistance[59]in AML-CFT matters.
3. Competent authorities must provide appropriate assistance in relation to money laundering and terrorist financing to the foreign counterparts for (1) the production of information; (2) searches of financial institutions; (3) the taking of witnesses' statements; and (4) the tracking, identifying, freezing, seizure, and confiscation of assets laundered or intended to be laundered, the proceeds of money laundering and assets of corresponding value[60].
4. Treaties or other formal arrangements and informal mechanisms must be in place to support international cooperation via bilateral or multilateral mutual legal assistance.
5. Laws and procedures should allow for the extradition of the accused without undue delay[61].
6. National authorities should keep both statistical and factual records for information exchange between countries.

4.3 Role of FIUs in international cooperation

Since FIUs are organized with the major purpose of combating money laundering and terrorist financing, and they have common features and act in accordance with the Egmont Group's principles, FIU cooperation at the international level is very important. When dealing with international requests for information, the Egmont Group provides guidelines in terms of best practices for the exchange of information between FIUs. Regarding international cooperation between FIUs, there are three factors to be focused on: (1) the core features of FIU international cooperation; (2) conditioning the FIUs' abilities to cooperate at the international level; and (3) the relationship between different organizational modals and international cooperation. An FIU, mostly attached to administrative authorities, should cooperate with all its counterparts regardless of their internal and organizational structure. However, three important points should be considered[62]. They are:

1. Whether there are or should be restrictions on sharing financial information;
2. If so, how much information should be shared; and
3. What type of information should be shared.

4.4 Financial institutions and DNFBPs

As most money laundering activities have been with the banking system, financial supervisors are authorized to cooperate with their counterparts with respect to AML-CFT analysis and regulatory investigation. The Basel Committee issued the twenty five core principles (1997) for applying to all banking supervisors. In particular Principles 23, 24 and 25 state the issues regarding international cooperation. The Committee also issued Core Principles Methodology (1999) that describes under what conditions assessments should be made and detailed explanation of each principle.

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[59] FATF Recommendation 36
[60] FATF Recommendation 38
[61] FATF Recommendation 40
[62] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. VIII-8

Recommendations 4 and 40 also support the point that countries should not use financial institution secrecy law as a ground for refusing to provide the mutual legal assistance and extradition. Recommendations 35-40 deal with international cooperation regarding AML-CFT for financial institutions and DNFBPs.

Although a country (home country) can establish a branch of its bank in another country (host country) using informal or formal arrangements for a proper information sharing system, the home country supervisor has to close the bank if the host country does not have an adequate supervision of the bank relative to the risk management[63]. The home country supervisors are required to exchange information with the host country supervisors[64] regularly so that the home country supervisors have up-to-date information at their fingertips. As financial institutions and DNFBPs have taken the vital roles in the AML-CFT process, prompt and efficient assistance and cooperation done by supervisors of those institutions can produce the fruitful result in any AML-CFT regime.

4.5 Insurance companies

Cooperation between insurance supervisors is another support in detecting cases related to money laundering and financing of terrorism. The International Association of Insurance Supervisors is committed not only to set out the principles that are fundamental to effective insurance supervision but also to develop standards, including the principles relating to international cooperation, that can be used by the insurance supervisors throughout the world as efficient and timely exchange of information is critical to the effective supervision in international insurance sector and essential for the effective supervision of the financial system. Principles can be implemented in a flexible manner depending on the circumstances of a particular jurisdiction.

Insurance Core Principle (ICP) 5 is described in ten essential criteria[65] for supervisory cooperation and information sharing. ICP 5 reads:

> *The supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality.*

In most IAIS member countries money laundering and terrorist financing are criminal acts under the law. In conjunction with law enforcement authorities and in cooperation with other supervisors, insurance supervisors should supervise insurers and intermediaries for AML-CFT purpose. ICP 28 states:

> *The supervisory authority requires insurers and intermediaries, at a minimum those insurers and intermediaries offering life insurance products or other investment related insurance, to take effective measures to deter, detect and report money laundering and financing of terrorism consistent with the Financial Action Task Force on Money Laundering (FATF).*

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[63] Basel Committee on Banking Supervision, "Core Principles Methodology" April 2006: Core Principle 23 essential criterion 2, p. 37

[64] ibid.: Core Principle 24 additional criterion 2, p.38

[65] IAIS, "Insurance Core Principles and Methodology", October 2003 http://www.insurance.gov.gy/Documents/IAIS%20Core%20Principles.pdf

ICP 28, criterion (c) explains:

> *The supervisory authority has appropriate authority to cooperate effectively with the domestic Financial Intelligence Unit (FIU) and domestic enforcement authorities, as well as with other supervisors both domestic and foreign, for AML-CFT purpose.*

The exchange of information between supervisory authorities is a key element in pursuing insurance activities on the Internet. The IAIS consequently issued Principles on the Supervision of Insurance Activities on the Internet in October 2004, where Principle 3 states:

> *Supervisors should cooperate with one another, as necessary, in supervising insurance activities on the internet.*

4.6 Securities firms

Cooperation between supervisory authorities of securities firms should be in place at the international level to facilitate the detection and deterrence of money laundering and terrorist financing cases. The international Organization of Securities Commissioners issued Resolutions on Money Laundering in October 1992, where Resolution 7 states:

> *Each IOSCO member should consider the most appropriate means, given their particular national authorities and powers, to share information in order to combat money laundering.*

In addition, the IOSCO Core Principles 11, 12 and 13 encourage the regulators to have an adequate information-sharing arrangement with regulators in other countries.
Although competent authorities should provide the widest possible range of international cooperation to their foreign counterparts, certain limitation of conditions can be placed on their assistance. If a country does not criminalize certain fiscal offenses, it may not be able to provide assistance in connection with money laundering of the proceeds of a fiscal crime to the requesting country.

International cooperation between law enforcement agencies and judicial authorities is vital to achieve the goals of any AML-CFT regimes. Recommendations 36 to 40 and Special Recommendation V encourage the countries to provide the widest possible range of mutual assistance on the basis of a treaty, arrangement or other mechanism for mutual legal assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings in relation to money laundering and terrorist financing.

5. Combating money laundering and terrorist financing

5.1 Effective legal framework

Mainly based on the UN international conventions, the 2004 FATF 40 Recommendations and 9 Special Recommendations were created and it is unquestionable that they are invaluable to law enforcement and judicial authorities in AML-CFT regimes. Therefore, the first step of the AML-CFT process is to ratify and

implement the UN conventions or UN instrumentalities. In particular, implementation of the Vienna Convention (1988), the Convention against Financing of Terrorism (1999) and the Palermo Convention (2000) are essential to obtain an effective AML-CFT regime in accordance with the FATF Recommendations. Apart from the UN conventions, countries should fully ratify and implement the AML-CFT conventions adopted by their respective regional organizations. Besides the aforementioned conventions, countries should fully implement UN Resolutions dealing with terrorist financing, especially United Nations Securities Council Resolution 1373[66].

Under Recommendation 3, concerning ML, countries are encouraged to adopt measures similar to those set forth in the Vienna and Palermo Conventions and such measures should include:

a) Identifying, tracing and evaluating property which is subject to confiscation;
b) Carrying out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property;
c) Taking steps that will prevent or void actions that prejudice the State's ability to recover property alleged to be liable to confiscation; and
d) Taking any appropriate investigative measures.

Although Recommendation 3 covers terrorist financing cases as money laundering predicate offenses, Special Recommendation III emphasizes freezing and confiscating of terrorist assets.

> *Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.*
>
> *Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.*

5.2 Countermeasures against ML and FT

In order to have a comprehensive legal and institutional framework for AML/CFT, domestic laws should be modified, adjusted and amended in line with the related international conventions and UN resolutions. First of all it is essential to criminalize money laundering and financing of terrorism. Second, institutional arrangements for AML/CFT should be made. Third, it is also essential to provide an adequate framework of extensive measures for prevention and detection of money laundering and terrorist financing. Fourth, there should be measures to control the proceeds of crime efficiently.

Since banks are the financial institutions used by money launderers and criminals, a Bank Secrecy Act is one of the legal actions. If there is a secrecy law in the banking system that obstructs cooperation and provision of information needed for investigation of money laundering and terrorist financing offenses a Bank Secrecy Act – which would provide law enforcement authorities with a tool to facilitate

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[66] FATF Special Recommendation I

investigations into the criminals' financial activities to monitor domestic and international money flows and identify potential launderers – is needed.

Countries have modified their respective Bank Secrecy Act to prevent banks and other financial service providers from being used as intermediaries for criminal activities or to hide the transfer or deposit of money derived therefrom.

The fixing of a threshold level amount makes the money launderers hesitate to use large-scale cash transactions. They create a new process known as "smurfing"– splitting of a large amount of money into multiple smaller transactions. Multiple smaller transactions are less noticeable and it is easy to evade the bank reporting requirements. Even though the amount of currency is above the threshold level, most banks simply ignore the rules. In spite of heavy penalties for reporting violations, banks are not eager to abandon the source containing considerable revenue. The Bank Secrecy Act, therefore, is amended to impose much heavier penalties for reporting violations. Banks need to educate their employees how to carry out the KYC/CDD process so that they know their customers properly as numerous crimes including foreign crimes have been carried out using banks by money launderers and criminals.

The anti-money laundering acts in different countries are passed to combat money laundering. Banks are forced to obtain statements from the customers who are exempted, and banks are exempted from penalties under financial privacy laws when reporting suspicious transactions. Consequently, fees paid for money laundering have risen dramatically and financial institutions cannot control their temptation. Accordingly, several of them are fined for money laundering. Adequate administration and supervision of financial institutions, especially for suspicious transaction reports, is critical in combating ML and FT.

In addition, fighting against corruption is one means of countermeasures because corruption at the highest levels of government is one type of catalyst for the success of the money laundering process. There are different types of factors which can be used to facilitate performing money laundering but they are hindrances to combating money laundering. Whatever the obstacles there are in anti-money laundering and counter-terrorist financing, it is essential that the financial institutions must act in partnership with law enforcement and supervisory authorities in order to get rid of the obstacles in combating the twin evils. The alarming fact for the international community is that terrorist financing submerged under the money laundering process is transnational movement of funds by using many countries whose governments firmly believe in absolute financial privacy.

5.3 Effective implementation

In addition to the adoption of laws, regulations and other measures, effective implementation is required to strengthen the AML-CFT regime. In some countries, despite the adoption of AML-CFT laws, implementation of the adopted laws is weak. Countries have to implement and utilize the appropriate laws, regulations and other measures that have been adopted. Effective implementation in the initial stages of AML/CFT enforcement - the most important part of the implementation – is critical. Without suspicious transaction reports, viable and effective investigation, and good control of the proceeds of crime, it is obviously hard to achieve justice in prosecution.

5.3.1 Suspicious transaction reporting/report

One of the most effective and helpful factors in combating ML and FT is reporting suspicious transactions. Financial institutions should promptly report their suspicious transactions that are linked to money laundering or terrorism to the respective competent authorities. The reporting requirements must be in accordance with that particular country's AML-CFT laws.

Recommendations 13, 14, 16 and 26 deal with ML-related suspicious transaction reports regarding financial institutions, DNFBPs and competent authorities respectively whereas Special Recommendation IV deals with terrorism-related suspicious transaction reports. Recommendation 32 encourages competent authorities to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of such system for further reference.

5.3.2 Investigation of ML-FT offenses

Although many countries have adopted money-laundering laws around the world, vigorous enforcement is limited to a few countries. Money-laundering techniques develop constantly and money-laundering is said to be the world's third largest business by value[67]. Investigative techniques tend to have some loopholes because laundered money can still be moved around the world. It is therefore extremely important for investigators to obtain the fundamental knowledge and necessary skills about money-laundering investigations and continuously follow the latest money-laundering typologies. More importantly, investigators should be provided with adequate, advanced technological facilities for the use in their daily operations, and training opportunities to strengthen their professional investigative capacity. In this regard, countries with advanced knowledge and skills in the ML investigation should provide technical assistance to countries with weak institutional capacity.

5.3.3 Control of the proceeds of crime

The most effective measures against ML-FT are tracing, freezing, seizing and confiscating the proceeds of crime so that the volume of dirty money business and financial support to terrorists can be reduced. Consequently, domestic and international efforts to further develop and utilize those measures should be enhanced using proper mechanisms.

5.4 Knowledge of untraceable ML-FT methods

In combating money laundering and terrorist financing, untraceable means of money/value transfer should be seriously considered. Having known that these methods have been used by money launderers and terrorist organizations, authorities should take some kinds of measures to impose AML-CFT requirements on the money/value transfer systems in AML-CFT regimes. The competent authorities of

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[67] David Lyman (Senior Partner Tilleke & Gibbins Rev.), "Money Laundering" Thailand English Language Law Forum, February 17, 1999 http://www.thailawforum.com/articles/moneylaunderingtg.html [Read December 2006]

AML-CFT regimes have established guidelines that assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and financing of terrorism, providing training courses and seminars in connection with the ML-FT methods. There are some types of money laundering methods apart from the ones mentioned in Chapter 2, (1.4). Some money launderers use informal money remittance systems without being supervised. The most alarming methods that hinder combating ML and FT are alternative remittance systems, wire transfers, misuses of non-profit organizations and cross-border transactions.

Terrorists raise money from both legal and illegal activities. Charitable contributions can be major sources of funding via non-governmental organizations. Informal money transfer systems can be the method terrorists and terrorist organizations prefer to use for these methods do not leave traces for detection.

5.4.1 Alternative remittance systems

Alternative remittance systems – known as informal value transfer systems or underground banking systems – transfer value without using formal money remittance systems. In other words, an alternative remittance system is a type of financial service through which funds or values are transferred without being supervised. Trade-based money laundering can also be viewed as a type of alternative remittance system. Trade-based value transfers that are vulnerable to terrorist financing are commonplace in many parts of the world. The International Narcotics Control Strategy Report released by the Bureau for International Narcotics and Law Enforcement Affairs (March 2004)[68] states:

> *In one example of how alert customers scrutiny stopped suspect trade goods with ties to terrorism, a European Customs service intercepted a shipment of transshipped toiletries and cosmetics that originated in Dubai. Customs examination of the manifest suggested that the goods were counterfeit and they were grossly undervalued. The goods were ultimately consigned to a third country. The resultant investigation revealed that the original exporter of the goods was a member of al-Qaida.*

One point should be pondered that it is impossible to eliminate the informal money value transfer systems because in some of the developing countries that method is the only viable means of transferring money. Even if some countries do have formal money remittance systems, the formal financial institutions provide the service at an inordinate price. The reason these alternative remittance systems are in demand and attractive to both criminals and legitimate customers is they are cheaper and faster than formal banking system. Without this type of system people who cannot easily access the formal financial sector will have some inconvenience. On the other hand, taking this fact as an advantage, money launderers and terrorists have willingly used this method to transfer the fund from one place to another. It is extremely difficult to tackle the illegal informal remittance systems.

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[68] US Department of State, "The International Narcotics Control Strategy Report released by the Bureau for International Narcotics and Law Enforcement Affairs", March 2004 http://www.state.gov/p/inl/rls/nrcrpt/2003/vol2/html/29910.htm [Read December 2006]

The final part of Recommendation 23 and Special Recommendation VI focus on informal alternative remittance systems. Special Recommendation VI, encourages countries to impose AML-CFT requirements on forms of money move or value transfer systems and aims to apply AML-CFT controls to money launderers and terrorists who take advantage of alternative remittance systems.

5.4.2 Wire transfers

Money launderers have made extensive use of electronic payment and message systems or "wire transfers" where movement of funds without the identity of originator between accounts is a double click. As a result, investigations of major ML cases have become more difficult to pursue. The term "wire transfer" refers to any transaction of an amount of money through a financial services business by electronic means to a beneficiary at another financial services business, where the originator and the beneficiary may be the same person. In order to facilitate the investigations of money laundering cases, the FATF issued Special Recommendation VII.

> *Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.*
>
> *Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).*

Countries should take appropriate actions to require financial institutions to obtain accurate and meaningful information of the originator on wire transfers[69] where the threshold of wire transfers must not be above USD 3000[70]. Full originator information contains:

§ the name of the originator;
§ the originator's account number (or a unique reference number if no account number exists); and
§ the originator's address (Countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth.).

In addition, beneficiary financial institutions should adopt effective risk-based procedures for handling wire transfers with incomplete originator information[71]. Regarding cross-border wire transfers, the transfers need to be accompanied by the name, account number and address of the originator[72]. If the account number does not exist, a unique reference number can be used. Domestic wire transfers need to be accompanied by the account number, only if the rest of the information about the originator can be traced by authorities concerned within three business days[73].

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[69] FATF Special Recommendation VII, essential criteria VII.1
[70] FATF Special Recommendation VII, essential criteria VII.4
[71] FATF Special Recommendation VII, essential criteria VII.7
[72] FATF Special Recommendation VII, essential criteria VII.2
[73] FATF Special Recommendation VII, essential criteria VII.3

5.4.3 Non-profit organizations

In general, non-profit organizations which enjoy tax exempt status as a result of being organized to serve the public interest. Nowadays, charities may be operating under great difficulty in different parts of the world where non-profit organizations are misused by terrorist financiers. In order to reduce the risk of non-profit organizations, the FATF has issued a set of international best practices entitled "Combating the Abuse of Non-profit Organizations: International Best Practices[74]". These guidelines inform non-profit organizations how activities should be carried out and how to prevent non-profit organizations from being misused to finance terrorism.

Under Special Recommendation VIII, a country should ensure that, its non-profit organizations cannot be used by terrorist organizations or for terrorist financing. It reads:

> *Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:*
> § *by terrorist organizations posing as legitimate ones;*
> § *to exploit legitimate entities as conduits for terrorist financing, including to avoid asset freezing measures; or*
> § *to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.*

In order to achieve the goals of Recommendation VIII, there are three requirements[75] for attention by countries. They are:

§ *Ensure financial transparency.*
§ *Programmatic verification.*
§ *Administration.*

5.4.4 Cross-border transactions

The FATF encourages countries to set the policies designed to tackle dirty money passing through the global system and the financing of terrorism as the banking systems become tightened. Consequently, money launderers and terrorist organizations have changed their way of laundering and financing. They choose the methods by which they can use cash without a trace and they have increasingly done so.

Special Recommendation IX states:

> *Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation.*
>
> *Countries should ensure that their competent authorities have the legal*

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[74] FATF, "Combating the Abuse of Non-profit Organizations: International Best Practices", 11 October 2002, http://www.icnl.org/JOURNAL/vol5iss1/cr_int.htm [Read January 2007]

[75] WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. IX-13

authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.

Under Special Recommendation IX, countries should have measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III[76], in place by implementing one or both of the following two types of systems for incoming and outgoing cross-border transportations of currency/bearer negotiable instruments[77].

(a) Declaration system

(i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments that are of a value exceeding a prescribed threshold should be required to submit a truthful declaration to the designated competent authorities; and
(ii) The prescribed threshold cannot exceed EUR/USD 15,000.

(b) Disclosure system

(i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments should be required to make a truthful disclosure to the designated competent authorities upon request; and
(ii) The designated competent authorities should have the authority to make their inquiries on a targeted basis, based on intelligence or suspicion, or on a random basis.

Competent authorities should have the legal authority not only to request and obtain information from the couriers who make false declaration(s) or disclosure(s) of currency/bearer negotiable instruments or failure to declare/disclose them but also to stop or restrain currency/bearer negotiable instruments that are suspected to be related to money laundering and terrorist financing . Unusual or suspicious cross-border movements of currency, other negotiable instruments and highly valued commodities (precious stones/metals) should be reported to the country customs services or other appropriate authorities[78].

5.4.5 Use of false identity

In addition to the aforementioned three ML methods, there is another method – money laundering using false identity – that makes the authorities of financial institutions hard to see the actual picture of money transactions. Identity theft dealing with two

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[76] FATF Special Recommendation IX, essential criteria IX.10 and IX.11
[77] FATF Special Recommendation IX, essential criterion IX.1
[78] FATF Recommendation 19

activities[79] – acquiring, collecting and transferring personal information from a tangible source (an actual document) or an intangible source (a computer screen) and using the obtained information as an instrument of crime in future – has been used in transactions.

It is stated in the "Report of the Workshop Measures to Combat Economic Crime, Including Money-Laundering – Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005" that examples of the more common ways in which personal information is obtained for later criminal use are as follows:

1. *Theft of purses and wallets; theft of documents from the mail; redirection of mail from the victim's home to perpetrator's home;*
2. *Recovering from trash documentation that identifies personal information relating to the victim, for example, a credit card or bank account number (dumpster diving);*
3. *Unauthorized copying of digitized data (e.g. "skimming" devices that record credit card and/or debit card numbers; a hidden camera to record personal identification numbers (PIN) accompanying the skimming of debit cards);*
4. *Obtaining personal information in respect of a dead person in order to assume their identity (tombstoning)*
5. *Obtaining personal information from public sources (e.g. "shoulder surfing", which involves looking over someone's shoulder while they are entering their PIN when using a debit card);*
6. *Obtaining personal profile information on an individual from the Internet with a view to using that information to impersonate them;*
7. *Using the Internet to direct victims to a website that looks like that of a legitimate business. At the website the victim is asked to disclose his or her personal information. The personal information is collected by the criminal for later use to commit fraud or another form of economic crime (this activity is called "phishing");*
8. *Compromise of large databases (e.g. hacking into public or private computer databases to obtain personal information in order to make false identification documents); and*
9. *Using personal information supplied by corrupt government or company employees to make forged documents (e.g. false driver's licenses) or obtaining false identification documents from such employees.*

5.5 International cooperation in AML-CFT

As mentioned above, international cooperation deals with different areas such as financial institutions, DNFBPs, insurance companies, securities firms, etc.

As ML- and FT-related crimes have taken place increasingly across national borders it has been challenging investigative authorities to trace and prove complicated transnational money flow. In order to perform an effective investigation, international cooperation through the Egmont Group, facilitator among financial intelligence units around the world, is essential.

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[79] UN Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Ekobrottsmyndigheten Swedish National Economic Crimes Bureau, "Report of the Workshop Measures to Combat Economic Crime, Including Money-Laundering – Eleventh United Nations Congress on Crime Prevention and Criminal Justice", Bangkok, 18-25 April 2005.

Countries should take appropriate measures to ensure that they do not provide safe havens for terrorists and money launderers. Apart from national countermeasures, regarding international cooperation in combating money laundering and terrorist financing, Recommendations 35 to 40 and Special Recommendation V provide that each country should cooperate with another country through a mutual legal assistance mechanism or other mechanisms.

5.6 Technical assistance in AML-CFT

Regardless of country income level, the establishment of viable AML-CFT regimes requires significant expenditure to develop appropriate institutions, recruit personnel, train staff and acquire advanced technology. Technical assistance (TA) is one factor to facilitate the establishment and development of efficient and effective AML-CFT regimes by developing countries that need expertise and knowledge, up-to-date information and other resources necessary for the process. The World Bank and the International Monetary Fund, in cooperation with the Financial Action Task Force, the FATF-style regional bodies, the UN Global Program against Money Laundering and other key organizations and national governments are involved in combating money laundering and terrorist financing. TA donors and providers are encouraged to respond to TA requests related to combating the financing of terrorism on a priority basis.

In order to meet the major objective of TA, to assist countries in the implementation of the full AML-CFT standard, TA includes[80]:

- Designing institutional framework;
- Legislative drafting and provision of legal advice;
- Enhancing financial supervisory regimes;
- Building capacity of financial intelligence units and other agencies;
- Traditional workshops and seminars;
- Videoconferencing (Global Policy Dialogues);
- Multi-year (Capacity Enhancement Program);
- Appointment of mentors and peripatetic advisors; and
- Publications on a wide range of AML-CFT topics.

The technical assistance can be research and information exchange; needs analysis; consultancies and advisory services; study tours; awareness-raising seminars; development of model laws and regulations; assistance in drafting legislation and regulations; local, national or regional training courses; computer-based training modules; mentoring and attachments; guidance notes and best practice tools; and communication and information technology support and training.

Effective technical assistance programs require mechanisms and projects that are flexible and appropriate to the identified needs of the requesting country. One of the requirements of an efficient approach to combat ML-FT is to deliver sequential technical assistance across several sectors, including awareness raising and policy

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[80] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, http://www.imf.org/external/np/pp/eng/2005/083105.pdf [Read November 2006]

development of measures relevant to the regulatory and financial sectors. It is also required to provide assistance to support law enforcement processes.

It is needless to say that solid foundation for effectively sequencing and coordinating the delivery of technical assistance by identifying with accuracy; the relevant technical assistance and training needs compiled from a wide variety of sources and frameworks – bilateral and multilateral needs assessment studies and missions; compliance assessments and mutual evaluations in relation to relevant global standards; self-assessments; and country statements in the context of regional and international forums are crucial in combating ML and FT.

6. Chapter-wise comments

There are some challenges in combating ML-FT. The key challenge in implementing AML-CFT regimes is obtaining, maintaining and dissemination of relevant information. Countries should therefore treat information with: (1) the appropriate level of confidentiality and (2) reasonable level of privacy by all parties as information is a prerequisite for the effective enforcement of laws and regulations. A fundamental challenge to the disseminating relevant information is establishing a framework for the sharing of information that is acceptable to all parties and meets reasonable AML-CFT objectives.

Regarding cross-border movement of funds, it has become intensely global both in volume and speed, and levels of economic crimes have also become higher and higher. There are a number of problems that law enforcement authorities face at the domestic level and are exacerbated once the crime or the proceeds cross the borders because of the differences in legal and regulatory systems. One challenging problem is related to documents held in foreign countries. When the cross-border movement of funds is made up of multi-layers of corporate entities connected to each other through a complex web of affiliates and subsidiaries, the records are spread worldwide and it is really hard to trace the fragmented movement of the funds. It can be the most challenging problem in performing asset-tracing investigation if one or two safe-haven countries are in the complex web of jurisdictions.

It is important to enact legislation that creates an environment that minimizes opportunities for unscrupulous persons to obscure the extent and nature of their participation in legal business activities. There should be effective arrangements in place that allow for the identification of all persons who participate in the ownership of corporate entities, who serve as directors or who are in positions to exert significant control over corporate vehicles.

As support at the highest level of a country is very important, policy makers will need to be convinced of the level of priority that should be accorded to the development of an AML-CFT infrastructure. An effective and efficient AML-CFT regime depends on timely legislation and members of parliament should understand the obligations that arise from the relevant UN conventions, resolutions of the Security Council and other relevant regional commitments. Enacting the bill as early as possible can be one of the challenging factors in developing a successful AML-CFT regime.

The chances of successfully implementing a regulatory regime are enhanced under circumstances in which the key stakeholders – policy makers, consumers of financial

products and services, financial institutions, regulators, investigatory authorities and other government agencies – understand the competing interests and the various issues on which the regulators must focus. The challenge of understanding these factors is increased in the case of regulatory regime geared to address AML-CFT risks.

Government officials need to understand the fundamental requirements and protocols associated with their new responsibilities and the role of the FIU of the country especially in the arrangements for the handling and processing of information as it flows from reporting institutions through the FIU to law enforcement and prosecution authorities. At the same time, reporting institutions need to play their important roles as the gatekeepers of the system and to be aware of the sanctions that can arise in instances of failure to meet their legal obligations.

The establishment of a customer profile is a crucial aspect of the CDD process which is the foundation for the subsequent function of monitoring customer activity and making determination as to the need to file a suspicious activity report. It is important to update and accurately maintain information on customers, i.e. not only the information originally obtained but also all subsequent information obtained. This is a kind of on-going monitoring of customer activity and it is a challenging process. Therefore, financial institutions are challenged to determine what types of monitoring systems are most appropriate for their needs. Factors that will influence their decision are the volume, nature and complexity of their regular business transactions.

Supervisors should create and maintain an environment in which institutions are able to effectively conduct legitimate business activities with the least unnecessary regulatory burden. As they should also protect the integrity of the financial and wider business community they are challenged to develop a supervisory framework that is meaningful and effective in the context of the institutions. Regulations and guidance notes should be used to give more detailed expression to the basic framework as established in the primary legislation. Since risk-based approach that is not new to both supervisors and reporting institutions has been the center of attention, supervisors are expected to understand the risks to which their licenses are exposed and to make appropriate decisions on the most effective use of their supervisory resources.

In summary, as mentioned above, the following essential components of an effective legal framework, such as competent authorities, countermeasures against ML and FT, effective implementation, investigation of ML-FT offenses, suspicious transaction reports, good control of proceeds of crime, knowledge of untraceable ML-FT methods, international cooperation, assistance and cooperation from financial institutions and non-financial institutions, and technical assistance are important factors in the performance of combating ML-FT within an efficient and effective AML-CFT framework. The following chapter will indicate how Thailand's AML-CFT system fulfils the requirements of such an effective regime.

It may be mentioned that specific details about the need for compliance with international standards and the need for improvement of Thailand's AML laws by amendment, new enactment, and modification of existing regulations, guidelines, etc. can be seen in the concluding Chapter X.

CHAPTER IV
THAILAND'S DEVELOPMENT OF AML-CFT REGIME

1 General information on Thailand

General information on Thailand is categorized into four topics – (1) geography and population, (2) exports and imports, (3) government, and (4) economy – which are focused in this paper.

1.1 Geography and population

Thailand is the only Southeast Asian country never to have been taken over by a European power although Southeast Asian countries were colonized by British (Brunei, Malaysia, Myanmar and Singapore), Dutch (Indonesia), French (Cambodia, Laos and Vietnam,) and Spanish (the Philippines). Besides, Japan occupied Cambodia, Indonesia, Malaysia, Myanmar and the Philippines. Thailand consisting of 76 provinces – that covers an area of 513,115 square kilometers – is situated in the heart of Southeast Asia. Thailand borders the Lao People's Democratic Republic and the Union of Myanmar to the North, the Kingdom of Cambodia and the Gulf of Thailand to the East, the Union of Myanmar and the Indian Ocean to the West, and Malaysia to the South.

The population of Thailand is approximately 65 million[1] – Thai (75%), Chinese (14%) and others (11%) that include the Muslim Malays concentrated in the southern peninsula; the hill tribes of the north; the Khmers, or Cambodians, who are found in the southeast and on the Cambodian border; Karen (Myanmar refugees) (about 120,000[2] in 2005) in the West; and the Vietnamese, chiefly recent refugees who live along the Mekong River. While the minorities generally speak their own languages, Thai is the official language.

1.2 Exports and imports

Although the population in the North is relatively sparse, rice is intensively cultivated in the river valleys, and Thailand is one of the world's leading exporters of rice. Apart from rice, commercial crops include rubber, corn, kenaf, jute, tapioca, cotton, tobacco, kapok, and sugarcane. It also exports farmed shrimp and valuable minerals, such as, tin, lead, zinc and tungsten. Thailand is the world's 6th largest exporter of jewelry and the 9th largest importer of precious metals and pearls[3].Although teak – product of forest in the northern part of Thailand – was once a major export, over-cutting has gradually decreased Thailand's forest reserve severely. And yet teak is still a valuable commodity. Manufacturing of automobiles and their parts, plus exporting them to

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[1] CIA, "The World Fact Book" 2007, https://www.cia.gov/cia/publications/factbook/geos/th.html [Read 15 March 2007)

[2] ibid.: https://www.cia.gov/cia/publications/factbook/geos/th.html [Read 15 March 2007]

[3] International Trade Center UNCTAD/WTO, cited in IMF's DAR on Thailand, 24 July 2007:p. 16

1.3 Economy

Thailand economy operates using "free market" principles for Thailand that is able to attract investment from different parts of the world, and tourism is the leading source of foreign exchange. In 1997, Thailand was hit by financial and economic crisis and it had a big improvement in 2002 with a well-developed infrastructure, a free-enterprise economy, and pro-investment policies due to several factors including low interest rates and strong domestic consumption. Within the two years (2002-2004), Thailand was at the top of the East Asia's economy. The Thai economy grew 6.9% in 2003 and 6.3% in 2004[4]. In 2005, Thailand's economic growth slowed down from the previous year. The Thai economy grew only 4.4% in 2005 owing to high oil prices, weaker demand from Western markets, prolonged drought in rural regions, and the negative impact of the tsunami on tourism revenue. On the other hand, the Thai economy performed well beginning in the third quarter of 2005. In 2006, Thailand's economic growth accelerated slightly from the previous year. The main growth engine of the economy in 2006 was high export expansion, considerable expansion in the tourism sector, and a slowdown in imports due to decelerated growth of domestic demand. Overall economic conditions improved and economic stability was at a satisfactory level in 2006.

In 2005, the baht averaged at 40.29 baht per US dollar. During the first half of 2005, the baht depreciated from both domestic and external pressure. However the baht started to stabilize in the latter half of the year. In 2006, the baht averaged at 37.93 per US dollar, appreciating from the average of 40.29 baht per US dollar in 2005. Throughout the year, the baht was on an appreciating trend and appreciated especially rapidly in the fourth quarter of 2006[5]. Up to mid-December, the baht appreciated very quickly against the US dollar and reached 35.23 baht perUS dollar. During the period of 1-25 January 2007, the baht averaged at 36.01 baht per US dollar. The baht moved within a narrow range and was relatively stable. Overall economic stability in 2006 was satisfactory; internal stability remained sound; and core inflation stayed within the policy target range of 0 – 3.5 percent for the whole year.

Thailand, in her attempt to cope with globalization, has continuously taken various reform measures in the financial sector, labor market, trade, and public sector. These reform efforts have been progressing well and begun to bear fruits. Key achievements and remaining challenges to its economy will be presented as follows:

1. Improving the efficiency of capital and labor market
2. Investing in human capital
3. Improving regulatory quality and enforcement
4. Ensuring competitive market
5. Fostering macroeconomic stability
6. Improving corporate governance

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[4] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p16, para. 35

[5] BOT, "Bank of Thailand News" http://www.bot.or.th/BOThomepage/DataBank/Econcond/pressrel/monthly/release2006/pressrelease/presseng_december06.asp [Read 31 January 2007, 17 September 2007]

7. Improving public sector governance

Thailand has determined to improve her competitiveness, although more remains to be done to sustain the momentum of reform and ensure the implementation of reform measures. Inadequate/underdeveloped infrastructure was reported by firms as one of the major constraints to their business operation and expansions. It is expected that public investment in infrastructures and logistics system will start from year 2007 after careful consideration. Several other reform projects are also being carried out, including reform in education, improvement of business environment to reduce cost, promotion of innovation systems, improvement of skills, and encouragement of the increasing use of ICT through further liberalization of telecommunications**.**

1.4 Government

Thailand was in alliance with Japan during World War II and towards the end of World War II Thailand became a US ally following the conflict. A bloodless revolution in 1932 led to a constitutional monarchy and the King who is hereditary is the chief of the State, and the head of the government is the prime minister who is chosen by the members of the House of Representatives. Following the national election for the House of Representatives, the leader of the Party that can organize a majority coalition is appointed prime minister by the King.

Thailand has a rich history of military coups. The most infamous one among the major coups was the 1973 democracy movement where the university students were gunned down by the military. The clash only ended when the King intervened. The latest coup, which had royal and public support, was different from others. Gen. Sondhi Boonyaratkalin, the Thai Army Chief, took over power and formed the Council for National Security, which sought and gained the King's approval that is crucial for the government and seen as an assurance of stability. He led a successful, peaceful and bloodless coup to overthrow Thai Prime Minister's administration on 19 September 2006. The military government suspended the 1997 constitution and introduced an interim constitution on 1 October 2006. It also installed an interim national assembly and Prime Minister, and announced that general elections under a new constitution (after being approved by a general referendum on 19 August 2007) would take place in 2007[6]. Since the referendum was accepted by 57.8% of the voters on 19 August and approved by the King on 24 August 2007, there is a new constitution for the Kingdom of Thailand.

Four hundred of the members of the House of Representatives are elected from constituencies and the rest on a proportional basis. There shall be a total of 400 constituency members of the House of Representatives and a total of 80 members of the House of Representatives elected on a basis of proportional representation for four electoral zones. According to the new constitution, Thailand has bicameral legislature consisting of the 150-member Senate (made up of both elected and selected senators), whose members are elected from constituencies on a nonpartisan basis for six-year terms from the date of appointment and the 480-seat House of Representatives, whose members are popularly elected for four-year terms from the general election date.

[6] The general election was held on 23 December 2007.

The legal system is based on the civil law system with influences of the common law system. According to the Law Governing Court Organization of 1934, four types of court: judicial court, military court, administrative court and constitution court were established[7].

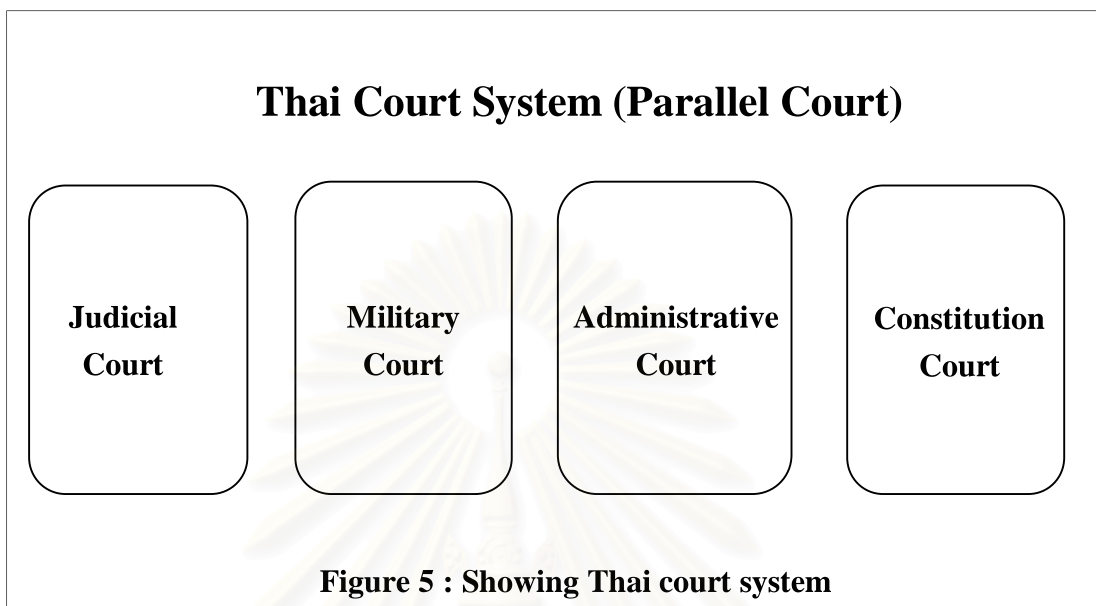

Figure 5 : Showing Thai court system

The judicial court is divided into two categories: (1) normal court (Civil and Criminal) and (2) special court (Central Tax Court, Central Juveniles and Family Court, Central Bankruptcy Court, Central Labor Court and Central Intellectual Property and International Trade Court).

Three levels of normal judicial court are:

1. the Courts of First Instance (135 courts);
2. the Courts of Appeal (one Bangkok-based Court of Appeal and nine regional Courts of Appeal) ; and
3. the Supreme Court (the highest court)

The Supreme Court is the highest and most important court, and its judgments are final. However, in criminal cases the accused may petition His Majesty the King for clemency. The judges are appointed by the Monarch in the judicial system in Thailand.

The four priority objectives of the interim government are as follows:

1. political reform to be undertaken by drafting a new constitution and conducting a free and fair election;
2. the return of national unity to overcome political separation and impartial conduct in society, especially in relation to the three Southern border provinces that have experienced much injustice;
3. economic reform to reduce the gap of income distribution; and
4. restoration of fairness and justice in the legal system to deal with issues of corruption and unfairness within the police force and all government

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[7] Adapted from "Review on 'State Constitution (1997)' prescribed in Thai Barrister" course curriculum" www.thaibar.thaigov.n et/sheet/manit/1.ppt Manit Jumpa, Law Faculty of Chulalongkorn University.

agencies.

2. General situation of ML and FT in Thailand

In order to see the overall picture of money laundering and terrorist financing in Thailand, one has to know at least the background information, statistical information on money laundering cases, and money laundering methods related to ML and FT in Thailand.

2.1 Background information

A crime or type of crime considered to be the major sources of illegal proceeds in Thailand is narcotics. The narcotics problem – the cause of serious crime dealing with both national and transnational criminal organizations – has taken root deeply and rapidly spread, making an enormous severe impact on national security including politics, economy, society and international relations.

The project on combating illicit drugs initiated by the King encouraged the hill tribe people to cultivate cash crops in place of opium that had been grown for ages in the Golden Triangle area. Although the heroin problems had been alleviated, Thailand still faces the problem of production and trafficking of large quantities of methamphetamine.

According to the result of narcotics cases arrested in 2000-2002, both the number of cases and the offenders stands at about 200,000 cases every year. Comparing to other cases, the offenses relating to narcotics made the greatest number of cases arrested and seized by the government officials.

In 2003, the government established the National Command Center for Combating Narcotics, and assigned the agencies – such as the Ministry of Justice (MOJ), the Ministry of Interior (MOI), the National Security Council (NSC), the Royal Thai Police (RTP), the Office of the Attorney-General (OAG), the National Intelligence Agency (NIA), and the Office of the Narcotics Control Board (ONCB) – tasked to work cooperatively to seriously fight against drug problems. In 2004, there was 1.2 – 2.4 million baht of money in circulation related to trading in Amphetamine. Consequently, Thailand was taken off the U.S. State Department's list of major narcotics source or transit countries in September 2004. So far, the Thai government has tackled the narcotic problems effectively to a certain extent.

The ONCB has evaluated that the severe spread on narcotics has decreased overall for the offenders relating to narcotics decreased in number of arrest, from 67,222 cases in January – May 2003 to 25,009 cases in the same period of the year 2004 and the number of people taking treatment decreased from 247,665 persons to 5,836 persons. On the other hand, according to the geographical condition Thailand has become the illicit transit point for heroin en route to the international drug market from Myanmar and Laos, and a drug money-laundering center that lies at the root of the existence of the transnational organized crime groups in Thailand.

Thailand is susceptible to money laundering and financing of terrorism due to some points: (1) significant underground economy; (2) all types of cross-border crime such as illegal gambling, theft, prostitution, human trafficking, illegal logging, etc.; (3) the

production and sale of fraudulent travel documents, which facilitate the money laundering process; and (4) corruption without which any country may be spotlessly regulated. Money launderers use both banking and non-banking financial institutions to move illicit money. Apart from drug-related predicate offense, other serious predicate offenses such as human trafficking, corruption, tax evasion, etc. seem to need more attention in Thailand ML investigation.

Illegal use of alternative remittance system to move funds produced by illegal gambling and lotteries is also an obstacle in the way of countering money laundering and financing of terrorism in Thailand. Above all the fact that prostitution that is part of human trafficking – dealing with trafficking in children, women and young men with different purposes – is one of the predicate offenses relating to money laundering should not be ignored by the authorities.

The Bangkok Post editorial[8] titled *"Tackling human trade forcefully"* dated 31 March 2007 states:

> *Thailand once again found itself on a long list of countries named as both trafficking sources and destinations. This failed to acknowledge our efforts to stamp out the trade and the draconian prison terms our courts have been giving those traffickers police have actually managed to catch and convict. Possibly that was because such arrests have been few in number.*

According to the ASEM Anti-Money Laundering Project – Research Paper (2)[9] – it seems that there are more drug-related cases than prostitution/ human trafficking cases among the cases provided by the AMLO in Thailand despite the fact that the Thai government has exerted control on the narcotic problems. Only seven cases out of 46 cases are related to prostitution/human trafficking. It is needless to say that the authorities have been working very hard to eliminate this horrible human trafficking crime from the country. The following are two example sanitized cases presented at the joint APG-FATF Annual Typologies Meeting held in Bangkok on 28 – 30 November 2007.

> ***(Case No. 1)***
> *Mr. N was found guilty of procurement of prostitutes. The civil court was of the view that a transport van in his possession was gained through his commission of the offenses so it was ordered confiscated.*
>
> ***(Cases No. 2)***
> *Mrs. R and her associates were found guilty of procuring women for prostitution in Australia. Their bank deposits worth 56,641.40 baht altogether were ordered confiscated by the court as proceeds of their commission of the offenses as they were unable to prove lawful sources of the money.*

The above cases show that there are cases relating to prostitution/human trafficking that constitute one category of the 8 ML predicate offences in the AMLA. The question is whether the authorities place the emphasis on investigation of prostitution/human trafficking, or the legislation is tough enough to end this vile trade,

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[8] Editorial, "Tackling human trade forcefully", The Bangkok Post, (31March 2007), p. 8.

[9] AMLO, The Asia Europe Meeting (ASEM) anti-money laundering project – Research Paper(2), "Case Studies on the Links between Organized Crime Groups in Asia and Europe", 2005: p. 46

or corruption is the factor to make fighting human trafficking deficient. In order to build an effective legal framework and to fulfill their obligations in combating ML, Thailand has to exert evenly on all ML predicate offenses of the AMLA.

The Bangkok Post also states:

> *Although women and girls abducted into forced prostitution undergo one of the most horrific of human experiences, their plight is frequently ignored because of the power of the coercive forces behind this trafficking.*
>
> *Twenty-three years have passed since five girls were burned alive in a brothel fire in Phuket because they were unable to escape from the beds to which they had been shackled. Six years ago, a police raid in northern Bangkok freed 30 women who had been forced into the flesh trade. Their treatment had been so barbaric that one girl was still in the iron shackles which enslaved her. A year ago police rescued 47 Lao girls from the brothel in Chachoengsao province in which they had been sold. And these cases are thought to represent the tip of the iceberg because all too often there is no proper investigation or prosecution of those responsible, including the authorities who had turned a blind eye, because of the influence of the local mafia.*

Regarding terrorism, although there is no pervasive evidence of money laundering ties in Thailand with international terrorist groups, the research shows that three out of forty six cases indicate there is potentiality in financing of terrorism. Terrorist groups may have used Thailand as their meeting place, and Thailand's banking system as a tool for financing of terrorism. So far, Thailand has experienced ten terrorist attacks[10] in which the terrorist groups submitted their demand to other countries that were the targets of their acts. On the other hand, due to the patterns of the circumstantial unrest in the southern border provinces and officials' enquiry, it is evaluated that the terrorists have used money as an important component influencing common people to instigate various unrests under different situations. Thai authorities have increased measures against ML and FT and agencies involved in the Thailand AML-CFT system have strengthened their cooperation.

At the eighth meeting of ASEAN army chiefs in Hua Hin, Prachuap Khiri Khan province, on 20 November 2007, the Deputy Prime Minister Sonthi Boonyaratkalin – the former army chief who oversees national security affairs – said the security problems in the three southernmost provinces of Thailand had become an international concern as it was part of bigger movements affecting marine transport through the Straits of Malacca and the Indonesia-Malaysia-Thailand Growth Triangle that covers southern Thailand, northern Malaysia and Sumatra[11].

The transnational organized crime groups in Thailand take part in various types of criminal activities actively through their global network. The task of fighting transnational organized crime can neither be that easy nor be accomplished by only one agency. Thailand requires inter-agency cooperation both within and outside the country. In order to facilitate coordination and cooperation for systematic prevention,

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[10] "Thailand Country Report": Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Thailand, 18 – 25 April 2005, Correction Press, Bangkok: p. 92

[11] Wassana Nanuam, "Sonthi: Separatist movements part of int'l terror network" (News Report), the Bangkok Post, 21November 2007: p. 4.

suppression, and correction of this problem, the Cabinet resolved, on 7 November 2000, to set a national security policy for prevention and for all government agencies concerned. The government assigned the Office of NSC as the lead agency called the National Focal Point to oversee and coordinate work on the prevention and correction of the problem of transnational crime both at policy and operational levels to be consistent with and support other key national policies.

Although the international standards have not been fully reflected in Thailand AML-CFT legislation, Thai authorities have created legislative components as much as they can in line with the international standards. Thailand has to work hard not only to be compliant with the agreed international standards but also to meet the latest international standards due to ever changing nature of ML-FT.

Accordingly, supervisory measures including regulations, guidelines, notifications, off-site monitoring and on-site examination to the effectiveness of internal control systems at FIs concerning the AML-CFT requirements, and compliance with the regulations and guidelines have been developed and implemented. Thailand requested an FSAP including a full AML-CFT assessment based on the 2004 Methodology, as updated in June 2006 and the assessment was carried out in February 2007 and the APG has planned to come to Thailand in the middle of 2008 for the mutual evaluation.

Pattern and form of money laundering has very much changed and developed, especially money from an illegal business related to narcotics which formerly used banking transferal. Since the anti-money laundering law is effective, the pattern of money laundering has changed to a type of hidden business set up with a purpose to cover money laundering. Besides buying and selling of narcotics via technology system in modern times, there is daily money lent on interest, insurances and investment in real estate business with a purpose to cover the source of money.

In order to facilitate the establishment and development of efficient and effective AML-CFT regimes Thailand as a developing country has been provided with technical assistance by TA donors and providers involved in combating ML and FT.

2.2 Statistical information on ML cases

Besides AMLA-defined.8 predicate offenses, there are some other types of crimes that generate criminal proceeds, which money launders and terrorists might make use of in their activities. The AMLO has seized or restrained assets of 1108 cases – divided into 6 categories - with a total value of 10,805,933,762.00 baht according to the AMLO's statistics on assets, from January 1, 2002 to December 31, 2006,.

(i) 979 cases in the offense related to **narcotics**, with an asset value of 8,351,354, 594 .96 baht
(ii) 31 cases in the offense related to **sexual abuse** with an asset value of 278,013,806.79 baht
(iii) 40 cases in the offense related to **fraud** with an asset value of 704,853,732.89 baht
(iv) 28 cases in the offense related to **malfeasance** with an asset value of 481, 813,162.16 baht
(v) 7 cases in the offense related to **extortion** with an asset value of

102,558,495.18 baht

(vi) 23 cases in the offense related to **customs** with an asset value of 887,339,970.02 baht

Table 2 : Statistics on ML cases

No.	Predicate Offense	Civil Court ordered forfeiture	Case dismissed	Under Court proceedings	Under Prosecutors' consideration	Under investigation and evidence gathering	Case considered by Transaction Committee, but			
							I	II	III	IV
1	Narcotics (979 cases)	308	10	574	19	35	5	28	0	0
2	Sexual abuse (31 cases)	3	1	26	0	0	0	1	0	0
3	Fraud (40 cases)	3	0	24	2	1	0	1	5	4
4	Malfeasance (28 cases)	2	0	18	1	3	0	2	0	2
5	Extortion (7 cases)	0	0	6	0	1	0	0	0	0
6	Customs (23 cases)	2	3	16	0	0	0	0	2	0
	Total	318	14	664	22	40	5	32	7	6

Note :
I = Prosecutors decided no filing cases to the court
II = Non-prosecution
III = Passed to other agencies
IV = Sent for rights protection process

According to the above table the majority of ML cases are related to drug and no cases for the two predicate offences – embezzlement and terrorism – and it shows that Thailand needs to pay more attention to other predicate offences, especially embezzlement (sort of corruption) and terrorism, of the AMLA.

The result of prosecution related to assets seized and/or confiscated under the instructions of the Transaction Committee from January 1, 2002 to December 31, 2006, shows the cases as follows:

1. 318 verdicts in the Court
2. 14 cases of dismissal
3. 664 cases pending in the Court
4. 22 cases under consideration of the Public Prosecutors
5. 40 cases under investigation and collection of evidence
6. 50 cases considered by the Transaction Committee where it decided not to file to the court/ non prosecution / to pass to other agencies/ to send for rights protection process

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Although there is no gambling house in Thailand in the strict legal sense, some exist at the borders illegally, and illegal gambling thrives in Thailand such as underground lottery and underground casinos. From time to time police have raided gambling dens and taken legal action against the operators and gamblers.

According to a news report of 5 February 2006 police sweep netted 262 people and seized 152 million baht worth of chips from a gambling den in central Bangkok. Arrests of illegal gamblers in the whole country are estimated at more than 100,000 people every year.

According to a research conducted by the Faculty of Economics of Chulalongkorn University in 1996[12], the following statistics are revealed.

- § The number of gambling houses in Bangkok is 187.5 to 300 places (inclusive of small gambling houses 61 to 100 places with the amount of money less than 1 million baht per day)

- § The number of medium-size gambling houses in Bangkok is 122 to 200 places with the money flow of 1 to10 million baht per day (inclusive of 5 big-size gambling houses with the money flow of more than 10 million baht per day in between Sundays to Thursdays and about 400 to 500 million baht on Fridays and Saturdays)

- § Estimated amount of money flowing into every size of gambling house 136, 429 to 637,900 million baht annually for Bangkok and that of those outside of Bangkok around 88, 2oo to 142, 000 billion baht a year

The SEC has identified and prosecuted dozens of companies accused of operating illegal boiler rooms over the past several years.

For relevant additional information, refer to AMLO-Table A that is a comprehensive document containing the statistics covering the period from 2002 to 2006. However, they do not include information on cases where no assets were seized or restrained.

Based on the information analyzed from STRs filed with the AMLO, the FIs used for laundering funds can be divided as follows:

(i) Domestic commercial banks: STRs filed are greater than any other FIs in terms of number while the volume normally run into millions of baht.
(ii) Securities businesses including mutual funds: STRs filed are lesser than the banking sector, yet the volume may run into billions of baht.
(iii)Insurance companies: STRs filed are lesser than the banking sector, yet the volume may be much greater than the banking sector.

The AMLO provided the information in the following table that gives a selection of statistics concerning the AML-CFT regime that operates in Thailand.

[12] Phasook Pongpaichit and Rangsit Piriyarangsan, (Faculty of Economics of Chulalongkorn University), "Lottery Ticket, Brothel, Gambling House, Amphetamine, Illegal Economy and Public Policy in Thailand", 1996: page 116 (Translation)

Table 3: Selected statistics on Thailand AML-CFT regime

Year	No. of STRs	Value of STRs ฿ (million)	Value of STRs $ (million)	Assets seized ฿ (million)	Assets seized $ (million)	Prosecuted ML cases	ML convictions	Property forfeited ฿ (million)	Property forfeited $ (million)
2000	290	-	-	271	7	-			
2001	16,489	-	-	1,239	33	9	7	9.3	0.3
2002	46,221	171,251	4,521	1,391	37	4	2	31.3	0.8
2003	32,338	120,013	3,168	3,260	86	10	7	112.1	2.9
2004	38,935	135,251	3,571	2,094	55	10	3	327.7	8.7
2005	39,175	156,908	4,152	1,228	32	12	0	505.8	13.4
2006	30,107	114,287,966	3,007,578	943	25	3	0	163.8*	4.3
Total	203,555	114,871,389	3,022,990	10,426	275	48	19	1,150.0	30.4

* Up to 29 September 2006 only.

Thailand is divided into 9 regions besides Bangkok. The Record of Analyzing the Report on the Suspicious Transactions and the Exchange Information with foreign counterpart FIUs since 2003 to 2006 – AMLO-Table C – will provide additional statistics. Although the statistics in the above table is not factual but largely based on interviews it can complement the overall action of law enforcement agencies responsible for AML-CFT activities.

2.3 Methods/Trends used for ML-FT

Thailand provided forty six cases for the ASEM Anti-Money Laundering Project, Research Paper (2)[13] – Case Studies on the Links between Organized Crime Groups in Asia and Europe. The cases show that criminals use the following methods/trends to launder the dirty money.

1. Multiple transactions to the same destination
2. Multiple transactions to different destinations
3. Rapid movement of funds
4. Use of false documentation
5. Use of a network having branches in many countries
6. Use of companies as ML vehicles
7. Use of night-club businesses in Thailand and drug couriers
8. Use of different types of currency
9. Investment in real estates

The IMF mission's detailed assessment report states[14]:

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[13] AMLO, The Asia Europe Meeting (ASEM) anti-money laundering project – Research Paper(2), "Case Studies on the Links between Organized Crime Groups in Asia and Europe", 2005: p.59

[14] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.23, para. 70 -71

The authorities consider that laundering occurs in a wide range of FIs. They are of the view that the main methods used to launder funds in Thailand involve:
a. investing illegal money in legal business;
b. operating an illegal business through a company, a foundation or an association;
c. investing in real estate, land and building, or any other valuable assets; and
d. operating import-export businesses.

The authorities consider that there are four main methods used to raise funds for terrorism:
a. Using a legal business as a front for illegal or unlicensed business activities that are not accounted for.
b. Issuing shares in cooperatives or companies
c. Collecting money and fund-raising via religious activities (including from abroad).
d. From crimes such as narcotics, gambling, sexual trafficking, gasoline trafficking, illegal labor-trading and arms trading.

The joint FATF Annual Typologies Meeting[15] was held in Bangkok on 28 – 30 November 2007, focusing on four areas: money laundering threat analysis strategies; proliferation financing; vulnerabilities in gaming and casinos sector, which is the subject of an in-depth study by the APG Typologies Working Group; and money laundering and terrorist financing vulnerabilities of on-line commercial sites.

The APG Typology Collection Guideline contains 5 sections:

1. Casinos and gaming projects
2. Money laundering and terrorism financing methods
3. Money laundering and terrorism financing trends
4. Effects of AML/CFT countermeasures
5. International cooperation and information sharing

Out of 21 methods in sections 2 Thailand responds to only 6 methods as follows:

(a) Abuse of non-profit organizations/charities
Asian terrorists tempted to make small amount of fund transactions via non-profit organizations in order to avoid authorities' detection. Some NPOs in the region are linked to terrorist organizations listed in the UN sanction list. Terrorist financiers also take advantage of the lack of declaration system of cross border currency.

(b) Structuring (smurfing)
The following is an example case of structuring.

The AMLO received a suspicious transaction report (STR) made by a bank that Miss S, extramarital wife of Mr. P, conducted many cash deposits and withdrawals involving 1 – 1.9 million baht in each transaction and taking only banknotes of small denominations to avoid reporting to the AMLO. As a result of an investigation by the AMLO, it was found that the couple together held 70 accounts at various banks totaling a large amount of money. It was also found that Mr. P had a history of drug involvement while Miss S had no such history. The AMLO, therefore, contacted the Narcotics Suppression Bureau (NSB) of the Royal Thai Police for further action.

[15] APG and FATF, "Joint FATF/APG Typologies Meeting Jurisdiction Reports", 28 – 30 November 2007

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Later, the NSB made an investigation and found that the couple was major drug traffickers with direct contact with the Wa. The NSB subsequently made a bait purchase of 74 kilograms of heroine and were able to arrest the couple together with 3 other people and exhibits including 74 kilograms of heroine, Thai currency worth 15,463,520 baht, US currency worth 114, 251 dollars and bank accounts worth 12,224,993 baht. Afterwards, AMLO officials, NSB officials and officials of the Office of Narcotics Control Board (ONCB) made a search of 13 houses of people believed to have acted for the disposal of the couple's drug proceeds and found 7,325,810 baht's worth of cash and 9 bank books worth together 39,124,923 baht and many cars by using people who earn a living by depositing and withdrawing cash from banks for others. The occupation is found most in the southern border provinces.

The above case proves that smurfing is one popular method used by the money launderers to avoid the authorities' attention. Using 70 accounts at various banks shows that the criminals like to use the ML method/trend – "multiple transactions to different destinations". The couple used a combination of two methods "smurfing" and "multiple transactions to different destinations". We should consider an AML-CFT law to cover smurfing/structuring in Thailand.

(c) Wire transfers
A case study for wire transfer is as follows:

Mr. S, a rancher in "Tak Province", opened an account and got an ATM card with a bank in that province. Later deposits/transfers were made into the account from other provinces, totaling 5.48 million baht in 1 month. During that same period, more than 250 withdrawals through the ATM were made from the account in Supanburi Province. It is surmised that Mr. S has been employed to open the account by another person who wanted to block investigation of his own financial path. Incidentally, TAk and Supanburi are at high risk of drug involvement.

This case shows a typical example of how they use wire transfer for money laundering. Although only one person was used for multiple transactions in this case, there may be some cases related to wire transfer using several persons.

(d) Use of shell companies/corporations

There are 2 categories of cover businesses. One is investing funds illegally gained in legitimate businesses and structuring the balance sheet so that it shows profits, which can then be claimed as the legitimate source of assets. For example, funds can be in used-car businesses, real estate businesses and livestock.

The other category is running legitimate businesses to facilitate transfers of illegally-gained funds to destinations abroad. Businesses run for this purpose are such as import-export businesses, trading in gems and gold, travel businesses and hotels and currency exchange businesses.

(e) Use of foreign bank accounts
Groups of people/juristic persons engaging in businesses illegal under Thai law but legal under the law of foreign countries (e.g. casinos) use Thai nationals – their employees – to conduct financial transactions (10 million bath each)

through Thai banks instead of banks of the country where the funds originated.

(f) Use of credit cards, checks, promissory notes etc.
The following is an example for use of credit cards, checks, promissory notes etc.

Mrs. O, a resident of Bangkok, who was under suspicion of drug involvement, conducted financial transactions with branches of banks located at discount stores. These frequent transactions did not involve large amounts of money. It was between 180,000 – 600,000 baht each time. Later, the woman was arrested by NSB officers together with Mr. M and exhibits which included 60,000 amphetamine pills, 13 grams of ice, 18 ecstasy pills. 1 gram of ketamine powder, 38 500-milligram bottles of ketamine solution, 1 motorbike, cash worth 6,000 baht, 7 gold objects, 1 notebook computer and 2 cash cards.

This kind of case was not included in the forty six cases provided for the ASEM Anti-Money Laundering Project. That is why the method used in this case is not included on the list provided for the Research Paper II. According to this case criminals in Thailand did use the method "use of credit cards, checks, promissory notes".

Regarding section 3, Thailand provides the following ML trends used in Thailand.

Money laundering trends

1. *Investing illegal money in legal businesses*
2. *operating an illegal business through a company, a foundation or an association*
3. *Investing in real estate, land and building, or any other valuable assets*
4. *Operating import-export businesses*
5. *Underground banking includes bureau de change, casa de cambio, casino transfer, forex, bullion seller*
6. *Use of weathered bank notes or outdated bank notes to deposit money into an account*

Terrorist financing trends

1. *Using a legal business as a front company for illegal or unlicensed business activities that are not accounted for*
2. *Issuing shares in cooperatives or companies*
3. *Collecting money and fund-raising via religiouss activities (including from abroad*
4. *From crimes such as narcotics, gambling, sex trafficking, gasoline trafficking, illegal labor trading and arms trading*

3. Enactment of Anti-Money Laundering Act (AMLA) and related regulations

It is plausible to say that Thailand is infamous for multifarious organized crimes, such as drug trafficking, prostitution, money laundering and so forth due to its geo-political and cosmopolitan situation. However, Thailand has proved that it has been an active struggler rather than passive survivor of the world. Thailand cannot remain passive in the face of heightening international pressure on the one hand and the escalating financial crimes on the other. Of the various crimes, money laundering and terrorist financing are singled out to serve as the subjects of scrutiny for the purpose of analyzing the combat mechanism, otherwise known as "anti-money laundering and combating the financing of terrorism (AML-CFT) regime". Previously money laundering could enable these criminals to use the laundered money or assets to further

their criminal activities and commit their other offenses because the then existing laws are not adequate to suppress either money laundering or terrorist financing.

Having realized that establishment of effective measures to combat ML and FT is essential to cut off the vicious circle of crimes from the regime, Thailand has to take concrete measures to combat money laundering. As a member of the UN, Thailand has to observe and will implement whatever is required in creating a peaceful society. In order to do so Thailand must utilize the most notable guidelines governing ML and FT issues that can be found in the following:

1. The 1988 Vienna Convention
2. The 1999 FOT Convention
3. The 2000 Palermo Convention
4. UNSC Resolution No. 1269, dated 19 October 1999
5. UNSC Resolution No. 1368, dated 12 September 2001
6. UNSC Resolution No. 1373, dated 28 September 2001
7. FATF (Financial Action Task Force) 40 Recommendations
8. FATF 9 Special Recommendations
9. FATF Methodology for Assessing Compliance
10. Basel Core Principles

3.1 Legislative process[16] of Anti-Money Laundering Act

The Office of Narcotics Control Board (ONCB), an agency under the Ministry of Interior that is responsible for narcotic drugs and drug-related crimes, issued an order – No. 3/2537 dated 25 May 1993 – to form an agency level drafting committee. The committee drafted a Bill on anti-money laundering based on the UN Conventions – especially the Vienna Convention and Palermo Convention – and the FATF Forty Recommendations. Although the UN Conventions provide international standards for combating money laundering, in order to obtain some ideas for adjusting the standards to the circumstances of Thailand, the committee collected certain anti-money laundering Acts of other countries and the AML Acts were studied and analyzed.

After holding the fourteenth meeting on 6 February 1995, the committee drafted the Bill and handed in the Bill to the Office of Narcotics Control Board to be approved. The Board approved the Bill on 8 March 1995. Pursuant to the approval, the Bill was submitted to the Council of State through the Cabinet. The Cabinet had elaborated the Bill and passed the Bill to the Council of State that completed its consideration and reported back to the Cabinet on 23 September 1996. The Cabinet-approved Bill was then submitted to the House of Representatives on 6 August 1997 for its consideration as the first agenda.

During the first reading on 13 August 1997, the *ad hoc* committee consisting of 36 members, who were members of the House of Representatives, was set up to consider the Bill. Mr. Veerakorn Kumprakorb, the then minister to the Prime Minister's Office, was the chairman of the Committee. The drafting process was long and the law was slow in coming. After having done the exerted and thorough discussion during 23

[16] Annop Likitchitta (Legal Expert), "Frequently asked questions regarding AML", 1 April 1999. (Translation)

meetings, the parliamentary committee submitted the Bill to the House of Representatives on 11 March 1998, which approved the Bill and sent it to the Senate on 24 July 1998. The Senate appointed a Special Senate Committee at the 4th Senate meeting (legislative session) to consider the Bill and returned it with some amendments to the House of Representatives on 18 September 1998. However, the House of Representatives did not approve the amendment made by the Senate. Consequently, a joint committee representing both houses was set up to reconsider the Bill.

After modifying the Bill during eleven meetings, both the House of Representatives and the Senate approved it on 17 March 1998 and 19 March 1998 respectively. The Prime Minister presented the Bill to His Majesty the King for his signature on 1 April 1999 and the Bill was signed by His Majesty the King on 10 April 1999. At long last, the law entitled ***"The Anti-Money Laundering Act, B.E.2542"*** (**AMLA**) was published in the Royal Gazette on 21 April and came into force on 19 August 1999, 120 days after its publication.

3.2 AMLA and related regulations and acts

The Anti-Money Laundering Act comprises 7 chapters consisting of 66 Sections.

1. General Provisions (12 Sections)
2. Reporting and Identification (11 Sections)
3. Anti-Money Laundering Board (8 Sections)
4. Transaction Committee (8 Sections)
5. The Office of Anti-Money Laundering (8 Sections)
6. Procedures Concerning Assets (12 Sections)
7. Penalties (7 Sections)

There are two English translations, one by the former AMLO Secretary-General, Police Major-General Peeraphan Prempooti, and the other by Krisdika (the Council of State). Actual meaning of the title of the Act (Thai version) means "Prevention and Suppression of Money Laundering Act". The Council of State translates the title as ***"Money Laundering Control Act, BE 2542***" whereas the AMLO's translation is "***Anti-Money Laundering Act, BE 2542***" that is a perfect title for the Act. No matter what the titles of the translations are, they both refer to the same Thai version of ***Prevention and Suppression of Money Laundering Act***, BE 2542. The two versions each have slight differences in translation that are found to be not exact reflections of concepts in Thai texts. The following are some glaring instances:

Table 4: Two versions of AMLA translation

Heading/Section	AMLO Text	Krisdika Text
Title	Anti-Money Laundering Act of BE 2542	Money Laundering Control Act BE 2542 (1999)
Board	Anti-Money Laundering Board	Money Laundering Control Board
Office	The Anti-Money Laundering Office	The Office of the Money Laundering Control
Chapter 6 heading	The Asset Management	Property Proceedings
Section 3	Terrorism is added as 8th predicate offense.	No addition yet.
Section 16	Any person	A trader
Section 20	The phrase "on behalf of a	No such phrase in the text

	customer" is included.	
Section 48	The power is shown as "to restrain or seize".	The power is shown as "seizure or attachment".

Consequently, this research paper has opted to use the amalgamated text of the two English translations, largely based on the Council of State's translation, done by the AMLO on 04-06-07. As the title in acronym "AMLA" has been internationally known and widely in use, the acronym is used throughout the paper referring to the Thai version of the Act.

According to Section 4, Section 17 and Section 21 of the AMLA, the following related regulations were issued.

1. Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office (B.E. 2545)
2. Prime Minister Office Regulation on the Coordination in Compliance with the Anti-Money Laundering Act (2001)
3. Prime Minister Office Notification
   Re: Prescribing the Qualifications and Prohibitions of the Transaction Committee
   Re: Self Identification Procedure of Customer of Financial Institution
4. Anti-Money Laundering Board Regulations
5. Anti-Money Laundering Office Regulations

Furthermore the following Thai Acts are related to the AMLA.

1. Penal Code
2. Bank of Thailand Act
3. Commercial Banking Act
4. Civil and Commercial Code
5. Government Savings Bank Act
6. Government Housing Bank Act
7. Islamic Bank of Thailand Act
8. Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business
9. Small and Medium Enterprise Act
10. Cooperatives Act
11. Pawn-shop Act
12. Securities and Exchange Act
13. Life Insurance Act
14. Non-life Insurance Act
15. Derivatives Act
16. Official Information Act
17. Criminal Procedure Code
18. Civil Procedure Code
19. Bureaucratic Restructuring Act
20. Extradition Act
21. Narcotics Act
22. Act on Mutual Assistance in Criminal Matters
23. Organic Act on Counter Corruption

24. Special Case Investigation Act

3.2.1 Predicate offenses

Regarding predicate offenses, originally seven predicate offenses were defined under the AMLA. Section 3 of the AMLA reads as follows:

Section 3
In this Act: "predicate offense" means any offense
(1) relating to narcotics under the law on narcotics control or the law on measures for the suppression of offenders in offenses relating to narcotics;
(2) relating to sexuality under the Penal Code only in respect of procuring, seducing or taking away for an indecent act a woman and child for sexual gratification of others, offense of taking away a child and a minor, offense under the law on measures for the prevention and suppression of women and children trading or offenses under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offense relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;
(3) relating to public fraud under the Penal Code or offenses under the law on loans of a public fraud nature;
(4) relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions;
(5) of malfeasance in office or malfeasance in judicial office under the Penal Code, offense under the law on offenses of officials in State organizations or agencies or offense of malfeasance in office or dishonesty in office under other laws;
(6) relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the Penal Code;
(7) relating to smuggling under the customs law.

After the 9/11 tragic event “terrorist acts” was added as the 8th predicate offense by means of two Emergency Decrees[17] which amended both the AMLA and the Penal Code, and became effective on 11 August 2003. It reads:

To comply with UN Resolution 1373, on August 5, 2003, Thailand has passed two major Executive Decrees to amend the Penal Code and the Anti-Money Laundering Act being effective from August 11, 2003 onwards.

The following are the OAG’s paraphrased versions of English translation of respective sections in Thai.

*1. **The Amendments to the Penal Code Section 135***

Section 135/1
Whoever commits the following criminal offenses:

[17] AMLO, “A Compendium of Anti-Money Laundering Laws and Regulations by Anti-Money Laundering Office”: p. 26 & – Amendments of Penal Code and Anti-Money Laundering Act : pp 26 - 27

(1) Committing an act of violence, or causing death or serious harm to the body or freedom of any person;
(2) Committing any act that causes serious damage to a public transportation system, telecommunication system, or infrastructure of public interest;
(3) Committing any act that causes damage to the property of any state, any person, or the environment, which causes or is likely to cause significant economic damage.

if such an act is committed with intent to threaten or coerce the Thai government, a foreign government, or an international organization to do or refrain from doing any act that may cause serious damage or to create unrest in order to cause fear among the public; shall be deemed to have committed an act of terrorism and shall be punished with death or imprisonment for life, or imprisonment of three to twenty years and fine of sixty thousand to one million baht.

An act during a demonstration, gathering, protest, objection or movement in order to demand government assistance or justice, which is an exercise of freedom under the constitution, shall not be deemed an act of terrorism.

Section 135/2
Whoever
(1) threatens to commit an act of terrorism, by displaying an act that is reasonable to believe that such person will carry out what such person has threatened to do: or
(2) collects forces or arms, procures or gathers property, provides or receives terrorist training or makes other preparations, or conspires to commit an act of terrorism or to commit any offense that is part of a plan for a terrorist act, or instigates the public to participate in a terrorist act, or knows of any imminent terrorist act by any person and commits any act to cover it up;

shall be punished with imprisonment of two to ten years and fine of forty thousand to two hundred thousand baht.

Section 135/3

Whoever is a supporter for an act of offense under Section 135/1 or 135/2 shall be liable to the same punishment as the principal in such offense.

Section 135/4

Whoever is a member of a group of individuals designated by a resolution or declaration the United Nations Security Council to have performed an act of terrorism and the said resolution or declaration has already been endorsed by the Thai government, shall be punished with imprisonment not exceeding seven years and fine not exceeding one hundred and forty thousand baht.

2. ***<u>The Amendments to the Anti-Money Laundering Act (2542/1999) Section 3</u>***

Section 3/8
Offenses relating to terrorism under the Penal Code

Once the offenses involving terrorist acts having been enacted, suspicious activity reporting (SAR) will automatically extend to this new offense.

Consequently the eight predicate offenses of the AMLA are:

1. Narcotics

2. Sexuality and trafficking of children and women
3. Cheating and fraud to the public
4. Misappropriation by commercial banks or financial institutions
5. Malfeasance in office or judicial office
6. Extortion or blackmail by criminal organization
7. Customs evasion
8. Terrorist acts

In addition, the Cabinet has approved in principle an amendment of the Act in order to add 8 more offenses. At present, proposed amendment of the AMLA for expansion of predicate offenses has got to be approved by the Parliament[18]. The eight additional predicate offenses proposed are as follows:

1. Offenses relating to the use, holding, or being in possession of natural resources or the illegal exploitation of natural resources committed unlawfully under the law governing minerals, the law governing forestry, the law governing national reserved forests, the law governing petroleum, the law governing national parks, or the law governing preservation and protection of wild life.

2. Offenses relating to foreign exchange control under the law governing foreign exchange control.

3. Offenses relating to unfair acts concerning securities transactions under the law governing securities and security exchanges.

4. Offenses relating to gambling under the law governing gambling.

5. Offenses relating to arms trading under the law governing fire arms, ammunition, explosives, fireworks, and toy guns.

6. Offenses relating to collusion in submitting tenders to government agencies and offenses relating to obstruction of fair price competition under the law governing tenders offered to government agencies.

7. Offenses relating to labor cheating under the Penal Code.

8. Offenses relating to liquor under the law governing liquor, offenses relating to tobacco under the law governing tobacco, and offenses concerning excise duties under the law governing excise duties.

3.2.2 Definitions

3.2.2.1 ML offense

Section 5 of the AMLA defines money laundering. The text of Section 5 is as follows:

Section 5

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[18] Proposed Amendment to AMLA Considered by the Council of State – No. 415/2550 (2007)

Any person who:

(1) transfers, accepts a transfer of or converts the property connected with the commission of an offense for the purpose of covering or concealing the origin of that property or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or

(2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the property connected with the commission of an offense or the acquisition of rights therein,

shall be said to commit an offense of money laundering.

3.2.2.2 Jurisdictions

Section 6 defines jurisdictions of money laundering. One significant point of the Act is that the offender is deemed to have committed the offense and is subject to the penalty within Thailand regardless of the place of commission of offense – whether within or outside Thailand. The text of Section 6 reads:

Section 6

Any person who commits an offense of money laundering shall, even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

(1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;

(2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or

(3) the offender is an alien and the act so committed is an offense under the law of the State in whose jurisdiction the act occurs, provided that such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition.

For this purpose, section 10 of the Penal Code shall apply mutatis mutandis.

3.2.2.3 Ancillary ML offense

Sections 7 to 9 define ancillary money laundering offense and provide what types of penalties money laundering offenders will receive when they are involved in money laundering and financing of terrorism. Section 7 stipulates that any person who assists a principal offender of money laundering and financing of terrorism will have the same penalty as the principal offender of the offense. It reads:

Section 7

In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable:

(1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense,

(2) providing or giving money or property, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense.

In the case where any person provides or gives money or property, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for

such offense.

Section 8 states that even the person who attempts to commit a money laundering offense will have the same penalty as provided by the law for a successfully committed offense.

> ***Section 8***
> *Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.*

Section 9 includes conspiracy to money laundering as ML predicate offense and provides penalties for conspirators.

> ***Section 9***
> *Any person who enters into conspiracy to commit an offense of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offense.*
>
> *If the offense of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offense.*
>
> *In the case where the offense has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.*
>
> *If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offense to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.*

3.2.3 Know your customer

In order to find out if a transaction is involved in money laundering and/or terrorist financing, Section 20 focuses on know your customer (KYC). The text reads:

> ***Section 20***
> *A financial institution shall cause its customers to identify themselves on every occasion of making a transaction prescribed in the Ministerial Regulation unless the customers have previously made such identification.*
>
> *The identification under paragraph one shall be in accordance with the procedure prescribed by the Minister.*

Although paragraph one of Section 20 of the AMLA addresses the FATF know your customer requirements, due to paragraph two, customer identification should be made according to the procedure prescribed by the Minister. However, it seems that the AMLA requires FIs to make arrangements for customers' identifications in the case of transactions subject to reporting because of the phrase "to be reported by financial

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จุฬาลงกรณ์มหาวิทยาลัย

institutions to the Office" in Clause 1 of Ministerial Regulation[19] No. 6.

Ministerial Regulation No. 6 (2000)
Clause 1

For the transactions to be reported by financial institutions to the Office, the financial institutions shall make arrangement for the customers to identify themselves every time prior to the transactions unless the customers have already identified themselves previously.

Section 22 imposes financial institutions to keep records for five years. The text reads:

Section 22
A financial institution shall, unless otherwise notified in writing by the competent official, retain particulars with regard to the identification under section 20 and the record of statements of fact under section 21 for the duration of five years as from the day its customer's account is closed or the relationship with its customer terminates, or as from the making of such transaction, whichever is longer.

The Prime Minister Office issued the following notification[20] for self identification procedure of customers of financial institutions.

Clause 1: *The self identification of a customer who is a natural person shall at least present the information and evidences as follows:*
(1) Name and family name.
(2) Official ID number or passport number in case of an alien.
(3) Address according to house registration or place of residence in case of an alien.
(4) Date of birth.
(5) Sex.
(6) Status.
(7) Nationality.
(8) Essential personal identification, namely, official ID card, official ID card of civil servant or state enterprise employee or other government officer, passport or other identification document issued by the authority.
(9) Occupation, place of work and phone number.
(10) Place of contact and phone number.
(11) Signature of the transactor.

Clause 2: *In case that the financial institution is able to verify the authenticity of the information in Clause 1 by electronic means, the financial institution may ask the customer to identify oneself by presenting only the name, family name, date of birth, official ID number and signature of the transactor.*

Clause 3: *For the self identification of the juristic person customer, at least the following information and evidence shall be presented:*
(1) Name of the juristic person.
(2) Taxpayer ID Number.
(3) Place of establishment and phone number.
(4) Category of business operation.
(5) Certificate of statement in the register as issued by the registrar not more than one month old.

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[19] AMLO, "A Compendium of Anti-Money Laundering Laws and Regulations" (p. 40 - Ministerial regulations issued under the provisions of the Anti-Money Laundering Act, 1999)

[20] ibid.: (p. 69 – Prime Minister Office Notification, Re: Self Identification Procedure of Customer of Financial Institution)

(6) Seal of the juristic person (if any).
(7) Taxpayer ID card.
(8) Signature of the authorized signatory on behalf of the juristic person.

The following is the AMLO's policy statement on KYC/CDD[21] approved by the Cabinet on 27 February 2007.

Measures for Anti-Money Laundering and Combating the Financing of Terrorism
Policy Statement
on
Compliance with the Know Your Customer and Customer Due Diligence
for
Financial Institutions and Designated Non-Financial Businesses and Professions

Rationale

Money laundering is an offense which most countries, including Thailand, treat as a top priority to combat. Although it is not an offense that causes death, serious injuries or violation of freedom of an individual, it enables organized crimes to cause damages to countries' economy and security. Most money laundering offenses are committed by transnational crime organizations. This prompted entities and international organizations to issue measures calling on countries that may wish to become their members to accede to the conventions or international agreements on combating money laundering as follows:

1. *United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances;*
2. *United Nations Convention against Transnational Organized Crime;*
3. *International Convention for the Suppression of the Financing of Terrorism;*
4. *United Nations Security Council resolutions;*
5. *Financial Action Task Force's 40 Recommendations and 9 Special Recommendations;*
6. *Basel Committee on Banking Supervision; and*
7. *United Nations Charter.*

In response to international standards, Thailand promulgated the Anti-Money Laundering Act of 1999 on 21 April 1999, which took effect on 19 August 1999. This legislation created the Anti-Money Laundering Office (AMLO) and a civil forfeiture system for confiscating assets identified as having been acquired with the proceeds of specific criminal offenses, as listed below.

1. *Offenses relating to narcotics under the Narcotics Control Act and the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics.*
2. *Offenses relating to sexuality under the Penal Code, the Measures to Prevent and Suppress Trading of Women and Children Act, or the Prevention and Suppression of Prostitution Act.*
3. *Offenses relating to cheating and fraud to the public under the Penal Code or offenses pursuant to the Fraudulent Loans and Swindles Act.*
4. *Offenses relating to embezzlement, cheating or fraud involving a financial institution.*
5. *Offenses relating to malfeasance in office.*
6. *Extortion or blackmail by a member of an organized crime group.*
7. *Evasion of customs duty.*
8. *Offenses relating to terrorism under the Penal Code.*

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[21] "Measures for Anti-Money Laundering and Combating the Financing of Terrorism Policy Statement on Compliance with the Know Your Customer and Customer Due Diligence for Financial Institutions and Designated Non-Financial Businesses and Professions" http://www.amlo.go.th/amlo_new/img/upload/PDF/measures_en_annex2.pdf [Read 22 June 2007]

The Anti-Money Laundering Office has thus far substantially cut off the vicious circle of crimes by seizing and forfeiting a large amount of assets related to predicate offenses.

The Anti-Money Laundering Office was designated by the National Corporate Governance Subcommittee on Commercial Bank, Securities and Insurance Sectors to chair the working group on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) under the Report on the Observance of Standards and Codes (ROSCs). The working group opined that the current anti-money laundering law has not sufficiently contained the customer identification and due diligence policies applicable to all financial institutions and to designated non-financial businesses and professions. The working group also recognized that the KYC/CDD policies not only help financial institutions detect, deter, and prevent ML-FT, they also are a mandate for action if Thailand wishes to be viewed as compliant with the international standards in AML-CFT. As the amendment to the Anti-Money Laundering Act will not be passed by the time Thailand is scheduled to be evaluated, this Policy Statement is deemed necessary.

This Policy Statement should be applicable to –
Financial Institutions as follows:

1. *Commercial banks under the Commercial Banking Act, and banks established under the provisions of respective specific laws.*
2. *Finance businesses and credit foncier companies under the Act on the Undertaking of Finance Business, Securities Business, and Credit Foncier Business, and securities companies under the Securities and Exchange Act.*
3. *Life insurance companies under the Life Insurance Act, and casualty insurance companies under the Casualty Insurance Act.*
4. *Savings cooperatives under the Savings Cooperatives Development Act.*
5. *Any juristic person undertaking a non-bank business related to finance as provided by the Ministerial Regulations.*
6. *Ad hoc juristic persons under the law governing ad hoc juristic persons for securitization of assets.*
7. *Juristic persons permitted to operate the business relating to foreign currency payment under the law governing currency exchange control.*
8. *Asset management companies under the law governing asset management companies.*
9. *Any juristic person undertaking derivatives business under the Derivatives Act.*
10. *Any juristic person trading in agricultural futures under the Agricultural Futures Trading Act of 1999.*

Designated Non-Financial Businesses and Professions as follows:

1. *Any person or juristic person trading in precious stones or metals, such as gold and jewelry.*
2. *Any person or juristic person trading or undertaking a hire-purchase business in motor vehicles.*
3. *Any person or juristic person undertaking personal loan businesses under the supervision of the Bank of Thailand on non-financial businesses.*
4. *Any person or juristic person undertaking electronic cash card businesses under the supervision of the Bank of Thailand.*

Definitions
(i)For Financial Institutions:

"Customer" *means a person or juristic person having relationship with or undertaking a financial transaction with a financial institution or being a final*

beneficial owner of the relationship or transaction or having power over final decisions on such acts.

"Specially Attended Customer" *means a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently complies with the Financial Action Task Force Recommendations, or a customer from a country not having anti-money laundering measures, or a customer undertaking suspicious transactions or listed as having relationship with a person that may commit a predicate offense or money laundering, or a customer that the Anti-Money Laundering Office has informed a financial institution to treat as such accordingly, or a customer that has been listed as a high risk business or profession such as trading in metals or precious stones, money exchange or illegal loans, etc.*

"Know Your Customer" *means collecting customer identification and address in accordance with the risk level and also "Customer Due Diligence" which needs enhanced information and verification of the background of the customer.*

(ii) For Designated Non-Financial Businesses and Professions:

"Customer" *means a buyer or a seller referred to in the Civil and Commercial Code.*

Content

The Anti-Money Laundering Office will
- *treat commission of predicate offenses and money laundering offense as serious crimes and will expand liability to juristic persons.*
- *proceed to locate and recover assets related to predicate offenses and money laundering offenses while protecting the interest of innocent persons.*

Financial Institutions should

1. *assess the customer's risk level using relevant information obtained from the customer or other sources. Information kept must be appropriately and sufficiently verified against reliable sources and be analyzed and reviewed periodically.*
2. *not allow anonymous accounts or accounts in obviously fictitious names.*
3. *have appropriate due diligence measures and classify customers by risk of committing predicate offenses or money laundering offenses under the Anti-Money Laundering Act, including applying these procedures in their branches in foreign countries.*
4. *have appropriate and enhanced due diligence measures for specially attended customers.*
5. *have intermediaries or other third parties conduct due diligence as if it is conducted by the institution itself.*
6. *pay special attention to unusually large or suspicious transactions which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined. The written record must be made available to competent authorities or auditors.*
7. *report promptly its suspicions to the Anti-Money Laundering Office, if the financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity related to predicate offenses or money laundering offenses under the Anti-Money Laundering Act.*
8. *have appropriate measures in place to deal with money laundering and terrorist financing that might occur by the use of information technology.*
9. *maintain, for at least five years, all necessary records on transactions sufficiently to permit retrieval of individual transactions, as from the date the account was closed or the business relationship was ended.*

10. maintain, for at least five years, customer identification documents, from the date the account was closed or the business relationship was ended. The documents must be made available and submitted, upon request, to the competent officials.
11. have appropriate and continuous policies in organizational management, personnel training, and an audit function to test the compliance system.
12. issue regulations, policies, procedures and manuals in accordance with this Policy Statement.

Designated Non-Financial Businesses and Professions should

- *apply the above policy insofar as it does not conflict with the normal business practice and have customers identified before conducting a cash transaction of one million baht or more, unless there has been an earlier identification prior to this transaction, and report to the Anti-Money Laundering Office any suspicious transactions, even if it is not a cash transaction.*

3.2.4 Suspicious transaction reporting/report

After financial institutions have performed the CDD measures, unusual transactions may be discovered. As regards reporting on suspicious transactions, Sections 13 and 14 require financial institutions to make reports to the AMLO. The respective texts read:

Section 13
When a transaction is made with a financial institution, the financial institution shall report that transaction to the Office when it appears that such transaction is:
(1) a transaction funded by a larger amount of cash than that prescribed in the Ministerial Regulation;
(2) a transaction connected with the property worth more than the value prescribed in the Ministerial Regulation; or
(3) a suspicious transaction, whether it is the transaction under (1) or (2) or not.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported by the financial institution, that financial institution shall report such fact to the Office without delay.

Section 14
In the case where there subsequently appears a reasonable ground to suspect that any transaction already made without being reported under section 13 is a transaction required to be reported by a financial institution under section 13, that financial institution shall report it to the Office without delay.

Although the AMLA does not provide specific amount of the threshold level for each transaction, Ministerial Regulation No. 2 states the limitation of an amount of cash (about US$ 50,000) and a value of property (about US$125,000). It reads as follows:

Clause 1*: The report of the transactions of financial institutions to the Office, in case of being the transactions under Section 13 (1) and (2), shall be made specific for the transactions as follows:*

(1) The transactions under Section 13 (1) involving the cash two million baht or more;
(2) The transactions under Section 13 (2) involving the property valued five million baht or more.

If the customer refuses to give facts and information required Section 21 focuses on making a report to the AMLO regarding the refusal.

> ***Section 21***
> *In making a transaction under section 13, a financial institution shall also cause a customer to record statements of fact with regard to such transaction.*
>
> *In the case where a customer refuses to prepare a record of statements of fact under paragraph one, the financial institution shall prepare such record on its own motion and notify the Office thereof forthwith.*
>
> *The record of statements of fact under paragraph one and paragraph two shall be in accordance with the form, contain such particulars and be in accordance with the rules and procedure as prescribed in the Ministerial Regulation.*

In accordance with the third paragraph of Section 21, the Prime Minister issued the Ministerial Regulation No 7. It states:

> ***Clause 1:*** *In recording the facts connected with the transactions to be reported by the financial institutions to the Office, the transaction report forms for the transactions under Section 13 (1), (2) or (3) shall be used as the case may be and, in this respect, as prescribed in the Ministerial Regulation issued under the provisions of Section 17.*
>
> ***Clause 2****:* *In recording the facts under Clause 1, the customers shall affix signature as evidence.*
>
> *In case of the customers refusing to record the facts or refusing to affix signatures in the said record, the financial institutions shall prepare the record of facts by stating the facts as appeared at the time making the transactions and immediately notify the Office.*

All the facts and information must be recorded for a period of five years from the date on which such facts emerge according to Section 22 of the AMLA (Please see heading 3.2.3 – Customer Due Diligence). Further discussion on this point will be seen in Chapter 7.

Apart from financial institutions, Section 15 makes it compulsory for land offices to report on any registration the value of which exceeds the prescribed limit.

> ***Section 15***
> *A Land Office of Bangkok Metropolitan, Changwad Land Office, Branch Land Office and Amphoe Land Office shall report to the Office when it appears that an application is made for registration of a right and juristic act related to immovable property to which a financial institution is not a party and which is of any of the following descriptions:*
> *(1) requiring cash payment in a larger amount than that prescribed in the Ministerial Regulation;*
> *(2) involving a greater value of immovable property than that prescribed in the Ministerial Regulation, being the assessment value on the basis of which fees for registration of the right and juristic act are levied, except in the case of a transfer by succession to a statutory heir; or*
> *(3) being made in connection with a suspicious transaction.*

Ministerial Regulation No. 3 provides the specific amount of the threshold level for

each transaction, under Section 15 (1), (2) and (3) as follows.

> *(1) The payment by cash under Section 15 (1) in the amount two million baht or more;*
> *(2) The real property being valued under Section 15 (2) five million baht or more.*

Ministerial Regulation No. 4 – Clause 4 states that for the transaction report under Section 15 (1) and (2), copies of the applications to register the rights and juristic act, as certified to be correct must be used as report forms and delivered the report to AMLO within five days from the last day of the month having such matter. Electronic media forms can also be used ensuring that they contain the information in accordance with the aforesaid application. For the case of the transaction report under Section 15 (3), Clause 5 states that the copies of the applications, as certified to be correct, together with the notes of describing the reasonable suspicion must be sent to the AMLO within five days from the date having the suspicion.

In addition, Section 16 imposes a duty on a business dealer or consultant to report any suspicious transaction to the AMLO. The text of Section 16 is:

> ***Section 16***
> *Any person engaging in the business involving the operation of or the consultancy in a transaction related to the investment or mobilization of capital shall report to the Office in the case where there is a reasonable ground to believe that such transaction is associated with the property connected with the commission of an offense or is a suspicious transaction.*
>
> *In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported under paragraph one, that person shall report such fact to the Office without delay.*

3.2.5 Report forms and delivery of reports

Section 17 stipulates that reporting must be made in accordance with the Ministerial Regulations.

> ***Section 17***
> *The report under section 13, section 14, section 15 and section 16 shall be in accordance with the form, period of time, rules and procedure prescribed in the Ministerial Regulation.*

Ministerial Regulation No. 4 explains how to report the suspicious transactions to the AMLO. Clause 1 describes three types of transactions report form – Form PorPorNgor[22] 1-01 for Section 13 (1), Form PorPorNgor 1-02 for Section 13 (2) and Form PorPorNgor 1-03 for Section 13 (3). In regard to insurance companies, Form PorPorNgor 1-04-1, Form PorPorNgor 1-04-2 and Form PorPorNgor 1-04-3 are to be used as the transaction report forms instead of the aforementioned three forms. The financial institutions may use other transaction report forms containing the same information by using electronic media forms instead. The report forms can be seen in Appendix B (data attachments – STR forms).

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[22] Abbreviation in Thai alphabets for Anti-Money Laundering

Clause 2 mentions that regarding Section 13 (1) and 13 (2), suspicious transaction report must be sent to the AMLO twice a month – one for the first half of the month and the other for the second half of the month – within seven days from the day following the 15th day and the last day of the month. With regard to Section 13 (3), the report must be sent to the AMLO within seven days from the date having the reasonable suspicion. As for Section 13 paragraph 2, a financial institution must file the report to notify the AMLO within seven days from the date on which such facts emerge. The aforementioned report forms can be used for the cases under Section 14 of the AMLA.

According to Ministerial Regulation No.4, Clause 6, in order to file the transaction report under Section 16, Form PorPorNgor 1-05 must be used or the electronic media form containing the same information as the said report form can be used. Clause 7 states that the report must be submitted within seven days from the date having the reasonable belief that such transactions are related to the property connected with the offenses or are the transactions under reasonable suspicion.

Clause 8 describes three methods of how to deliver the report forms to the AMLO.

1. Submission to the officer at the Office
2. Delivery by return registered mail
3. Transmission as electronic data. In this respect, the persons, duty-bound to file reports, shall keep the original report forms in custody.

3.2.6 Exemption

Transactions exempted from filing report to the AMLO are stated in Ministerial Regulation No. 5 – Clause 1.

> ***Clause 1:*** *The transactions being exempted from filing report to the Office under Section 13, Section 15 and Section 16 of the Anti-Money Laundering Act, 1999, are as follows:*
>
> *(1) The transactions to which the King, the Queen, the Heir Apparent or members of the royal family from the rank of royal prince/princess up to crown prince/princess are the parties;*
>
> *(2) The transactions to which the government, the central administration, the provincial administration, the local administration, the state enterprises, the public organizations or other state agencies are the parties;*
>
> *(3) The transactions to which the following foundations are the parties*
>
> *(a) Chaipattana Foundation;*
>
> *(b) H.M. the Queen's Foundation for the Promotion of Supplementary Occupation and Related Techniques;*
>
> *(c) Sai Jai Thai Foundation*
>
> *(4) The transaction connected with the property under movable category being made with financial institutions except for:*
>
> *(a) The transactions being the domestic money transfer by using the Bahtnet service under the Bank of Thailand rule governing the Bahtnet service or being the inter-bank cross-country money transfer by using the service of Society for Worldwide Interbank Financial Telecommunication, Limited Liability Co-operative Society (S.W.I1.F.T.s.c.);*
>
> *(b) The transactions connected with the property being the ships, ships having tonnage from six tons or more, steam ships or motor boats having tonnage from five tons or more, including also rafts;*

> *(c) The transactions connected with the property being the vehicle instruments or any other mechanical equipment.*
>
> *(5) The execution of the loss insurance contracts except for the compensation under the loss insurance contracts expecting to make payments from ten million baht or more.*
>
> *(6) The registration of rights and juristic acts under the category of transfer to be public benefit land or the obtainment by possession or prescription under Section 1382 or Section 1401 of the Civil and Commercial Code.*

The provisions on reporting and identification do not apply to the Bank of Thailand governed by the Bank of Thailand Act[23].

3.2.7 Anti-Money Laundering Board and its regulations

The Anti-Money Laundering Board consisting of 25 members[24] was established under Section 24 of the AMLA. According to the existing law (AMLA), the Prime Minister is the chairman of the Anti-Money Laundering Board (AMLB) and the Minister of Finance is the vice chairman. However, in practice the Minister of Finance has been designated by the Prime Minister to perform the duties of the chairman of the Board. In February 2007[25], the Cabinet approved the amendment that allows the Minister of Justice to chair the AMLB with the permanent secretaries of Ministry of Justice and Ministry of Finance as his deputies.

> *The changes, which will go to the National Legislative Assembly for approval, allow the justice minister to chair the Amlo board [AMLB] with the permanent secretaries for justice and finance as his two deputies.*

The AMLO is directly overseen by the AMLB and operations of the AMLO that deal with seizing of assets are overseen by the Transaction Committee (TC). Both the AMLB and TC are independent bodies that report to the chairperson of the AMLB.

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[23] Section 23 of the AMLA

[24] Proposed Amendment to AMLA considered by the Council of State – No. 415/2550 (2007)

1. Minister of Justice as Chairman,
2. Permanent Secretary of the Ministry of Justice as Vice Chairman,
3. Permanent Secretary of the Ministry of Finance as Vice Chairman,
4. Secretary-General of the Office of Narcotics Control Board,
5. Attorney General
6. Commissioner-General of the Royal Thai Police,
7. Director-General of the Department of Insurance,
8. Director-General of the Department of Lands,
9. Director-General of Royal Thai Customs,
10. Director-General of Department of Excise,
11. Director-General of the Department of Revenue,
12. Director-General of the Department of Treaties and Legal Affairs (Ministry of Foreign Affairs),
13. Governor of the Bank of Thailand,
14. Secretary-General of the Securities Exchange Commission,
15. President of the Thai Bankers' Association,

(16-24). nine qualified experts appointed by the Cabinet from those who have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act with the consent of the House of Representatives and the Senate respectively as a member of the Board and

25. Secretary-General of the AMLO as the Secretary of the Board.

[25] Anucha Charoenpo, "MONEY LAUNDERING NEW POWERS : Govt amends Amlo structure"(News report), The Bangkok Post, (28 February 2007)

Section 25 states the duties of the Board. The text reads:

Section 25
The Board shall have powers and duties as follows:
(1) to propose to the Council of Ministers measures for money laundering control;
(2) to consider and give opinions to the Minister with regard to the issuing of Ministerial Regulations, rules and notifications for the execution of this Act;
(3) to lay down rules in connection with the retention, a sale by auction or utilization of property and the evaluation of compensation and depreciation under section 57;
(4) to promote public cooperation in connection with the giving of information for the purpose of money laundering control;
(5) to monitor and evaluate the execution of this Act;
(6) to perform other acts prescribed in this Act or other laws.

Section 30 of the AMLA provides that the AMLB may appoint subcommittees to submit opinions on particular matters or to conduct particular pieces of work for the Board. By virtue of that section the AMLB at its meeting No.2/2543 on 5 October 2000, set up 8 subcommittees as follows:

1. Subcommittee on Legal Affairs;
2. Subcommittee on Policy and Measures;
3. Subcommittee on Coordination of Work under the Anti-Money Laundering Act, B.E. 2542;
4. Subcommittee on Screening Work on Improvement of the AMLO's Structure and Duties;
5. Subcommittee on Adjudication;
6. Subcommittee on Promotion and Coordination of People's Cooperation;
7. Subcommittee on Selecting Advisors and Specialists; and
8. Subcommittee on Information and Monitoring and Assessment.

The Anti-Money Laundering Board has issued the following regulations. Details can be seen in "A Compendium of Anti-Money Laundering Laws and Regulations".

1. Regulation on the Custody and Management of the Seized or Attached Property (2000)
   - § Chapter 1: Property Custody Duty
   - § Chapter 2: Property Custody Procedure
   - § Chapter 3: Property of Management Procedure

2. Regulation on the Damages and Depreciation Appraisal (2000)

3. Regulation on Permitting the Stakeholder to Take the Property for Auction and Using the Property for Benefits to the Authority (2000)
   - § Chapter 1: General Provisions
   - § Chapter 2: Permitting the Stakeholder to Take the Property for Custody and Utilization
   - § Chapter 3: Auction
   - § Chapter 4: Using the Property for Benefits to the Authority

4. Regulation on Putting up the Property for Auction (2001)
   - § Chapter 1: Auction Undertaking

- § Chapter 2: Auction Procedure
- § Chapter 3: Transfer and Delivery of Property
- § Chapter 4: Procedure Receiving Money and Keeping Money for Custody

5. Regulation on Hiring Advisors or Specialists in Performing the Duties of AMLO under the Law Governing Anti-Money Laundering (2003)
   - § Chapter 1: General Provisions
   - § Chapter 2: Qualification and Functioning of Advisor or Specialist
   - § Chapter 3: Procedure of Hiring , Appointment and Remuneration
   - § Chapter 4: Recruitment Subcommittee

3.2.8 Transaction Committee

Eight sections (Section 32 to Section 39) of the AMLA describe the Transaction Committee (TC) and responsibilities of the TC. A 5-member Transaction Committee is to be formed under section 32 and the Committee's duties and responsibilities are specified in section 34.

> ***Section 32***
> *There shall be a Transaction Committee consisting of Secretary-General as Chairman and four persons appointed by the Board as members.*
>
> *The qualifications of, and prohibitions to be imposed on, a member of the Transaction Committee shall be prescribed by the Minister. A member of the Transaction Committee appointed by the Board shall hold office for a term of two years. A member who vacates office may be reappointed, and section 27 and section 28 shall apply mutatis mutandis, except that with respect to the vacation of office under section 27(3), a member appointed by the Board shall vacate office upon removal by the Board.*

The Prime Minister Office issued the following notification for the qualifications and prohibitions of the Transaction Committee.

> ***Clause 1:***
> *The persons, who will be appointed to be members of the Transaction Committee shall be knowledgeable and specialized in economics, finance, treasury, law or in one or another field beneficial to performing working under the Anti-Money Laundering Act,1999, and shall have one or another qualifications as follows:*
>
> *(1) Being or using [used] to be a civil servant from or higher than level 8 or equivalent or*
> *(2) Being or using [used] to be a state enterprise or agency employee from or higher than the position of division chief or equivalent or*
> *(3) Being or using [used] to be an instructor in the said academic field and holding or using [used] to hold the position from or higher than assistant professor.*
>
> ***Clause 2:***
> *The persons, who will be appointed to be members of the Transaction Committee shall not have any prohibition as follows:*
>
> *(1) Being a member of the political party or an executive director or an officer of the political party.*
> *(2) Being a member of the House of Representatives, a member of the Senate, a*

member of the local assembly, an administrator of the local government or a political appointee.
(3) Being a director in the state enterprise.
(4) Being a director in the state agency unless approved by the Board of Directors.
(5) Being a director, a manager, an advisor or holding any other position in similar or having interest in partnership, company or financial institution or engaging in other occupation or profession or operating any business contradictory to performing duties under the Anti-Money Laundering Act, 1999.

According to Section 34 of the AMLA, the TC has to carry out the following duties.

(1) To examine a transaction or property connected with the commission of an offense;
(2) To give an order withholding the transaction under Section 35 or Section 36;
(3) To carry out the acts under Section 48;
(4) To submit to the Board a report on the result of the execution of this Act; and
(5) To perform other acts as entrusted by the Board.

The mode of exercising its powers is prescribed in Sections 35 to 38 and Section 39 deals with remuneration that a member of the TC can receive.

Section 35 of the AMLA states that the TC has the authority to issue a written order to restrain any money laundering related transaction in advance within the time prescribed but not longer than three business days. In emergency situations, the Secretary-General can order to restrain the transaction and report to the TC.

Section 35
In the case where there is a reasonable ground to believe that any transaction is connected or possibly connected with the commission of an offense of money laundering, the Transaction Committee shall have the power to give a written order withholding such transaction for a fixed period of time which shall not be longer than three working days.

In case of compelling necessity or urgency, the Secretary-General may give an order withholding the transaction under paragraph one for the time being and report it to the Transaction Committee.

In addition to Section 35, Section 36 provides that if there is concrete evidence that a transaction is involved in the process of money laundering offense, the Transaction Committee has the power to issue a written order to temporarily restrain the transaction not exceeding ten business days.

Section 36
In the case where there is convincing evidence that any transaction is connected or possibly connected with the commission of an offense of money laundering, the Transaction Committee shall have the power to give a written order withholding such transaction for the time being for a fixed period of time which shall not be longer than ten working days.

Although Sections 13, 14 and 15 state that financial institutions have to submit the report to the Anti-Money Laundering Office (AMLO) without delay, it is not

specifically mentioned as to whether the AMLO has to submit the report to the TC and how long the AMLO can keep the information before submitting the report to the TC. In order to fill up that particular gap, the Prime Minister issued Ministerial Regulation No 8 – clause 1 indicates that the AMLO has to submit the report to the Transaction Committee within seven days from the date on which such an incident is found for consideration to issue order under Section 48.

> ***Ministerial Regulation No 8:***
> ***Clause 1****:*
> *Upon the Office already receiving the transaction report or information connected with the transaction, an initial examination shall be made, if it turns out that any transaction is under reasonable belief that it may contain the transfer, disposal, removal, concealment or hiding of any property being the property connected with an offense, the Office shall promptly forward the matter to the Transaction Committee for consideration to issue order under Section 48. In this respect, within seven days from the date on which such an incident is found.*
>
> *As for the consideration of the Transaction Committee, if it is deemed that the forwarded matter is insufficient for the consideration to issue order under Section 48, the Transaction Committee may assign the competent official being assigned in writing by the Secretary-General to make additional inspection and file report to notify the Committee.*

Section 37 states that the Transaction Committee has to file a report on action taken to the Anti-Money Laundering Board.

> ***Section 37***
> *When the Transaction Committee or Secretary-General, as the case may be, has given an order withholding the transaction under section 35 or section 36, the Transaction committee shall report it to the Board.*

Section 38 of the AMLA deals with the authority the TC, the Secretary-General and the competent official have.

> ***Section 38***
> *For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:*
>
> *(1) to address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;*
>
> *(2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;*
>
> *(3) to enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed or*

converted from its original state.

In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorization and the identification.

The identification under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.

All information obtained from the statements, written explanations or any account, document or evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.

In 2003 (B.E. 2546), the Prime Minister Office issued Regulation on Payment of Incentives and Rewards in Proceedings against Assets under the Anti-Money Laundering Act (B.E. 2542). Under this system, investigators from the AMLO and other investigative agencies can receive personal payments from the property they seize in money laundering cases. After domestic and international criticism of this system, the Prime Minister Office Regulation on Cancellation of aforementioned Regulation was issued on 9 October 2007 (B.E. 2550).

3.2.9 Anti-Money Laundering Office (AMLO) and its regulations

The Anti-Money Laundering Office (AMLO) established under Section 40 of the AMLA is headed by the Secretary-General of the Anti-Money Laundering Board, assisted by two Deputy Secretaries-General – one in charge of matters relating to administration and the other in charge of matters relating to compliance – who has the duty to oversee the performance and public employees of the AMLO[26]. Section 40 specifies the duties and responsibilities of the AMLO.

Section 40
There shall be established in the Office of the Prime Minister the Anti-Money Laundering Office which shall have the powers and duties as follows:
(1) to carry out acts in the implementation of resolutions of the Board and the Transaction Committee and perform other secretarial tasks;
(2) to receive transaction reports submitted under Chapter 2 and acknowledge receipt thereof;;
(3) to gather, monitor, examine, study and analyze reports and information in connection with the making of transactions;
(4) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;
(5) to conduct projects with regard to the dissemination of knowledge, the giving of education and the training in the fields involving the execution of this Act, or to provide assistance or support to both Government and private sectors in organizing such projects;
(6) to perform other activities under this Act or under other laws.

The mode of exercising powers by the AMLO Secretary-General in respect of suspicious transactions is prescribed in Section 46, while Section 47 requires the AMLO to file an annual report on its activities to the Cabinet. It is to be noted that the

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[26] AMLO, “Organizational Structure” http://www.amlo.go.th/amlo_new/templete.php?lang=EN&id=51&nvar_l23=true , [Read December 2006]

AMLO consisting of five working units – General Affairs Division, Law Enforcement Policy Division, Assets Management Division, Information and Analysis Center and Examination and Litigation Bureau – functions as a national FIU as well. The text of Sections 46 and 47 read as follows:

> ***Section 46***
> *In the case where there is a reasonable ground to believe that any account of a financial institution's customer, communication device or equipment or computer is used or probably used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.*
>
> *In the case of paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as it may think fit, provided that the permission on each occasion shall not be for the duration of more than ninety days.*
>
> *Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall give cooperation for the implementation of this section.*
>
> ***Section 47***
> *The Office shall prepare an annual report on the result of its work performance for submission to the Council of Ministers. The annual report on the result of work performance shall at least contain the following material particulars:*
>
> *(1) a report on the result of the performance with regard to property and other performance under this Act;*
> *(2) problems and obstacles encountered in the work performance;*
> *(3) a report on facts and remarks with regard to the discharge of functions as well as opinions and suggestions.*
>
> *The Council of Ministers shall submit the annual report on the result of work performance under paragraph one together with its remarks to the House of Representatives and the Senate.*

The AMLO issued the following Regulations[27].

1. Regulation on the Expenses in Compliance with the Law Governing Anti-Money Laundering (2002)[28]
2. Regulation on the Measure in Verifying the Report and Information on the Transaction of the Person and Juristic Person under the Anti-Money Laundering Office (2002)[29]

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[27] AMLO, "A Compendium of Anti-Money Laundering Laws and Regulations", pp 100 – 121

[28] Chapter 1: Expenses on the Property Seizure and Attachment
Chapter 2: Expenses on Property Price Appraisal
Chapter 3: Expenses on Delivery and Copies of Inquiry Record
Chapter 4: Expenses on Property Storage and Management
Chapter 5: Expenses under paragraph 5 of Section 49 of the AMLA
Chapter 6: Expenses Relevant to Property Damages and Depreciation Appraisal
Chapter 7: Expenses Relevant to Remuneration for Outsider Seeking of Information or Giving Information

[29] Chapter 1: Rules of Receiving Report and Information on Indication of Facts on an

3. Regulation on Good Public Administration of the Anti-Money Laundering Office[30]

3.2.10 Competent official

Regarding the definition of "***Competent official***" Section 3 of the AMLA defines:

> ***Competent officia****l" means a person appointed by the Minister to perform an act under this Act;*

Section 4 states:

> ***The Prime Minister*** *shall have charge and control of the execution of this Act and shall have the power to appoint* ***competent officials*** *and issue Ministerial Regulations, Rules and Notifications for the execution of this Act.*

Whereas, Section 38 and Section 46 state:

> *For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and* ***the competent official entrusted in writing by the Secretary-General*** *shall have the powers ……:*

Ministerial Regulation No 8 – clause 2 also mentions:

> ***Clause 2:*** *In case the Transaction Committee deeming that the forwarded matter under Clause 1 may be taken action under Section 48 but still lacking some evidence to make it believable that any property is the property connected with an offense, the Transaction Committee shall undertake to inspect the property or assign* ***the competent official being assigned in writing by the Secretary-General*** *to inspect the property in order to obtain the said evidence.*

This difference has been bridged by the definition of "Competent Official" in the Prime Minister Office Regulation on the Coordination in Compliance with the AMLA, 1999 – Clause 2.

> ***Competent official*** *means* ***a competent official under the law governing anti-money laundering****.*

3.2.11 Restraint and enquiry

Sections 35 and 36 of the AMLA (Please see heading 3.2.8 – Transaction Committee) stipulate that the TC or the Secretary-General (in an emergency) has the power to issue a written order to restrain any suspicious transaction within three days and the TC has power to issue a written order to temporarily restrain the transaction not

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Offense from the Official Department or Public Agency
Chapter 2: Rules of Receiving Report and Information on Indication of Facts on an Offense from the Private Sector
Chapter 3: Rules on Verification of Clues or Facts on an Offense from the Private Sector

[30] Chapter 1: General Provisions
Chapter 2: Essential Basic Rules in Performing Functions
Chapter 3: Principle in Performing Functions of Unit
Chapter 4: Principle in Performing Functions of Officer
Chapter 5: Principle in Performing Specific Functions of Unit and Officer for Achievement
Chapter 6: Principle of Rendering Services and Facilities to the Public

exceeding ten business days if there is concrete evidence that any transaction is connected or possibly connected with the commission of ML offense.

The difference between Section 35 and Section 36 is that Section 35 works only where there is ***probable cause***, whereas Section 36 deals with ***evidence***.

In order to undertake a duty in accordance with this Act, the TC, the Secretary-General or a competent official has the power to inquire in writing or compel or summon anyone to testify, submit any relevant documents and have access into a residence or any transporting conveyance that is suspicious to be connected with money laundering offense. The text of Section 38 reads:

> ***Section 38***
> *For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:*
>
> *(1) to address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;*
> *(2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;*
> *(3) to enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed or converted from its original state.*
>
> *In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorization and the identification.*
>
> *The identification under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.*
>
> *All information obtained from the statements, written explanations or any account, document or evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.*

3.2.12 Assets management

Sections 48 to 59 provide detailed description of the assets management. Procedures relating to restraining, seizure and confiscation of assets involved in money laundering offenses are set out in Section 48 as well as the Ministerial Regulation No. 9. Clause 2 supplements the third paragraph, and clauses 1 & 3 supplement the fourth paragraph of AMLA Section 48.

Section 48
In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offense may be transferred, distributed, moved, concealed or hidden, the Transaction Committee has the power to order a provisional seizure or attachment of such property for the duration of not more than ninety days.

In the case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property under paragraph one for the time being and then report it to the Transaction Committee.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the property has been seized or attached or the person interested in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offense in order that the seizure or attachment order may be revoked, in accordance with the rules and procedure prescribed in the Ministerial Regulations.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the property or ordered revocation thereof, the Transaction Committee shall report it to the Board.

Ministerial Regulation No. 9
Clause 1: *To evoke the seizure or attachment of property under paragraph four of Section 48, the transactor, whose property is ordered to be seized or attached or the interested person in the property, shall file petition to the Secretary-General together with the evidence showing that the money or property in such transaction is not the property connected with an offense.*

Clause2: *Upon the officers of the Office having correctly and completely inspected the petition and evidence, the petition, together with the evidence, and opinion shall be forwarded to the Secretary-General for consideration to submit opinion to the Transaction Committee for consideration to issue order revoking the seizure or attachment of such property Committee for consideration to issue order revoking the seizure or attachment of such property.*

Clause 3: *The petitioner for revocation of the seizure or attachment is entitled to present the explanation or bring along the relevant persons advisors to join the explanation for the consideration of the petition and evidence shown under Clause 1.*

Para 4*: Any individual who conducts any transactions or an individual who has a vested interest in the asset being seized or restrained shall produce evidence to prove that the money and asset in the transaction are not related to the commission of an offense, so that the restraint or seizure order can be withdrawn. The proceeding and guidelines shall be administered in accordance with the Ministerial Regulations.*

Section 49 states the prosecution procedure between the Secretary-General, the prosecutor, the Anti-Money Laundering Board and the Court, and their responsibilities.

Section 49
Subject to section 48 paragraph one, in the case where there is convincing

evidence that any property is the property connected with the commission of an offense, the Secretary-General shall refer the case to the public prosecutor for consideration and filing an application with the Court for an order that such property be vested in the State without delay.

In the case where the public prosecutor considers that the case is not so sufficiently complete as to justify the filing of an application with the Court for its order that the whole or part of that property be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for taking further action. For this purpose, the incomplete items shall also be specified.

The Secretary-General shall take action under paragraph two without delay and refer additional matters to the public prosecutor for reconsideration. If the public prosecutor is still of the opinion that there is no sufficient prima facie case for filing an application with the Court for its order that the whole or part of that property be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for referring the matter to the Board for its determination. The Board shall consider and determine the matter within thirty days as from its receipt from the Secretary-General, and upon the Board's determination, the public prosecutor and Secretary-General shall act in compliance with such determination. If the Board has not made the determination within such time-limit, the opinion of the public prosecutor shall be complied with.

When the Board has made the determination disallowing the filing of the application or has not made the determination within the time specified and action has already been taken in compliance with the public prosecutor's opinion under paragraph three, the matter shall become final and no action shall be taken against such person in respect of the same property unless there is obtained fresh and material evidence likely to instigate the Court to give an order that the property be vested in the State.

Upon receipt of the application filed by the public prosecutor, the Court shall order the notice thereof to be posted at that Court and the same shall be published for at least two consecutive days in a newspaper widespreadly distributed in the locality in order that the person who may claim ownership or interest in the property may file an application before the Court gives an order. The Court shall also order the submission of a copy of the notice to the Secretary-General for posting it at the Office and at the Police Station where the property is located. If there is evidence that a particular person may claim ownership or interest in the property, the Secretary-General shall notify it to that person for the exercise of rights therein. The notice shall be given by registered post requiring acknowledgement of its receipt and given to such person's last recorded address.

In the case of paragraph one, if there is a reasonable ground to take such action as to protect rights of the injured person in a predicate offense, the Secretary-General shall refer the case to the competent official under the law which prescribes such offense in order to proceed in accordance with that law for preliminary protection of the injured person's rights.

Section 50 dealing with protection to the rights of *bona fide* third party provides that a person who claims ownership of the asset, the subject of a petition by the prosecutor, can file a petition to prove that the asset is not related to any offense.

Section 50
The person claiming ownership in the property in respect of which the public prosecutor has filed an application for it to be vested in the State under section 49 may, before the Court gives an order under section 51, file an application

satisfying that:

(1) the applicant is the real owner and the property is not the property connected with the commission of the offense, or
(2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity.

The person claiming to be a beneficiary of the property in respect of which the public prosecutor has filed an application for it to be vested in the State under section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

Section 51 allows the Court to issue an order to forfeit the asset to the state after the investigation of petitions filed under Sections 49 and 50.

Section 51
When the Court has conducted an inquiry into an application filed by the public prosecutor under section 49, if the Court is satisfied that the property to which the application relates is the property connected with the commission of the offense and that the application of the person claiming to be the owner or transferee thereof under section 50 paragraph one is not tenable, the Court shall give an order that the property be vested in the State.

For the purpose of this section, if the person claiming to be the owner or transferee of the property under section 50 paragraph one is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that all such property is the property connected with the commission of the offense or transferred in bad faith, as the case may be.

Sections 52 and 53 empower the Court to conduct further proceedings relating to ordered forfeited property in order to protect third party rights.

Section 52
In the case where the Court has ordered that the property be vested in the State under section 51, if the Court conducts an inquiry into the application of the person claiming to be the beneficiary under section 50 paragraph two and is of the opinion that it is tenable, the Court shall give an order protecting the rights of the beneficiary with or without any conditions.

For the purpose of this section, if the person claiming to be the beneficiary under section 50 paragraph two is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such benefit is the benefit the existence or acquisition of which is in bad faith.

Section 53
In the case where the Court has ordered that the property be vested in the State under section 51, if it subsequently appears from an application by the owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of section 50, the Court shall order a return of such property or determine conditions for the protection of the rights of the beneficiary. If the return of the property or the protection of the right thereto is not possible, payment of its price or compensation therefore shall be made, as the case may be.

The application under paragraph one shall be filed within one year as from the Court's order that the property be vested in the State becoming final and the applicant must prove that the application under section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause.

Before the Court gives an order under paragraph one, the Court shall notify the Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and present an opposition to the application.

Section 54 states that the prosecutor can file a motion requesting the Court to order to forfeit additional property related to the offense.

Section 54
In the case where the Court has given an order that the property connected with the commission of the offense be vested in the State under section 51, if there appears additional property connected with the commission of the offense, the public prosecutor may file an application for a Court's order that such property be vested in the State, and the provisions of this Chapter shall apply mutatis mutandis.

Section 55 deals with the provisional seizure of restrained assets to prevent the disbursement while the proceedings are pending.

Section 55
After the public prosecutor has filed an application under section 49, if there is a reasonable ground to believe that the property connected with the commission of the offense may be transferred, distributed or taken away, the Secretary-General may refer the case to the public prosecutor for filing an ex parte application with the Court for its provisional order seizing or attaching such property prior to an order under section 51. Upon receipt of such application, the Court shall consider it as a matter of urgency. If there is convincing evidence that the application is justifiable, the Court shall give an order as requested without delay.

Section 56 stipulates that the competent official has to execute the seizure or restraint of the asset and the assessment of the value of the asset seized. Detailed procedures the competent official has to do are prescribed in the Ministerial Regulation No 10, Clause 3 to Clause 14.

Section 56
When the Transaction Committee or the Secretary-General, as the case may be, has given an order seizing or attaching any property under section 48, the competent official entrusted shall carry out the seizure or attachment of the property in accordance with the order and report it together with the valuation of that property without delay.

The seizure or attachment of the property and the valuation thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation;

*provided that the provisions of the Civil Procedure Code shall apply **mutatis mutandis**.*

Section 57 deals with the custody of restrained and seized property.

Section 57
The retention and management of the property seized or attached by an order of

the Transaction Committee or the Secretary-General, as the case may be, shall be in accordance with the rules prescribed by the Board.

In the case where the property under paragraph one is not suitable for retention or will, if retained, be more burdensome to the Government service than its usability for other purposes, the Secretary-General may order that the interested person take such property for his or her retention and utilization with a bail or security or that the property be sold by auction or put into official use and a report thereon be made to the Board accordingly.

The permission of an interested person to take the property for retention and utilization, the sale of the property by auction or the putting of the property into official use under paragraph two shall be in accordance with the rules prescribed by the Board.

If it subsequently appears that the property sold by auction or put into official use under paragraph two is not the property connected with the commission of the offense, such property as well as such amount of compensation and depreciation as prescribed by the Board shall be returned to its owner or possessor. If a return of the property becomes impossible, compensation therefor shall be made by reference to the price valued on the date of its seizure or attachment or the price obtained from a sale of that property by auction, as the case may be. For this purpose, the owner or possessor shall be entitled to the interest, at the Government Savings Bank's highest rate for a fixed deposit, of the amount returned or the amount of compensation, as the case may be.

The evaluation of compensation or depreciation under paragraph four shall be in accordance with the rules prescribed by the Board.

Sections 58 and 59 of the AMLA empower the AMLO to proceed with legal action under the AMLA overriding any other legal process.

3.2.13 Penalties and remuneration

Sections 60 to 66 prescribe penal provisions for offenders, accomplices and abettors liable to imprisonment and/or fine for violation of the Act. The following table shows the offenders, and the imprisonment or fine for violation of the Act.

Table 5 : Penalties for ML and FT

Section	Offender	Imprisonment	or	Fine	or	Both
Section 60	Any individual guilty of the crime of ML	One to ten years	or	20,000 ฿ to 200,000 ฿	or	Both
Section 61 (paragraph – 1)	Any juristic person guilty of an offense under Sections 5,7,8, or 9	---------	or	200,000 ฿ to 1,000,000 ฿	or	--------
(paragraph– 2)	A Director, Manager or any person responsible for the operation of the juristic person under para (1)	One to ten years		20,000 ฿ to 200,000 ฿		Both

Table 5 : Penalties for ML and FT

Section	Offender	Imprisonment	or	Fine	or	Both
Section 62	Any individual guilty under Sections 13,14,16,20,21,22, 35 or 36	----------		300, 000 ฿		--------
Section 63	Any individual who makes a false statement or the concealment of the facts	Not exceeding two years	or	50,000 ฿ to 500,000 ฿	or	Both
Section 64 (paragraph – 1) (paragraph – 2)	Any individual failing to appear, or refusing to testify or to submit documents and evidence required under Section 38 (1) and (2) or failing to cooperate under Section 38 (3) Any individual acting by any means to leak restricted information to others under Section 38, para (4)	Not exceeding one year	or	Not exceeding 20,000 ฿	or	Both
Section 65	Any individual who diverts, damages, destroys, conceals, takes away, looses or renders useless the documents or information or assets which have been ordered by official action to be forfeited.	Not exceeding three years	or	Not exceeding 300,000 ฿	or	Both
Section 66	Any individual acting in any means to let others know the confidential information	Not exceeding five years	or	Not exceeding 100, 000 ฿	or	Both

Section 31 and Section 39 give members of the Anti-Money Laundering Board, and members of the Transaction Committee an opportunity to receive remuneration as prescribed by the Cabinet.

3.2.14 Penalty for ML offense of public officials

Sections 10 and 11 provide the penalties for anyone in the capacity as a public official and any member of the Anti-Money Laundering Board who commits an ML-FT offense or any malfeasance in office. The respective texts of Section 10 and Section 11 are as follows:

> ***Section 10***
> *Any official, member of the House of Representatives, senator, member of a local assembly, local administrator, Government official, official of a local government organization, official of a State organization or agency, director, executive or official of a State enterprise, director, manager or any person responsible for the operation of a financial institution, or any member of an organ under the Constitution who commits an offense in this Chapter shall be liable to twice as much penalty as that provided for such offense.*
>
> *Any member, member of a subcommittee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General or competent official under this Act who commits an offense in this Chapter shall be liable to three times as much penalty as that provided for such offense.*
>
> ***Section 11***
> *Any member, member of a subcommittee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General, competent official, official or Government official who commits an offense of malfeasance in office or malfeasance in judicial office as provided in the Penal Code which is connected with the commission of the offense in this Chapter shall be liable to three times as much penalty as that provided for such offense.*

4. Thailand and international legal instruments

As part of compliance required under the international conventions and UN resolutions relating to money laundering and terrorist financing, Thailand has carried out essential measures to some extent, if not all.

4.1 Thailand and UN conventions

The four major conventions - The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the International Convention for the Suppression of the Financing of Terrorism (the UN Convention against FOT), the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and the International Convention against Corruption are to be focused on in this paper.

4.1.1 Thailand and Vienna Convention

Thailand ratified the Vienna Convention on 1 August 2002. The Vienna Convention deals mostly with combating drug trafficking, and introduces significant provisions relating to international cooperation. The three purposes, among others, are:

(1) to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic;

(2) to deprive persons engaged in illicit traffic of the proceeds of their criminal (+ acts/activities) and eliminate their main incentive for so doing; and
(3) to improve international cooperation in the suppression of illicit traffic by sea.

Thailand has utilized Narcotics Act Sections 15 and 65, the AMLA Section 7 (under "offenders and penalties"), and Penal Code Section 86 in order to comply with Article 3 of the Vienna Convention.

Narcotics Act – (*Section 15*)

No person shall produce, import, export, dispose of or possess narcotics of category I unless the Minister permits for the necessity of the use for government service. The application for a license or the permission shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulations.

The production, import, export or possession of narcotics of category I in quantity as the following shall be regarded as production, import, export or possession for the purpose of disposal.

(1) Dextrolyzer or LSD is of the quantity computed to be pure substances of zero point seventy five milligrams or more or is of narcotics substances thereof of fifteen doses or more or is of pure weight of three hundred milligrams or more.
(2) Amphetamine or derivative amphetamine is of the quantity computed to be pure substances of three hundred seventy five milligrams or more or is of narcotics substances thereof of fifty doses or more or is of pure weight of one point five grams or more.
(3) Narcotics of category I unless (1) and (2) is of the quantity computed to be pure substances of three grams or more.

Narcotics Act – *Section 65*

Any person, who produces, imports the narcotics of category 1 in violation of Section 15, shall be liable to imprisonment for life and to a fine of one million to five million baht.

If the commission of the offense under paragraph one is committed for the purpose of disposal, the offender shall be liable to death penalty.

If the commission of the offense under paragraph one is a production by retailing or whole-selling and in quantity computed to the pure substances, or in number of used dosage, or in net weight, that does not reach the quantity prescribed in Section 15 paragraph three, the offender shall be liable to imprisonment for a term of four years to fifteen years, or to a fine of eighty thousand to three hundred thousand baht or to both.

If the commission of the offense under paragraph three is committed for the purpose of disposal, the offender shall be imprisoned for a term of four years to life and to a fine of four hundred thousand to five million baht.

Penal Code – *Section 86*

Whoever by any means whatever, does any act to assist or facilitate the commission of an offense of any other person before or at the time of committing the offense, even though the offender does not know of such assistance or facilities, is said to be a supporter to such offense, and shall be liable to two

thirds of the punishment provided for such offense.

The following are three examples of drug-related cases presented at the joint FATF Annual Typologies Meeting held in Bangkok on 28 – 30 November 2007.

Case No. 1
The police found out that Mr. J was a big drug dealer in Klong Tei area. He then fled to evade an arrest warrant. Before his disappearance, Mr. J transferred a lot of assets connected with the commission of drug offenses to his associates especially Mr. S, his brother.

Later AMLO officers and the police searched the residence of Mr. S and that of Ms. L, his mistress, as well as a house rented by Mr. S for the sister of Ms. L. A lot of cases and other assets were found including cars, motorcycles and gold objects. These were hidden in various places both in Bangkok and in the provinces.

Mr. S had no stable livelihood to match that much of assets. As for Mr. J, though he ran a used-car firm, business was not going well. According to his own employees, the firm usually sold only a car a month. In some months, even a car was not sold. Despite that fact, Mr. J almost daily had his employee take about 1,800,000 – 1,900,000 baht to deposit at a bank. Sometimes, he would split the money and had his employees deposit the breakout amounts at different banks. Money was also transferred to Mr. S's account. Mr. J made it a point with his employees that no more than 2,000,000 baht be deposited at a time. His employees did not know how he earned the money. According to others, Mr. S had financial problems and Mr. J gave him money every month. So Mr. S was unlikely to own such a lot of assets.

Looking at all the assets in the possession of Mr. J and Mr. S against their livelihoods and possible lawful income, the civil court was of the view that all the assets seized had not been lawfully gained and that they were proceeds of the commission of the drug offense, which is a predicate offense under the Anti-Money Laundering Act 1999. The court, therefore, ordered the confiscation of all 37 items worth about 7,069,934.43 baht.

Case No. 2
The police found out that Mr. S and his associates used and sold drugs. A raid was made on his house and 3 methamphetamine pills were found on his person. 1,786, 660 baht's worth of cash was also found hidden in his house such as underneath water jars and TV sets. He was then charged with illegal possession of drugs and money laundering. The court ruled against him.

Case No. 3
Mr. S was found guilty of drug offenses and 1,675,340 baht's worth of assets was ordered confiscated by the civil court as proceeds of the commission of the offenses. These included 2 cars, a motorcycle, 2 gold necklaces, 16 Buddha tablets, 2 wrist watches and a safe.

The above cases show that the application of the AMLA made it possible to use a civil forfeiture system leading to confiscation of criminal assets without conviction. However, one drawback is that the arm of the law using such civil forfeiture system does not reach the leaders of the criminal gangs.

In combating ML and FT, preventive measures and implementation of the measures are more important than seizure and confiscation of assets. Preventive measures must be initially adopted and proactive legal measures should be implemented in order to effectively prevent the twin crimes of ML-FT. Thailand, however, seems to focus on

the seizure and confiscation of assets. The Detailed Assessment Report (DAR) on Thailand by the IMF assessment team[31] states:

> *There is also a serious problem of implementation in the fact that the AML hardly disseminates any reports to LEAs for completion of criminal investigations and further prosecution of ML offenses. In addition the AMLO appears to have been created with a structure and focus on seizing and confiscating property connected with the commission of predicate offenses using the civil process for vesting property in the State in the AMLA and this, coupled with a rewards system, created in 2003, for AMLO staff seems to act as a disincentive for AMLO to focus on the criminal aspect of ML cases. These factors may eventually weaken the deterrence factor that the criminal process contributes, if criminals perceive that their actions do not imply the risk of being punished with the serious and retributive type of sanctions (prison) that the criminal system typically comprises.*
>
> *The fact that most convictions are derived from drug-related predicate offenses also demonstrates that there is not an autonomous approach to investigating money laundering and that more efforts need to be put in investigating the laundering of property connected with the commission of other predicate offenses.*

Having adopted Anti-Money Laundering Act B.E. 2542 (AMLA) containing measures against ML to be applied to eight predicate offenses, Thailand ratified the Vienna Convention (1988) on 1 August 2002.

It is criticized that the current list of predicate offenses in the Thai Anti-Money Laundering Act (B.E.2542) does not comport with international best practices. In addition, the definition of "property involved in an offense" in the AMLA is limited to proceeds of predicate offenses and does not extend to instrumentalities of a predicate offense or a money laundering offense. Despite the proposed amendments – pending with the Cabinet since 2004 – with the enactment of eight additional predicate offenses, the list of sixteen predicate offenses will still be deficient under international standards.

Regarding extradition, Articles 6 and 7 of the Vienna Convention are addressed by the Thai Extradition Act (1929) and the Act on Mutual Assistance in Criminal Matters (1992) respectively.

Regarding suspicious transaction reports, according to the AMLA, the financial institutions have to report any transaction involving 2,000,000 baht or more in cash, and those involving 5,000,000 baht or more in non-cash assets. Besides, any transaction suspected to involve ML, regardless of the amount of cash and value of assets must be reported to the AMLO. One important point of the AMLA provisions is that failure to file an STR is an offense under the AMLA.

The TC is authorized to examine the suspicious transactions. Section 38 of the AMLA empowers not only the TC but also the Secretary-General of the AMLO or an assigned competent authority to make enquiries to an entity suspected of laundering money. Section 48 of the AMLA states procedures relating to freezing and Section 49

[31] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.52 paras 152 – 153

provides procedures for confiscation of assets involved in money laundering offenses, supplemented by Ministerial Regulation No. 9. (Please see heading 3.2.12 – Assets management.)

4.1.2 Thailand and UN Convention against FOT (1999)

Thailand signed the UN Convention against FOT on 18 December 2001 and ratified the Convention on 29 September 2004. The Thai government issued two Emergency Decrees (Please see heading 3.2.1 Predicate Offenses.) to enact measures related to terrorist financing on 11 August 2003, according to the Thailand's (1997) Constitution. One of the Decrees amended Section 135 of the Thailand's Penal Code to criminalize the acts of terrorism, other terrorism related offenses, and financing of terrorism. The other amended Section 3 of the AMLA to add the offenses related to terrorism under the Penal Code, as the eighth predicate offense for money laundering. The Parliament endorsed the status of such decrees as legal Acts in April 2004.

Articles 2, 4 and 5 of the Convention against FOT were addressed by the aforementioned decrees, and other articles were implemented through the AMLA and other pieces of legislation. When Thailand ratified the Convention for the Suppression of the Financing of Terrorism, Thailand declared that since it is not a party to the following treaties, in the application of this Convention, they shall not be included in the Annex of this Convention pursuant to Article 2 paragraph 2(a).

1) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 1973;
2) The International Convention against the Taking of Hostages, 1979;
3) The Convention on the Physical Protection of Nuclear Material, 1979;
4) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988;
5) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, and;
6) The International Convention for the Suppression of Terrorist Bombings, 1997.

Thailand also declared that it did not consider itself bound by Article 24 paragraph 1 of the Convention according to Article 24 paragraph 2 thereof.

Considering the following treaties to be included in the Annex of this Convention, Thailand accordingly ratified three out of nine Conventions listed in the Annex A to the Convention against FOT.

1. 16 May 1978 – Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
2. 16 May 1978 – Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
3. 16 May 1996 – Protocol for the Suppression Unlawful Acts of Violence at Airports, Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal (1988)

On the other hand, the Detailed Assessment Report on Thailand by the IMF assessment team recommended as follows[32]:

> *Thailand has not criminalized the financing of the acts that constitute an offense within the scope of, and as defined in those three treaties or any of the other treaties.*
>
> *Thailand must amend the provisions of section 135/2 of the PC to criminalize the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR II*

Since the threat of terrorism has ruined the sense of security and safety of mankind in the civilized world, action must be taken simultaneously in various dimensions of different parts of the world in order to eliminate problems of terrorism. Thailand, as a part of the world, is determined to fight terrorism to the end. The highest priorities of the Thai government[33], concerning terrorism are as follows:

1. To give first priority to the prevention of terrorism and to ensure that the systems and mechanisms to solve terrorist problems are in place;
2. To increase the efficiency of intelligence work and to organize a coordinated system that can provide in-depth information analysis and monitor terrorist movements in a timely manner;
3. To improve laws, rules, and regulations and bring them up to date with the nature of the terrorist phenomenon in order to deal with the threats it poses in an efficient and timely manner;
4. To foster human resource development and improve information systems and knowledge bases in order to ensure efficient prevention and correction of the problems posed by terrorism;
5. To educate people and help them understand the threat of terrorism as well as to raise their awareness and encourage them to cooperate with the government in its intelligence work and to serve as networks at the community level to prevent terrorism;
6. To reduce factors and conditions that are favorable to terrorism by taking action to suppress transnational movements that are the root cause of arms smuggling, illegal border crossing, document forgery and financial support, as well as to reduce conditions that lead certain groups of people to join terrorist groups;
7. To strengthen and expand regional cooperation in order to create networks for prevention and correction of terrorist problems, and to establish mechanisms for coordination and channels for efficient and timely communication, including exchange of information and experience;
8. To cooperate with the international community, bilaterally and multilaterally, in order to establish networks for the prevention and correction of terrorist problems of all forms, and to fulfill its international obligations under the framework of the United Nations, with special

[32] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.55 paras 164 – 165

[33] "Thailand Country Report": Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Thailand, 18 – 25 April 2005: Correction Press, Bangkok, pp. 113 – 114

attention given to national interests and security;
9. To coordinate emergency plans of relevant agencies and combined resources of the government, the private sector, and the general public, as well as to arrange for a detailed plan of coordination among agencies concerned, organize emergency preparedness regular exercises, and lay the groundwork for post-incident recovery.

There is no specific definition of a terrorist organization or of a terrorist under Thai law. A terrorist organization or a terrorist can, however, be interpreted to be an organization / a person that is a terrorist organization / a member of a terrorist organization classified by any UNSC resolution or declaration endorsed by Thailand. It is also interpreted to be a person / an organization whose members that commit(s) a terrorist act under Section 135/1 and 135/2.

4.1.3 Thailand and Palermo Convention

The main purpose of the Palermo Convention is to promote international cooperation to prevent and combat transnational organized crime more effectively. Thailand is a full-fledged signatory to the Palermo Convention[34] and is dedicatedly cooperative in the process of international AML-CFT matters. Thailand, however, has yet to ratify the convention. The reason for delaying in ratifying the convention is that the Palermo Convention cannot be ratified by Thailand until all of its requirements are previously incorporated into domestic legislation. Legislation to this end has been prepared and it is expected that it will soon be submitted to the Parliament for consideration and approval.

According to the IMF's DAR[35], the following are three examples of requirements of the Palermo Convention that have not yet been incorporated into domestic legislation:

- *The predicate offenses to money laundering, as set forth under Section 5 of the AMLA, do not cover all of the serious offenses under Thai law as required by the Palermo Convention, nor the complete list of designated categories of offenses under the standards.*

- *Article 6(2)(c) of the Palermo Convention requires that predicate offenses include both domestic and extraterritorial offenses. However, not all of the predicate offenses for money laundering extend to conducts that occurred in another country, which constitute an offense in that country, and would have constituted a predicate offense had they occurred in Thailand.*

- *Article 12(1) of the Palermo Convention requires countries to have laws that enable confiscation of proceeds of crime derived from offenses covered by the convention or property, the value of which corresponds to that of such proceeds.*

According to the majority of researchers, Thailand's laws, at present, are not comprehensive enough to criminalize organized crimes efficiently and the penalties

[34] "Thailand Country Report": Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Thailand, 18 – 25 April 2005: Correction Press, Bangkok, p. 60

[35] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.255, para 1226

imposed for serious crimes do not correspond to the serious crimes committed by organized crime syndicates. Although legal provisions relevant to prevention and suppression of organized crime exist in the Thai legal system, they are scattered in various acts of legislation. Thailand Country Report[36] states:

> *The majority of researchers concluded as follows:*
>
> *Thailand should enact new laws to be more efficient in the prevention and suppression of organized crime. Current laws are not comprehensive enough to criminalize organized crimes efficiently, especially when there is no clear or well-formulated definition of "Organized Crime" and the "Transnational" nature of organized crimes syndicates. General legal provisions to criminalize an act of "Conspiracy" to commit serious crimes are also lacking.*
>
> *At the moment, the penalties imposed for such serious crimes do not correspond to the serious crimes committed by organized crime syndicates. Certain offenses are punishable with fines, which should be increased to much more severe levels to be more proportionate to the serious crimes committed and to the vast monetary gains by organized crime syndicates.*
>
> *In addition, current legal provisions which appear to be relevant to prevention and suppression are scattered in various acts of legislation, to the extent that it is impossible to conduct an accurate survey or to make all necessary amendments. Thus, new laws must be drafted, adopted, and promulgated.*

Thailand considers extradition requests on the basis of the Extradition Act (1929) and bilateral extradition treaties. The following are important aspects of the 1929 Thailand Extradition Act.

1. In the absence of an extradition treaty, extradition shall be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai laws (Section 4) and so long as it is not related with a political offense (Section 12).
2. Reciprocity is generally required but it is not a legal requirement. This allows Thailand to extradite even if reciprocity is not fully obtained, i.e., in case the requesting State cannot commit reciprocity because the offense to which extradition relates carries death penalty under Thai laws.
3. Extradition will not be granted if the accused has already been tried and discharged or punished in any country for the crime requested (Section 5).
4. Under the current law, Thai nationality is not an absolute bar for extradition.
5. An extradition request shall be sent through the diplomatic channels (Section 6) and it shall contain the conviction and the warrant of arrest for the requested person, together with the related evidence (Section 7)
6. In case of a request for provisional arrest, the nature of the offense and the arrest warrant of the requesting Court shall be submitted. Provisional arrest pending the arrival of a formal request for surrender is permitted. The public prosecutor will apply to the Court for the issuance of a provisional arrest warrant. The extradition request shall be submitted to the Court

[36] "Thailand Country Report": Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Thailand, 18 – 25 April 2005: Correction Press, Bangkok, p. 61

within two months from the date of the order for detention (Section 10).

The Office of the Attorney General (OAG) proposed new Draft Legislation on Extradition that adheres to the legal approach of the UN Model Treaty on Extradition. It was prepared by a drafting committee and has been scrutinized by the Council of State. A committee was appointed as the Scrutinizing Committee on Obligations and Commitments made to the Palermo Convention by the Minister of Justice. The Committee endorsed the fundamental principles of the Draft Legislation. The OAG drafted a number of new Acts of legislation by adhering to the principles of the Palermo Convention.

As regards mutual legal assistance, the assistance and cooperation seems to be fast enough to be prompt and timely in providing assistance as the mechanisms designed. Although the AMLA does not provide any particular Section regarding international cooperation, the Mutual Assistance in Criminal Matters Act B.E. 2535 (1992) provides international assistance on investigations, prosecutions, confiscation, searching and freezing of illicit proceeds.

The text of Section 7 in the Mutual Assistance in Criminal Matters Act reads as follows:

> *The Central Authority shall have the following authority and functions:*
> *(1) To receive the request for assistance from the Requesting State and transmit it to the Competent Authorities;*
> *(2) To receive the request for assistance from the Requesting State and transmit it to the Competent Authorities;*
> *(3) To consider and determine whether to provide or seek assistance;*
> *(4) To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;*
> *(5) To issue regulations or announcement for the implementation of this Act;*
> *(6) To carry out other acts necessary for the success of providing or seeking assistance under this Act.*

According to Section 7 of the Act, international cooperation has to be carried out via the Central Authority – the Attorney General (AG) or the person designated by him[37]. Thailand has made a strong commitment to international cooperation in virtue of ratifying the Vienna Convention. Up to the present, Thailand has concluded 11 bilateral extradition treaties[38], entered into bilateral treaties on mutual legal assistance with 14 countries[39] and the AMLO, as the national FIU, signed Memoranda of Understanding with 31 foreign FIUs[40]. Having known that international cooperation is

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[37] The Act on Mutual Assistance in Criminal Matters B.E. 2535, Section 6

[38] (1) UK (1911), (2) Belgium (1936), (3) Zanzibar and Solomon Islands under UK (1937), (4) Indonesia (1979), (5) Philippines (1984), (6) USA (1990), (7) PRC (1998), (8) Cambodia (2000), (9) Bangladesh (2000), (10) Laos (2000), and (11) ROK (2000).

[39] (1) USA (10-6-93), (2) Canada (3-10-94), (3) UK (10-9-1997), (4) France (1-6-97), (5) Norway (22-9-2000), (6) China, PRC (21-6-2003), (7) Korea, ROK(25-8-2003), (8) India (8-2-2004), (9) Poland (26-2-2004), (10) Sri Lanka (30-7-2005), (11) Peru (3-10-2005), (12) Belgium (12-11-2005), (13)Australia (27-7-2006), and (14) Ukraine (being submitted to cabinet).

[40] (1) Belgium (24-4-2002), (2) Brazil (29-1-2003), (3) Lebanon (25-2-2003), (4) Indonesia (24-3-2003), (5) Romania (24-3-2003), (6) Finland (22-4-2004), (7) UK (11-6-2004), (8) ROK (16-6-2004), (9) Australia (23-6-2004), (10) Portugal (28-6-2004), (11) Andorra (23-7-2004), (12) Estonia (26-10-2004), (13) Philippines (26-10-2004), (14) Poland (26-10-2004), (15) Mauritius (28-10-2004),

essential to prevent and suppress acts relating to ML and FT, the Cabinet passed a resolution that emphasized the importance of international cooperation on 7 November 2000.

On the other hand, due to the narrow range of predicate offenses Thailand's capacity to execute extradition requests related to money laundering is restricted to limited circumstances. If there is a request for extradition related to money laundering derived from unlisted predicate offenses in Thailand, it will be impossible for the offense under consideration to be considered money laundering offense in Thailand and the person sought could not be prosecuted for money laundering in Thailand either.

The ADB Consultants' Analysis Report[41] states that the following changes are required to enable Thailand to meet its international obligations in relation to the domestic legal regimes relating to transnational crime and money laundering.

> 1. *The AMLA must be amended to ensure that all offenses that carry a penalty of imprisonment for a period of 4 years, or a more serious penalty, are predicate offenses that give rise to the offense of money laundering. That is that "serious offenses" are predicate offenses under section 5 of the AMLA.*
>
> 2. *If the amendment to the AMLA to deal with serious offenses does not cover all offenses under the Palermo Convention, then the AMLA must be further amended to ensure that it includes as predicate offenses for the offense of money laundering –*
>   a. *further elements of the offenses of participation in an organized criminal group; and*
>   b. *the offense of obstruction of justice;*
>   c. *further offenses when committed by criminal groups*
>
> 3. *The AMLA, or other relevant law, must be amended to give to the appropriate authority power to order that transactions that facilitate, or are part of, the money laundering process are void and of no effect. Such power is, in all countries with which we are familiar, is vested in courts and accordingly we recommend that Courts must be empowered to order the reversal of such transactions.*
>
> 4. *The AMLA should be amended to make it absolutely clear that the offenses of money laundering can be committed when any of the predicate offenses take place outside the Kingdom.*
>
> 5. *The definition of asset in the AMLA should be amended to cover assets located outside Thailand.*
>
> 6. *Extend the offenses in Title III Chapter 1 of the Penal Code to make it an offense to use physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official.*
>
> 7. *Amend the Penal Code provisions relating to membership of a body whose proceedings are secret and whose aim is unlawful so that they apply to groups of three or more persons.*

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(16) Netherlands (21-2-2005), (17) Georgia (10-3-2005), (18) Monaco (4-4-2005), (19) Malaysia (18-4-2005), (20) Bulgaria (13-6-2005), (21) Saint Vincent and the Grenadines (10-7-2005), (22) Ukraine (19-7-2005), (23) Myanmar (30-7-2005), (24) Nigeria (24-4-2006), (25) Japan (15-5-2006), (26) Ireland (14-6-2006), (27) St. Kitts and Nevis (26-2-2007), (28)Cayman Islands (28-2-2007), (29) Bermuda (28-5-2007) (30) Sweden (28-5-2007), and (31)Palau (17-7-2007)

[41] ADB, "ADB Consultants' analysis report on Thailand", April 2006: pp. 105-106

8. *Ensure that the Penal Code permits prosecution of Thai nationals at the request of a country which is exercising a recognized jurisdiction over an offense committed by a Thai national and Thailand does not extradite such person.*

9. *Extend the powers of the DSI (Department of Special Investigation) to cover the other offenses required to be created under the Palermo Convention in particular the corruption and obstruction of justice offenses outlined in Articles 8 and 23 of the Palermo Convention.*

10. *Make provision which allows testimony to be taken in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communication technology such as video links or other adequate means.*

4.1.4 Thailand and UN Convention against Corruption

Today, the fight against corruption enjoys governments' and societies' highest attention throughout the world. Addressing corruption in public procurement is an important component of any effective anti-corruption strategy[42] in order to establish an effective anti-corruption framework within which regulatory agencies, supervisory agencies and enforcement agencies carry out their official duties honestly and effectively. The aims and objectives of the procurement systems should be to identify and eliminate risks of corruption.

Despite their dedication, lack of government's political commitment can hamper the AML-CFT process. Although Thailand realizes that good governance is one of the major pillars for assistance to build a more effective AML-CFT regime, to be honest, Thailand is not a country that has corruption-free governance yet.

Corruption undermines the effectiveness of AML-CFT measures. Since it has long been impeding the development of both developed and developing countries alike the UN has carried out much work over the years to construct a framework for strong anti-corruption regimes. The United Nations Convention against Corruption was adopted on 31 October 2003 and came into force on 14 December 2005. The only way to ensure that the Convention becomes a functioning instrument is countries have not only to ratify but also to implement the Convention efficiently and effectively. Thailand signed the Convention on 9 December 2003 although it has yet to ratify the Convention. Thailand's laws, regulations, and policy guidelines on public procurement are published in the Royal Gazette in order to reduce the risk of corruption.

Even though corruption is criminalized in all jurisdictions, the rules are different from one country to another. Whatever rules are stipulated, raising public awareness about the negative and harmful impact of corruption on society is an essential factor in combating against ML and FT because corruption is rampant in many parts of the world and it can be one catalyst for the escalation of ML and FT.

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[42] ADB/OECD, "Anti-Corruption Initiative for Asia and the Pacific, Curbing Corruption in Public Procurement in Asia and the Pacific Progress and Challenges in 25 Countries, Thematic Review", executive summary, p. ix

In Thailand, according to the Penal Code BE 2499 (1956), six basic corruption offenses are as follows:

1. Bribery of public servants
2. Soliciting or the acceptance of gifts by public servants
3. Abuse of political positions for personal advantage
4. Possession of unexplained wealth by a public servant
5. Secret commissions paid by agents or employees in the case of private sector corruption
6. Cases of bribery gifts to voters

The Penal Code prohibits the bribery of officials, including bribery done through intermediaries. The relevant regulations are contained in Sections 143, 144, 148, 149 and 150. Sections 151 through 154 deal with other abuses of authority for personal gain. Furthermore offenses against judicial officials are stipulated in Sections 167 to 199 whereas Sections 200 to 205 deal with malfeasance in judicial office. Additional penal and administrative sanctions for accepting or soliciting bribes can be found in a number of laws such as the Civil Service Act (1992) and the Act on Offenses Relating to the Submission of Bids or Tender Offers to Government Agencies. The following are three examples of corruption cases.

> *[Presented at the joint FATF Annual Typologies Meeting was held in Bangkok on 28 – 30 November 2007.]*
>
> *Mr. P chief of a Tambol Administrative Organization in Samut Prakarn Province, was found guilty of corruption by procuring an exorbitantly priced plot of land. The price charged on the organization was 6,947,000 baht while the assessed price was only 1,232,500 baht. Mr. S, the land owner, received a check for the overpriced cost of the land. He then changed it into two cashier checks and deposited only 2,350,000 baht into his bank account. Mr. P took the remaining 4,594,000 baht. Mr. P deposited some of the money he gained from the unlawful deal into the bank account of Mrs. P, his wife. Mr. S also received some money as a reward for collaboration in the act of corruption.*
>
> *The civil court decided that the three persons' bank deposits worth 1,078,117.47 baht altogether were proceeds of the act of corruption and ordered their confiscation.*
>
> *[News report[43]]*
> *The Assets Scrutiny Committee will, in two weeks, press four criminal charges against deposed prime minister Thaksin Shinawatra for abuse of authority when he was in power, which could land him in jail for abuse of authority when he was in power, which could land him in jail for 26 years if he is found guilty.*

According to the news report, the four charges are as follows:

1. Mr. Thaksin allegedly failed to declare to the National Counter Corruption Commission his total Shin Corp shareholdings while in office.

2. The alleged stake holding concealment also led to the second charge related to the sale of Shin Corp shares by his family to Singapore-based Temasek Holdings. (The ASC has already frozen 66 billion out of the 73

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[43] Ampa Santimatanedol, "Thaksin faces up to 26 years in jail"(News report), The Bangkok Post, (27 November 2007) :p.1

billion baht that Mr. Thaksin's family netted from the Shin Corp sale.)

3. Mr. Thaksin allegedly ordered the issuance of a cabinet resolution in 2003 to convert the mobile-phone operators' concession fee into excise tax that caused about 40 billion baht in damage to two state enterprises, TOT Plc and CAT Telecom Plc.

4. Mr. Thaksin allegedly ordered the Export and Import Bank to lend a 900-million-bath soft loan, out of a total of four billion baht, to the Myanmar government to improve its infrastructure and telecom sector in 2004. This came with the condition that the Myanmar government purchase materials from Shin Corp. (After the loan agreement, Myanmar reportedly contracted Shin Corp's subsidiary, Shin Satellite, to be a major supplier to its 600 bath broadband satellite telecoms project.)

The news report also stated the Assets Scrutiny Committee (ASC) secretary Mr. Kaewsan had said that under the process, the ASC would file the criminal charges with the Attorney General's Office, which is responsible for taking the cases to court.

[News Report[44]]

Nine officials at the Department of Special Investigation (DSI) have been suspended from duty for allegedly embezzling reimbursement funds for accommodation expenses in deep South.

The news report stated that the nine officers including investigators and special case officers would be suspended and payment of their salaries and other benefits would be put on hold until they could prove they were innocent. The nine officers are part of a group of more than 60 officers who had claimed accommodation expenses during missions to the deep South. Although the amount involved was not given, the DSI chief said the case damaged the organization and tainted its reputation. More than 50 officers facing the same allegation are still being investigated by the panel.

One of the four priority objectives of the interim government is to restore fairness and justice in the legal system to deal with issues of corruption and unfairness within the police force and all government agencies. The IMF Detailed Assessment Report[45] on Thailand states:

The Asian Corporate Governance Association(ACGA) assessed Thailand as having a corporate governance standard and practice index of 50 out of a possible 100 in 2005, down from 53 in 2004. This compared to an average of 58 for the ten Asian nations that were assessed. The methodology identified Thailand as having particularly weak enforcement by regulators and the market (index of 40) and a low corporate governance culture (index of 35).

And yet Thailand slipped back from 11th place to 14th in the Asia-Pacific index and

[44] Corruption Police Investigation: "DSI officers suspended over expenses claims" (News report), The Bangkok Post, (7 December 2007) :p. 6

[45] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the financing of Terrorism on Thailand, 24 July 2007 (Draft): p.17, para. 43

from 63rd to 84th in the overall 180-nation world index[46].

Since FATF Recommendation 6 requires authorities to pay particular attention to PEPs, they have to be capable of handling the PEP-related cases intelligently and skillfully. Thailand enacted the "Organic Act on Counter Corruption, B.E. 2542" in 1999. The Act consists of 54 Sections where Sections 1 to 5 provide general information; Sections 6 to 18 deal with the National Counter Corruption Commission (NCCC); Sections 19 to 31 provide the information on powers and duties of the NCCC; Sections 32 to 42 state how to inspect assets and reliabilities: (1) declaration of accounts showing particulars of assets and liabilities of persons holding political positions [Sections 32 to 38] and (2) declaration of an account showing particulars of assets and liabilities of state officials [Sections 39 to 42]; and Sections 43 to 54 suggest how to conduct a fact inquiry.

In 2003, the NCCC – whose main duty is to investigate corruption involving PEPs – and the Office of Criminal Litigation against Persons Holding Political Position of the Office of the Attorney General were successful in filing lawsuits against the former Deputy Minister of the Ministry of Public Health and other high-ranking politicians and convincing the Supreme Court to convict them.

In order to achieve success in combating corruption in the long term, the NCCC would carry out the following[47].

1. Propose measures, opinions or recommendations to the Cabinet or the organizations concerned for corruption prevention.
2. Build up attitudes, values, morals and ethics concerning integrity.
3. Seek cooperation from people and public relations.
4. Promote transparency and accountabilities.

One of the Thailand's answers to the DAQ[48] states:

> *………corruption is an ongoing problem in Thailand at all levels of government and in LEAs. Authorities in the government and LEAs are committed to combating this problem and have legal measures in place to assist preventing corruption. The professional standards for employees are set out in National Security Regulations, B.E.2517 and the Civil Service Regulations Act B.E.3525 which provide for hiring civil servants or law enforcement related duties. These applicants must undergo a number of criminal record checks and interviews before being engaged. In specialized units like DSI and NCCC, there are further specific requirements under their acts which require higher educational criteria for employment and additional security clearance. For instance, in DSI qualifications for new staff according to the Special Investigation Act Section 14 requires employees or new hires to have finished a Bachelor of Law and having useful experience in related fields for 3 years or being a civil servant in a related field for over 10 years.*

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[46] "Thailand slips down the list, now seen as more corrupt" (News report):, The Bangkok Post, (27 September 2007), p. 2.

[47] The Office of the National Counter Corruption Commission , http://www.nccc.thaigov.net/nccc/en/org.php

[48] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism" on Thailand, 24 July 2007(Draft): p.112, para. 484.

Due to the Penal Code, the practical implication is that Thailand cannot hold its nationals liable for bribery committed outside of Thailand. As aforementioned since Thailand has not ratified the convention yet, appropriate amendment should be made to the Penal Code before ratifying the convention. In order to eradicate corruption and combat the criminals who assist in corruption, increased international cooperation against corruption is of vital importance.

As hiding or laundering bribes and embezzled funds in foreign jurisdictions is no longer uncommon for individuals, Thailand realizes that international cooperation among enforcement agencies and prosecutorial authorities is one key aspect of the fight against corruption. Despite the recognition of the importance of mutual legal assistance and extradition, Thailand has noticed the current ineffectiveness of the available legal and institutional tools and tried to improve the system to identify and eliminate risks of corruption.

4.2 Thailand and UN resolutions

There are two eminent UNSC Resolutions – Resolution 1269 (1999) and Resolution 1373 (2001) – dealing with the issue of terrorist financing. UNSC Resolution 1269 requires countries to cooperate with each other through bilateral and multilateral agreements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts; and to prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism. Thailand has met the requirements of this resolution according to the provisions in Section 9 of the Act on Mutual Legal Assistance in Criminal Matters B.E. 2535, the Extradition Act B.E. 2472, bilateral treaties and multilateral treaties.

UNSC Resolution 1373 requires countries to prevent and suppress terrorist financing; criminalize any act in order to support terrorism; freeze funds and assets related to terrorist acts; and prevent their nationals or any entities from making funds or assets for the benefit of persons who participate in the commission of terrorist acts. Thailand has also met the requirements of UN Security Council Resolution 1373 due to the amendments to the Penal Code Section 135 and by ratifying the Convention against FOT.

The DAR, however, states[49]:

> *There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. The authorities have claimed that the mechanisms for seizing and attaching property under AMLA, the CPC or the Special Investigations Act could be used to give effect to UNSCR 1373. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay.*

It also states[50]

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[49] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism" on Thailand, 24 July 2007(Draft): p.77, para. 285.

[50] ibid.: p.79, paras. 295-296.

There are no specific systems in place for communicating actions taken under the freezing mechanisms to the financial sector.

Article 13 of Ministerial Regulation Number 10 issued under the AMLA prescribes the procedures for communicating actions taken under freezing mechanisms in general. Article 13 of MR 10 sets forth that "upon the TC or the S-G, as the case may be, has already issued an order to attach any property, the competent official shall issue notice of the order in writing to the property owner, the persons entitled to or the possessor of such property. Where the attached property is a chose in action or a claim, a written notice must be made to the third party who has a duty in or is liable to make payment or submit things under such chose in action or claim. The authorities claim that article 13 would be applied to communicate any freezing or attachment of terrorist property to the financial sector immediately upon taking such action. Although this system may be used for communicating actions adopted by the TC or the S-G under AMLA, it does not seem to cover freezing or attachment orders issued under the CPC, the Special Investigations Act or in response to a request from a foreign court. The assessors are, therefore, not satisfied that Thailand has an effective mechanism for communicating freezing actions to the FIs.

4.3 Thailand and FATF 40+9 Recommendations

Although Thailand is not a member of the FATF, since Thailand is a founding member of the APG – an FATF-style Regional Body – Thailand has committed to meet the FATF 40+9 Recommendations regarding the operation, supervision, and regulation of financial sectors. One important issue is that it seems 8 predicate offenses in Section 3 of the AMLA and 8 additional Cabinet-approved predicate offenses (Proposed Amendment to AMLA Considered by the Council of State – No. 415/2550 – Please see heading 3.2.1 –Predicate offenses) do not cover all the 20 categories of serious offenses described in Recommendation 1 of the FATF 40+9 Recommendations. The designated categories of offenses listed in the glossary to the 40 Recommendations and the Thailand 16 predicate offenses can be compared in the following table.

Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	**AMLA**
1	Participation in an organized criminal group and racketeering	- - - - - - -
2	Terrorism, including terrorist financing	Offenses relating to terrorism under the Penal Code.
3	Trafficking in human beings and migrant smuggling	- - - - - - -
4	Sexual exploitation, including sexual exploitation of children	Offenses relating to sexuality under the Penal

Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	**AMLA**
		Code, in particular to sexual offenses 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 offenses relating to the trafficking in children or minors, or offenses under the Measures to Prevent and Suppress Trading of Women and Children Act, or offenses under the Prevention and Suppression of Prostitution Act, in particular related to offenses of procuring, seducing, enticing or kidnapping a person for the purpose of prostitution trade, or offenses relating to being an owner of a prostitution business, or an operator, or a manager of place of prostitution business, or supervising persons who commit prostitution for trade in a prostitution business,
5	Illicit trafficking in narcotic drugs and psychotropic substances	Offenses relating to narcotics under the Narcotics Control Act or the Act on Measures for the Suppression of Offenders in an Offense relating to Narcotics.
6	Illicit arms trafficking	Offenses relating to arms trading under the law governing fire arms, ammunition, explosives, fireworks, and toy guns (not approved yet)
7	Illicit trafficking in stolen and other goods	- - - - - - -
8	Corruption of bribery	Offenses relating to malfeasance in office, or malfeasance in judicial office under the Penal Code, offenses pertaining to the law governing public officials of a state enterprise or government office, or offenses pertaining to malfeasance or dishonesty in carrying out official duties under other related laws
9	Fraud	Offenses relating to cheating and fraud to the public under the Penal Code or offenses pursuant to the Fraudulent Loans and Swindles Act.
10	Counterfeiting currency	- - - - - - -
11	Counterfeiting and piracy of products	- - - - - - -
12	Environmental crime	- - - - - - -
13		- - - - - - -

Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	**AMLA**
	Murder, grievous bodily injury	
14	Kidnapping, illegal restraint and hostage taking	- - - - - - -
15	Robbery or theft	- - - - - - -
16	Smuggling	- - - - - - -
17	Extortion	Offenses relating to the commission of extortion or blackmail by a member of an unlawful secret society or organized criminal association as defined in the Penal Code.
18	Forgery	- - - - - - -
19	Piracy	- - - - - - -
20	Insider trading and market manipulation	Offenses relating to collusion in submitting tenders to government agencies and offenses relating to obstruction of fair price competition under the law governing tenders offered to government agencies (not approved yet)
21		Offenses relating to embezzlement or cheating and fraud involving assets, or acts of dishonesty or deception as described in the law governing commercial banks, or Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, or Act Governing Securities and Stock Exchange, which is committed by director, a manager or any person who is in charge of or having any vested interest relating to the management of a financial institution.
22		Offenses relating to customs evasion under the Customs Act.
23		Offenses relating to the use, holding, or being in possession of natural resources or the illegal exploitation of natural resources committed unlawfully under the law governing minerals, the law governing forestry, the law governing national reserved forests, the law governing petroleum, the law governing national parks, or

Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	**AMLA**
		the law governing preservation and protection of wild life. (not approved yet)
24		Offenses relating to foreign exchange control under the law governing foreign exchange control (not approved yet)
25		Offenses relating to unfair acts concerning securities transactions under the law governing securities and security exchanges (not approved yet)
26		Offenses relating to gambling under the law governing gambling (not approved yet)
27		Offenses relating to labor cheating under the Penal Code.
28		Offenses relating to liquor under the law governing liquor, offenses relating to tobacco under the law governing tobacco, and offenses concerning excise duties under the law governing excise duties

Although there are sixteen predicate offenses (eight offenses of which are not on the list of FATF designated predicate offenses), the AMLA does not cover the following ten predicate offenses.

- participation in an organized criminal group and racketeering,
- trafficking in human beings and migrant smuggling,
- illicit trafficking in stolen and other goods,
- counterfeiting currency,
- counterfeiting and piracy of products,
- murder, grievous bodily injury,
- kidnapping, illegal restraint and hostage-taking,
- robbery or theft,
- forgery, and
- piracy.

According to the Detailed Assessment Report (DAR)[51] on Thailand made by the IMF assessment team, even if the proposal of eight additional predicate offenses is approved by the Parliament, the list of predicate offenses for money laundering would still not cover the above-mentioned predicate offenses.

[51] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007 (Draft): p. 47, para. 119

The DAR also states[52]:

> *Although the AMLA clearly extends the offense of money laundering to offenses committed abroad, it is silent on the extension of predicate offenses to offenses committed abroad. There is no case law to clarify this uncertainty because the matter has not been tested yet in Thai courts.*

The assessment team recommended that the AMLA should be amended to add all of the FATF offenses mentioned above to the list of predicate offenses, and to make it absolutely clear that the offense of money laundering can be committed when any of the predicate offenses take place outside of Thailand.

According to the IMF's Detailed Assessment Report that is based on the Forty Recommendations (2003) and the Nine Special Recommendations on Terrorist Financing (2001) – FATF 40 + 9 Recommendations – of the Financial Action Task Force, Thailand obtains the grades: Cs (compliant) for 2 Recommendations, LCs (largely compliant) for 4 Recommendations, PCs (partially compliant) for 29 Recommendations, NCs (non-compliant) for 13 Recommendations and NA (not applicable) for 1 Recommendation out of 49 Recommendations depending on how much compliant Thailand is with the respective Recommendations. The following table shows ratings of compliance with FATF 40 + 9 Recommendations. (Please see Chapter V, heading 4.8.1 – IMF mission's comments on compliance ratings for further information.)

Table 7: Ratings of compliance with FATF 40 + 9 Recommendations

Sr. No.	Compliant (C)	Largely compliant (LC)	Partially compliant (PC)	Non-compliant (NC)	Not applicable (NA)
1	R-4 : Secrecy laws consistent with the Recommenda -tion	R-2 : ML offense (material element and corporate liability)	R-1 : ML offense	R-5 : Customer Due Diligence	R-34: Legal arrangement – beneficial owners
2	R-19: Other forms of reporting	R-3 : Confiscation provisional measures	R-10: Record keeping	R-6 : Politically exposed persons	
3		R-28: Power of competent authorities	R-11: Unusual transactions	R-7 : Correspon- dent banking	
4		R-40: Other forms of cooperation	R-13: Suspicious Transaction Reporting	R-8 : New technologies	
5			R-14: Protection and no tipping off	R-9 : Third parties and introducers	
6			R-15: Internal controls, compliance and audit	R-12: DNFBP (R5, 6, 8 – 11)	
7			R-17: Sanctions	R-16: DNFBP (R13 – 15 and 21)	
8			R-18: Shell banks	R-21: Special attention for higher risk countries	
9			R-20: Other NFBP and secure transaction techniques	R-22: Foreign branches and subsidiaries	
10			R-23: Regulation, supervision and	R-24: DNFBP regulation,	

[52] ibid.: p. 47, para. 122

Table 7: Ratings of compliance with FATF 40 + 9 Recommendations

Sr. No.	Compliant (C)	Largely compliant (LC)	Partially compliant (PC)	Non-compliant (NC)	Not applicable (NA)
			monitoring	supervision and monitoring	
11			R-25: Guidelines and feedback	SR VII: Wire transfer rules	
12			R-26: The FIU	SR VIII: Non-profit organizations	
13			R-27: Law enforcement authorities	SR IX: Cross-border declaration and disclosure	
14			R-29: Supervisors		
15			R-30: Resources, integrity and training		
16			R-31: National cooperation		
17			R-32: Statistics		
18			R-33: Legal persons – beneficial owners		
19			R-35: International cooperation – Conventions		
20			R-36: International cooperation – mutual legal assistance (MLA)		
21			R-37: International cooperation – dual criminality		
22			R-38: International cooperation – MLA on confiscation and freezing		
23			R-39: International cooperation – Extradition		
24			SR I: Implementing UN instruments		
25			SR II: Criminalizing terrorist financing		
26			SR III: Freezing and confiscating terrorist assets		
27			SR IV: STR		
28			SR V: International cooperation		
29			SR VI: AML-CFT requirements for money/value transfer services		

4.4 Regulation and supervision of financial institutions

The BOT and MOF are the prudential supervisors for all financial institutions set out in the Commercial Banking Act (CBA). Not only the Commercial Banking Act but also the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business empower the BOT to conduct regulation of the financial institutions covered by those laws. The BOT and the Thai Bankers' Association (TBA) have worked with concerted effort to produce a policy document relating to KYC/CDD standards and programs in accordance with the Basel Committee Core Principles. The BOT exercises both regulatory and supervisory duties. The BOT policy statement was issued on 19 January 2007. It spells out the KYC and CDD practices for all FIs to comply with. The BOT also issued and circulated the BOT guidelines that require

banks to have KYC/CDD policies and procedures and "Operational Risk Audit Manual" that provides guidelines on operational risk management in order to prevent ML.

In Thailand, there is no bank secrecy law that would prohibit sharing information between competent authorities domestically or internationally and between financial institutions and competent authorities [Section 24 of CBA read with Section 35 (3) of CBA].

There are 26 types of financial institutions in Thailand according to Section 3 of the Anti-Money Laundering Act, B.E.2542 (AMLA 1999) and the Ministerial Regulation No.1 (2000). The following table shows the financial institutions with their respective regulating laws and regulators.

Table 8 : Financial institutions

	Financial Institution	Regulator/Supervisor	Regulating Law
1	The Bank of Thailand	MOF	Bank of Thailand Act, B.E. 2485 as amended
2	Commercial Banks	BOT	Commercial Banking Act, B.E. 2505 as amended
3	Finance Companies	BOT	The Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522
4	Credit Foncier Companies	BOT	The Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, B.E.2522 as amended
5a	SFIs that are banks	AMLO, BOT (as MOF agent)	Establishment act relevant to each SFI
5b	SFIs that are non-banks	AMLO, BOT (as MOF agent)	Establishment act relevant to each SFI
6	Savings Cooperatives	The Department of Cooperatives Promotion and the Department of Cooperative Auditing, Ministry of Agriculture and Cooperatives (MOAC)	Cooperative Act, B.E.2511
7	Agricultural Cooperatives	AMLO, MOAC	Cooperative Act, B.E.2511
8.	Social Security Fund	AMLO, and Ministry of Labour and Social Welfare	Social Security Act, B.E.2533
9	Personal Loan Business Companies	BOT	Section 5 of the Announcement of the National Executive Council No. 58, (RE: Personal Loan under supervision) dated 9 June 2005

Table 8 : Financial institutions

	Financial Institution	Regulator/Supervisor	Regulating Law
10	Pawnshops	AMLO and MOI	Pawnshop Act, B.E. 2505
11	Hire Purchase Companies	BOT	--------------
12	Small Industrial Finance Corporations	AMLO, BOT (as MOF agent)	The Industrial Finance Corporation of Thailand Act, B.E.2502
13	Leasing Companies	AMLO	
14	Authorized Money Transfer Agents	AMLO and BOT	Exchange Control Act, B.E.2485
15	Postal Office	AMLO	----------------
16	Credit Card Companies	AMLO and BOT	----------------
17	Companies authorized to issue travelers checks	AMLO and BOT	----------------
18	E. Money Companies	AMLO and BOT	----------------
19	Agricultural Futures Brokers		Agricultural Futures Trading Act, B.E.2542
20	Derivatives Brokers/Dealers	AMLO and SEC	Derivatives Act B.E.2546
21	Securities Companies	AMLO and SEC	The Securities and Exchange Act, B.E.2535
22	Companies that handle cash (such as private securities firms that provide payroll services)		
23	Asset Management Companies (AMC)	BOT (as MOF agent)	Emergency Decree on the Asset Management Company, B.E.2541
24	Life Insurance Companies	AMLO	Life Insurance Act, B.E. 2510 as amended
25	Life Insurance Agents and Brokers	AMLO	Life Insurance Act, B.E. 2510 as amended
26	Authorized Money Changers	BOT (as MOF agent)	Exchange Control Act, B.E.2485

There are eight Specialized Financial Institutions (SFIs) that are established by their respective specific enabling Acts, for example, the Government Savings Bank is established by the Government Savings Bank Act and the Islamic Bank of Thailand by the Islamic Bank of Thailand Act. Although the MOF is given the authority not only to supervise and regulate general activities and operations conducted by the SFIs but also to stop the SFI's activities, the MOF has authorized the BOT to exercise oversight of all SFIs and to perform on-site inspections pursuant to the supervision and regulation authority given to the MOF under each SFI establishment Act. The BOT is required to make suggestions along with the result of its supervision to the MOF about any action the MOF should take in respect of each SFI. As indicated by the authorities, SFIs are "allowed to apply" the BOT Notification on Accepting Deposits. The MOF ordered all SFIs to implement their own AML-CFT internal policies following the requirements of a policy document regarding AML-CFT and KYC/CDD for SFIs based on the contents of the TBA guidelines.

The Agricultural and Saving Cooperatives are regulated and supervised by the Cooperative Promotion Department (CPD) and the Cooperative Auditing Department (CAD) of the Ministry of Agriculture and Cooperatives. The CPD reviews fitness and

properness of directors or managers of cooperatives in the registration and issued an unenforceable circular in 2000 and requested cooperatives that all of their transactions be performed in compliance with the requirements of the AMLA whereas the CAD conducts on-site inspections of cooperatives on an annual basis[53].

Credit card operators in Thailand can be classified into 2 groups: 1) non-bank companies (12 companies – 2 of them are subsidiaries of commercial banks); and 2) commercial banks (8 commercial banks). The MOF is the primary authority for regulating non-bank companies, but the MOF permits the BOT to set all related regulations for non-bank companies, which require the prior approval from the MOF. None of the credit card companies are subject to the AMLA.

The BOT has supervised non-bank credit card companies since November 2002 and non-bank e-money businesses since December 2004. The BOT issued regulations aimed at enhancing consumer protection and for preventing the excessive build-up of household debts, especially credit card debt but neither of these specifically address AML/CFT issues.

Regarding pawnshops, the Minister of Interior is responsible for the regulation and oversight of pawnshops under the Pawnshop Act B.E. 2505. The IMF[54] states:

> *Pawnshops are not legally subject to the AMLA. However, some provisions in the Pawnshop Act B.E. 2505 are relevant to AML-CFT. As stipulated in section 18 (bi), in making a pawning deal, a pawnbroker shall clearly record data of the ID card of the pawning person on the stub of the pawning ticket. Where the pawning person does not need a citizen ID card, the pawnbroker shall record data of the paper stating the name and address of the person.*

4.5 Securities industry in Thailand

Securities industry is regulated and supervised by the SEC under the Securities Exchange Act (SEA) and the Derivatives Act (DA). The SEC is not only responsible for regulating the securities and derivatives sector through issuing notifications under both the SEA and the DA but also for supervising securities firms and derivatives firms (except for agricultural futures brokers – supervised by the AFTC) for compliance with the requirements applying to them using a risk-based supervision framework comprising both off- and on-site supervision.

The MOF approves market entry for securities firms on the recommendation of the SEC and the SEC approves market entry for derivatives businesses. Securities industry is divided into three groups – the equity market, the bond market and the futures market.

Equity Market*:* Thailand's only authorized secondary securities market is the Stock Exchange of Thailand (SET) regulated by the SEC. The trading system operated at the SET is computerized and the clearing and settlement process is managed by

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[53] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007 (Draft): pp.182 – 184, paras. 852 – 860.

[54] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007 (Draft): p.131, para. 587.

Thailand Securities Depository Co., Ltd. (TSD), a wholly-owned subsidiary of the SET.

***Bond Market**:* The bond market is also operated by the SET. Settlement of government securities was transferred from the Bank of Thailand to Thailand Securities Depository (TSD) in May 2006 to make the TSD the single provider of securities settlement system in Thailand. In addition, the SET operates a Bond Electronic Exchange (BEX) aimed at retail bond investors.

Futures Market: The Thailand Futures Exchange Plc (TFEX) established on May 17, 2004 and responsible for providing and regulating the market for derivatives trading in Thailand is a subsidiary of the SET. The trading system on the TFEX is electronic trading where only member brokerage firms are allowed to access the Exchange trading system. A brokerage firm can apply for TFEX membership after having a license from the SEC.

The primary regulator of the Thai capital market governed under various laws and regulations is the Securities and Exchange Commission (SEC) established in 1992. In order to construct a new legal framework and mark a new era for the Thai capital market, the Securities and Exchange Act (SEC Act) B.E. 2535 (1992) was enacted on March 16, 1992. The Act came into force in May 1992. This law empowers the Office of the SEC to be the independent state agency to reinforce the unity, consistency, and efficiency in supervision and development of the capital market of the country.

The following diagram shows the summarized securities industry structure from the Detailed Assessment Report on Thailand by the IMF.

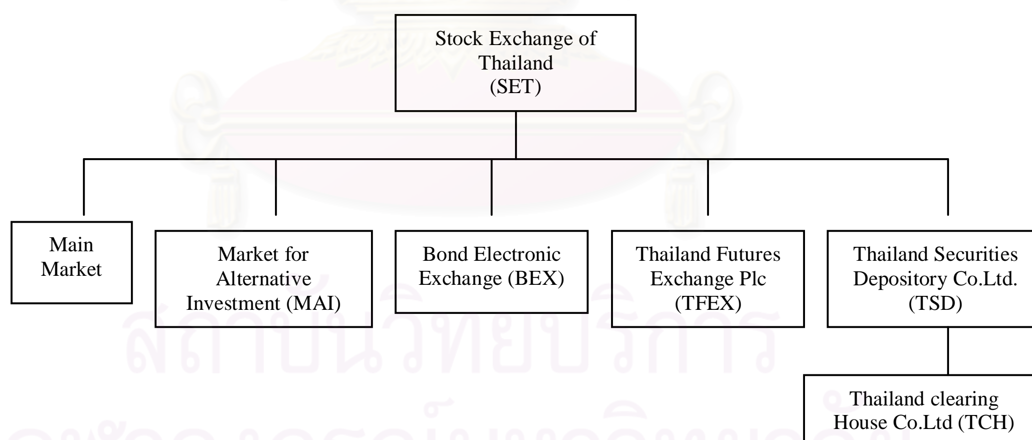

Figure 6: Structure of SEC financial sector

Since the majority of securities companies are not cash based, they are less vulnerable to misuse of abuse than the banking system at the first stage – placement stage – of illegal funds. On the other hand, they are potential to be used at the second stage – layering stage – of money laundering for they enable the launderers to disguise the illegal funds and conceal the source of the illicit proceeds. Money launderers are also attracted to the securities industry for integrating criminal proceeds into the general economy, which is the third stage of money laundering.

The Securities Exchange Law was enacted and the Securities Exchange of Thailand (SET) officially started trading in April 1975. On 1 January1991, the SET changed its name to “The Stock Exchange of Thailand (SET)” that is a juristic entity set up under the Securities Exchange of Thailand Act B.E. 2517 (1974).

As the SET is the immediate monitor of securities trading information, whenever any suspicious practices in securities trading occur, the SET holds primary responsibility for inspection and gathering all related evidence and facts for further action and coordination with the Securities and Exchange Commission of Thailand and the police at the Economic Crime Investigation Division.

Key projects included the Annual General Shareholders Meeting Assessment Program and the proposals for several amendments to the Securities and Exchange Act B.E. 2535 (1992) in support of material advancements in the corporate governance efforts. Since some new rules related to anti-money laundering have already been promulgated, the SEC accordingly produced a number of documents[55] for combating ML and FT.

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[55] 1. Draft Notification of the Office of the Securities and Exchange Commission on “Rules, Conditions and Procedures Concerning the Management of Risks to Prevent the Use of Securities Business for Money Laundering and Financing of Terrorism”

2. The Association of Securities Companies’ Guidelines (ASCO) on KYC/CDD to be approved by the SEC

3. Risk Classification

4. List of NCCT and high-risk countries

5. Documentation Supporting Securities Trading Account Opening

6. The Association of Investment Management Companies’ Guidelines (AIMC) on KYC/CDD to be approved by the SEC

7. The Notification No. Kor Thor. 42/2543 Re: Rules, Conditions and Procedures for Securities Brokerage and Securities Trading which is not the Debt Instrument dated 26 September 2000.

8. The Notification No. Kor Thor. 65/2547 Re: The Conduct for Derivative Business for the Entity with Derivative Agent Licensed dated 22 December 2004.

9. The Notification No. Or. Thor. 21/2543 dated 11 October 2000.

10. The Circulation No. Thor. (Vor) 1896/2549 The clarification with respect to working practice in contacting with investor and managing settlement of risk dated 30 August 2006.

11. The Notification No. Sor Khor / Nor. 4/2549 Re: Operating system for the undertaking of Fund Management Business dated 8 March 2006.

12. The Notification No. Kor Nor. 30/2547 Re: Rules, Conditions and Procedures for Establish Management of Fund dated 30 June 2004.

13. The Notification No. Sor Khor. 43/2547 Re: Rules, Conditions and Procedures for Sale or Acceptance of Redemption of Investment Units and Solicitation of Customers to enter into a Private Fund Contract dated 3 December 2004.

14. The Notification No. Kor Thor. 43/2543 Re: Rules, Conditions and Procedures for Securities Trading of Debt Instrument dated 26 September 2000.

15. The Notification No. KorThor. 24/2549 Re: Rules, Conditions and Procedures for Operational Control of Securities Underwriting dated 25 October 2006

16. Securities and Exchange Act B.E. 2535

17. The Derivatives Act B.E. 2546

18. The Notification No. Or Khor / Nor. 5/2549 Re: Compliance Guideline for Fund Management Business Working System dated 8 March 2006

19. The Notification No. Kor Thor / Nor / Khor. 3/2548 Re: Prohibited Characteristics of the Personnel in Securities Business dated 17 January 2005

20. The Notification No. Kor Thor / Nor / Khor. 4/2548 Re: Qualifications and Other Prohibited Characteristics of Executives of Securities Companies dated 17 January 2005

21. The Notification No. Or Thor/Nor/Khor/Yor 6/2548 Re: Guideline for the approval of directors and managing director of securities companies dated 8 April 2005

On the international front, the SEC has performed its role at the International Organization of Securities Commissions (IOSCO) and carried on with the regional campaign for consistent cooperation, at bilateral and multilateral levels, in several areas among member jurisdictions. Furthermore, the SEC contributed to the establishment of international supervisory standards at the IOSCO's implementation Task Force and was appointed as Chairman of the Asia-Pacific Regional Committee (APRC).

In early 2007, The SEC conducted a themed AML-CFT inspection of securities firms to ascertain whether they had in place AML-CFT policies and risk management systems, a documented KYC/CDD process, and a process for recording and filing STRs. In terms of sanctions, the SEC has issued letters to 48 of the firms inspected in early 2007 requiring them to rectify the deficiency in their policies and procedures that were discovered, but has not imposed any other type of sanctions as many of the AML-CFT requirements are new for the securities sector.

The legal enforcement against securities business offenses became more efficient with a significant increase in the number of the settlement cases and a milestone progress in the collaboration with other agencies in criminal proceedings.

4.6 Insurance industry in Thailand

The life Insurance Act (1992) and the Insurance against Loss Act (1992) regulate the insurance industry in Thailand while insurance companies are supervised by the Department of Insurance (DOI)[56] within the Ministry of Commerce. In order to fulfill all the applicable requirements of IAIS, coordination and cooperation between the AMLO and the DOI are indispensable. Although the AMLO has issued regulations related to anti-money laundering sector-wise, if the DOI does not include anti-money

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22. The Notification No. Sor Khor. 15/2548 Re: The Approval of Marketing Officer and working conduct dated 21 June 2005
23. The Notification Kor Thor / Nor / Khor 35 / 2548 Re: Prohibited Characteristics of the Personnel in Derivatives Business dated 13 September 2005
24. The Notification No. Kor Thor / Nor / Khor 37 / 2548 Re: Prohibited Characteristics of the Director in Derivatives Business dated 13 September 2005
25. The Notification No. Or Thor/Nor/Khor/Yor 11/2548 Guideline for the approval of directors and managing director of Derivatives Business dated 31 October 2005
26. The Notification No. Sor Khor. 25/2548 Re: The Approval of Marketing Officer and working conduct for Derivative Business dated 28 September 2005
27. Ministerial Regulation No.5 (B.E. 2539) Promulgated under the Securities and Exchange Act B.E. 2535
28. Ministerial Regulation Concerning Approval on Undertaking of Securities Business in the Category of Mutual Fund Management B.E. 2545
29. Ministerial Regulation No. 15 (B.E. 2543) Promulgated under the Securities and Exchange Act B.E. 2535
30. The Notification of the Ministry of Finance Re: Prescription of conditions for Securities companies to apply for approval of person to be major shareholder
31. The Notification No. Sor Thor 2/2549 Re: Filing and record keeping for Derivative business

[56] DOI formerly under the Ministry of Commerce has been renamed as Office of Insurance Commission (OIC) and placed under the Ministry of Finance by virtue of the provisions of the Commission for Supervision and Promotion of Insurance Business Act BE. 2550 (2007), becoming effective on 1 September 2007. http://www.Oic.or.th/type-doi/act 2550.pdf [Read December 2007]

laundering requirements in its supervision program, the Thailand insurance sector cannot be compliant with the IAIS standards. On the other hand the AMLO, as the dedicated anti-money laundering agency, should avail itself of all its supervisory tools to ensure that there are adequate AML controls in insurance businesses. According to the IMF reports it seems that the collaboration between the AMLO and the DOI needs to be strengthened. The IMF[57] recommended as follows:

> 1. *AMLO, in collaboration with the relevant financial sector supervisors (BOT, SEC, DOI, and CPD) should organize further seminars/workshops to raise awareness among financial institutions, in particular, domestic ones, regarding the ML/FT risks to the financial sector and the effective internal controls for AML/CFT compliance.*
>
> 2. *The AMLO and the relevant financial sector supervisors (BOT, SEC, DOI, and CPD) should develop or update regulations/circulars/notifications which include details of requirements for financial institutions regarding customer due diligence, record keeping, on-going monitoring of accounts and transactions, suspicious transaction reporting, and internal controls and compliance for AML/CFT. In particular, the consultation with the private sector in the process of developing/ updating regulations/ circulars/ notifications would be useful for awareness raising among financial institutions.*
>
> 3. *The AMLO and the relevant financial sector supervisors (BOT, SEC, DOI, and CPD) should monitor implementation of these regulations/ circulars/ notifications by reviewing compliance with them through off-site monitoring and on-site inspections. In particular, senior management of financial institution should be interviewed by the financial sector supervisors regarding their recognition of AML/CFT issues.*

The DOI has issued two notifications:

1. Operational Guidelines for Compliance Function of Insurance Company (25 September 2006); and
2. General Rules on Know Your Customer / Customer Due Diligence (KYC/CDD) for the Anti-Money Laundering and Combating the Financing of Terrorism (13 February 2007).

The IMF[58] comments:

> *The DOI has issued 2 notifications, one, on September 25, 2006, setting forth "Operational guidelines for compliance function of insurance company", the other dated February 13, 2007, informing life insurance companies to use "as their practical guidelines" the DOI Policy Statement containing "General Rules on Know Your Customer/ Customer Due Diligence (KYC/CDD) for the Anti-Money Laundering and Combating the Financing of Terrorism: AML-CFT". The authorities indicated that these notifications do not set forth enforceable provisions for the insurance sector.*

Under the Life Insurance Act, B.E.2510 as amended, the DOI has neither powers to monitor insurance companies for compliance with the AML-CFT requirements in the AMLA nor powers of sanction against insurance companies and their directors for

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[57] IMF, "IMF legal team's report on Thailand", September 2005: pp. 23 -24, para. 28

[58] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007 (Draft): p.125, para. 556

failure to comply with AML-CFT requirements even though under Section 45 of the Life Insurance Act, the insurance commissioner has the power to order a company to submit reports and documents. Only the Ministry of Commerce has the power to supervise the insurance companies.

The IMF Detailed Assessment Report on Thailand (2007) states[59]:

> *Under the Life Insurance Act, the DOI within the Ministry of Commerce is responsible for regulating and supervising life insurance companies. The focus of the DOI is on regulating the overall prudential health of life insurance companies. The DOI considers that the AMLO is the primary regulator of life insurance companies for AML/CFT requirements. The DOI has not issued any regulatory requirements on AML-CFT for life insurance companies. The DOI does not conduct any supervision of life insurance companies for compliance with AML-CFT requirements under the AMLA. Accordingly, there is no real effective supervision of the insurance sector for compliance with AML-CFT requirements.*

4.7 Thailand and universal instruments

There are twelve universal instruments against terrorism (Please see Chapter 2, heading 4.1 United Nations). In addition there are 4 instruments (International Convention for the Suppression of Acts of Nuclear Terrorism – signed on 13-04-05, Amendment to the Convention on the Physical Protection of Nuclear Material signed on 08-07-05, Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation signed on 14-10-05, and Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed on 14-10-05) that have not come into force yet.

The key principle established by the universal instruments is to prosecute or extradite to ensure that no safe haven exists for terrorists. The instruments can be divided into five categories: (1) aviation, (2) internationally protected persons and taking of hostages, (3) maritime, (4) nuclear and explosives and (5) financing of terrorism.

<u>Aviation</u>

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (1969)
- Convention for the Suppression of Unlawful Seizure of Aircraft (1971)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1973)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (1989)

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[59] IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007 (Draft): p.185, para. 868.

Internationally Protected Persons and Taking of Hostages

§ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1977)

§ International Convention Against the Taking of Hostages (1983)

Maritime

§ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1992)

§ Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1992)

Nuclear and Explosives

§ Convention on the Physical Protection of Nuclear Material (1987)

§ Convention on the Marking of Plastic Explosives for the Purpose of Detection (1998)

§ International Convention for the Suppression of Terrorist Bombings (2001)

Financing of Terrorism

§ International Convention for the Suppression of the Financing of Terrorism (2002)

Thailand is making every effort to become a party to all international conventions on terrorism. So far, Thailand has ratified the six conventions in three categories – aviation, nuclear and explosives, and financing of terrorism – according to the status list of International Conventions on Terrorism updated by the UNODC as at 7 June 2006. The following are the dates on which Thailand ratified those particular conventions.

1. 6 March 1972 – Convention on Offenses and Certain other Acts Committed on Board Aircraft (1963)
2. 16 May 1978 – Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
3. 16 May 1978 – Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
4. 16 May 1996 – Protocol for the Suppression of Unlawful Acts of Violence at Airports, Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal (1988)
5. 29 September 2004 – International Convention for the Suppression of the Financing of Terrorism (1999)

6. 25 January 2006 – Convention on the Marking of Plastic Explosives for the Purpose of Detection (1998)

In 2002, Thai Cabinet established a Committee that has the responsibility of

determining what new or amended legislation is necessary for Thailand to implement the remaining treaties and protocols relating to terrorism. In 2003, Thailand held an international conference known as *"The Pacific Rim International Conference on Money Laundering and Financial Crimes"* at Bangkok from 24-26 March 2003, where 492 participants from across the globe attended. Thailand organized two workshops on International Legal Cooperation against Terrorism held in Bangkok and Phuket, Thailand, in January and May 2005 respectively. The Terrorism Prevention Branch (TPB) of the United Nations Office on Drugs and Crime contributed to the World Bank training on the "Combating the Financing of Terrorism" held in Bangkok, Thailand on 9-13 May 2005. It also conducted a comparative study on "*Anti-Terrorism Legislative Developments in Seven Asian and Pacific Countries"*. However, unfortunately, Thailand was not one of them. The study is undertaken within the framework of TPB's technical assistance activities in support of the ratification and implementation of the universal instruments against terrorism, focusing on two aspects of international cooperation in criminal matters: extradition and mutual assistance.

Anti-terrorism legislative developments in seven Asian and Pacific countries are reviewed under three topics[60] that are going to be used for the review of Thailand relating to the twelve universal instruments against terrorism.

- Legislation governing terrorism offenses
- Jurisdiction
- International cooperation in criminal matters
  - Extradition
  - Mutual assistance in criminal matters

4.7.1 Legislation governing terrorism offenses

It is a general practice in Thailand that laws are changed before ratifying any convention or protocol so that the government does not need to obtain the approval from the parliament to ratify the convention or protocol for the situation is not under the requirement of the 1997 Constitution Section 224.

4.7.1.1 Aviation

Thailand ratified all the four aviation-related Conventions: Convention on Offenses and Certain Other Acts Committed on Board Aircraft (1963); Convention for the Suppression of Unlawful Seizure of Aircraft (1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); and Protocol for the Suppression of Unlawful Acts of Violence at Airports, Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal (1988).

The Act on Certain Offenses against Air Navigation B.E.2521 was enacted in 1978. Since Article 5 of the Act on Certain Offenses against Air Navigation B.E.2521

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[60] Terrorism Prevention Branch of United Nations Office on Drugs and Crime, "Comparative Study on Anti-Terrorism Legislative Developments in Seven Asian and Pacific Countries : Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, the Philippines, Timor-Leste and Viet Nam, Vienna, January 2006: pp. 19 – 24

criminalizes seizure of an aircraft or exercising control of an aircraft in flight by force or threat to harm a person on board or endanger the safety of the aircraft with penalty from 10 years to life imprisonment or death penalty Thailand was ready to ratify the Convention on Offenses and Certain Other Acts Committed on Board Aircraft (1963) and the Convention for the Suppression of Unlawful Seizure of Aircraft (1970).

Thailand ratified the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) due to the following points.

(i) Section 6 of the Act on Certain Offenses against Air Navigation B.E.2521 (1978) criminalizes destroying an aircraft in service or causing damage to such an aircraft which endangers the safety of an aircraft in service with penalty from five years to life imprisonment or death penalty;

(ii) Section 7 of the Act criminalizes performing or threatening to perform an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft with penalty from one to ten-year imprisonment;

(iii) Section 8 of the Act imposes imprisonment from one to five years for destroying or damaging air navigation facilities or interferes with their operation or if any such act is likely to endanger the safety of aircraft in flight; and

(iv) Section 9 of the Act imposes imprisonment from five to twenty years for providing information knowing it to be false, thereby endangering the safety of an aircraft in flight.

Before Thailand ratified the Protocol for the Suppression of Unlawful Acts of Violence at Airports, Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal (1988) Article 6 *bis* was added to the Act on Certain Offenses against Air Navigation B.E.2521 (1978) in 1995. It criminalizes:

(i) an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; and

(ii) destroying or seriously damaging the facilities of an airport serving international aviation or aircraft not in service located thereon or disrupting the services of the airport, if such an act endangers or is likely to endanger safety at that airport with penalty from five years to life imprisonment or death penalty.

4.7.1.2 Internationally protected persons, and taking of hostages

Thailand has not ratified the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1977) and the International Convention against the Taking of Hostages (1983). They are still under consideration.

4.7.1.3 Maritime

Although Thailand has not ratified the Convention for the Suppression of Unlawful

Acts against the Safety of Maritime Navigation (1992) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1992), the Prevention and Suppression of Unlawful Acts against Maritime Navigation (Pirates) Act B.E. 2534 was enacted in 1991.

(i) Section 15 of the Act criminalizes seizing or exercising control over a ship by force or threat to harm a person on board with imprisonment from five years to ten years.
(ii) Section 16 of the Act criminalizes destroying a ship with imprisonment from five year to life imprisonment or death penalty.
(iii) Section 18 of the Act criminalizes causing damage to a ship without endangering the safety of that ship with imprisonment from six months to five years.
(iv) Section 17 of the Act criminalizes causing damage to a ship with endangering the safety of that ship with the imprisonment from six months to seven years. If these offenses cause serious injury or death of a person, the aggravated penalty is up to life imprisonment or death penalty.

4.7.1.4 Nuclear and explosives

Thailand ratified only one of the three conventions related to nuclear and explosives that is the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1998). The Convention on the Physical Protection of Nuclear Material (1987); and the International Convention for the Suppression of Terrorist Bombings (2001) are still under consideration.

Thailand has laws on Munitions – the Munitions of War Control Act B.E.2490, the Firearms, Ammunition, Explosive Articles and Fireworks and Imitation Firearms Act B.E.2490, the Act on Export Control of Armaments and Materials (1952), and the decree on the Export Control of Armaments and Materials (1992). The Munitions of War Control Act B.E.2490 was adopted in 1947. It requires individuals who wish to manufacture, purchase, possess, use or import guns, bullets or explosives to seek permission from the registrar. It prohibits a person from:

(i) importing, procuring, bringing in, manufacturing, or processing weapons except with permission of the Permanent Secretary of the Department of Defense, and
(ii) giving weapons to individuals who may cause any violence to the public peace.

The Act on Export Control of Armaments and Materials (1952) and the decree on the Export Control of Armaments and Materials (1992) regulate the export or transshipment of weapons and explosives. Individuals seeking to export or transship weapons or explosives are required to seek permission from the Minister of Defense, and subject to certain conditions.

4.7.1.5 Financing of terrorism

As regards criminalization of terrorist financing, Thailand ratified the International Convention for the Suppression of the Financing of Terrorism (1999) in 2004. Article

2 of the Convention requires that the domestic law of a country must create offenses concerning the collection or provision of funds or assets with the intention or knowledge that they will be used for terrorist acts.

Consequently, before ratifying the International Convention for the Suppression of the Financing of Terrorism (1999) on 29 September 2004, the Anti-Money Laundering Act, B.E.2542 (AMLA) came into force in August 1999 and "terrorist acts and financing of terrorism" was added as the 8th predicate offense by means of two Emergency Decrees[61] which amended both the AMLA and the Penal Code. It became effective on 11 August 2003. Thailand has a firm policy in condemning terrorism in all its forms and manifestations.

4.7.2 Jurisdiction

Under the Anti-Money Laundering Act Section 6 lists various circumstances where Thailand will have jurisdiction over an alleged offender.

1. Either the offender or co-offender who is a Thai national or resident of Thailand or an alien who has taken action to commit an offense in Thailand.
2. An alien whose action is considered an offense in the country where the offense is committed under its jurisdiction and if that alien appears in Thailand and is not extradited under the Extradition Act, Section 10 of the Penal Code shall apply *mutatis mutandis.*

Penal Code:

Section 10

Whoever does an act outside the Kingdom, which is an offense according to various Sections as specified in Section 7(2) and (3), Section 8 and Section 9 shall not be punished again in the Kingdom for the doing of such act, if:

(1) there be a final judgment of a foreign Court acquitting such person ; or

(2) there be a judgment of a foreign Court convicting such person, and such person has already passed over the punishment.

If the sentenced person has suffered the punishment for the doing of such act according to the judgment of the foreign Court, but such person has not yet passed over the punishment, the Court may inflict less punishment to any extent than that provided by the law for such offense, or may not inflict any punishment at all, by having regard to the punishment already suffered by such person.

In order to comply with UNSC Resolution 1373, amendment to the Penal Code Sections 135/1-3 (Please see heading 3.2.1 – Predicate offenses) not only defines the scope of terrorism but also treats terrorist acts as serious offenses. It also criminalizes all steps – preparation, conspiring, supporting and abetting, – in the terrorism process, and the commission of acts of terrorism.

Section 3/1 of the Civil Procedure Code applies to the offenses committed on board a ship or aircraft registered in Thailand or operated by the Thai government. It states:

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[61] AMLO, "A Compendium of Anti-Money Laundering Laws and Regulations" : p. 26 & – Amendments of Penal Code and Anti-Money Laundering Act: pp. 26 – 27

For the purpose in submission of the plaint in the case where the cause of action occurs in Thai vessel or aeroplane outside the Kingdom, the Civil Court shall be the Court of the territorial jurisdiction.

4.7.3 International cooperation in criminal matters

4.7.3.1 Extradition

It is undeniable that one country alone cannot control, fight and suppress transnational crimes effectively and successfully, and international cooperation between countries is of essence to combat such crimes to the end. Extradition – an important legal mechanism – is a formal transference of a fugitive from one country to another for prosecution or punishment.

The Thai Extradition Act – B.E. 2472 (1929) – requires Thailand to provide international cooperation to foreign countries where there is an Extradition Treaty between the requesting country and Thailand. On the other hand, Thailand has extradited persons even to countries with which Thailand does not have an extradition treaty on the basis of reciprocity.

According to the Act, the fugitive cannot be extradited unless the following conditions are satisfied[62].

1. Double criminality:
   The offense on which a request for extradition is based must be an offense under Thai law carrying a punishment of not less than one year of imprisonment (Section 7).

2. Non-political offense:
   If the offense on which a request for extradition is based is a political offense, the fugitive cannot be extradited. (Section 10 and Section 17-3).

3. Double jeopardy:
   Extradition is prohibited if the offender has already been tried for the crime on which a request for extradition is based (Section 5).

4. Prohibition on extradition of nationals:
   The Extradition Act does not expressly prohibit the extradition of nationals but only requires the court to consult the Minister of Justice before it orders a Thai national to be released. The Minister of Justice may permit such extradition if he disagrees with the court (Section 16).

The procedure under the Act is:

1. The extradition request together with the necessary documents must be sent through diplomatic channels (Article 6).

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[62] Hon. Suchart Traiprasit (former Attorney General of Thailand), "The Role of Thai Prosecutors in the Fight against the Transnational Crime" [Read December 2006, September 2007] http://www.acpf.org/Activities/public%20lecture1999/prsctrnsnatcrime(E).html

Proceedings shall commence with a request from a foreign government to the Royal Siamese Government through the diplomatic agents of such Government for the extradition of a certain person, or in the absence of such diplomatic agents through the competent Consular Officers.

2. The request then will be forwarded to the Ministry of the Interior for consideration. The Ministry of the Interior may order the accused to be arrested (Article 8). The arrest proceeding is then proceeded by the Royal Thai Police.

   Unless the Royal Siamese Government decides otherwise, the request together with the accompanying documents shall be transmitted to the Ministry of the Interior in order that the case may be brought before the Court by the Public Prosecutor. The Ministry of the Interior may order the accused to be arrested or may apply to the Court for a warrant of arrest.

3. After the arrest, the Public Prosecutor of the International Affairs Department, Office of the Attorney General will take over the case and apply to the Criminal Court in Bangkok for a hearing before the judge.

4. The Court is directed by the Act that he should not be allowed bail in the extradition case (Article 11).

   After arrest the accused must be brought without unnecessary delay before the Court and a preliminary investigation must be made in accordance as far as possible with the Siamese rules of procedure in criminal cases. The Court may order a remand from time to time on the request of either party and for good and sufficient reasons but the Court should not allow bail in these cases.

5. In the normal case, the hearing will take about a year.

6. After the court makes a positive ruling under the Act (an order authorizing the accused to be detained with a view to being surrendered), it normally will take a month to surrender the accused to the requesting state. After the ruling the accused has right to appeal to the Court of Appeal within 15 days and shall not be sent out of the country during that period (Article 15). The decision of the Court of Appeal is final both on point of fact and law (Article 17).

The ADB Analysis Report recommends that the following changes should be made concerning extradition[63].

1. *Amend the Extradition Act to allow Thailand to refuse extradition where it has substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.*

[63] ADB, "ADB consultants' analysis report on Thailand", April 2006: pp.34 - 35

2. *If necessary and appropriate under Thai law, amend the Extradition Act to provide that mutual assistance may not be refused on the ground that the offense in respect of which assistance is sought is a fiscal offense and Thailand is a party to a treaty that provides mutual assistance shall not be refused for the offenses it covers on the ground that such offenses are fiscal offenses.*

3. *Amend the Extradition Act to provide that where Thailand is a state party to a convention that requires that a specified offense shall not be considered to be a political offense or an offense connected with a political offense or an offense inspired by the political motives for the purposes of extradition obligations, the requirement contained in Section 12 (3) of that Act relating to political offenses shall not apply.*

4. *Amend the Extradition Act to designate the Attorney General as the Central Authority to take necessary steps in response to any extradition request.*

5. *Amend the Extradition Act to prohibit the granting of bail to anyone subject to extradition, except when the Court deems it appropriate. In addition, require the court to consult the public prosecutor prior to granting provisional release on bail. If the public prosecutor has no objection, the court may then issue such a provisional release on bail.*

6. *Amend Section 8 of the Penal Code to ensure that it covers the full range of offenses under the Palermo Convention so that it can prosecute in Thailand when it refuses to extradite a Thai national.*

7. *If appropriate, amend the Extradition Act to allow surrender of a Thai national to another country on condition that, if convicted, the person shall be returned to Thailand to serve the sentence imposed.*

8. *Consider whether it would be desirable to amend the Extradition Act to allow the enforcement in Thailand of a foreign sentence in cases where a foreign country seeks extradition for the purpose of enforcing an already imposed sentence.*

9. *Amend the Extradition Act to give Thailand sufficient time to seek, and obtain assurances in relation to, further material from the requesting country.*

4.7.3.2 Mutual assistance in criminal matters

In addition to extradition, mutual assistance in criminal matters regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters has been taking a vital role in AML-CFT regimes. The Palermo Convention contains the internationally agreed elements of mutual legal assistance[64]. They are:

§ taking evidence or statements from persons;
§ effecting service of judicial documents;
§ executing searches and seizures, and freezing;
§ examining objects and sites;
§ providing information, evidentiary items and expert evaluations;
§ providing originals or certified copies of relevant documents and records including government, bank, financial, corporate or business records;

[64] "United Nations Convention against Transnational Organized Crime" – Palermo Convention – (2000), Article 17, No. 3

- § identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- § facilitating the voluntary appearance of persons in the requesting State Party; and
- § any other type of assistance that is not contrary to the domestic law of the requested State Party.

General criteria, according to the Act on Mutual Assistance in Criminal Matters, cover the following aspects of criminal justice.

1. Investigation, inquiry and testimony
2. Compiling and providing documents or information
3. Delivery of documentary evidence
4. Search and seizure
5. Transferring or accepting a person in custody for taking testimony
6. Tracing of subjects or individuals
7. Initiating criminal proceeding upon request
8. Confiscation or seizure of assets

In order to implement the Treaty on Mutual Assistance in Criminal Matters with the United States of March 19, 1986, the Thai government enacted the Act on Mutual Legal Assistance in Criminal Matters B.E. 2535 in 1992. After this law was passed, the country having a mutual assistance treaty with Thailand can request for assistance via the Central Authority (the Attorney General) and a country that has no treaty with Thailand can also request assistance under the principle of reciprocity through diplomatic channels.

> ***Section 9/1***
> *Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides [providing?] that such state commits to assist Thailand under the similar manner when requested.*
>
> ***Section10***
> *The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The State which has no such treaty shall submit its request through diplomatic channels.*

The ADB Analysis Report recommends that the following changes should be made concerning mutual assistance[65].

1. *Amend Section 12 of the Mutual Assistance Act to allow the designation of other competent authorities to which foreign requests may be assigned for example:-*
    - *appropriate officials of the National Counter-Corruption Commission*
    - *the Transaction Committee and the Secretary-General of the Anti-Money Laundering Office; and*
    - *special case inquiry officials under the Special Case Investigation Act*

2. *If necessary and appropriate under Thai law, amend the Mutual Assistance Act to deal with fiscal offenses. The amendment could provide that mutual assistance may not be refused on the ground that the offense in respect of*

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[65] ADB, "ADB consultants' analysis report on Thailand", April 2006: pp.32 – 34

which assistance is sought is a fiscal offense and Thailand is a party to a treaty that provides mutual assistance shall not be refused for on the ground that an offense is a fiscal offense.

3. *Amend the Mutual Assistance Act to provide that where Thailand is a state party to a convention that requires that a specified offense shall not be considered to be a political offense for the purposes of mutual assistance obligations, the requirement contained in Section 9 (3) of that Act relating to political offenses shall not apply.*

4. *If necessary and appropriate, ensure that relevant laws do not permit any person to refuse to give evidence or produce documents or otherwise assist in the execution of a request for assistance on the grounds of bank secrecy provisions. Also ensure that Thailand's public interests under Section 9 (3) of the Mutual Assistance Act do not include the concept of bank secrecy.*

5. *Amend Part 9 of the Mutual Assistance Act to provide a power to grant a foreign request for the freezing of restraint of an asset suspected of being related to a money laundering offense in another country.*

6. *Amend Part 9 of the Mutual Assistance Act to ensure that it covers foreign criminal forfeiture orders.*

7. *Amend the Mutual Assistance Act to allow Thailand to provide assistance which does not need the exercise of compulsory powers in Thailand even though dual criminality does not exist.*

8. *If necessary, amend the Mutual Assistance Act to make it an offense for a Thai official or other person to disclose that a request has been made or the contents of a request.*

9. *Consider whether Thailand wishes to expressly provide in Section 9 of the Mutual Assistance Act that it may refuse to provide assistance if it has substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.*

10. *Amend the Mutual Assistance Act to allow the taking of testimony for a foreign country by the use of video conferencing or other appropriate technology.*

11. *Consider amendment either of the Mutual Assistance Act or the Criminal Procedure Code to give more flexibility to the powers of the Attorney-General or the Public Prosecutor to deal with foreign requests.*

12. *Amend the Mutual Assistance Act to allow, in appropriate cases, property confiscated in Thailand at the request of a foreign country to be:*
    - *returned to the requesting country to facilitate compensation to victims of the crime;*
    - *shared with the requesting county; or*
    - *contributed to a special international fund.*

The following is the AMLO's Policy Statement on international cooperation[66]

[66] "Measures for Anti-Money Laundering and Combating the Financing of Terrorism Policy Statement on International Cooperation"
http://www.amlo.go.th/amlo_new/img/upload/PDF/measures_en_annex2.pdf [Read: June 2007]

approved by the Cabinet on 27 February 2007.

Measures for Anti-Money Laundering and Combating the Financing of Terrorism Policy Statement on International Cooperation

Rationale

Money laundering is increasingly being perpetrated on a cross-border basis. Various United Nations and other intergovernmental standards have been developed, and these impact on the obligations of states to work both globally and within their respective regions. Thailand is obliged to comply with the following international obligations.

1. *United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances*
2. *United Nations Convention against Transnational Organized Crime*
3. *International Convention for the Suppression of the Financing of Terrorism*
4. *United Nations Security Council resolutions*
5. *Financial Action Task Force's 40 Recommendations and 9 Special Recommendations*
6. *United Nations Charter*

Thailand already has in place a relevant law that meets various measures stipulated in the Conventions for countries wishing to become parties thereto. At present Thailand has already enacted an anti-money laundering law, i.e., Anti-Money Laundering Act B.E 2542. The Act criminalizes 8 predicate offenses. The Act was published in the government gazette on 21st April 1999 and came into force on 19th August 1999. Later, by virtue of the Act, Ministerial Regulations, Rules, and other Notifications were issued and became effective on 27th October 2000 resulting in complete enforcement of Thailand's anti-money laundering legislation.

Given the transnational nature of money laundering (ML), solid international cooperation is the key to achieving effective implementation of the international obligations under domestic laws. The scope of international cooperation includes exchange of information such as financial transactions and intelligence between special purpose bodies such as financial intelligence units, in such matters as investigation and prosecution offenses and searching, freezing and confiscating illicit proceeds. Other forms of cooperation are prosecution and transfer of sentenced offenders. Hence, there is a need to seek and provide international cooperation for undertaking such activities.

This Policy Statement shall be applicable to: *all relevant agencies.*

Content

1. *Treat prevention of money laundering and financing of terrorism as the first priority, including establishing systems and mechanisms to meet this objective.*
2. *Enhance efficiency of intelligence and coordination systems which enable in-depth analysis of data and monitoring of trends relating to money laundering and the financial support of terrorism.*
3. *Amend the relevant laws and regulations in compliance with the international standards to enable efficient and prompt responses to money laundering and financing of terrorism.*

4. *Develop personnel capability, information systems, and knowledge about money laundering and financing of terrorism to effectively prevent and resolve any impediment in accordance with the international standards.*
5. *Reduce factors and conditions conducive to money laundering and financing of terrorism by suppressing transnational organized crime groups involved in arms and human smuggling, and document forgery. It is also important to guard against individuals being recruited into terrorist groups.*
6. *Strengthen and enhance the regional networks to combat money laundering and financing of terrorism; set up coordination mechanisms and communication channels in an efficient and timely manner; and promote the exchange of knowledge and experience.*
7. *Cooperate with the world community both on a bilateral and multilateral basis so as to form an effective network in combating money laundering and terrorism of all forms, as well as act on the international obligations under the United Nations framework, taking into account national interest and security.*

AML-CFT international legal instrument is an amalgamation of measures that can be summarized as follows:

1. criminalization of ML and FT;
2. setting the freezing, seizing and confiscation systems;
3. imposing preventive regulatory requirement on a number of businesses and professions;
4. establishing an FIU;
5. creating an effective supervisory framework;
6. setting up channels for domestic cooperation; and
7. setting up channels for international cooperation.

5. Chapter-wise comments

Although Thailand has a legal framework in the Anti-Money Laundering Act (AMLA) and the core elements of its AML-CFT regimes are established, the predicate offences in the AMLA need to be extended. The AMLA should also be amended to fully incorporate CDD requirements and to regulate wire transfers in accordance with Special Recommendation VII.

There are two reasons for why Thailand has striven for the implementation of AML-CFT legislation in accordance with the international standards. First, each regulator is governed by its separate governing law. For example, the AMLA governs the AMLO, the Bank of Thailand Act and the Commercial Banking Act control the BOT, etc. Second, majority of the countries that set the international standards are from the common law countries but Thailand is a civil law country. The result is that it is difficult for Thailand to adopt and implement the international standards and recommendations mostly based on common law concepts.

Thailand does have the AML-CFT law (Section 16 of the AMLA) that partially covers designated non-financial businesses and professions (DNFBPs) but the coverage is not enough to cover some DNFBPs and some FIs in the banking sector.

Regarding money changers and money transfer agencies, substantive measures are still needed to mitigate the ML and FT risks in Thailand. Authorized money transfer agents and legalized money changers should be made subject to the full range of

AML-CFT obligations and the competent authorities should increase their efforts to suppress illegal money changing and remittance activity in the large informal sector. Thailand should strictly control both legal and illegal money changers and money transfer agencies in the country.

International AML-CFT standards to measure the success of an AML-CFT regime have entered a stage of maturity. And yet, assessing the effectiveness of an AML-CFT system achieving its objectives seems to be both conceptually and practically difficult. Governments around the world, on the other hand, have exerted their effort on combating money laundering and terrorist financing by imposing measures in accordance with the international standards. Establishing an effective AML-CFT regime in a country depends on how these measures are implemented knowing not only the real situation of ML and FT in the country but also weaknesses and strengths of the regime. Above all, the government has to handle the AML-CFT mechanism and its tools effectively and efficiently.

It may be mentioned that specific details about the need for compliance with international standards and the need for improvement of Thailand's AML laws by amendment, new enactment, and modification of existing regulations, guidelines, etc. can be seen in the concluding Chapter X.

CHAPTER V
AML-CFT MECHANISM AND ITS TOOLS

Countries are encouraged to institute the necessary AML-CFT legislative framework through international legal instruments designed to harmonize standards or through initiatives that seek to compel recalcitrant countries to adopt them. Three major factors of the framework are:

1. Preventing the financial system from being used for purposes of money-laundering;
2. Detection of money laundering operation through legislative provisions; and
3. Suppression of money-laundering activities and associated crimes.

1. Regulatory, supervisory, and enforcement agencies

There are generally three types of agency that are crucial when building an effective and efficient AML-CFT regime. They are regulatory, supervisory and enforcement agencies. These agencies are working together, via the FIU of the country in response to the risks posed by ML and FT to the reputation and integrity of financial systems, to develop robust AML-CFT programs and internal control systems in countries.

An FIU can be formed based on one of the four basic models – administrative model, law enforcement model, judiciary model, and hybrid model. FIUs of countries play the roles of facilitator to obtain effective inter-agency coordination and cooperation that are the most important factors in building a successful effective AML-CFT regime. Authorities from the three types of agency and staff of FIU are provided with necessary training that may include case studies, examples of supervisory actions against financial institutions so that participants are able to understand the problems they may face in implementing an effective AML-CFT regime. There may be a need for technical assistance program to be developed.

Regulatory and/or supervisory agencies have the onus for developing and implementing comprehensive legislation against ML and FT that complies with international standards in order to prevent the financial systems from being used for purposes of money-laundering. Regulators must keep up to date with ever-changing criminal activities and invented methods of performing crimes. Accordingly, AML-CFT laws and regulations need to be frequently updated to comply with international standards. Law makers have to create innovative, effective and efficient rules and regulations building on the point as to how criminal and terrorist organizations use legitimate financial institutions to transfer funds and disguise the origin of the assets.

Supervisory authorities should supportively supervise the process of the implementation in accordance with the national anti-money laundering and counter-terrorist financing Act so as to prevent the financial institutions from being used by money launderers and terrorist groups.

First of all, supervisors have a thorough understanding of what money laundering and terrorist financing are since they are responsible for verifying the implementation of

the law and ensuring full implementation of international standards. Secondly, supervisory authorities are the ones that educate the public about the risks money laundering and terrorist financing can have on the country's economy and make the public aware of the government actions. A consultation mechanism between the authorities and the private sectors will lead to better understanding between the public sectors and private sectors. Thirdly, supervisory authorities also provide guidance on KYC and STR reporting that can be an effective tool during the implementation process. Training programs are necessary to be conducted for both public and private sectors. In addition on-site and off-site inspections are part of the responsibilities of supervisory agencies.

According to the findings from the AML-CFT assessments[1] by the IMF and the WB, the report states:

> *Even among assessed high- and middle-income countries, the supervisory framework did not yet cover all aspects of the relevant Recommendations. In addition, sanctioning powers needed to be either strengthened or streamlined. Assessors expressed a general concern that the supervisors did not have sufficient means to perform their supervisory duty effectively and such capacity issues were particularly acute in the assessed low-income countries.*

Enforcement agencies are responsible for suppressing the money laundering and terrorist financing related crimes as well as for confiscation measures that are complements to enforcement and preventive measures such as freezing and seizing assets. They must also develop techniques to track illicit funds as well as the best practices for indictment. Furthermore, the enforcement agencies must have necessary skills and institutional capacity to investigate. In other words, they have to detect money-laundering operations through legislative provisions allowing for the centralization of information by authorities charged with combating such operations and implementation of specialized investigative measures. They must develop the enforcement of AML-CFT laws in order to successfully prosecute ML and FT cases.

Many assessors of the AML-CFT assessments[2] done by the IMF and the WB noted that even where legal provisions and law enforcement powers were in place, ML-FT investigations and prosecutions were limited. Due to the assessments of the 12 assessed countries, with regard to FIUs, the report says:

> *With respect to FIUs (Recommendation 26), 6 percent were rated compliant, 39 percent largely compliant, 6 percent partially compliant, and 50 percent non-compliant. This indicates some major shortcomings in an area that is critical to AML-CFT efforts. The observed weaknesses in the high- and middle-income countries concerned lack of resources, failure to provide adequate feedback to the reporting institutions, and insufficient analysis of the suspicious transaction reports. No assessed low-income country had an operational FIU-related functions.*

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[1] IMF and WB, "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information", 31 August 2005, <http://www.imf.org/external/np/pp/eng/2005/083105.pdf> [Read November 2006]

[2] ibid.

1.1 Thailand institutional framework for combating ML and FT

Having enacted the AMLA successfully, Thailand – armed with the required tools to tackle money laundering and terrorist financing offenses – is ready to deal with any predicate offenses defined in the AMLA. In order to develop a robust AML-CFT regime with an effective internal control system, there should be perfect distribution of duty and responsibility – concerning regulation, supervision, investigation, prosecution, etc. – among well-organized governmental agencies and private agencies that are to implement the AMLA, in compliance with international standards. The Thailand institutional framework has functioned quite well and the policies and regulations have been reviewed and modified in order to withstand the test of time.

In Thailand, there are forty nine agencies taking part in combating money laundering and financing of terrorism. These agencies and departments – both government and private – are categorized in the institutional framework for combating ML and FT according to the area of responsibility based on their respective nature of operational functions, as follows[3]:

1. Ministries, committees, or other bodies to coordinate AML-CFT action
2. Criminal justice and operational agencies
3. Financial Sector Bodies
4. Designated Non-Financial Businesses and Professions and other matters

The following Table shows the agencies and their respective areas of responsibilities.

Table 9 : Agencies and their respective areas of operations

No.	Ministries, Committees or other bodies to coordinate AML/CFT action	Criminal justice and operational agencies	Financial sector bodies	Designated Non-Financial Businesses and Professions, DNFBPs and other matters
1	Anti-Money Laundering Office	Office of the Attorney General	Bank of Thailand	Department of Provincial Administration, Ministry of Interior
2	Department of Treaties and Legal Affairs, MFA	Office of the National Counter Corruption Commission	The Office of the Securities and Exchange Commission	Department of Employment (Secretary of the Entry of Foreign Private Organization to Operate in Thailand)
3	Office of the Permanent Secretary, Ministry of Finance	Customs Department, Ministry of Finance	Department of Insurance	Ministry of Social Development and Human Security
4	Department of International Economic Affairs, MFA	Excise Department	Cooperative Auditing Department, Ministry of Agriculture and Cooperatives	Office of the National Culture Commission, Ministry of National Culture

[3] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): pp. 35 - 41

Table 9 : Agencies and their respective areas of operations

No.	Ministries, Committees or other bodies to coordinate AML/CFT action	Criminal justice and operational agencies	Financial sector bodies	Designated Non-Financial Businesses and Professions, DNFBPs and other matters
5		Revenue Department	Cooperative Promotion Department, Ministry of Agriculture and Cooperatives	Federation of Accounting Professions
6		Office of the Narcotics Control Board	Land Department, Ministry of Interior	The Lawyers Council of Thailand
7		National Intelligence Agency	Government Savings Bank	Gold Traders Association of Thailand
8		Office of the National Security Council	The Government Housing Bank	Thai Jewelry Traders Association
9		Royal Thai Police	Export - Import Bank of Thailand, Ministry of Finance	Jewelry Association
10		Department of Special Investigation, Ministry of Justice	Bank for Agriculture and Agricultural Cooperatives, Ministry of Finance	Thai Jewelry Producers Association
11		National Coordinating Agency for Terrorist and Transnational Crimes	Islamic Bank of Thailand	Thai Hire- Purchase Businesses Association
12		The Fiscal Policy Office, Ministry of Finance	Small and Medium Enterprise Development Bank of Thailand	Real Estate and Marketing Association
13			Secondary Mortgage Corporation, Ministry of Finance	
14			The Thai Banks' Association	
15			The Foreign Bankers' Association	
16			The Agricultural Futures Trading Commission	
17			Association of Investment Management Companies	
18			Association of Securities Companies	
19			The General Insurance Association	
20			The Thai Life Assurance Association	

Table 9 : Agencies and their respective areas of operations

No.	Ministries, Committees or other bodies to coordinate AML/CFT action	Criminal justice and operational agencies	Financial sector bodies	Designated Non-Financial Businesses and Professions, DNFBPs and other matters
21			The Cooperative League of Thailand	

1.2 Public and private sectors

Stakeholders of the AMLA can be divided into two broad sectors, public sector and private sector, that work together to fight ML and FT effectively and efficiently. Strengthening the collaborative process to comply with the revised FATF 40+9 Recommendations (2004) between public sectors and private sectors is a critical factor in building an effective AML-CFT regime. In other words, supervisors and financial institutions play an important role and they are obliged to work cohesively to meet and maintain the international standards. Public sectors have to make fruitful plans with the objectives of making perfect decisions and private sectors have to implement the plans and decisions effectively and successfully.

In this regard, Thailand has exerted profound influence on the cooperation between public sector[4] and private sector[5] during the implementation process. There are 49

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[4] 1. Anti-Money Laundering Office (AMLO)
2. Office of the Attorney General (OAG)
3. Bank of Thailand (BOT)
4. The Office of the Securities and Exchange Commission (SEC)
5. Department of Insurance, Ministry of Commerce (DOI)
6. The Office of the National Counter Corruption Commission (NCCC)
7. The Office of the Narcotics Control Board (ONCB)
8. National Intelligence Agency (NIA)
9. Office of the National Security Council (NSC)
10. National Coordinating Agency for Terrorist and Transnational Crimes (NCATTC)
11. Royal Thai Police (RTP)
12. Department of Special Investigation, Ministry of Justice (DSI)
13. Department of Treaties and Legal Affairs, MFA (DTLA–MFA)
14. Department of International Economic Affairs, MFA (DIEA–MFA)
15. Office of the Permanent Secretary, Ministry of Finance (OPS–MOF)
16. The Customs Department, MOF (CD–MOF)
17. The Excise Department, MOF (ED–MOF)
18. The Revenue Department, MOF (RD–MOF)
19. Department of Lands, Ministry of Interior (DOL – MOI)
20. The Fiscal Policy Office, MOF (FPO–MOF)
21. Government Savings Bank, MOF (GSB–MOF)
22. The Government Housing Bank, MOF (GHB–MOF)
23. Export - Import Bank of Thailand, MOF (EIBT–MOF)
24. Bank for Agriculture and Agricultural Cooperatives, MOF (BAAC–MOF)
25. Islamic Bank of Thailand, MOF (IBT–MOF)
26. Small and Medium Enterprise Development Bank of Thailand, MOF (SMEDBT–MOF)
27. Secondary Mortgage Corporation, MOF (SMC–MOF)
28. Cooperative Auditing Department, Ministry of Agriculture and Cooperatives (CAD–MAC)
29. Cooperative Promotion Department, Ministry of Agriculture and Cooperatives (CPD–MAC)
30. Department of Provincial Administration, MOI (DOP – MOI)

public and private agencies and departments (as at 5 October 2006) that are responsible for regulation, supervision and enforcement of AML-CFT regime under the AMLA in Thailand.

2. Implementation of AMLA

Since the implementation of the AMLA encompasses the four main areas: (i) Regulation/Compliance,(ii) Supervision, (iii) Enforcement and (iv) Cooperation and Coordination, the aforementioned agencies can roughly be categorized into groups responsible for each area as shown in the following Table.

Table 10 (A): Agencies and their responsible areas (A)

Sector for Which Agencies are Responsible	Regulatory Agencies	Supervisory Agencies	Enforcement Agencies
Both financial and non-financial sectors	Anti-Money Laundering Office		
		Office of the National Security Council	
		Office of the National Counter Corruption Commission	
		Office of the Narcotics Control Board	
		National Intelligence Agency	
		Customs Department	
		Excise Department	
		Revenue Department	
		Fiscal Policy Office	
	Office of the Permanent Secretary (Ministry of Finance)		
	Department of International Economic Affairs (Ministry of		

31. Department of Employment, Ministry of Social Development and Human Security (DOE–MSDHS)
32. Ministry of Social Development and Human Security (MSDHS)
33. Office of the National Culture Commission, Ministry of National Culture (ONCC–MNC)
34. The Agricultural Futures Trading Commission (AFTC)

[5] (1) The Thai Bankers' Association (TBA)
(2) The Foreign Banks' Association (FBA)
(3) Association of Securities Companies (ASC)
(4) Association of Investment Management Companies (AIMC)
(5) The General Insurance Association (GIA)
(6) The Thai Life Assurance Association (TLAA)
(7) Thai Hire- Purchase Businesses Association (THPA)
(8) Gold Traders Association of Thailand (GTAT)
(9) Thai Gem and Jewelry Traders Association
(10) Jewelry Association (JA)
(11) Thai Gem and Jewelry Manufacturers' Association
(12) Real Estate and Marketing Association (REMA)
(13) Federation of Accounting Professions (FAP)
(14) The Lawyers Council of Thailand
(15) The Cooperative League of Thailand

Table 10 (A): Agencies and their responsible areas (A)

Sector for Which Agencies are Responsible	Regulatory Agencies	Supervisory Agencies	Enforcement Agencies
	Foreign Affairs)		
			Office of the Attorney General
			Royal Thai Police
			Department of Special Investigation
			National Coordinating Agency for Terrorist and Transnational Crimes
Financial sector	Bank of Thailand		
	Office of the Securities and Exchange Commission		
	Department of Insurance		
	Cooperative Auditing Department		
	Cooperative Promotion Department		
	Agricultural Futures Trading Commission		
	Thai Bankers' Association		
	Foreign Banks' Association		
	Association of Investment Management Companies		
	Association of Securities Companies		
	General Insurance Association		
	Thai Life Assurance Association		
	Cooperative League of Thailand		
Non-financial sector (DNFBPs and other matters)	Federation of Accounting Professions		
	Lawyers Council of Thailand		
	Department of Provincial Administration		
	Department of Employment		
	Ministry of Social Development and Human Security		
	Office of the National Culture Commission		

Table 10 (B): Agencies and their responsible areas (B)

Coordinating Agencies	
International	Department of Treaties and Legal Affairs (Ministry of Foreign Affairs)
Local financial sector	Department of Lands
	Government Savings Bank
	Government Housing Bank
	Export-Import Bank of Thailand
	Bank for Agriculture and Agricultural Cooperatives

Table 10 (B): Agencies and their responsible areas (B)

Coordinating Agencies	
	Islamic Bank of Thailand
	Small and Medium Enterprise Development Bank of Thailand
	Secondary Mortgage Corporation
Local non-financial sector	Gold Traders Association of Thailand
	Thai Gem and Jewelry Traders Association
	Jewelry Association
	Thai Gem and Jewelry Manufacturers' Association
	Thai Hire-Purchase Businesses Association
	Real Estate Sales and Marketing Association

2.1 Compliance

In the area of ***regulation/compliance***, it will be subdivided into *legislative compliance* and *preventative compliance*. Ratification of international conventions, adoption of required national laws or amendment of existing laws, acceptance and implementation of UN resolutions and international standards and recommendations will come under legislative compliance. Such issues as "Know-Your-Customer" (KYC), "Customer Due Diligence" (CDD), record-keeping, "suspicious transaction reporting" (STR), "cash transaction reporting" (CTR), internal control and audit, on-site and off-site inspection, awareness campaign etc. will fall under preventative compliance.

2.1.1 Legislative compliance

Since criminals are constantly looking for new avenues and methods for exploitation of their crimes, especially money laundering and terrorist financing, the legislative framework needs to be flexible enough to provide for generic and sector-specific detailed obligations that can be updated quickly to reflect changes in the AML-CFT regime. In addition, the requirement for the obligations must be enforceable and AML-CFT legislation must be consistent with the national interests and legal norms.

Legal aspects of drafting AML-CFT laws are important in a manner which comports with recognized international standards. As part of compliance required under the international conventions and UN resolutions relating to ML and FT, Thailand has – as stated earlier – carried out the following measures:

(i) Enactment of AMLA on 21 April 1999.
(ii) Ratification of the 1988 Vienna Convention on 1 August 2002.
(iii) Ratification of the 1999 Convention against FOT on 29 September 2004.
(iv) Signing of the 2000 Palermo Convention on 13 December 2000.
(v) Making of ministerial regulations in response to UN resolutions between September 2000 and July 2003.
(vi) Amendment of AMLA and the Penal Code in response to UN resolutions on 11 August 2003.
(vii) Signing of the ASEAN regional treaty for mutual legal assistance in criminal matters on 17 January 2006.
(viii) Formation of committees and subcommittees representing public and private sectors to deal with compliance issues since November 2003.
(ix) Signing of memoranda of understanding on exchange of financial intelligence by AMLO with 31 foreign counterparts up to July 2007.

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According to the anti-money laundering law, there are 8 predicate offenses. (Please see Chapter 4, heading 3.2.1 – Predicate offenses.)

(1) ***Offense relating to narcotics***: After the government's declaration of the war on drugs under the leadership of the former Prime Minister, Pol. Lt. Col. Thaksin Shinawatra on 1st February 2003, a roadmap was set out for overcoming drugs and called on all relevant agencies/organizations to join forces continuously and seriously. The results of the activities have shown that the situation and the trend of narcotics problem have substantially decreased in severity.

(2) ***Offense relating to trafficking of women and children***: Even though Thailand has several issues of law enforcement upon sexual trafficking such as the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) and the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997), the problem of sexual trafficking is a social problem which becomes more and more serious in society every day. There are 3 factors holding why the sexual trafficking does not decrease; on the other hand, it increases more and more even though the government sector, private sector and laws have extremely attempted to suppress any activity on sexual trafficking and any tourist place where there has an activity concerning sexual trafficking: - (i) Economic factor, i.e. unemployment and migration of agricultural labor; (ii) Social factor, i.e. the point of view of the customary Thai society is that male is more influential than female that shows inequality of gender, and then female is likely to be a sort of sexual material; (iii) Law and political factor, i.e. law has no sufficient tight and severe enforcement the same as an official having no attention on government functions.

(3) ***Offense relating to public fraud***: It is an economic crime which has enormous severe impact on national economy. There were 256 offenders and 87,404 damaged persons found in the statistics since 1984 – 2003; the total value of damages was 13,691,631 million baht.

(4) ***Offense relating to embezzlement in financial institutions***: At present, these offenses have obviously changed in terms of stepping forward because of technology development. It means that the technology to be used by the government for suspicious transaction investigation will be more effective accordingly.

(5) ***Offense relating to corruption***: Corruption situation in Thailand has tended to be increasingly severe in terms of changing forms and methods of corruption. Because of the complexity of corruption, the amount of damages has hugely increased, including avoidance and escape from any offenses according to law.

(6) ***Offense relating to extortion or blackmail***: As observed from collected data relating to the number of cases, values and offenders in this type of offense, there is a very small number of cases notified to the police. It does

not mean that there is no wrongdoing in this type of offense. But by means of technology development, the forms and patterns of crime have gone far beyond anticipation. Therefore the suppression of this type of offense has not been able to catch up with the development under the present circumstances.

(7) ***Offense relating to Customs evasion***: It is a predicate offense which has tended not to be decreasing; on the contrary, it is continuously increasing. Furthermore, the value of damages may be doubled because at present and in the future the smuggling of goods will be of great value and will be easier in hiding or delivery i.e. any goods that are smuggled will breach/infringe on copyright.

(8) ***Offense relating to terrorist financing***: The circumstantial unrest in Thailand has tended to be increasingly severe especially in the three Southern border provinces: - Yala, Patanee and Narathiwat.

Besides the eight predicate offenses, additional eight predicate offenses have been approved by the Cabinet and the proposed amendment of the AMLA has to be approved by the Parliament. (Please see Chapter 4, heading 3.2.1 – Predicate offenses.)

2.1.2 Preventative compliance

Seeing that the world around us – inclusive of Thailand – is being confronted by the growing ML- FT activities, which in turn inevitably impact on Thai society economically and socially, Thailand has come to realize that some specific urgent measures need to be taken to counter the threat. Money laundering, in particular, has the effect of shaking loose the moral uprightness of people engaged both in the public and private sectors. Incentives in the form of lucrative bribe tend to corrupt people, the people thus corrupted become more and more greedy, the greed knows no bounds leading to more corrupt practices, and the wheel of corruption keeps spinning in an endless cycle of social and moral degradation. The end result is that society is no longer a decent, pleasant place to live in. Such a worst scenario is unacceptable to Thailand, or to any other country in the world for that matter. To save oneself from such social and moral decay, one must do something that is beneficial to society as a whole.

Precisely with that view in mind, the government has designated the year 2002 as the year of good corporate governance. The Cabinet, on 5 February 2002, formed a national committee, i.e. *The National Corporate Governance Committee (NCGC)*[6], composed of 18 members representing the public and private sectors, with the objective of upgrading the level of corporate governance in Thai business. The committee consists of members[7].

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[6] http://www.cgthailand.org/setCG/about/ncgc_en.html

[7] 1. Prime Minister or designated Deputy Prime Minister : Chairman
2. Minister of Finance
3. Minister of Commerce
4. Permanent Secretary, Ministry of Finance
5. Permanent Secretary, Ministry of Commerce

The responsibilities of the committee are as follows:

- § To establish policies, measures and schemes to upgrade the level of corporate governance among institutions, associations, corporations and government agencies in the capital market.
- § To order the related agencies and persons, both in the private and government sectors to testify any information to the NCGC.
- § To suggest [to] related agencies to improve their policy schemes and operating processes including legal reforms, ministerial regulations, rules, and enactments to achieve good corporate governance.
- § To promote the guidelines of good corporate governance to the public and related parties to raise confidence from international investors.
- § To appoint subcommittees and working groups to study and assist any operations by using their authority. These group members [will be composed] of representatives from various private and public agencies. The subcommittees have to report their operating results to the NCGC within the specified period.
- § To monitor the progress and evaluate the performance of [the] subcommittees.

The Corporate Governance Subcommittee chaired by the BOT Governor and set up under the Cabinet's Corporate Governance Committee has formed, among others, the *Working Group of Report on Observance of Standards and Codes on Anti-Money Laundering and Combating the Financing of Terrorism*,[8] also known as the "**AML-CFT Working Group**." As restructured on 16 May 2006, the Working Group has 26 members[9].

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6. Governor, Bank of Thailand (BOT)
7. Secretary-General, Office of the Securities and Exchange Commission (SEC)
8. President, Stock Exchange of Thailand (SET)
9. President, Thai Chamber of Commerce (TCC)
10. President, Federation of Thai Industries (FTI)
11. President, Thai Bankers' Association (TBA)
12. President, Institute of Certified Accountants and Auditors of Thailand
13. President, Listed Companies Association
14. President, Association of Securities Companies
15. President, Association of Investment Management Companies (AIMC)
16. President, Thai Investors' Association
17. President, Thai Institute of Directors' Association
18. Assistant Secretary-General, SEC : Secretary

[8] Corporate Governance Subcommittee on Commercial Banks, Financial Companies and Insurance Companies' Order No. 1/2549, dated 16 May 2006

[9]

1.	Secretary-General, Anti-Money Laundering Office	Chairman
2.	Office of the National Counter Corruption Commission	Vice-Chairman
3.	Management Assistance Group, Bank of Thailand	Member
4.	Supervision Group, Bank of Thailand	Member
5.	Financial Market Office, Bank of Thailand	Member
6.	Ministry of Finance	Member
7.	Department of Special Investigation, Ministry of Justice	Member
8.	Office of the Attorney General	Member
9.	Department of Insurance, Ministry of Commerce	Member
10.	Department of Treaties and Legal Affairs,	

The responsibilities of the Working Group are as defined below:

1. To study the scope and requirements of involvement in the Report on Observance of Standards and Codes (ROSCs) on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT);
2. To formulate action plan, scope and schedule of ROSCs on AML-CFT and monitor the outcome of the evaluation;
3. To designate sub-working group members or experts to be consultants as necessary in preparing submission of ROSCs;
4. To advise, recommend and develop procedure to comply with the program's standard;
5. To explain facts and details in process of AML-CFT and other necessary action;
6. To report results of the study related to policy transparency matters to the Working Group on Monetary and Financial Policy Transparency; and
7. To invite experts and persons concerned to give information that might benefit the work of the Working Group.

In addition to the subcommittee's working group, i.e. the AML-CFT Working Group, there have been established 3 subgroups or task forces under the working group as follows:

1. ***CDD task force***: responsible for drafting laws and regulations about CDD for the financial sector; members composed of representatives from AMLO, MOF, BOT, SEC, DOI, Bankers and Securities Dealers.

2. ***DNFBPs task force***: responsible for dealing with DNFBPs; members consisting of representatives from AMLO, MOJ, Department of Business Development, Thai Chamber of Commerce, Lawyers, Accountants, Real Estate, Pawnshops, Precious Metal and Stone Dealers Associations.

3. ***IT task force***: responsible for making modifications to AML-CFT IT

	Ministry of Foreign Affairs	Member
11.	Office of the National Security Council	Member
12.	Department of Provincial Administration, Ministry of Interior	Member
13.	Ministry of Interior	Member
14.	Revenue Department, Ministry of Finance	Member
15.	Thai Bankers' Association	Member
16.	Foreign Banks' Association	Member
17.	Thai Hire-Purchase Businesses Association	Member
18.	The Office of the Securities and Exchange Commission	Member
19.	Association of Securities Companies	Member
20.	Association of Investment and Management Companies	Member
21.	The Thai Life Assurance Association	Member
22.	Department of Lands, Ministry of Interior	Member
23.	Thai Chamber of Commerce	Member
24.	Anti-Money Laundering Office	Secretary
25.	Director of Legal Proceedings Office, Bank of Thailand	Assistant Secretary
26.	Anti-Money Laundering Office	Assistant Secretary

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systems in the financial sector; members made up of representatives from MOF, Thai Bankers' Association, Foreign Banks' Association and from all commercial banks.

The subcommittee and the working group and the task forces have since been working earnestly to accomplish their respective assigned tasks. Most notably among them are the Thai Bankers' Association's AML-CFT policy paper endorsed by the World Bank, which focuses on banks' AML-CFT policy, covering: duties and responsibilities; KYC/CDD programs; customer acceptance policy; monitoring of high-risk accounts and transactions; investigation and reporting of suspicious transactions; records retention; and training. Based on this policy paper, the AMLO was then in the process of finalizing new regulations for CDD for financial institutions. In this regard the IMF technical team commented as follows:

> *The new regulations will be supplemented by additional requirements and guidance from the relevant supervisory bodies. Compliance with these requirements will be monitored by the relevant financial sector regulators.*[10]

Besides, the BOT has developed on-site and off-site supervision of AML-CFT compliance by financial institutions.

The level of compliance with the established international standards by a jurisdiction is usually assessed in two ways: mutual evaluation (ME) and Financial Sector Assessment Program (FSAP). In the case of Thailand the mutual evaluation is done by APG on a regular basis and a report is submitted to the APG's annual meetings. Assessment under FSAP is carried out by the IMF and a report called ROSC (Report on Observance of Standards and Codes) is submitted to the IMF Board. AML-CFT is one of the standards and codes, compliance of which is in accordance with the FATF 40+9 Recommendations.

As far as the ROSC program is concerned, the mandate of the Working Group can be defined as making preparations for hosting assessment programs and compiling answers on AML-CFT issues to the assessors. In this regard, as part of the ROSC process the IMF mission first sent to Thailand a set of DAQ (Detailed Assessment Questionnaires) in September 2006, which Thailand filled up with appropriate answers and returned to the IMF by the deadline in December 2006. By February / March 2007, the IMF mission came to Thailand on an on-site examination visit and at the conclusion of the visit the IMF mission produced a draft DAR (Detailed Assessment Report)—which set out findings on Thailand's existing AML-CFT system and recommendations for improvement of legal and administrative frameworks.

Assessments on Thailand are rated according to the level of compliance such as (i) compliant, (ii) largely compliant, (iii) partially compliant, (iv) non-compliant, and (v) not applicable, as prescribed in the FATF AML-CFT assessment methodology. In the subsequent chapters, discussion about the assessments and ratings will be made, as necessary.

The Working Group has been active in holding a number of seminars and training

[10] IMF TA report on Thailand, April 2006, p. 6

courses on KYC/CDD, assets management, public awareness, etc. Under the supervision of the Subcommittee, the Working Group has helped draw up a KYC/CDD banking policy by the Thai Bankers' Association, which the World Bank has helped with the vetting.

Under the supervision of the Subcommittee for Corporate Governance, the Working Group has helped draw up an AML-CFT policy in Thai banking system by the Thai Bankers' Association, which was already approved by the World Bank. One part of the policy focuses on *KYC/CDD standards and programs*. KYC/CDD standards are thoroughly explained, highlighting on seven topics. They are:

1. Definition of KYC/CDD;
2. Importance of KYC/CDD standards;
3. Key elements of KYC/CDD standards;
4. Customer acceptance policy;
5. Customer identification and verification;
6. Specific identification issues; and
7. Investigation and reporting of suspicious transactions.

Customers' risk level and frequency of KYC/CDD review process, and documents required for account opening are found annexed to the AML-CFT policy.

It is also stated in the policy that all bank staffs should be trained in AML-CFT policies and procedures and understand all compliance obligations, and the consequences and penalties for failure to comply with internal and external rules. In addition, detailed training guidelines, principles and requirements are stated in the policy.

The Subcommittee on Improvement of Corporate Governance of Commercial Banks, Finance Companies and Insurance Companies has been active in holding a number of seminars and training courses on KYC/CDD, asset management, public awareness, etc. Besides, Thailand has sent its trainees from both public and private sectors to participate in regional and AML-CFT-related international seminars and training courses in order to improve their skills, enhance their awareness and broaden their professional knowledge. Similarly, Thailand has sent its specialists and trainers to such seminars and training courses as part of regional and international cooperation programs.

For improvement of its AML-CFT mechanism Thailand seeks technical assistance not only from individual countries but also from the World Bank, IMF, ADB, and so forth.

2.2 Supervision

All the competent authorities need to upgrade skills and techniques in the field of supervising the financial institutions and they need to share and disseminate knowledge and best practice as well. Since the AMLO, as an FIU, is responsible for all the aforementioned four areas, it has to supervise the whole regime for the effective and successful implementation of the Anti-Money Laundering Act in Thailand. It has disseminated information to both public and private sectors on policies, approaches and results so as to build a good understanding and promote

cooperation in the prevention and suppression of ML-FT. Public awareness has been raised through various media such as newspaper, television, radio and website, and through press releases. Besides, the AMLO has set up annual training programs supported by specialists not only for government agencies but also for private agencies and the general public.

Table 11 : AMLO's Training Programs

Training Program	2001		2002		2003		2004		2005		Total	
	F[11]	P[12]	F	P	F	P	F	P	F	P	F	P
Information Dissemination Training for the Public	4	950	10	2,562	19	4,118	26	5,963	11	2,317	70	15,910
Information Dissemination Training for related agencies	12	1,800	17	2,120	23	4,178	21	5,001	2	600	75	13,699
Information Dissemination Training for financial institutions	3	200	8	420	12	720	10	650	5	763	38	2,753
Information Dissemination Training for officials	9	1,150	5	700	6	525	3	258	2	334	25	2,967
Total	28	4,100	40	5,820	60	9,541	60	11,872	20	4,014	208	35,329

As mentioned in Chapter 2, a fundamental challenge to the dissemination of relevant information is "establishing a framework for the sharing of information that is acceptable to all parties and meets reasonable AML-CFT objectives". The Table shows that 35,329 participants attended the 208 courses on Information Dissemination Training for the public, related agencies, financial institutions and officials within 5 years (from 2001 to 2005).

The front line of defense against ML-FT contains financial institutions in banking sector and in non-banking sector including private banking, correspondent banking, banking relationships and shell banks (perceived as high risk). In order to meet the international obligations, an effective supervisory system is essential in Thailand. Different types of financial institutions are supervised by different authorities.

In general, the AMLO, the BOT and the SEC are empowered to supervise and examine financial institutions for compliance with AML-CFT regulations. The Minister of Finance has assigned the BOT to supervise the money changers that are licensed by the Minister of Finance. Any juristic person who wants to conduct the business of money changers and remittance must apply for authorization by the Minister of Finance through the BOT.

[11] F = frequency
[12] P = No. of participants

Although regulatory responsibility for banks is shared between the AMLO and the BOT, other financial institutions are supervised by specific regulators. For instance, the SEC supervises securities companies; the DOI deals with supervising life and non-life insurance; and the Cooperative Promotion Department takes care of supervisory matters in relation to thrift and credit cooperatives in accordance with the guidance issued by the AMLO. On the other hand all savings cooperatives are under the Cooperatives Promotion Department and the Department of Cooperative Auditing both of which are within the Ministry of Agriculture and Cooperatives.

There are two types of supervision, on-site supervision and off-site supervision, with the purpose of examining the risks an institution faces and how those risks are managed.
On-site supervision focuses on the operational risk owing to inadequate or failed internal processes, i.e. staff and system of the bank or external events. Off-site supervision deals with analysis of documents – financial statements, market analysis, reports on the operation of subsidiary entities and responses to questionnaires issued by the supervising agency – and data supplied by the institution or from other sources.

Supervising transactions in this paper are basically divided into three types:

(1) transactions of financial institutions;
(2) transactions of non-financial institutions; and
(3) cross-border transactions.

2.2.1 Transactions of financial institutions

2.2.1.1 Banks

Implementing procedures for supervising banks with appropriate regulatory obligations in accordance with international standards is one initial step to supervise all financial institutions. The process of supervision includes a review of customer files and the sampling of some accounts in addition to policies and procedures[13]. The role of internal audit is important in the evaluation of adherence to KYC standards on a consolidated basis and supervisors should ensure that they have effective access to any relevant reports carried out by internal audit. Information regarding individual accounts is used only for lawful supervisory purposes, and must be protected by the recipient in a satisfactory manner when sharing information between two supervisors[14].

The BOT is in charge of the AML-CFT issues in regard to banks and financial institutions in the banking sector. The BOT, as the main bank regulator, provides regulations or guidelines on AML-CFT for banks and as a representative of the Ministry of Finance for the financial institutions it regulates, does on-site and off-site supervision. The BOT carries out operational risk assessment within its risk-based supervision procedures in relation to the AML-CFT matters and off-site monitoring via its normal supervisory procedures. Despite the fact that the BOT has the major role in supervision of banking industry in Thailand, the supervision of suspicious transaction reporting under Section 13 of the AMLA is performed by the AMLO that

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[13] Customer Due Diligence for Banks, Basel Committee on Banking Supervision, para. 61
[14] Customer Due Diligence for Banks, Basel Committee on Banking Supervision, para. 68

also has to ensure banks to comply with the obligations imposed on them in the AMLA. It shows that the borderline, regarding responsibility, between the BOT and the AMLO is not clear cut. However, it was agreed that the BOT would conduct on-site supervision and the AMLO would conduct off-site supervision of general compliance issues in future.

A financial sector master plan proposed by the Ministry of Finance and the BOT was approved by the cabinet in January 2004. The main purpose of the plan is to reconstruct, develop and strengthen the Thailand's financial sector where the Ministry of Finance and the BOT will be responsible for regulations. The plan includes four main points.

- Developing a framework for consolidated supervision.
- Memorandum of Understanding on information exchanges and coordination of tasks between the regulatory bodies.
- Promoting good governance in financial institutions.
- Developing risk management capability.

There have been meetings focusing on how to use advanced technology in new CDD requirements. At the meetings, the IT task force of the AML-CFT working group and the chief information officers of banks discussed the question of developing software which deals with new CDD requirements. As the banking industry is faced with challenges of curbing the menace of money laundering, banks need to: (i) know their customers thoroughly and (ii) comply with requirements of both domestic and international regulations in fighting money laundering and financing of terrorism. The purposes of the risk management software are:

- to detect fraud & money laundering instances by monitoring transactions online;
- to design their know your customer (KYC) program which includes algorithms to search and match identity/details of a customer against lists based on people's names, organization names, addresses, identity numbers, dates & other identification data; and
- to comply with local and international regulations.

The software – the result of the cooperation between the authorities and the financial industry – has been developed and could be operational before long. Since the AMLO has issued regulations for relevant entities, the BOT has imposed requirements for KYC and is in the process of amending the requirement and the Manual for on-site examination in accordance with the AMLO regulations on CDD.

The Governor of the BOT, which is responsible for 7 areas of ROSCs including AML-CFT, has been appointed as the Chairman of the Corporate Governance Committee for commercial banks, finance business and insurance companies. An AML-CFT working group for ROSCs assessment program was formed where the Secretary-General of the AMLO is the chairman, and the BOT and the Thai Bankers' Association (TBA) are members of the working group. The BOT and the TBA have worked together in two areas, the AML-CFT compliance and supervision relating to financial institutions. The TBA is responsible for both regulation and supervision regarding all the banks in Thailand including private banks. The TBA has established

its own internal joint-working group (TBA JWG) that comprises its own member banks to assist the AML-CFT working group.

Although the foreign financial institutions have well-established policies and procedures, domestic institutions in Thailand still need to develop their internal AML-CFT policies and procedures. The TBA JWG created an adjustable AML-CFT policy to help all banks to write up their own policies and procedures for management control and risk prevention depending on various types of customers they serve.

The AML/CFT policy[15], in Thai banking system, consists of four parts:

1. Duties and responsibilities;
2. KYC/CDD standards and programs;
3. Record retention; and
4. Training

Based on this policy – the result of cooperation between the AMLO, the BOT and banks, finalized and endorsed by the World Bank – financial institutions, professions, and designated businesses have to develop their respective policies. The TBA's AML-CFT policy was revised in December 2006. The TBA's "Guidelines on Know Your Customer (KYC) and Customer Due Diligence (CDD) to meet international standards related to financial transactions" was issued pursuant to 2 AMLO Policy Statements in 2007.

The guidelines consist of:

1. Requirements for new account opening
2. Know Your Customer for different types of customers
3. General exemptions for Know Your Customers
4. The KYC/CDD rectification process for existing customers
5. Sanction and Warning List, Politically Exposed Persons (PEPs)

As using a risk-based approach to enforcing regulations is a powerful solution, the risk-based approach is the standard practice for all FIs and the risk levels are divided into: (a) risk rating level 1 (low), (b) risk rating level 2 (medium), and (c) risk rating level 3 (customers requiring special attention) or commonly known as "high".

According to the TBA guidelines[16], the customers' risk levels are categorized as follows:

Table 12(A) : Customer's Risk Level, Frequency of KYC/CDD Review Process

Risk Identification	KYC/CDD
Risk rating level 1 (Low)	
Ordinary Persons 1. Customer with deposits outstanding at the end of each month of less than	§ Verification of the original of the customer's National ID Card, passport or other photo ID cards with the customer's National ID number

[15] TBA, "Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) Policy", December 2006

[16] TBA, Guidelines on Know Your Customer (KYC) and Customer Due Diligence (CDD) to meet international standards related to financial transactions – Annex (1) to the TBA's AML-CFT policy, 2007

Table 12(A) : Customer's Risk Level, Frequency of KYC/CDD Review Process

Risk Identification	KYC/CDD
threshold agreed and having aggregate balance of cash deposits or withdrawals of less than four times the threshold within a 12-month cycle. 2. Customer with total credit facilities of less than the set threshold. Note: It is the discretion of each member bank to set its own threshold between THB 2-5 million.	issued by a government agency. § Verification of name, date of birth and nationality. § Verification of current address (as it appears on the National ID Card). § In addition, P.O. Box address can be used for convenience in contacting customers, but it cannot be used as an address for KYC purposes, since the address for KYC has to be the one that appears on the National ID card only. § Verification of the occupation, the type of business and the position of the customer in the business. § Verification of the purpose of account opening.
Juristic Persons 1. Credit customer who does not fall under the level 3 risk rating and who is subject to the Bank's annual credit review. 2. Customer and affiliated companies which are listed companies. 3. Customer and affiliated companies which are managed by professional managers. 4. Government agency and state enterprise. 5. International charitable organization or non-profit organization which has been established for more than 10 years and which has revenue of more than USD 10 million or the equivalent. 6. Financial institution where the headquarters are not located in a high-risk country and implement AML-CFT measures in line with FATF standard.	§ Verification of the Certificate of Registration, the registered address and the address of business operation of such partnership, and/or limited company. § Verification of the original National ID Cards of all individuals authorized to sign on behalf of the juristic person opening and operating an account. § Conduct KYC on, and maintain identification documents of, individuals holding 20 % or more of the shares, and of the least two directors. The documents are to be certified by the individual authorized to sign on behalf of the juristic person opening the account. § Verification of the type of business the customer is engaged in . § Verification of the account opening process.
Risk rating level 2 (Medium)	
Ordinary Persons Foreign customer who is not assigned level 3 risk rating. Customer not assigned level 1 or level 3 risk rating.	In addition to CDD in level 1 customer, banks shall: § understand the purpose(s) of the account ; § know the source of funds; § indicate the amount of money and the items expected to occur in the account; and § understand the relationship between the individual authorized to operate the account and the actual owner of the account or business.
Juristic Persons 1. Customer and affiliated companies which are not listed companies and majority of revenue are cash. 2. Financial institution and affiliated companies where the headquarters are located in a high-risk country but	In addition to CDD in level 1 customer banks shall: § understand the purpose(s) of the account. § know the source of funds; § indicate the amount of money and the items expected to occur in the account; and § understand the relationship between the

Table 12(A) : Customer's Risk Level, Frequency of KYC/CDD Review Process

Risk Identification	KYC/CDD
implement AML-CFT measures in line with FATF standard. 3. Customer not assigned level 1 or level 3 risk rating.	individual authorized to operate the account and the actual owner of the account or business.
Risk rating level 3 (Customers requiring special attention)	
Ordinary Persons 1. Customer who is a politically exposed person (PEP) or related to him. 2. Customer whose domicile or source of funds is a high-risk country. 3. Customer in high-risk occupation/business. 4. Customer reported in suspicious activity report (form AMLO 1-03). 5. Customer whose name is in the Sanction List but due to certain reasons, the bank needs to give him/her services. 6. Customer with level 2 risk rating but unreachable through at least 3 contact channels for more than 90 days.	In addition to CDD in levels 1 + 2: § Banks should know the source of funds and assets of, and should assess the net worth of customers. § Banks must indicate the source of high value transactions or transactions that are unusual or are not in line with the normal business of the customer. § The opening of a level 3 account shall require approval by a top executive or an authorized individual whose position, roles and responsibilities have been agreed by Compliance/AML Compliance. § In case where there is necessity or urgency, banks may go ahead and open an account for the customer. However, the customer must be informed, and must agree that no transactions relating to that account can be conducted until approval is granted by a top executive, or by an authorized individual. The approval of the account shall be given within two (2) days after all required documents for account opening have been submitted.
Juristic Persons 1. Customer with political relationships. 2. Customer who conducts business or has a source of revenue from a high-risk country. 3. Customer in high-risk occupation / business.	In addition to CDD in levels 1 + 2: § Banks should have the knowledge of the structure and relationships of the organization. § Banks should know the source of funds and assets of, and should assess the net worth of customers. § Banks must indicate the source of high value transactions or transactions that are unusual or are not in line with the normal business of the customer. § The opening of a level 3 account shall require approval by a top executive or an authorized individual whose position, roles and responsibilities have been agreed by Compliance/AML Compliance. § In case where there is necessity or urgency, banks may go ahead and open an account for the customer. However, the customer must be informed, and must agree that no transactions relating to that account can be conducted until approval is granted by a top executive, or by an authorized individual. The approval of the account shall be given within two (2) days after all required documents for account opening have been submitted.

In addition, customers from high risk jurisdictions and countries on the following lists also require special attention.

1. NCCT list[17]
2. Office of Foreign Assets Control (OFAC) countries list[18]
3. Transparency International Index, only countries with the CPI score of 2.3 and lower[19]
4. Countries/Jurisdictions subject to monitoring on money laundering or drugs trafficking (if any)

Table 12 (B): High risk jurisdictions and countries

Transparency International (TI) Index, Office of Foreign Assets Control (OFAC), and Non-Cooperative Countries and Territories (NCCT)		
Sr. No.	Countries/Territories	TI index/OFAC/NCCT
1	Angola	TI index
2	Balkans	OFAC
3	Belarus	OFAC
4	Bangladesh	TI index
5	Cambodia	TI index
6	Cameroon	TI index
7	Chad	TI index
8	(Democratic Republic of)Congo	TI index
9	(Republic of) Congo	TI index
10	Cote d'Ivoire	TI index, OFAC
11	Ecuador	TI index
12	Equatorial Guinea	TI index
13	Guinea	TI index
14	Haiti	TI index
15	Iran	OFAC
16	Iraq	TI index, OFAC
17	Kenya	TI index
18	Kyrgyzstan	TI index
19	Libya	OFAC
20	Myanmar	TI index, OFAC
21	Niger	TI index
22	Nigeria	TI index
23	North Korea	OFAC
24	Pakistan	TI index
25	Sierra Leone	TI index
26	Sudan	TI index, OFAC
27	Syria	OFAC
28	Tajikistan	TI index
29	Turkmenistan	TI index
30	Uzbekistan	TI index
31	Venezuela	TI index
32	Zimbabwe	OFAC

Supervisory authorities must take action to build and maintain domestic confidence in

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[17] "Non-Cooperative Countries and Territories" <http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html>

[18] <http://www.transparency.org/policy_research/surveys_indices/cpi/2005>

[19] United States – Department of the Treasury (Office of Foreign Assets Control) http://www.treasury.gov/offices/enforcement/ofac/programs

the AML-CFT regime and prove its effectiveness to the external evaluators. As the AMLA does not prohibit anonymous accounts, the ADB suggested that Thailand should enact specific legislation to prevent the use of anonymous and false name accounts.

2.2.1.2 Securities market

The SEC that is responsible for supervision of the securities market in Thailand has adopted a risk-based approach to supervision and encourages securities companies to adopt international standards. Guidelines on CDD for securities companies and compliance procedures were implemented in 2006. The IMF has offered the SEC assistance to finalize the AML-CFT regulatory framework for the securities sector. The AML-CFT criteria have been applied since the new CDD rules were put in place. Accordingly the SEC has conducted on-site and off-site risk-based supervision of 40 securities firms and 18 asset management companies since 2006. In addition, the SEC has audited the reporting of STRs to the AMLO as part of its on-site inspections since 2005 and requested the AMLO to provide more feedback on the outcome of the STR reporting. Despite the lack of a formal MOU between the AMLO and the SEC on the AML regulation, the SEC has dealt and will continue to deal with the AML-CFT issues.

The securities markets are less vulnerable because of the following factors[20].

1. *All transactions must be paid for by checks or direct transfers from accounts. No cash payments are allowed.*

2. *The SEC has been developing stronger policies on KYC and CDD. It has recognized the need to update the policy framework and this work is being done. In particular there is a strong emphasis on ensuring brokers understand and apply CDD.*

3. *The SEC has stronger legislative framework than other financial regulators such as the Bank of Thailand and the Insurance Department. This is due to the fact that the framework is newer and reflects similar models in other jurisdictions.*

With regard to brokers, the SEC verifies and supervises patterns of customer activity. The scope of the procedures designed to identify marked malpractices includes identifying unusual transactions and transactions being audited by the SEC to report to the AMLO. These AML-CFT supervision and compliance procedures will be applicable as well when derivatives market is established and comes into operation. They will be subject to reporting in accordance with rules and regulations.

The IMF[21] comments in its assessment report as follows:

Regarding FATF Recommendation 5,

1. The securities sector (excluding agricultural futures brokers) is the only

[20] ADB analysis report on Thailand, April 2006: p.72

[21] IMF – Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): pp.152 - 153

one that has any enforceable obligation for FIs to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

2. The securities sector (excluding agricultural futures brokers) is the only one with an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship.

3. The securities sector (excluding agricultural futures brokers) is the only one that has any enforceable obligations for FIs in relation to the timing of verification.

For R 6, the IMF report states that "the only requirements that apply are in the securities sector (excluding agricultural futures brokers)" and for R 8, "the securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented".

Agricultural futures brokers are not regulated by the SEC but by the Agricultural Futures Trading Commission (AFTC). The AFTC has not issued any requirements containing AML-CFT elements for the agricultural futures brokers, so they are not regulated at all for AML-CFT[22].

2.2.1.3 Insurance companies

Although the AMLO has issued anti-money laundering related obligation the DOI has yet to include requirements for anti-money laundering and terrorist financing in its supervision program. The DOI has begun to address how to apply AML-CFT requirements to the life insurance sector that is comparatively smaller in size than banking and securities. In fact, the majority of premiums for life insurance products fall below the threshold in the FATF 40+9 Recommendations. The DOI has yet to adopt a risk-based approach to supervision which has been under consideration. The IMF has offered assistance to the Ministry of Commerce in performing a risk assessment of the insurance sector so as to develop a policy for applying AML-CFT requirements to the insurance sector.

The IMF[23] comments:

> *There is no effective monitoring by the AMLO or the DOI of compliance by life insurance companies to the limited CDD requirements applicable to insurance companies under the AMLA. The TLAA has been proactive in producing comprehensive industry guidelines that detail the key CDD related requirements. Moreover, discussions with industry suggested that many insurance firms already have in place procedures to enable them to follow the non-binding AML-CFT guidelines issued by the DOI and the TLAA. It would appear that the practical compliance with the CDD requirements in the standard is largely driven by the incentives facing insurance companies to mitigate their business risk when writing life insurance business. However, the lack of any effective monitoring by the authorities means that the assessors are not satisfied that*

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[22] IMF – Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.124, para. 551

[23] ibid.: p.150, para. 698

CDD requirements are adopted across all of the industry.

2.2.2 Transactions of non-financial institutions

As the formal banking system is being scrutinized by authorities, money launderers preferably use institutions and companies beyond the banking system for it leaves no paper trail as well as it lacks formalities with regard to verification and record-keeping. Designated non-financial businesses and professions, and alternative remittance systems that play a significant role in money movement in Asia are examples of informal payment systems. Consequently, supervision of non-financial institutions has to be included in the Thailand's AML-CFT supervisory system.

2.2.2.1 DNFBPs

According to FATF Recommendation 12, there are five categories – (1) casinos, (2) real estate agents, (3) dealers in precious metals and dealers in precious stones, (4) gatekeepers such as lawyers, notaries, other independent legal professionals and accountants, and (5) trust and company service providers. They, except casinos, and trust and company service providers, operate officially in Thailand. There are about 10, 000 dealers in precious metals and stones operating in Thailand. Approximately 51,000 lawyers (but not notaries) regulated by the Lawyer Act B.E.2528, operate in Thailand, creating the Lawyers' Council of Thailand, the lawyers' Self-Regulatory Organization (SRO). About 14,000 accountants and auditors governed by the Thai Accounting Act, B.E. 2543 and the Accounting Professions Act, B.E.2547 are registered nationwide and belong to the Federation of Accounting Professions (FAP) which is an SRO. Despite the fact that the real estate activity is widespread in Thailand the real estate agents are neither strongly organized nor properly supervised.

There are no requirements in place in relation to any categories of the DNFBPs and no representatives from the DNFBP sector on the Anti-Money Laundering Board.

The IMF Detailed Analysis Report[24] states:

> *The authorities seemed to have difficulty clearly articulating which part of government was responsible for initiating policy matters on AML/CFT and for monitoring overall effectiveness of the system. Moreover, some agencies that play a key role in AML/CFT are not represented at the AMLB (e.g., no agency from the DNFBP sector is represented; none of the NIA, NSC, NCATTC, or NCCC are represented).*

Although the present law does not impose CDD or record-keeping obligations in respect of the designated non-financial activities set out in Recommendation 12, the process for developing the DNFBP policy was discussed with the industry associations in the DNFBPs task force of the AML-CFT working group. Partly as a result thereof, certain amendments to the AMLA were approved by the Cabinet on 27 February 2007.

In Thailand, casinos are not permitted to open and Thailand is not an offshore

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[24] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.250, para. 1199

financial center nor does it host offshore banks, shell companies or trusts. The following is a brief explanation on each of the aforesaid categories in Thailand.

1. Casinos

At present, Thailand gives no permission as yet to make a casino legal. On the other hand there are some casino clubs at the Thai-Cambodia border such as – Koh Kong International & Resort Club, Casino Golden Crown Club, Casino Star Vegas (Resort) near Sa Kaew Province, Casino Grand Diamond City near Sa Kaew Province, Casino Orsmed Resort near Surin Province, at the Thai-Laos border such as – Casino Paradise Nam Ngum Resort near Nong Khai province and at the Thai-Myanmar border such as – Casino Golden Triangle & Paradise Resort near Chiang Rai province, Casino Regina Entertainment and Casino Koh Son Andaman Club, Ranong Province. Lately, gambling has become one of the predicate offenses under which casinos will be subject to the AMLA.

2. Real Estate Agents

An agent is a person whose job is to point out or arrange another person the way to make an agreement. In this regard, Section 845 of the Civil and Commercial Code states: "A person who agrees to pay remuneration to a broker for indicating the opportunity for the conclusion of a contract or for procuring a contract, is liable to pay the remuneration only if the contract is concluded in consequence of the indication or of the procurement by the broker." For suspicious transaction reports, a financial institution is required under Section 15 of the AMLA to make a report whenever a suspicious transaction appears.

3. Dealers in Precious Metals and Stones

The Thai Chamber of Commerce and the Association of Precious Metals and Stones realized that trading in precious metals and stones in Thailand made cash transactions in the past without the law being applicable to them imposing KYC/CDD. Also reporting of suspicious transaction was not applicable either. Dealers in precious metals and stones have now been brought under the reporting regime in accordance with the AMLA pursuant to the AMLO's KYC/CDD policy statement.

4. Lawyers, Notaries, Other Independent Legal Professionals, and Accountants

Lawyers, Notaries, Other Independent Legal Professionals

As regards the Lawyer Act B.E.2528, a lawyer means anyone who is officially registered with the Lawyer Council and qualified to be a licensed lawyer. At present, there are altogether 48,130 lawyers in Thailand; 25,081 in Bangkok and 23,049 in the provinces (data as at 13th December 2006). According to Section 7 of the Lawyer Act B.E.2528, lawyers are under the supervision of the Lawyer Council.

Accountants

Accountants are professionals in accounting, audit, accounting administration, accounting system, tax account, educational and technology account, and any other accounting services described in the Ministerial Regulation issued under Section 4 of the Accounting Professions Act B.E. 2547. The Federation of Accounting Professions is a self-regulatory organization.

5. Trust and Company Service Providers

In some foreign counties, there are some trusts and company service providers used as a tool of money laundering or for hiding the source of supplementary money for terrorists.

At present, Thailand gives no permission to open a legal trust as yet. There are some practitioners performing asset management governed by a specific law but it cannot be called 'trust' as it is in a foreign country.

2.2.2.2 Non-designated businesses

Apart from DNFBPs, there are other non-designated businesses related to financial transactions that may be used by criminals. Thailand has started but not completed a review of the adequacy of existing laws and regulations that relate to non-profit organizations. The review should be completed and appropriate steps taken to mitigate any potential terrorism risks that the review identifies.

Non-profit organizations (NPO)

Thailand is a country where Non-Profit Organizations (NPOs) or Non-Governmental Organizations (NGOs) – both local and foreign – abound and operate. NPOs/NGOs comprise associations and foundations and are subject to registration and the status of both organizations confers legal personality.

A non-profit organization consists of juristic persons carrying out the work without intending to gain personal benefit. They are foundations, associations, religious organizations, and private organizations.

1. Foundation

A foundation consists of property set up with public benefit purposes that includes charity, religion, art, science, literature, education or any other public interest with no aim of benefit sharing. And it is registered under the provisions of the Civil and Commercial Code.

2. Association

An association, a group of juristic persons, is established to conduct non-profit activities, sharing the same interest. The association must have regulations and be registered according to the provisions of the Civil and Commercial Code.

3. Religious organization

A religious organization refers to the administrative organization for the existence of a religion within Thailand, and it is necessary for such religion, whereas *an organization for religion* refers to a religious unit established by the religion's followers in a particular purpose to support the activities of such religion, or an organization that carries on the work of religious publicizing and ritual, together with taking care of places where the religion's followers go to worship such as a church, a mosque, a temple, a shrine including doctrine and any other sects as well.

4. Private organization

There is a variety of using the name of private organization, for example, a volunteer private organization, a non-profit volunteer organization, a public organization, a private development organization, etc. But in brief, they share similarities in composition which are: (1) an organization that does not belong to the government service, (2) a non-profit organization, (3) an organization carrying out the work for public usefulness such as giving service to society, carrying out public interest, helping to solve social problems or social development, (4) an organization that may or may not be a juristic person.

5. Trading association

A trading association is that kind of a juristic institution incorporated by professional enterprises for a particular purpose of promoting the work of enterprise other than that of sharing profits or income.

6. Chamber of commerce

A chamber of commerce is that kind of an institution incorporated by a group of people who work for promoting trade, industry, agriculture, finance or economy, that is not for sharing profit or income. There are four types of chambers of commerce as follows: (1) the Provincial Chamber of Commerce, (2) the Thai Chamber of Commerce, (3) the Foreign Chamber of Commerce and (4) the Chamber of Commercial Council of Thailand. They have legal status as juristic persons according to the Chamber of Commerce Act B.E.2509 (1966).

7. Other non-profit organization

Any other non-profit organizations that are not incorporated for sharing benefits or income are as follows:

1. A labor union;
2. A labor union of the government enterprise;
3. A political party; and
4. An international organization.

2.2.2.3 Alternative remittance systems

The prominent characteristic common to the alternative remittance systems (ARSs) is strong cultural sense of trust to send money without crossing a border physically and entering the conventional banking system. Due to a powerful sense of community and familial identity – one of the pillars of each transaction – which underlines many of the Asian cultures, communication between a client and a banker or two is seldom recorded by a written contract. The following diagram shows the communication structure of the alternative remittance system.

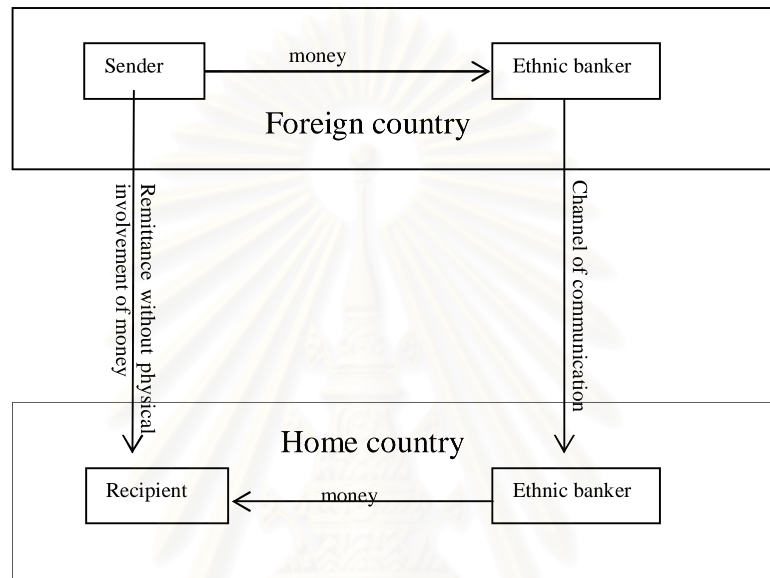

Figure 7: Showing communication structure of alternative remittance systems

Thailand is a place where people use different types of alternative remittance system: Thailand-America, Thailand-Europe, Thailand-China, Thailand-Cambodia, Thailand-India, Thailand-Laos, Thailand-Myanmar, Thailand-Philippines, etc. It is hard to say that this method is used by only money launderers. These systems have provided legitimate remittance and banking services for the peoples of Asia for centuries some people have been used to it and just use the method for their convenience or others use the method without realizing that their money is used for money laundering. Alternative remittance systems function in an entirely legal capacity when they remit the legitimate earnings of foreign workers in Thailand. On the other hand the systems remain legal and are used in money laundering services for the criminal economy.

Some cases of informal remittances came into light some years ago (2001) involving huge amounts of remittances totaling billions of baht and some business firms. They became high profile cases. The main facts can be described briefly as follows:

- Companies involved
  - Ratanakosin International Ltd.
  - Tanasap Tawi Ltd.
  - Eastern Petro Power Ltd.
- Amounts remitted
  - Ratanakosin International Ltd. ($37.81 million))

  - § Tanasap Tawi Ltd. plus Eastern Petro Power Ltd. (THB 7,496.26million - $198 million)
- § Number of remittances (109 times)
- § Number of people involved (20)
- § Jurisdictions remitted (Hong Kong, USA and Singapore)

There are two popular methods of alternative remittance systems, Hawala and Hundi, in the countries of the Indian sub-continent. Hawala is a more international system and associated with criminal activities than Hundi that is a more regional system used to safeguard funds during cross-border travels. However, distinctions between the Hawala and Hundi systems are disparate and do not pervade the region. Immigrants and workers in Thailand use the alternative remittance system known as “poey kuan" – said to have extended the remittance process to include intermediaries. It may have adopted one or both of the aforementioned systems and adapted the banking methods to incorporate their traditions and expertise.

The point is that authorities in Thailand know both money launderers and laymen use this untraceable method but it may be difficult to get the evidence. Even though the system is registered, money launderers will be preferable to use the unregistered system and naive uneducated villagers may use unregistered system innocently. It would be better if authorities can create a system that separates the money launderers from the laymen using the alternative remittance system.

Regarding the alternative remittance system the FATF Special Recommendation VI states:

> *Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.*

Accordingly Thailand should take measures to ensure that the alternative remittance systems are registered in accordance with the FATF 40+9 Recommendations. There are no money laundering offenses using alternative remittance systems in the AMLO cases and the DSI cases, and a few research papers on the alternative remittance systems in Thailand. More researches should be conducted by the AMLO as an FIU.

2.2.2.4 Cross-border transactions

In relation to cross-border transactions there are no appropriate measures consistent with the requirements of FATF Recommendation SR VII. Authorized money transfer agents should be made subject to the full range of AML-CFT obligations and the competent authorities should increase their efforts to suppress illegal money changing and remittance activity in the large informal sector in Thailand. There are neither existing laws, regulations nor other enforceable means regulating wire transfers nor cross-border instruments for the import of domestic currency. Those that are in place are not sufficient enough to effectively mitigate the known cross-border risks. The following is an example of a cross-border transaction-related case reported in the

newspaper[25].

> *Justice Minister Charnchai Likhitjitta said the five Chinese entered Thailand at Suvarnabhumi airport on Nov 20.*
> *The first group, from Guangzhou, arrived about 5 pm and declared HK$6.3 million in cash. Another group came from Hong Kong, arriving about 8 pm with a similarly large amount of cash.*
> *The total value was equivalent to about 60 million baht, he said.*
> *Authorities' suspicions were immediately aroused, with the arrival of the money coming hot on the heels of deposed prime minister Thaksin Shinawatra's call in an interview in Hong Kong last week for a government of national unity after the Dec 23 election.*
> *AMLO staff at the airport said the five Chinese could not explain what they planned to do with the money. They said they intended to invest in Thailand, but had not decided in what way.*
> *AMLO ran a background check and found they had no businesses in China, Hong Kong or Thailand. All five entered Thailand as tourists.*
> *AMLO could not seize the money, although it is empowered by the recently enacted Money Exchange Act to do so. The act prohibits foreigners from bringing in excessive amounts of cash, but does not specify the maximum amount.*

The most responsible agencies are the Customs Department, the Excise Department and the Revenue Department. The Customs Department[26] that operates as custodian of the entry and exit of goods to and from Thailand exchanges information on customs-related offenses – dealt with international trade of illicit commodities: tax evasion, commercial fraud, etc – with other agencies at both regional and international levels. In tax and duty evasion cases, the Revenue Department and Excise Department have the authority to carry out an administrative and preliminary investigation.

The Thai Customs Department has undertaken the use of the World Customs Organization's Harmonized Code for item identification and has recently introduced a computerized Electronic Data Interchange (EDI) system. The government has also undertaken measures to combat corruption in the port area, making moves against the paying of bribes to expedite the shipment of goods and in the reduction of 'red tape' in clearing goods for export, speeding up their movement.

Regarding money laundering using trade-based method, physical inspection programs for imports and exports have been carried out before the release of cargo. In order to identify high-risk goods the trade-related profiling system has been developed. Due to the increase of the trade volume, the Customs Department has reduced physical examination by using advanced technology, such as improving the customs profiling system, upgrading the responding units, allocating more resource persons to make the post-clearance audit and risk management. In order to be more effective, the customs procedures have been improved by introducing post-clearance audit instead of pre-clearance audit. The investigation of customs-related offenses, especially importing narcotics, illegal international trafficking of arms, ammunition and currency, has been carried out.

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[25] Thanida Tansubhapol. "B 60 m cash brought in through airport still here, says AMLO" (News Report), the Bangkok Post, (13 December 2007): p. 2.

[26] Laws and Regulations http://www.thailand.com/exports/html/law_general_09.htm [Read June 2007]

There are no declaration or disclosure requirements[27] for import/export of foreign currency as there are no restrictions in Thailand to import or export foreign currency (or bearer negotiable instruments). Regarding export of domestic currency (Thai baht), if the amount exceeds 50, 000 baht when traveling to foreign countries or 500,000 baht when traveling to Cambodia, Laos, Malaysia, Myanmar and Vietnam, they must have permission from the officers according to item 2 of the Ministry of Finance Notification relating to Money Exchange Control.

If the Customs Department finds out that a large amount of cash has been brought into Thailand, it will report the aforesaid information to the AMLO, the Office of Narcotics Control Board, and the Office of National Intelligence Agency according to the Notification No. NR 0805/18010 dated 1 April 2548 (2005) issued by the Office of the National Security Council relating to control over the money exchange when a large amount is brought into the country.

2.3 Enforcement

2.3.1 Administrative/Executive enforcement

In order to strengthen the enforcement of combating money laundering and terrorist financing, first of all, regulatory agencies must compile and keep up-to-date lists of suspicious persons and organizations to develop comprehensive legislation. Secondly they must focus on how to ensure that they meet international standards. In addition, implementation of international standards needs full support from policy makers who need to thoroughly understand the purpose of AML-CFT regulations.

The Anti-Money Laundering Act was issued in 1999 and under which Anti-Money Laundering Board (AMLB) consisting of 25 members was established for supervision and administrative enforcement (Please see Chapter IV, heading 3.2.7 – Anti-Money Laundering Board and its regulations). Monitoring and evaluating the effectiveness of the enforcement of the AMLA is one of the AMLB's responsibilities. The Anti-Money Laundering Office – headed by the Secretary-General of the AMLB – was also established and empowered (Please see Chapter IV, heading 3.2.9 – Anti-Money Laundering Office (AMLO) and its regulations) under the AMLA in order to perform administrative functions in accordance with the resolutions of the AMLB and the Transaction Committee established under Section 32 of the AMLA (Please see Chapter IV, heading 3.2.8 – Transaction Committee).

2.3.2 Legal enforcement

2.3.2.1Legislation

Law Enforcement cooperation standards are articulated in the FATF 40 Recommendations, the three conventions mentioned above – the Vienna Convention, the Palermo Convention, and the Convention against FOT – and in the UN Resolutions which require States not only to take appropriate steps to cooperate with

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[27] Under the Ministry of Finance's Notification, dated 6 December 2007 becoming effective in early 2008, a threshold of US $20,000/- has been prescribed for import or export of foreign currency- either in bank note or coin – into or out of Thailand.

each other particularly bilateral and multilateral agreements and arrangements to prevent and suppress terrorist acts but also to protect their nationals and other persons against the terrorist attacks and bring the perpetrators of such acts to justice and to prevent and suppress in their territories through all lawful means the preparation and financing of any act of terrorism.

Although Thailand adopted the Anti-Money Laundering Act B.E. 2542 (AMLA) containing measures against ML to be applied to eight predicate offenses, ratified the Vienna Convention (1988) on 1 August 2002 and proposed amendments for the enactment of eight additional predicate offenses, the predicate offenses are still deficient under international standards. On 29 September 2004, Thailand ratified the UN Convention against FOT and issued two Emergency Decrees (Please see Chapter IV, heading 3.2.1 – Predicate offenses) to enact measures related to terrorist financing on 11 August 2003, in accordance with the Thailand's 1997 Constitution. However, Thailand needs to ratify the six conventions of the Annex of the Convention against FOT. As mentioned above, Thailand has considered ratifying the Palermo Convention, amending the current legal provisions so as to be comprehensive enough to criminalize organized crimes effectively and efficiently. Ministerial regulations were made in response to the UN resolutions. Bilateral and multilateral instruments on AML-CFT related matters were also made so as to enhance international cooperation. Moreover, regarding the FATF 40+9 Recommendations, Thailand needs to refer the IMF's Detailed Assessment Report in order to fix and adjust the implementation of the AML-CFT requirements in accordance with the international standards.

Regarding money laundering offenses, Sections 35, 36 and 38 of the AMLA (Please see Chapter IV, heading 3.2.8 Transaction Committee) empower the Transaction Committee and the Secretary-General of the AMLO (1) to restrain the suspicious transactions related to ML offenses; (2) to issue a written inquiry or summon anyone to testify; (3) to have access into a residence, place, or any transporting conveyance in order to search for the purpose of tracing, monitoring, seizing or attaching any asset or any evidence. Section 46 of the AMLA also empowers the Secretary-General (SG) of the AMLO or the competent official, designated in writing by the SG to submit a petition to the Civil Court to issue a warrant to have access to obtain information from the account, communication data, or computer files. Sections 48 – 59 deal with asset management, and Sections 60 – 66 deal with Penal Provisions.

The Special Investigation Act and the Narcotics Suppression Act provide competent authorities with the authority to delay arrest and exercise discretion as to whether to commence a legal proceeding which allows them to waive arrest of suspected persons or seizure of money for the purpose of identifying persons involved in ML-FT activities for evidence gathering.

2.3.2.2 Investigations and prosecutions

The AML-CFT laws, in accordance with the recognized international standards, have a great impact on the ability of law enforcement to investigate and prosecute cases, the ability to share information with foreign authorities, and the ability of inter-agency officials to cooperate in their work in preventing and deterring ML-FT. The main agencies in Thailand, among others, in the law enforcement portion of the AML-CFT regime are the AMLO, the RTP, the ONCB, the DSI, the NCCC and prosecutors.

Having adopted the anti-money laundering measures, special investigative measures are necessary to be modified to be more effective, efficient and successful in the prevention and suppression of organized crimes as the Thailand Criminal Procedural Code 1934 is not subject to any specific provision on special investigation for serious crimes committed by organized crime syndicates. Accordingly, since 1999, law enforcement officials in Thailand have been empowered to apply the following special investigative measures[28].

(a) Access to information through communication and Electronic Technology:

Although the Constitution of the Royal Thai Kingdom B.E. 2540 (1997), Section 37 provides legal protection to the right and freedom of communication there are three exceptions where officials are permitted to access information by employing communication and electronic technology for the purpose of obtaining necessary and vital evidence for criminal action. They are:

1. Keeping public peace and order;
2. Maintaining good public moral; and
3. Maintaining the security of the state.

Constitution Section 37
A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 46 of the Anti-Money Laundering Act (1999) reinforces the Constitution.

AMLA Section 46
In the case where there is a reasonable ground to believe that any account of a financial institution's customer, communication device or equipment or computer is used or probably used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

In the case of paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as it may think fit, provided that the permission on each occasion shall not be for the duration of more than ninety days.

Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall give cooperation for the implementation of this section.

Section 25 of the Special Case Investigation Act, 2004 (SCIA), which has wider

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[28] "Thailand Country Report": Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Thailand, 18 – 25 April 2005, Correction Press, Bangkok: p. 20

scope of enforcement, also states:

SCIA Section 25

In case where there is a reasonable ground to believe that any other document or information sent by post, telegram, telephone, facsimile, computer, communication device or equipment or any information technology media has been or may be used to commit a Special Case offense, the Special Case Inquiry Official approved by the Director-General in writing may submit an ex parte application to the Chief Judge of the Criminal Court asking for his/her order to permit the Special Case Inquiry Official to obtain such information.

When granting permission under paragraph one, the Chief Judge of the Criminal Court shall consider the effect on individual rights or any other right in conjunction with the following reasons and necessities:
(1) There is a reasonable ground to believe that an offense of a Special Case is or will be committed;
(2) There is a reasonable ground to believe that an access to the information will result in getting the information of a Special Case offense; and
(3) There are no more appropriate or efficient methods.

The Office of the Attorney General (OAG) is the principal agency responsible for handling criminal prosecution, providing legal advice to state agencies, representing state agencies in the matter of civil litigation in court and conducting international cooperation in criminal matters. The Attorney General (AG) has occasionally established special offices to handle economic crime cases. For instance, the AG set up the Department of Economic Crimes Litigation, the Department of Intellectual Property and International Trade Litigation, the Office of Money Laundering Control Litigation and the Department of Tax Litigation. Although the AG set up special offices to handle economic crime cases, the Thai public prosecutors still have no power in the investigation process. They have to wait for the cases from the police before taking further action.

The ONCB has obtained the AMLO's cooperation and coordination by receiving disseminated financial intelligence that has been beneficial to the investigations. It has also performed joint investigations with the AMLO providing assistance to the AMLO especially in drug-related predicate offenses. Statistics for cases[29] examined by the ONCB are as follows:

Table 13: Number of drug-related cases opened by the ONCB

Year	Number of cases
2003	1838 cases
2004	1059 cases
2005	1238 cases
2006	1639 cases

The Table shows that 5774 drug-related cases were opened by the ONCB during four years (2003 -2006).

The Penal Code provides judicial authority for the RTP to conduct ML investigations

[29] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.103

as outlined in the following[30]

a. The RTP process for conducting ML investigation includes a preliminary investigation to determine if there are grounds to believe that the predicate offense is related to ML. If the evidence is enough to proceed with an ML case, the RTP would consider the matter for further investigation and then report the result to the AMLO (and the ONCB if the case is drug related).
b. The officer has authority under a search warrant to search persons or places and to seize and freeze any evidence pertaining to the assets of the accused criminal. The officer must inform the AMLO immediately according to article 11 of the RTP Regulation on the Crime Operation Procedure Practice on Prevention and Suppression of Money Laundering B.E. 2544 (2001) dated 27 April 2001.
c. Furthermore, police officers who in the course of other investigations come across assets reasonably suspected to be related to ML must report to the AMLO immediately in accordance with the AMLA. In the case where the transaction is reasonably suspicious, the officer has to report it to the AMLO according to article 10 of the same RTP Regulation.

Statistics for cases[31] RTP submitted to the AMLO are as follows:

Table 14: Number of cases RTP submitted to the AMLO

Year	Number of cases
2003	640 cases
2004	464 cases
2005	441 cases
2006	335 cases

The above Table shows that 1880 cases were submitted by the RTP to the AMLO within four years (2003 – 2006).

According to the Special Case Investigation Act B.E. 2547 (2004), the DSI is responsible for crime prevention and suppression and for investigation of specific crimes, such as Financial and Banking Crimes, Intellectual Property Rights crimes, Taxation crimes, Consumer Protection Environmental Crimes, Technology and Cyber or Computer Crimes, Corruption in Government Procurement, and other serious crimes that have a seriously negative effect on public peace and order, morale of the people, national security, international relations, and the economic or financial system.

The DSI has access to a wide range of special powers[32] under the Special Case Investigation Act to:

§ Obtain information from all communication (including wiretapping) with permission from the court;
§ Search without warrant (after the search, report to the court);
§ Utilize undercover techniques including back stopping, reverse sting, or other; approaches in an undercover capacity to penetrate organizations involved in

[30] ibid: p.104, para 429
[31] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft).: p. 104
[32] ibid.: p.107, para. 449

crime;
- Have special funding for investigations;
- Appoint any government officials or order other agencies to supply resources to assist or work for DSI during these investigations; and
- Allow the public prosecutor to participate in investigations from the beginning of special cases to advise on investigations or assist with court orders.

And it is required to establish that a case meets criteria in the Special Case Investigation Act. The DSI launches an investigation with the purpose to meet the criteria of the Special Case Investigation Act. If these criteria are met, the DSI must seek approval from the Board of Special Case (BSC) before it can utilize the investigation powers of that Act. The BSC is chaired by the Prime Minister or a competent authority designated by the Prime Minister and comprised of numerous officials from various Ministries, the Royal Thai Police, the Bank of Thailand, the Office of the Attorney General, and the President of Law Society and other persons who have expertise and knowledge in each field of economics, banking and finance and information technology or law. Most ML-related cases take 6 months to complete.

The government and the parliament intend to entrust the DSI with the power to investigate serious, complicated and sophisticated crimes and particularly economic crimes or white collar crimes, transnational and organized crimes; while the police have the power to maintain peace and social order and have the power to investigate street crimes. Since the DSI defines money laundering offense as a special case in Section 21, the DSI can conduct investigations relating to special criminal cases under the 27 pieces of legislation[33] which cover all eight ML predicate offenses.

[33] Acts :
1. Law on Loan Amounting to Public Cheating and Fraud
2. Competition Act
3. Commercial Banking Act
4. Law on the Finance Business Securities Business, and Credit Foncier Business
5. Chain Loan Control Act
6. Exchange Control Act
7. Law on Government Procurement Fraud
8. Act for the Protection of Layout-Designs of Integrated Circuits
9. Consumer Protection Act
10. Trademark Act
11. Currency Act
12. Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act
13. Interest on Loan by the Financial Institution Act
14. Bank of Thailand Act
15. Public Company Act
16. Anti-Money Laundering Act
17. The Industrial Product Standard Act
18. Copyright Act
19. Board of Investment Commission Act
20. Enhancement and Conservation of National Environmental Quality Act
21. Patent Act
22. Security and Exchange Commission Act

Ministerial Regulations:

23. Revenue Code
24. Customs Act
25. Excise Tax Act
26. Liquor Act

The DSI works jointly with other law enforcement agencies including the RTP, the ONCB, the NCCC and the AMLO. The DSI is often requested by these agencies to undertake joint investigations so that the provisions of the Special Case Investigation Act can be used in these cases. The DSI, under the authority of the Act, can also request any government agency to participate in their ongoing investigations and the agency must provide assistance.

According to the following Table, from 2004 to 2007, 302 special cases have been investigated under the Special Case Investigation Act. The number of cases completed is 171, and 131 cases are still under investigation.

Table 15: Number of cases investigated under the Special Case Investigation Act

Year	Special Cases	Cases completed	Cases under investigation
2004	31	29	2
2005	89	70	19
2006	170	71	99
2007	12	1	11
Total	302	171	131

The NCCC is designated to conduct corruption investigations including ML offenses relating to corruption offenses. The IMF's Detailed Assessment Report on Thailand states[34] that the NCCC receives about 2,000 cases per year through referrals from other law enforcement agencies (LEAs). They investigate 1,200 cases of the received cases on average and approximately 10% of which end in prosecution. No ML-related investigations or asset seizures have been pursued by the NCCC and no cases have been referred to the AMLO for pursuing under the civil provision of the AMLA.

The SEC is empowered to examine unfair securities trading practices such as trading securities by using inside information related to the facts of securities to the public, etc. Such cases are referred to the police at the ECID (Economic Crime Investigation Department) and the Office of the AG respectively. In real practice, most securities matters are referred to the SEC directly from other countries and the SEC asks for assistance by contacting directly foreign regulators rather than via the central authority

It is necessary to have effective and efficient cooperation between the BOT and the AMLO. The BOT examiners are appointed to be competent officials under the AMLA so that they are effectively able to exercise the relevant supervisory powers of the BOT and the investigative powers of the AMLO. According to the IMF's Detailed Assessment Report[35], not only increased communication between the BOT and law enforcement agencies is needed but also early coordination of cases among the AMLO, other law enforcement agencies, and the prosecutors' office should be encouraged and enhanced. The AMLO is encouraged to improve its case

27. Tobacco Act

[34] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.102 – 103, paras. 417 – 421

[35] ibid.: p.42, para. 107

management system and the tracking of evidence.

> ***Law enforcement issues***
> - § *Investigation and prosecution efforts must be enhanced among LEAs, the AMLO and the OAG so as to increase the number of ML prosecutions and convictions.*
> - § *Thailand should develop an effective seized asset management system to track seized property and assets from seizure to forfeiture.*
> - § *Thailand should take measures to detect or monitor the physical cross-border transportation of cash in currencies other than Thailand's baht and the transportation of bearer negotiable instruments.*
> - § *There is a need for increased communication between the BOT and LEAs.*
> - § *Early coordination of cases among the AMLO, other LEAs, and the prosecutors' office should be encouraged and enhanced.*
> - § *The AMLO is encouraged to improve its case management system and the tracking of evidence.*

Domestic cooperation between regulatory, supervisory and law enforcement authorities must be at the heart of an effective AML-CFT regime, and international cooperation in the form of information exchange, asset freezing, taking testimony and obtaining documents is essential to a successful defense against money laundering and terrorist financing.

2.3.2.3 Predicate offence-based sanctions

A test case involving asset forfeiture in ML-related case was once brought before the Constitution Court to rule if asset seizure procedures under the AMLA violate the provisions of the Constitution protecting the rights and liberties of persons against retroactive application of criminal law and criminal punishment. This test case, in the context of sanctions under the AMLA, can be regarded as a case of predicate offence-based sanction (PO–based sanction). The following is the reproduced text of the test case.

> ***Conclusion of Consideration No. 40-41/2546 Given on the 16th Date of October 2546***
>
> ***Subject: The Civil Court has submitted two cases to the Constitutional Court pursuant to section 264 of the Constitution for determination whether the assets seizure procedure under Chapter 6 of Anti-Money Laundering Act of 2542 is violative of sections 29, 32, 48 and 235 of the Constitution.***
>
> ***Summary of the Facts***
>
> *In accordance with section 264 of the Constitution, the Civil Court has submitted for consideration on appeal the case of Mr. Michael Charles Mescal and associates forming a group of eight in Civil Case black number ML.3/2544 and the case of Mrs. Tayoy (alias Joe or Joy) and associates forming a group of five in Civil Case black number ML.5/2544 to determine whether the assets seizure procedure under Chapter 6 of Anti-Money Laundering Act of 2542 is violative of sections 29, 32, 48 and 235 of the Constitution.*
>
> ***Issues to Consider and Conclusion***
>
> *Because of the similarity of the legal challenges presented in both cases, the Constitutional Court consolidated these two appeals to address the following issues:*

***Issue 1**: Do the procedures set forth in sections 48 through 59 under Chapter 6 of Anti-Money Laundering Act 2542 violate section 32 of the Constitution?*

The Constitution Court concludes that section 32 of the Constitution provides for the general principle protecting the rights and liberties of persons against retroactive application of criminal law and criminal punishment unless he or she has committed an act which constituted an offense at the time it was committed. Additionally, the penalty imposed shall not exceed the penalty provided by the law in force at the time the offense was committed. The underlying rationale of the Anti-Money Laundering Act as stated in its accompanying principle is to combat crime and provide measures to deter the economic motive for committing financial crimes. In furtherance of this objective, the law provides for two separate enforcement schemes. One is the creation of the criminal offense of money laundering for which an offender can be criminally prosecuted. The other remedy is to bring a civil proceeding for forfeiture against the asset involved in the offense of money laundering. A civil action of forfeiture provides for a shifting burden of proof and contains different assumptions than those contained in the criminal measure and does not amount to a criminal prosecution of an offender. A civil forfeiture action is against property and is not a criminal prosecution against a person. Therefore, a civil forfeiture action does not violate or conflict with section 32 of the Constitution at all.

***Issue 2**: Do the procedures set forth in sections 48 through 59 under Chapter 6 of Anti-Money Laundering Act 2542 violate sections 29 and 48 of the Constitution?*

The Constitution Court concludes that section 29 of the Constitution protects the rights and liberties from infringement except by virtue of the provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent necessary. Section 48 of the Constitution protects the right of ownership of property from restriction except as provided by law. The deprivation of property rights resulting from the application of Chapter 6 of Anti-Money Laundering Act, sections 48 through 59, are lawful measures implemented by the Government necessary to protect the security of the public. Therefore, the procedures set forth in sections 48 through section 59 of the Anti-Money Laundering Act do not violate sections 29 and section 48 of the Constitution.

***Issue 3**: Does section 59 of Anti-Money Laundering Act 2542 violate section 235 of the Constitution ?*

The Constitution Court concludes that the Anti-Money Laundering Act confers jurisdiction upon the Civil Court to adjudicate civil forfeiture proceedings and further provides that the Civil Procedure Code shall control in such proceedings. The Civil Court, which is established in accordance with section 19 of the Establishment of the Court of Justice Act 2543, is vested with jurisdiction over all civil cases and cases not specified to be under any other Court of Justice. The specific measures against assets involved in an offense set forth in Chapter 6 are not criminal measures against an individual. Therefore, the court proceedings conducted by the Civil Court under the Anti-Money Laundering Act are consistent with the Establishment of the Court of Justice Act and do not violate or conflict with section 235 of the Constitution at all.

For the reasons set forth above, the Judges of the Constitution Court unanimously decide that the provisions under Chapter 6, sections 48 through 59, of Anti-Money Laundering Act 2542 do not violate or conflict with sections 29, 32, 48 and section 235 of the Constitution.

Office of Constitution Court
16 October 2546 (2003)

2.3.2.4 Regulatory sanctions

Effective implementation for all preventive measures partly depends on an effective application of sanctions. An effective application of sanctions requires governments to ensure that their financial sectors remain transparent, accountable, and well protected. This can be achieved only through vigilance, acuity and cooperation. Furthermore individuals in both public entities and private entities have to carry out their duties according to the AML-CFT legislation and keep the confidential information without letting other people know. Sections 62 and 63 of the AMLA deal with regulatory sanctions for legal entities; Sections 64 and 65 deal with regulatory sanctions for both legal and natural persons; and Section 66 for any individual in both public entities and private entities.

2.3.2.5 Asset seizure

Forfeiture provisions in the Thai Penal Code are applicable to any offense including money laundering offenses.

> ***Section 32***
> *Any property as provided by the law that any person makes or possesses to be an offense shall be forfeited wholly, whether it belongs to the offender and has the person inflicted with the punishment according to the judgment or not.*
>
> ***Section 33***
> *For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:*
> *(1) a property used or possessed for use in the commission of an offense by a person; or*
> *(2) a property acquired by a person through the commission of an offense, unless such property belongs to the other person who does not connive at the commission of the offense.*

Regarding corruption, Section 34 of the Penal Code deals with the forfeiture of property.

> ***Section 34***
> *All properties:*
> *(1) which have been given under Section 143, Section 144, Section 149, Section 150, Section 167, Section 201 or Section 202; or*
> *(2) which have been given in order to induce a person to commit an offense, or as a reward to a person for committing an offense,*
> *shall be forfeited wholly, unless those properties belong to the other person who does not connive at the commission of the offense.*
>
> ***Section 143***
> *Whoever demands, accepts or agrees to accept a property or any other benefit for himself or the other person as a return for inducing or having induced, by dishonest or unlawful means, or by using his influence, any official, member of the State Legislative Assembly, member of the Changvad Assembly or member of the Municipal Assembly to exercise or not to exercise any of his functions, which is advantageous to any person, shall be punished with imprisonment not*

exceeding five years or fine not exceeding ten thousand baht, or both.

Section 144
Whoever gives, offers or agrees to give a property or any other benefit to any official, member of the State Legislative Assembly in order to induce such person to do or not to do any act, or to delay the doing of any act, which is contrary to his functions, shall be punished with imprisonment not exceeding five years or fine not exceeding ten thousand baht, or both.

Section 149
Whoever, being an official, member of the State Legislative Assembly, member of the Changvad Assembly or a member of the Municipal Assembly, wrongfully demands, accepts agrees to accept for himself or the other person a property or any other benefit for exercising or not exercising any of his functions, whether such exercise or not exercise of his functions is wrongful or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht, or death.

Section 150
Whoever, being an official, exercises or does not exercise any of his functions in consideration of a property or any other benefit which he has demanded, accepted or agreed to accept before being appointed as official in such post, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht.

Section 167
Whoever gives, offers or agrees to give a property or any other benefit to an official in a judicial post, Public Prosecutor, official conducting cases or inquiry official in order to induce him wrongfully to do, or not to do an act or to delay the doing of any act, shall be punished with imprisonment not exceeding seven years and fine not exceeding fourteen thousand baht.

Section 201
Whoever, being an official in a judicial post, a Public Prosecutor, an official conducting cases or an inquiry official, wrongfully demands, accepts or agrees to accept a property or any other benefit for himself or the other person in order to exercise or not to exercise any of his functions, whether such exercise or non-exercise is wrongful to his duty or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand baht, or death,.

Section 202
Whoever, being an official in a judicial post, a Public Prosecutor, an official conducting cases or an inquiry official, exercises or does not exercise any of his functions in consideration of a property or any other benefit which he has demanded, accepted or agreed to accept before his appointment to such post, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht, or death.

The AMLO, the ONCB, the DSI and the RTP, among others, have authority to identify, freeze, and/or forfeit ML-FT related assets.

The following Table shows the ONCB statistics relating to criminal ML cases – relating to narcotics only – and asset seizure conducted by the ONCB[36]. 95 % of the cases undertaken are referrals or invitations to participate in ongoing drug investigations being conducted by the RTP. The ONCB has an investigative unit that

[36] ONCB's answers to DAQ for IMF's Detailed Assessment Report on Thailand, 2007.

focuses entirely on seizing and forfeiture of assets relating to narcotic investigations and the RTP has a number of drug units who investigate the narcotics cases but also are responsible to identify and seize assets that are believed to be proceeds of crime associated with these offences.

According to the Table, from 1992 till 2007 January, there were 9141 examined cases relating to criminal money laundering cases and the value of asset seizure is THB 7,316.2 million that is equivalent to US$ 193.1. There are four types of assets: cash, bank deposit, property and real estate. The increase of not only the number of examined cases but also the value of asset seizure during those years can be seen in the Table.

Table 16 : Statistics relating to criminal ML cases and asset seizure

Year	Examined (Case)	Seized (million in baht)	Seized (million in dollar)	Type of Assets (million in baht)			
				Cash	Deposit Bank	Property	Real Estate
1992	4	11.4	0.3	1.8	3.7	1.1	4.8
1993	38	84.2	2.2	40.1	26.9	6	11.2
1994	44	115.9	3.1	2.6	57.6	14.2	41.5
1995	57	139.3	3.7	36.2	47.4	17.6	38.1
1996	92	107.0	2.8	23	41.2	17.6	25.2
1997	188	236.0	6.2	35.8	48.2	134	18
1998	284	174.3	4.6	70.7	60.1	22.2	21.3
1999	257	178.1	4.7	39.7	86.2	31.8	20.4
2000	449	247.0	6.5	44.3	100.3	52.1	50.3
2001	811	487.2	12.9	106.2	134.3	145.9	100.8
2002	1,042	709.6	18.7	123.6	157.4	213.9	214.7
2003	1,838	2,316.9	61.2	265.3	357.5	863	831.1
2004	1,059	683.3	18.0	128.5	114.1	264.7	176.0
2005	1,238	857.9	22.6	102.2	152.1	346.9	256.7
2006	1,639	943.1	24.9	97.1	209.0	304.4	332.6
2007 (Jan)	101	25.0	0.7	5.7	5.0	13.0	1.3
Total	9,141	7,316.2	193.1	1,122.8	1,601.0	2,448.4	2,144.0

According to the data given by the AMLO and the ONCB in the DAQ, the following Table shows the total **seizures** by the AMLO and the ONCB over the past six years. The value of the total seizure is THB 10, 246 million equivalent to US$ 268 million where the value of the AMLO' seizure is THB 4,181million and that of the ONCB is THB 6245 million.

Table 17 : Seizures by AMLO and ONCB

Year	AMLO		ONCB		Total	
	million in baht	million in dollar	million in baht	million in dollar	million in baht	million in dollar
2000	23		247		270	7
2001	752		487		1239	33
2002	682		710		1392	37
2003	944		2317		3260	86
2004	1410		683		2094	55
2005	370		858		1228	32
2006	?????		943		943	25
Total	4181	110	6245	158	10246	268

The AMLO's answer to the DAQ contains the following Table that shows the assets seized and forfeited under the AMLA since 2000.

Table 18 : Assets seized and forfeited by AMLO

Year	No. of STRs	Value of STRs Baht million	Value of STRs $ million	Assets Seized Baht million	Assets Seized $ million	Prosecuted ML Cases	ML Convictions	Property Forfeited Baht million	Property Forfeited $ million
2000	290			271	7				
2001	16,489			1,239	33	9	7	9.3	0.3
2002	46,221	171,251	4,521	1,391	37	4	2	31.3	0.8
2003	32,338	120,013	3,168	3,260	86	10	7	112.1	2.9
2004	38,935	135,251	3,571	2,094	55	10	3	327.7	8.7
2005	39,175	156,908	4,152	1,228	32	12	0	505.8	13.4
2006	39,395	?	?	943	25	3	0	163.8*	4.3
TOTAL	212,843	583,423	18,218	10,246	268	48	19	1,150	30.4

In the context of the above-mentioned Table, the AMLO examined transactions associated with the commission of offenses and reported to the TC for its order to seize or freeze assets involved in the commission of offenses or to revoke its earlier orders under Section 48 of the AMLA. These can be grouped according to the eight predicate offenses.

The following Table shows statistics for the 5-year period 1 January 2002 to 31 December 2006. The AMLO, under the AMLA, investigated 1108 cases from which it seized an estimated total value of assets of 6,416,439,230 baht ($ 169 million). The following Table shows the AMLO's statistics on assets seizure (AMLO Table A), forfeitures and ongoing cases from 1 January 2002 to 31 December 2006.

Table 19 : AMLO's statistics on assets seizure

Sr. No.	Type and Status of Case and Main Predicate Offenses Within Each Category*	2002		2003		2004		2005		2006		Total 2002-2006	
		No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)
1	**Civil Court ordered forfeiture**	**15**	**31.1**	**49**	**109.1**	**101**	**326.9**	**94**	**505.6**	**59**	**306.9**	**318**	**1,279.8**
	Narcotic	15	31.1	48	108.1	100	319.7	87	447.2	58	279.2		
2	**Case dismissed**			**1**	**1.6**	**4**	**29.3**	**3**	**5.6**	**6**	**307.0**	**14**	**343.5**
	Narcotic					3	3.6	2	2,.2	5	301.2		
	Customs			1	1.6	1	25.6			1	5.8		
3	**Under Court proceedings**	**71**	**834.5**	**129**	**1,843.9**	**134**	**2,118.0**	**146**	**1,892.6**	**184**	**1,649.6**	**664**	**8,338.7**
	Narcotic	66	825.7	120	1,755.6	118	1,738.9	125	1,439.7	145	1,000.9		
	Malfeasance			1	9.6	3	25.1	4	36.2	10	205.5		
	Customs	3	6.6	4	37.8	4	261.0	3	264.1	2	258.2		
4	**With prosecutor**					**7**	**7.0**	**8**	**64.2**	**7**	**5.4**	**22**	**76.5**
5	**Under investiga-tion and evidence gathering**					**13**	**38.4**	**18**	**52.3**	**9**	**145.7**	**40**	**236.4**
	Narcotic					12	8.4	15	18.6	8	20.9		
	Malfeasance					0		2	30.8	1	105.0		
6	**Forwarded by TC - AG did not forward to court**	**4**	**10.8**			**1**	**0.3**	**0**		**0**		**5**	**11..2**
	Narcotic	4	10.8	0	0.00	1	0.3						
7	**Not prosecuted**	**10**	**48.4**	**7**	**9.1**	**10**	**7.2**	**3**	**0.4**	**2**	**0.1**	**32**	**65.2**
	Narcotic	9	20.4	5	1.2	9	6..3	3	0.4	2	0.1		
	Malfeasance	1	28.1	0		1	0.9	0		0	0		
8	**Passed to other agencies**	**2**	**17.0**	**1**	**0.9**	**4**	**397.9**	**0**	**0**	**0**	**0**	**7**	**415.9**
	Fraud	0	0.00	1	0.9	4	397.9	0	0	0	0		
9	**Sent for rights protection process**	**0**		**2**	**11.9**	**3**	**26.8**	**0**	**0**	**1**	**0.1**	**6**	**38.8**
	Grand total	**102**	**941.9**	**189**	**1,976.5**	**277**	**2,951.9**	**272**	**2,520.7**	**268**	**2,414,.9**	**1108**	**10,806.0**

* The predicate offenses listed under each category reflect the main one(s) contributing to the total for each category. Note that the total for each category is greater than what is disclosed by the selected predicate offenses.

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The IMF's Detailed Assessment Report suggests that Thailand should develop an effective seized asset management system to track seized property and assets from seizure to forfeiture.
Regarding ML predicate offenses it states as follows:

> *Other serious predicate offenses such as corruption, fraud or other economic crimes have been neglected from an ML investigation perspective. Despite having the legal authorities to launch ML investigations relating to other predicate offenses, authorities admitted that they are reluctant to do so and rely on the AMLO to undertake the financial aspect of these investigations when the case is not drug related. Since the AMLO cannot pursue cases criminally, this means the seven other predicate offenses are very seldom pursued criminally by the predicate investigating agency. This is supported by the lack of or limited number of ML cases that have been provided by those agencies*[37].

The AMLO, the DSI and the Royal Thai Police have authority to identify, freeze, and/or forfeit ML-FT related assets.

2.4 National and international cooperation

National cooperation and coordination are the foundation of international cooperation. Coordination and cooperation between national authorities and financial institutions are essential to apply the AML-CFT requirements to banks, insurance companies, securities firms, lawyers and other non-financial businesses and professions covered by the FATF 40+9 Recommendations. Mechanisms for national cooperation and coordination must be in place so as to enable policy makers, the FIU, law enforcement and supervisors, and other competent authorities to cooperate and coordinate domestically with each other concerning the development in implementation of policies and activities to combat ML and FT. Consequently, cooperation among domestic AML-CFT stakeholders and with their international counterparts can be promoted.

2.4.1 National coordination and cooperation

The AMLB was set up and Section 25 (Please see Chapter IV, heading 3.2.7 – Anti-Money Laundering Board and its regulations) of the AMLA empowers the AMLB (1) to propose to the Cabinet measures for the control of money laundering; (2) to promote public cooperation in connection with the giving of information for the combat against ML and;(3) to monitor and evaluate the execution of the AMLA.

In order to improve the effectiveness of supervision, the Financial Institutions Policy Board was established mainly to formulate and oversee the implementation of the FIs and SFIs supervisory policies. The members of the Board consist of the Governor of the BOT as chairman and the representatives from agencies concerned.[38]

The National Coordination Center for Combating Terrorism and Transnational Crime (NCC-CTTC) was set up under the announcement of the Office of the Prime Minister

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[37] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.111, para. 480

[38] ibid.: p.251, para. 1201

No. 39/2547 dated 27 February 2004 with the following authority:

1. To coordinate and designate priority in information gathering concerned with international terrorism and transnational crime within the country and abroad.
2. To coordinate and set up a network for preventing and solving the problems of terrorism and transnational crime.
3. To coordinate and reconsider, make assessment of adequacy of measures and action plans of related agencies.
4. To coordinate in supplementary support for skill development and material support among the government agencies concerning foreign affairs.
5. To supervise actions in resolving the problems of international terrorism and transnational crime.
6. To invite government agencies concerned to consider necessary future operational plans.

The Committee on the Prevention and Solution of Transnational Crime, set up since February 2003 by the National Security Council (NSC), issued the Notification No.1/2547, dated 14 July 2004, establishing the Board of Subcommittee on the Prevention and Solution of Transnational Crime to implement the NCC-CTTC's obligations. As of 20 August 2006, the Board is composed of 27 members representing a wide range of security-related agencies.

On the other hand the IMF's Detailed Assessment Report states[39]:

> *During interviews conducted with the LEAs or agencies who have representation on the AMLB, it was evident that, despite these organizations being involved in the AMLB, many of the agencies had made minimal commitment to actually investigate ML or TF offenses even though these responsibilities clearly fell within their mandate. This raises concerns as to the effectiveness of the AMLB as an instrumental body determining "national priorities" for AML-CFT. Only the ONCB for drug cases and the AMLO have dedicated units to investigate ML or TF-related cases which is confirmed by the lack of ML prosecutions and convictions for non drug-related cases.*

AMLO has coordinated with other related agencies, such as, the ONCB, the RTP in the fight against drugs and the NCCC in investigation of government corruption cases. It has signed memoranda of understanding with the following agencies.

§ A memorandum of understanding with the National Counter Corruption Commission to support the operations of NCCC was signed on 22 September 2004.

§ An operational and integrated budget plan on the prevention and solution of the drug problem was drawn up with ONCB.

§ An operational and integrated budget plan on the prevention and solution of the human trafficking problem was drawn up with the Ministry of Social Development and Human Security.

In order to reinforce the cooperation with the public, the AMLO has initiated 2 major

[39] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.250, para. 1200

projects.

- § The AMLO Informant Project began operation in 2003 with the objective of communicating and networking with the public in combating money laundering and gathering information and clues from AMLO informants for investigation and data analysis, leading to further investigation and prosecution especially in crime involving drugs, corruption and influential persons, in line with the government policy. By 31 December 2004, 70,968 people had joined the project.

- § Project to establish a national Public Committee to promote and support the prevention and suppression of money laundering. This project was approved by the Minister of Justice to begin operation in the 2005 Financial Year. The project complies with the 1997 Constitution of the Kingdom of Thailand and 1999 Regulations of the Office of the Prime Minister on Good Governance. These call for efficient government services to respond to the needs of the people by emphasizing the benefit to the public, streamlining procedures and increasing the public access to information.

  The objectives of the project are:

  1. To support and promote public participation in AMLO's work by giving advice and recommendations on policy-making for the prevention and suppression of money laundering.
  2. To follow up on the work of AMLO for the national level public working committee.
  3. To establish or improve the efficiency of work systems in accordance with the advice and recommendations on policy-making of the national level public working committee to respond to the maximum extent possible to the needs of the people.

The BOT and other regulatory agencies work in close cooperation to exchange supervisory information and the BOT regularly exchanges knowledge, experience and material information with relevant foreign supervisory authorities as well. The AMLO uses Information Technology (IT) for receiving reports and encourages reporting entities to file reports electronically.

2.4.2 International cooperation

Central Authorities for international cooperation are:

(1) Ministry of Foreign Affairs under the Extradition Act, 1929
(2) Office of the Attorney General under the Act on Mutual Assistance in Criminal Matters, 1992
(3) Office of the Attorney General under the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional AMLA treaty)

Note: AMLO is the direct contact point under its Memoranda of Understanding with foreign FIUs.

The Cabinet passed a resolution on 12 February 2002 approving a Model

Memorandum of Understanding Concerning Cooperation in the Exchange of Financial Intelligence Related to Money Laundering and authorized the Secretary-General of the Anti-Money Laundering Office to sign memoranda with Financial Intelligence Units of the Egmont Group member countries.

Exchange of money laundering information with other countries is mostly conducted through the AMLO since it is responsible for collecting and disseminating financial intelligence with foreign FIUs. As part of international cooperation Thailand's AMLO received 347 cases from foreign counterparts and requested 351 cases to foreign counterparts from 2003 to 2006 according to AMLO Table C (Please see data attachment 9 (C) provided to the IMF for DAQ. The numbers of cases responded by both sides are not indicated in the Table C. The following Table shows the exchange of information with foreign counterpart FIUs from 2003 to 2006.

Table 20 : Exchange of Information

Fiscal year	Received cases from foreign counterparts	Requested cases to foreign counterparts
2003	43	49
2004	114	117
2005	95	96
2006	95	89
Total	347	351

The above table shows that Thailand requested 351 cases to foreign counterparts for assistance and received 347 cases from foreign counterparts within four years.

Under the ASEM Anti-Money Laundering Project funded by the UK and the European Commission, a research study was assigned to the AMLO as part of a project to build capacity to combat money laundering in Asian countries which are members of the forum of Asian and European countries. In 2004, the ASEM project arranged a training course in financial investigations, in which 30 trainees participated. This research project is known as "Research Project Two", under which an exchange database called "JAEME" (Joint Asia-Europe Money Laundering Data Exchange Project) was set up in mid-2005 and has since been in operation. This center's function is to process confidentially exchange of financial intelligence information among member FIUs with a view to sharing case studies and identifying linkages between suspected criminals in Asia and Europe stemming from the analysis of case studies.

The AMLO has become a member of the APG since April 2001 and it joined the Egmont Group in June 2001 and has become a member since. Thailand is a member of the ASEM, the APEC and the ASEAN. As Thailand is a member of the international community, it has legal obligations to honor any legal commitment it makes in relation to international conventions, UN resolutions, bilateral and multilateral treaties, international standards and guidelines of international organizations. While treaty obligations and UN Security Council resolutions are of mandatory nature, international standards and guidelines may not impose legal obligations to comply with. And yet, once any commitment is made, it becomes a duty to honor it.

Thailand's international obligations in relation to ML and FT derive from its being a State party to the relevant international conventions and in the case of the FATF Recommendations, it has voluntarily undertaken to meet the standards set out therein. Now that the UNSC by its Resolution No. 1617 dated 29 July 2005, has strongly urged all member States to implement the FATF 40+9 Recommendations on ML and FT, Thailand's international obligations have become more pronounced.

Thailand's mechanism of international cooperation is composed of the following components.

(a) Legal instruments
- (i) The Extradition Act, 1929
- (ii) Bilateral treaties on extradition process
- (iii) Act on Mutual Assistance in Criminal Matters, 1992
- (iv) Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional MLA treaty)
- (v) Bilateral treaties on mutual assistance in criminal matters
- (vi) Memoranda of Understanding on exchange of financial intelligence relating to money laundering
- (vii) United Nations conventions
- (viii) United Nations Security Council resolutions
- (ix) Recommendations and guidelines of international organizations

(b) Central Authority
- (i) Ministry of Foreign Affairs under the Extradition Act, 1929
- (ii) Office of the Attorney General under the Act on Mutual Assistance in Criminal Matters, 1992
- (iii) Office of the Attorney General under the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional MLA treaty)
- (iv) AMLO under Memoranda of Understanding with foreign FIUs

(c) Enforcement
- (i) Assistance in locating, identifying, freezing, seizing and confiscating the proceeds and instrumentalities of crime
- (ii) Extradition of offenders
- (iii) Exchange of information on criminal matters
- (iv) Establishment of joint investigation
- (v) Exchange of intelligence information on money laundering

2.4.2.1 Cooperation in mutual legal assistance

In general, Thailand provides mutual legal assistance in criminal matters on the basis of the Act on Mutual Assistance in Criminal Matters 1992 and bilateral or multilateral treaties on mutual assistance in criminal matters.

According to the Act on Mutual Assistance in Criminal Matters 1992, the Attorney General or the person designated by him is the Central Authority of Thailand (Section 6). One main function of the Central Authority is to consider and determine whether to provide assistance to a requesting State; and, whether to seek assistance from a foreign government. The processing unit of all the requests for the Central Authority

is the International Affairs Department, Office of the Attorney General.

The aim of the Act is to cooperate with and to assist other countries in fighting international and transnational crimes. Thailand has tried to assist the world community to the best of the country's ability within the limit of the law.

The following are the important aspects of the Act for facilitating and expediting the process of considering a request for assistance:

1. Thailand may provide assistance to a country that has no mutual assistance treaty with Thailand, but the requesting State has to state clearly in the request for assistance that it commits to assist Thailand in a similar manner when requested (Section 9-1).
2. The act which is the cause of the request must be an offense punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty which otherwise specifies (Section 9-2).
3. The State which has a mutual assistance treaty with Thailand shall address its request for assistance to the Central Authority. The State with no mutual assistance treaty with Thailand shall submit the request through diplomatic channels (Section 10).
4. If the Central Authority considers the request eligible for assistance and has gone through the correct procedure, the request then will be transmitted to the Competent Authority, i.e., the Commissioner of the Royal Thai Police, the Director-General of the Criminal Litigation, the Office of the Attorney General, the Director-General of the Corrections Department, depending on the nature of the request (Section 12)
5. If the request is not made in Thai or English language, it shall be accompanied by the authenticated Thai or English translation (Article 5 of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1994).
6. If a foreign State requests Thailand to forfeit property in Thailand, the property may the forfeited by the judgment of the Court if it has been forfeited by the final judgment of a foreign Court and it is forfeitable under Thai laws (Section 33). The forfeited property shall become the property of Thailand, or the Court may pass the judgment for it to be rendered useless or to be destroyed (Section 35).
7. Assistance may be refused if its execution would affect national sovereignty or security, or other crucial public interests, related to a political offense or related to a military offense (Section 9).
8. Moreover, the assistance may be postponed if its execution would interfere with the inquiry, investigation, prosecution or other criminal proceedings pending the handling in Thailand (Section 11).

Under the Act on Mutual Assistance in Criminal Matters 1992, the assistance includes:

1. taking the testimony and statement of persons;
2. providing documents, records and evidence;
3. serving documents;
4. searching and seizing
5. transferring persons in custody for the testimonial purpose;
6. locating persons; and

7. forfeiting assets.

As for mutual legal assistance in criminal matters, Thailand has entered into bilateral treaties with 14 countries. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

Thailand signed the regional treaty for mutual legal assistance in criminal matters on 17 January 2006 and the AMLO signed the memoranda of understanding on exchange of financial intelligence with 31 foreign counterparts up to 17-07-2007. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

The RTP is the competent authority designated to handle mutual legal assistance from a policing perspective. The AG administrates the execution of the requests received and seeks the RTP's assistance to collect the evidence or conduct investigations. The following is the Table of MLAT requests received from and responded to foreign FIU counterparts[40].

Table 21: MLAT requests

MLAT Requests Received from and Responded to Foreign Jurisdictions		
Year	**No. of cases**	
	Received	**Replied**
2001 – 2002	7	5
2002– 2003	54	31
2003 – 2004	51	31
2004 – 2005	124	123
2005 – 2006	41	41
Total	277	231

The above Table shows that Thailand responded to 83% of the received cases for mutual legal assistance.

2.4.2.2. Cooperation in extradition

The international effort against money laundering and the financing of terrorism has taken on heightened importance in the wake of the events of 11 September 2001. Extradition is one crucial factor in combating money laundering and financing of terrorism. Thailand has concluded extradition treaties that have special provisions on simplified procedure for extradition and it has concluded extradition treaties with 11 countries to enhance the extradition process promptly and effectively. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

However, the simplified procedure for extradition is not put into practice because of the fact that the Extradition Act 1929 has no specific provision on simplified procedure for extradition. In general, Thailand considers extradition requests on the basis of the Extradition Act 1929 and bilateral extradition treaties. The Act will govern extradition in Thailand insofar as it is not inconsistent with any extradition treaty to which Thailand is a party (Section 3).

[40] IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.271, para. 1329

The following are the important aspects of the Extradition Act 1929:

1. In the absence of an extradition treaty, extradition shall be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai laws (Section 4) and it shall not be a political offense (Section 12).
2. Reciprocity is generally required but not a legal requirement. This allows Thailand to extradite fugitives even if reciprocity is not fully obtained, i.e., in case the requesting State cannot commit reciprocity because the offense to which extradition relates carries death penalty under Thai laws.
3. Extradition will not be granted if the accused has already been tried and discharged or punished in any country for the crime requested (Section 5).
4. Under the current law, Thai nationality is not an absolute bar for extradition.
5. An extradition request shall be sent through diplomatic channels (Section 6) and shall contain the conviction and the warrant of arrest for the requested person, together with related evidence (Section 7).
6. In case of a request for provisional arrest, the nature of the offense and the arrest warrant of the requesting Court shall be submitted. The public prosecutor will apply to the Court for the issue of a provisional arrest warrant. The extradition request shall be submitted to the Court within two months from the date of the order for detention (Section 10).

The following Table shows the statistics on execution of extradition requests in the period 2002 -2006, which was provided for the answers to the DAQ. It shows that frequency of requests from foreign counterparts to Thailand is higher than that of requests from Thailand to foreign counterparts.

Table 22 : Extradition

Year	Requests from Thailand	Requests from Foreign Counterparts
2002	5	15
2003	5	13
2004	8	11
2005	4	9
2006	4	13
Total	26	61

As the principle of simplified procedures for extradition prescribed in the *UN Model Treaty on Extradition* is recognized as an effective measures for extradition such a principle has been stipulated in the new Draft Extradition Bill, which sets forth the procedures in detail. At the moment the Draft is pending scrutiny by the Drafting Committee of the Council of State. Once the new law is finally promulgated, it will constitute clearly defined simplified procedures for extradition.

2.4.2.3 Law enforcement cooperation

Agents from the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), posted by the United States of America at the US Embassy in Thailand share vital information closely with the agencies concerned in Thailand. Consequently, a number of transnational crime groups have been apprehended. The

US law enforcement agencies have also posted agents: (1) the Narcotics Affairs Section, (2) the US Customs (now under the Department of Homeland Security), (3) the Immigration and Naturalization Service (now under the Department of Homeland Security), (4) the US Secret Service, etc. at the US Embassy in Thailand.

A team of US District Attorneys – established by the Overseas Prosecutorial Development, Assistance and Training (OPDAT) program of the US Justice Department – at the US Embassy as well as the Office of the Attorney General in Thailand provides necessary technical assistance to Thai public prosecutors and other law enforcement officers, conducting seminars and training.

2.4.2.4 Technical assistance

Apart from law enforcement cooperation, the US government agencies concerned provided Thailand with technical assistance of considerable importance during the period from 2001 – 2006. It also subsidized Thailand's participation at the Egmont Group's first meeting in 2001.

According to Thailand Jurisdiction Reports [41], the following are the technical assistance that Thailand received within June 2003 – July 2006.

TA received from June 2003 to 2004

§ The IMF team met the AMLO two times in November 2003 and February 2004 with a view to seeking TA for Thailand AML-CFT program for donor community.
§ Eighteen AMLO officers participated in nine training courses/ seminars/ workshops abroad.
§ Officers from other agencies were trained in areas regarding AML-CFT.

TA received from June 2004 to June 2005

§ Two IMF experts visited Thailand in September 2004 for a review of the TA program on AML-CFT for Thailand.
§ One ADB expert visited Thailand in March 2005, negotiated TA for Thailand and reached an agreement for a 3-year action plan.
§ Several training courses funded by major donors have been organized in Thailand. Among the donors are the World Bank, the ASEM Anti-Money Laundering Project, the US government (International Law Enforcement Academy, BKK).
§ Several training and study visits abroad for Thai officials were funded by donors – the US Department of Justice, AUSTRAC, Japan-ASEAN Exchange Project, etc.

TA received from July 2005 to July 2006

IMF

[41] Thailand Jurisdiction Reports to APG Annual Meetings 2004, 2005 and 2006.

- § Funding for Thai officials to attend IMF Workshop on AML Measures for Criminal Justice Officials on 18 -22 July 2005 in Singapore.
- § Joining in the Seminar Workshop on AML-CFT organized by the AMLO as from 22 – 24 September 2005 in Pattaya, Thailand where one IMF expert (Mr. Andrew Gors) presented FATF Recommendations on DNFBPs.
- § Joint IMF/WB TA Needs for Thailand on 20 – 26 April 2006.

ADB

- § The first component of the TA would assist the Government in (i) assessing the legal, institutional, and procedural requirements for conforming to the accepted international obligations on international cooperation, including the relevant elements of the FATF 40 plus 9 Recommendations; and (ii) formulating an action plan on AML-CFT through consultation with all stakeholders. The completed Report was presented to Thai authorities on 9 April 2006.
- § The second component would support the Government of Thailand in holding a high-level policy seminar directed at key decision makers in the Mekong region. The seminar will assist establishing the legal and institutional framework for an AML-CFT regime in the region. The seminar was organized as from 27 – 28 April 2006 in Bangkok, Thailand.

World Bank

- § Joining in the Seminar Workshop on AML-CFT organized by the AMLO as from 22 – 24 September 2005 in Pattaya, Thailand Where 2 WB experts in Law Enforcement and Financial Sector presented FATF Recommendations.
- § Review of AML-CFT Policy Document which was drafted by Thai Bankers' Association. The review was completed in September 2005.
- § Review of Supervisory Manual which was drafted by the Bank of Thailand. The review was conducted in January 2006.
- § Joint IMF/WB TA Mission to provide advice on Detailed Assessment Questionnaires and identification of TA Needs for Thailand on 20 – 26 April 2006.

UK Charity Commission

- § Funding for Thai officials to attend the Seminar Workshop on Practical Techniques for Maintaining a Healthy NGO Sector from 5 – 8 February 2006 in the Philippines.
- § In collaboration with the AMLO, the Commission conducted a Seminar on Regulating Non-Profit Organizations and Non-Governmental Organizations in Bangkok, Thailand on 20 – 21 March 2006.
- § The Commission dispatched a mission to Thailand on 17 – 21 July 2006. The mission aimed to review the adequacy of Thai laws and regulations in supervising NPO/NGO and make recommendations.

AUSTRAC

From July 2005 to July 2006 the AUSTRAC funded Thai participants in the following training workshop.

- § Intelligence Analysis and Intelligence Reports on 26 – 30 September 2005 in Indonesia.
- § Terrorism Typologies Workshop on 14 – 17 November 2005 in Malaysia.
- § Alternative Remittance Systems Training Workshop on 21 – 24 March 2006 in Fremantle, Australia.

2.4.2.5 Other forms of cooperation

As an active combatant of ML-FT and related crimes, Thailand has cooperated and coordinated with regional and international organizations, including the UN, in promoting public awareness and enhancing capabilities and has hosted a number of seminars, training courses and conferences in Thailand over the past few years. Notably among them are two international meetings, one on money laundering and the other on crime prevention.

Earlier in 2003, Thailand held an international conference known as *"The Pacific Rim International Conference on Money Laundering and Financial Crimes"* at Bangkok from 24-26 March 2003, where 492 participants from across the globe attended.

Besides, a UN conference – *The United Nations Congress on Crime Prevention and Criminal Justice* – was hosted by Thailand in Bangkok from 18-25 April 2005.

The term "international cooperation" is meant to engulf bilateral, regional and international cooperation. The efforts of Thailand in this area will be confined to ML and FT and related matters. The International Law Enforcement Academy (ILEA) was established as a training center for the law enforcement officers from Southeast Asia countries including the People's Republic of China, Hong Kong and Macao in Thailand as the result of the agreement between the US government and the Thai government.

The ASEAN leaders called on member-states to strengthen their cooperation with the international agencies in the prevention and suppression of narcotics smuggling and they ratified the ASEAN Declaration on Transnational Organized Crime on 20 December 1997 with the common determination to deal with transnational organized crime seriously.

Australian Police officers and Customs officers are assigned to the Embassy of Australia in Thailand to coordinate efforts with the Royal Thai Police on criminal and narcotics cases. Australia also provides Thailand with technical support and expertise in the field of anti-money laundering and combating the financing of terrorism. The AUSTRAC assisted in the setting up of "Computer-Based Training Center" at the AMLO.

The United Kingdom and Thailand have solved the problems of international narcotics smuggling and other transnational organized crimes with concerted efforts. The UK Charity Commission – the independent regulator of charities in England and Wales – conducted a seminar on Regulating Non Profit Organizations and Non Government Organizations, in collaboration with the AMLO, in Bangkok, Thailand on 20 – 21

March 2006.

3. Anti-Money Laundering Office (AMLO)

3.1 Structure of AMLO

The twenty-five-member Anti-Money Laundering Board is co-chaired by two ministers – Minister of Justice and Minister of Finance – and the Secretary-General of the AMLO is Secretary (Please see Chapter 4 heading 3.2.7 Anti-Money Laundering Board and its regulations). The five-member Transaction Committee is chaired by the Secretary-General of the AMLO and four other qualified experts are members.

The AMLO is under the direct supervision of the Minister of Justice and it is organized into – (1) Office of the Secretary-General, (2) Internal Audit Unit, (3) Administrative Development Group, and (4) Policy and Planning Expert – that are all under the direct supervision of the Secretary-General. The Secretary-General of the Anti-Money Laundering Board has to oversee the performance of the AMLO assisted by two Deputy Secretary-Generals – Deputy Secretary-General for Administration and Deputy Secretary-General for Compliance. There are 4 divisions and 1 bureau under the supervision of 2 Deputy Secretaries-General.

Administration is divided into 3 major sections – General Affairs Divisions, Law Enforcement Policy Division, and Asset Management Division- whereas Implementation/compliance is branched into two sections – Examination and Litigation Bureau and Information and Analysis Center. Units directly under the Secretary-General are Internal Audit Unit and Administrative Development Group.

As regards the strength in terms of human resources is concerned, the breakdown is as shown below[42]:

- § General Affairs Division – 21 officials + 8 support staff
- § Law Enforcement Policy Division – 18 officials + 6 support staff
- § Asset Management Division – 19 officials + 1 staff employee
- § Information & Analysis Center – 20 officials + 7 support staff
- § Examination & Litigation Bureau – 133 officials + 3 support staff
- § Management Development Group – 3 officials + 0 support staff
- § Internal Audit – 2 officials
- § Executives – 4 officials (Secretary-General & 2 deputies, and 1 senior expert)

The following figure shows the structure of the AMLO organization.

[42] IMF – Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.90, para. 336

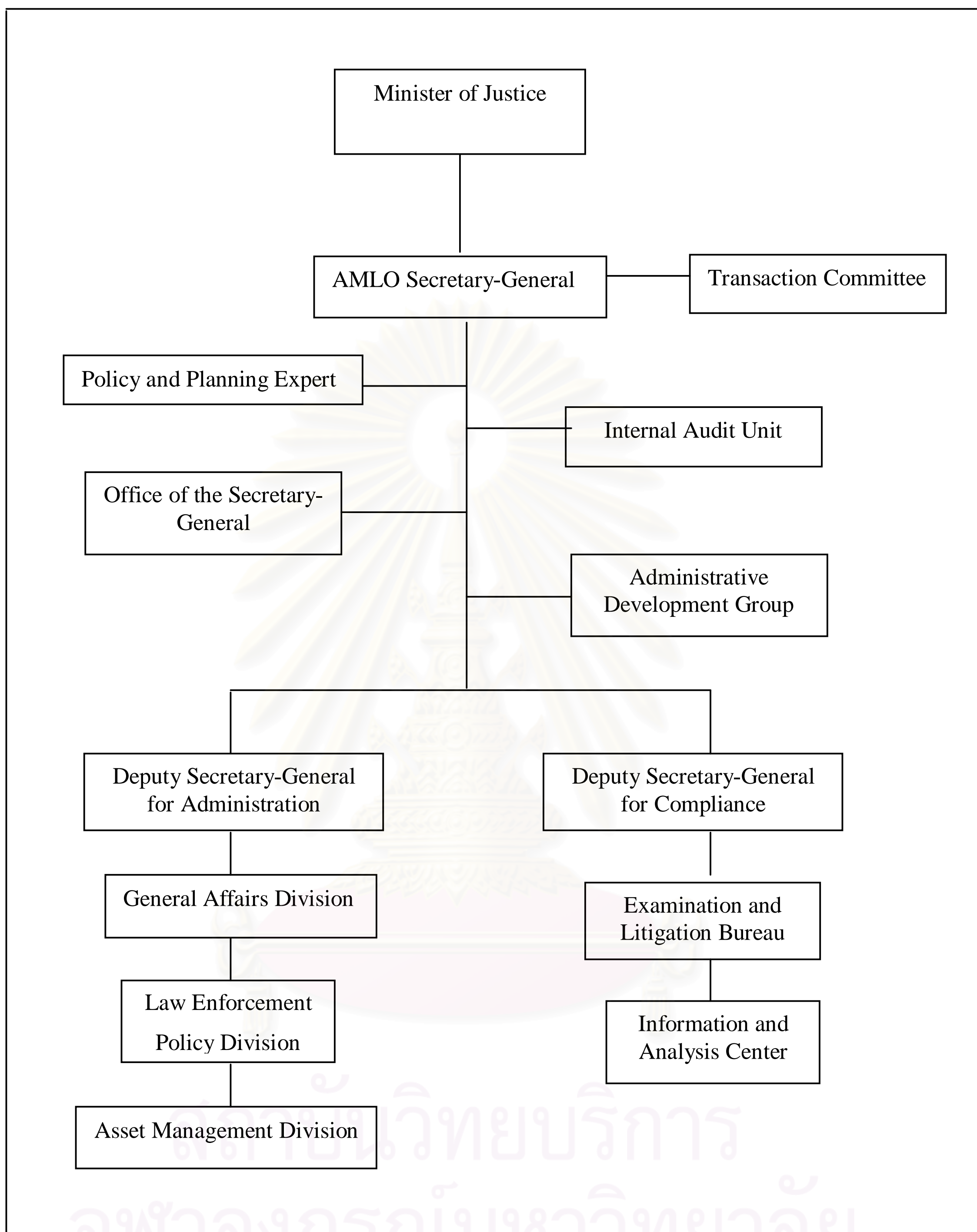

Figure 8: Showing AMLO organization

3.2 Operational procedures for examination and analysis of reports or information relating to transactions

1. To collect reports or information involved in transactions of individuals or juristic persons that lead to the process of investigation and analysis by the competent authorities. These reports and information are briefly described below:

(i) The reports or information that are related to transactions reported according to the Anti-Money Laundering Act B.E.2542
(ii) The reports or information involved in making transactions that are received from other sources

2. To examine and analyze, the reports or information have to be examined if they have any one of the following characteristics:
    (i) Relation with other transactions in the network which have higher value of transactions
    (ii) Any institution or institutions that report a great number of suspicious transactions of any individual or juristic person
    (iii) Anything that is related to any individual or juristic person who has made extremely suspicious transactions
    (iv) Any suspicious transactions that are related to any larger-sized association or network
    (v) Any individual or juristic person who usually makes suspicious transactions for a period of time
    (vi) Anything that is related to other patterns that have been found as a result of electronic methods or Artificial Intelligence System
3. To conduct examination and verification of the accuracy of the reports or information involved in making transactions which are identified by the Information Technology Method
4. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between the suspicious transactions and such individuals or juristic persons
5. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between such individuals or juristic persons and the person who commits either predicate offenses or money laundering
6. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between all available data relevant to such an individual or a juristic person in the database system
7. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between other transactions or information related to the account of the institution's customer, the communication data or other computerized data
8. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages with other data
9. To conclude the results of the examination and analysis in the form of a report incorporating suggestions and recommendations to the Secretary-General of the Anti-Money Laundering Board. The Secretary-General of the Anti-Money Laundering Board will consider if it is a suspicious case that displays any activities or behaviors involving assets related to predicate offenses or money laundering offenses. Exercising the AMLO's authority, the Secretary-General of the Anti-Money Laundering Board may then direct the competent authority concerned or the authorized official to investigate the reports and the information involved.
10. If the Secretary-General of the Anti-Money Laundering Board considers that the reports or information accessed do not measure up to the required elements or do not display any activity or behavior involving assets related to predicate offenses, the Secretary-General of the Anti-Money Laundering Board may

order further collection of all relevant information of the case into the database or, in the event of the information being considered useful for legal proceeding in the other litigation, may send the information to other agencies concerned.

11. In case there is a need for condition in examination of reports or information with other agencies concerned, the inquiry must be in writing and signed by the Secretary-General of the AMLO. The AMLO may follow up the result of work according to such written inquiry if it has not been notified within 15 days approximately (as per Section 38 of the Royal Decree concerning good management).

3.3 Financial intelligence unit

The AMLO functions as the national FIU of Thailand and performs its duty entrusted under the AMLA, practically representing the AMLB and the Transaction Committee for the Secretary-General of the AMLO is the Secretary of the AMLB and at the same time the Chairman of the Transaction Committee.

The AMLO, being directly under the Minister of Justice and having sufficient operational independence and autonomy to ensure that it is free from undue influence or interference, is an independent State agency. It, therefore, is a kind of an administrative-type FIU. It can exchange information directly with foreign counterparts using international criminal information exchange networks according to the Ministerial Regulation on "Organization of Work Units under Anti-Money Laundering Office, B.E. 2543 (2002)" issued by the Minister of Justice on 9 October 2002. Sections 35, 36 and 48 of the AMLA empower the AMLO to issue orders for seizure or forfeiture of assets. This makes the AMLO a prosecutorial-type FIU. Under Section 38 of the AMLA, the AMLO has the law enforcement powers. Consequently, on the basis of practical performance, AMLO can be regarded as a type of mixed or hybrid FIU, concurrently exercising those functions of other types of FIUs – administrative type FIU, prosecutorial-type FIU and law-enforcement-type FIU.

3.4 Powers and functions

As regards the definition of an FIU, the 2004 Egmont Group's revised definition of an FIU runs along the following lines:

> *A central, national agency responsible for receiving (and as permitted, requesting), analyzing and disseminating to competent authorities, disclosures of financial information:*
> *i. concerning suspected proceeds of crime and potential financing of terrorism, or*
> *ii. required by national legislation or regulation,*
> *in order to combat money laundering and terrorist financing*[43]

The AMLO has been given this power under Section 40 (4) of the AMLA (where there are legal provisions) and under Section 40 (6) of the AMLA (where there is another law stipulating that the AMLO shall pass on such information). See Chapter 4.

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[43] Statement of Purpose of the Egmont Group of Financial Intelligence Units, Guernsey, 23rd June 2004. p.2 http://www.egmontgroup.org/statement_of_purpose.pdf . [Read October 2007]

Under the Ministerial Regulation, dated 9 October, 2002, issued by the Minister of Justice, the AMLO is organized into 5 units, namely (1) General Affairs Division, (2) Law Enforcement Policy Division, (3) Asset Management Division, (4) Information and Analysis Center, and (5) Examination and Litigation Bureau. Each unit is assigned its respective duties and responsibilities.

General affairs division

It is responsible for the AMLO's administrative, financial and secretarial functions.

Law enforcement division

It handles the AMLO's formulation of operational plan, proposing of measures for prevention and suppression of money laundering activities, launching of public relations, undertaking of academic works, mutual assistance and cooperation with foreign counterparts and international organizations, setting up of personnel development, and performing of secretarial functions for the Anti-Money Laundering Board.

Assets management division

It is charged with maintenance of assets in custody, accounting system and asset management.

Examination and litigation bureau

It is tasked with inspection and analysis of data and transaction reports and properties associated with predicate offenses, coordination in investigation and suppression of offenses, proceeding with juristic acts, agreements and court cases, analyzing and collecting of evidence, and performing of secretarial functions for the Transaction Committee.

Information and analysis center

It is apparently unique in that it serves as Thailand's FIU and its functions deserve much attention and scrutiny. This unit is responsible to:

(a) establish database system and develop information technology system for the prevention and suppression of money laundering activities and the administration of the AMLO, as well as to act as the center for exchange of information on the country's anti-money laundering activities,
(b) act as the center for receiving and collecting reports on the making of transactions as well as processing and exchanging information through computers,
(c) put in place technical equipment, communications equipment, and modern technology systems in order to support investigation and intelligence functions on anti-money laundering, and to act as communications center for the AMLO,
(d) follow up and evaluate the performance of the work units relating to the enforcement of anti-money laundering law, as well as to expedite, follow up, evaluate and report operation results of the work units under the

AMLO,

(e) perform in collaboration with or in support of the operations of other relevant work units or others as assigned.

The AMLO's four basic strategies[44] are:

1. Prevention and suppression of money laundering
   - § Public relations and dissemination of results to create understanding within and outside the country
   - § Examination and analysis of information from all sources.
   - § Investigation and collection of evidence related to predicate offenses
   - § Creation of database shared among relevant agencies.
   - § Establishment of asset management systems
2. Promotion and coordination of cooperation in the prevention and suppression of money laundering and financing of terrorism
   - § Development and promotion of coordination systems with both the government and non-government sectors
   - § Coordination with agencies both within and outside the country
   - § Serving as a center for international cooperation
3. Application of information technology in the prevention and suppression of money laundering and financing of terrorism
   - § Integration of internal data systems
   - § Use of up-to-date technology to improve operational efficiency
   - § Development of information systems for the reporting and analysis of financial transactions
   - § Creation of central database to support other agencies
4. Human resource development
   - § Development of human resources inside the AMLO to increase capability in legal, technological and foreign language, management, including integrity and morality
   - § Development of related competent officials
   - § Creation of a network among law enforcement agencies
   - § Development of knowledgeable resource persons
   - § Creation of a sys tem to allocate qualified personnel

3.5 Results by AMLO's mission

Over the years Thailand's AMLO has gradually transformed itself from a mere operating agency domestically to a leading agency in Southeast Asia. Thailand is a member of such specialized international and regional bodies as APG, Egmont Group of FIUs and ASEM in matters dealing with money laundering and terrorist financing issues. It has assisted, as much as possible, national FIUs of Thailand's neighbors and has been cooperating with its counterparts abroad on a scale much recognized and appreciated by all those involved in the countering campaigns.

While the AMLO is active both domestically and internationally, it has never ceased to improve and enhance its skills and capabilities. Its professional zeal to improve is

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[44] AMLO, "Anti-Money Laundering Office 2004 Annual Report": p. 32

particularly evident by its willingness to have its AML-CFT regime assessed or analyzed by independent assessors from time to time. Within a short span of time, there have already taken place a series of assessment or analysis of Thailand's national capability by APG, ASEM, IMF ADB, and the World Bank. Their assessments as a whole reflect, to some great extent, the level of Thailand's compliance with the relevant international conventions and standards.

The outcomes of the AMLO's performance between 2000 and 2005 are categorized into three groups: (1) transaction reporting and analysis; (2) seizure and confiscation of assets; and (3) asset management. The following Table shows the three types of aforementioned transactions reported to the AMLO.

3.5.1 Transaction reporting and analysis

In accordance with Section 13 of the AMLA, financial institutions have to report three types of transactions – cash transactions with a value of two million baht (about $52,000)or more, asset transactions of a value of five million baht (about $130,000) or more, and suspicious transactions regardless of the amount of transaction– to AMLO. Reports are required to be submitted electronically and 95% of the received reports are reported electronically and 5% of the reports are received via fax or mail which are manually inputted into the database for analysis.

The following Table shows the number of transactions reported to the AMLO.

Table 23 : Number of transactions reported to AMLO

Year	2000	2001	2002	2003	2004	2005	2006	Total
Cash transaction	23,574	214,852	224,223	255,799	282,905	371,723	539,699	1,912,775
Asset transaction	62,813	297,934	297,777	352,772	344,504	347,400	487,356	2,190,556
Total no. of transactions	86,677	529,275	568,221	640,909	666,344	758,298	1,066,450	4,316,174
Suspicious transaction	290	16,489	46,221	32,338	38,935	39,175	39,395	212,843
STR as % of total transactions	0.3	3.1	8.1	5.0	5.8	5.2	3.7	4.9

All incoming reports are received electronically and are loaded directly into the mainframe computer for access where the electronic reports have mandatory fields – which results that the data cannot be inputted into the database until the information is completed. The Information and Analysis Center (IAC) of the AMLO analyzes the reports and produced intelligence reports for competent authorities. The IAC has to conduct further analysis when the Examination Litigation Bureau or law enforcement agencies request to assist in an ongoing investigation.

Analysts use Smart Search and Visual Links 2L to facilitate production of analytical reports. These are link analysis software tools used for charting of relationships between the financial transactions and the targets by manual inputting information

gathered from the information sources the analysts have access to.

Present systems that analysts work with are:

1. AMLO Electronic Reporting System (AERS) that collects financial transactions reports or suspicious transaction reports;
2. AMLO Financial Institute Information System (AMFIS) that makes a request for banking information from financial institutions for specific customer information. Highly secured system which tracks all queries;
3. AMLO Central Integration System (AMCIS) which is the web-base application that supports the transferring of information from government database, including competent authorities and informant databases.
4. AMLO Central Data Warehouse System (AMCES) which warehouses data received from government agencies;
5. Smart Search & Decision Support System (DSS) that is used for deep search by comparing with reports received by law (i.e. STR's, Cash Reports and Assets declarations) and other internal data (government information). It is also designed to assist the analysts make decisions as to what transaction or information is relevant. Analysts also use Smart Search for analyzing data of suspects from various sources of data received regarding the predicate offense they are being investigated for.
6. AMLO Case Management System (AMCAM) that is designed for managing the case and cataloguing the information collected during investigations conducted by AMLO's asset seizure unit. Analysts can access this system to draw information for conducting analysis of financial transactions;
7. VisuaLinks 2L that is an Artificial Intelligence System is the advance search system that was developed for the purpose of searching and analyzing of complex data from all sources that analysts have access to. This software allows the analysts to display and interpret the information plus produce charts showing these links.

The AMLO has incorporated the appropriate policies and security measures for securing of information they have collected.

3.5.2 Assets management

3.5.2.1 Seizure and confiscation of assets

The AMLO's operations that deal with seizing of assets are overseen by the Transaction Committee. Property in Thailand can be confiscated under three separate laws: the Penal Code, the Act on Measures for the Suppression of Offenders in an Offense Relating to Drugs 1991, and the AMLA. Provisional measures for seizing and attaching property are found under several laws in Thailand. In investigation and prosecution related to the prevention and suppression of ML, the results are divided into eight types. The following Table shows the statistics related to ML predicate offenses according to the AMLO data.

Table 24 : Statistics on predicate offenses

	No. of Cases in						
	2000	2001	2002	2003	2004	2005	Total
Drugs	3	65	63	129	73	115	448
Trafficking women and children	-	1	-	4	2	3	10
Public fraud	-	7	-	3	1	4	15
Embezzlement / fraud	-	-	-	2	6	1	9
Corruption	-	-	1	1	5	3	10
Extortion / blackmail	-	-	-	-	1	2	3
Smuggling	-	3	5	2	4	1	15
Terrorism	-	-	-	-	-	-	-
Total number of cases	3	76	69	141	92	129	510
Total value of assets million baht	23.87	988.50	383.14	915.12	1016.93	300.35	**3627.91**

According to the AMLO's answer to the DAQ Section 2, the assets forfeited under the AMLA since 2000 are as follows:

Table 25 : Value of assets forfeited

Item	Value (million in baht)	Value (million in dollar)
Cash	416	11
Deposit in FI	525	14
Vehicle	24	1
Treasure/jewelry	165	4
Real estate	1,340	35
Others	513	14
Auction account	92	2

3.5.2.2 Forfeiture

As of December 2005, the total number of cases related to the assets are 474 cases: 227 cases were judged as convicts by the Civil Court with an asset value of 626,227,951.86 baht forfeited to the State; 9cases were dismissed; 148 cases were under Court proceedings; 20 cases were under Prosecutors' consideration; 11 cases were under investigation; and 59 cases were decided not to go to the Court or transferred to other agencies.

The following Table[45] shows the statistics of the AMLO's asset forfeiture.

Table 26 :Asset forfeiture cases (as of Dec 2005)

Judged by the Civil Court,	227 cases	BHT 626, 227,951.86
Dismissed cases	9 cases	BHT 61,235,067.51
Under Court proceedings	148 cases	BHT 2,556,452,082.38
Under Prosecutors' consideration	20 cases	BHT 61,106,238.80
Being investigated and evidence gathering	11 cases	BHT 53,784,989.88
Decided not to go to the Court / Transferred to other agencies	59 cases	BHT 770,167,387.77
Total	474 cases	BHT 4,128,973,718.20

[45] Thailand Jurisdiction Report to APG, July 2005 – July 2006 (APG Annual Meeting 2006)

3.5.2.3 Disposal of assets

Assets seized or restrained under the law relating to the prevention and suppression of money laundering are managed for the maximum benefit to the state. Assets with condition unsuiTable for retention, or assets whose retention would be a burden to the state, such as houses, vehicles, animals, etc., have been disposed of as follows:

1. 37 auctions with a total sale value of 205,031,300 baht.
2. Utilization of the asset for official purposes, such as vehicles, computers, etc.
3. Custody and utilization by those who have a vested interest
4. Rental of assets, such as, condominiums, houses, with land, clothing stalls, tyre repair shops, etc.

4. Assessments

Up till now there have been 8 independent assessments on Thailand's national capabilities. The first one is done by APG in its Mutual Evaluation Report of June 2002. The second assessment is by the ASEM's AML Project consultants on technical needs of Thailand, the report of which was formally released in December 2003. The third assessment is made by the IMF legal team and the finalized report was issued in September 2005. The fourth assessment is in the form of an analysis report on Thailand's legal obligations concerning international cooperation in relation to AML-CFT, done by ADB's consultant in April 2006. The fifth assessment is made by the IMF technical team – which paid a follow-up visit to Thailand in April 2006 and drafted a report on its findings. The sixth assessment is done by the World Bank (WB) mission in the form of an aide-memoire of April 2006. The seventh assessment is done by the UK Charity Commission in (2006 – 2007) and the eighth assessment is the Detailed Assessment Report done by the IMF in July 2007.

4.1 APG's Mutual Evaluation Report[46] (2002)

APG's report focuses on three main areas – legal, financial and law enforcement. While most of its findings may no longer be applicable under the current situation, there still remain some that are sound and valid enough deserving proper attention.

On legal issues, the report recommended broadening of predicate offenses in the AMLA.

On financial issues, the report pointed out, among others, that the lack of free and full access by the financial regulator, i.e. BOT, to private individuals' banks accounts would seriously undermine the effectiveness of BOT's on-site examinations, that remittance agents are not subject to adequate supervision, and that an area of concern would be the unknown extent of underground banking.

On law enforcement issues, the report emphatically pinpointed the need for measures to detect or monitor physical cross-border transportation of currency and negotiable

[46] APG, "Mutual Evaluation Report on Thailand", adopted by APG 5th Annual Meeting, 4-7 June 2002

instruments.

4.2 ASEM AML Project Consultants' Report[47] (2003)

The consultants' report contains a number of recommendations for training and technical assistance in such areas as: investigative training; compliance training; awareness campaigns; financial system awareness; prosecutors training; judicial training; expert placement; and terrorist financing.

As the report contains quite a number of points deemed to be inaccurate on some crucial issues, the AMLO had to make an explanatory note to correct the report where erroneous, which, it seems, the ASEM AML Project Coordination Office opted to distribute as part of the consultants' report. Thus, the explanatory note has become an integral part of the report.

4.3 IMF Legal Team's Report[48] (2005)

The legal team's report identified discrete issues in the current AML-CFT regime and made specific recommendations on Thailand's AML-CFT regime with particular focus on the legislative, institutional, and supervisory frameworks for AML-CFT as well as their implementation.

The discrete issues the report emphasized are as follows:

§ The AML-CFT legal and institutional framework needs further consolidation and the agencies involved in the AML-CFT system need to strengthen cooperation.

§ International conventions and other AML-CFT standards are not yet fully reflected in the AML-CFT legislation.

§ The supervisory oversight for AML-CFT compliance by financial institutions needs to be enhanced. The relevant agencies – such as the BOT, SEC, DOI, CPD, and AMLO – should determine, as a matter of priority, the modalities and procedures for supervisory oversight of AML-CFT compliance. Policies, procedures, particularly for off-site monitoring and compliance need to be developed and implemented.

§ Government agencies and private sector associations are advised to continue raising awareness of ML- and FT-related risks and requirements.

In line with its above findings, the legal team opined that to address the issues identified in its report the following technical assistance would be essential:

(1) Workshops/seminars for public agencies concerned and private

[47] ASEM AML Project Consultants, "Training and Technical Assistance Needs Analysis on Thailand", February 2003.
[48] IMF Legal Team, "Anti-Money Laundering and Combating the Financing of Terrorism in Thailand", September 2005

financial industry and general public to raise awareness on ML-FT nature and scope and to provide training on AMLA obligations and requirements.

(2) Assistance in the development of specific national institutions, particularly, the enhancement of the operations of FIU, AMLO

(3) Reviewing the AML-CFT legislative framework and assisting in drafting or upgrading of the legislation and related regulations and guidelines.

(4) Assistance in developing supervisory policies, procedures, and manuals, including for off-site monitoring and on-site examination, for AML-CFT compliance in each financial sector, training the supervisors in their application and use, and in implementing them.

4.4 ADB Consultants' Analysis Report[49] (2006)

In response to Thailand's request for technical assistance (TA) from the Asian Development Bank (ADB) to strengthen its regime for AML-CFT, a team of consultants was assigned by the Bank to conduct an analysis of Thailand's AML-CFT regime. The team first visited Thailand in October 2005 and held discussions with relevant governmental authorities as well as those from the private sector. Again, in February 2006, the team made a second visit to Thailand and started drafting a 3-year action plan and an analysis report with the assistance of the domestic consultant.

The team identified the relevant international standards and analyzed the obligations which those standards impose on Thailand.

4.4.1 ADB's Three-Year Action Plan

The action plan reflects the need to combine legislative, administrative, training and donor activity. It will span a 3-year period from mid-2006 to mid-2009.

The analysis report reflects the findings and conclusions and contains a number of recommendations to amend existing laws or to enact new laws.

Based on the analysis of the report, the 3-year plan is meant to provide a sequenced framework for Thailand to change its legislation and administrative practices to fill the gaps between the current law and practices and the obligations imposed by the relevant international instruments and standards.

The proposed TA has two components – Component "A" and Component "B". The first component has already passed the stage whereby (i) assessment of the legal, institutional and procedural requirements for conforming to the accepted international obligations on international cooperation has been made, and (ii) formulation of an action plan has been drafted.

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[49] ADB, "Analysis of Thailand's Legal Obligations concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism", 9 April 2006.

The second component is meant to support the Thai Government in holding training sessions for relevant officials in the Mekong region. The Government, with the AMLO as the focal point, would organize the training sessions on the necessary elements of an effective AML-CFT regime and the necessary measures for establishing the legal and institutional frameworks for an AML-CFT regime, including cross-border issues. To this effect, the 3-year action plan has set out a schedule of technical assistance including training programs.

Under the TA program of the ADB, the suggested Action Plan approved by the Cabinet on 27 February 2007 is as in the Matrix[50] given in Appendix (C).

4.5 IMF Technical Team's Report[51](2006)

A technical assistance mission from the IMF paid a visit to Thailand approximately the same time as the World Bank mission, conducted an assessment as a follow-up to the IMF legal team's earlier analysis and drafted a report containing positive and reassuring observations and recommendations on Thailand's AML-CFT activities. In its executive summary the following summarized comments were made.

(1) The mission team recognizes the progress that the Thailand authorities have made towards strengthening Thailand's regime for anti-money laundering and combating the financing of terrorism (AML-CFT).

(2) The authorities appear to have made progress to determine who will have responsibility for the supervision of AML compliance by financial institutions.

(3) The mission team reviewed the authorities' efforts to complete a self-assessment of Thailand's compliance with the FATF standard through a review of an initial draft detailed assessment questionnaire (DAQ).

(4) The authorities should carefully manage the timeline between now and the evaluation visit of the APG in light of the legislative program that it must complete and the implementation challenges it faces.

(5) The Fund and other international organizations continue to have interest in assisting Thailand's efforts to improve its regime.

4.6 World Bank Mission's Aide-Memoire (2006)

In response to the BOT's request for technical assistance, a World Bank mission visited Thailand from April 21-27, 2006 and made a brief assessment in the form of an aide-memoire[52]. The mission was joined by a 2-representative team from the IMF

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[50] ADB, "Analysis of Thailand's Legal Obligations concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism", 9 April 2006

[51] IMF Technical Team, The Kingdom of Thailand – Technical Assistance Mission in Relation to the AML-CFT framework, April 2006.

[52] World Bank Group (Mark Butler, FSEFI), Aide-Memoire – Anti-Money Laundering and Combating the Financing of Terrorism, on the Kingdom of Thailand, April 21-27, 2006.

who attended the meetings as well.

As a matter of fact, the mission's visit was to wrap up the ongoing assessment on Thailand's technical assistance needs in specific areas, i.e. banking, securities, insurance, and designated non-financial businesses and professions (DNFBPs). Currently the World Bank is allegedly providing technical assistance to Thailand in respect of the following areas:

(1) developing of regulations and supervisory manuals; and
(2) training of BOT's supervisory staff.

The mission's findings briefly are as follows;

(1) ***ROSC*** (Report on Observance of Standards and Codes)**:** Financial Sector Assessment Program (FSAP) for Thailand is scheduled for early 2007 though APG's mutual evaluation of Thailand will not become due until mid-2008, meaning the mutual evaluation will be missed out from FSAP's ROSC. So Thailand needs to consider as to what options are available to facilitate an AML-CFT assessment to be conducted in order to permit it to form part of ROSC.

(2) ***CDD:*** The current CDD requirements for all institutions covered by the AMLA and as set out in Ministerial Regulation No.6 are very general and they do not provide the institutions with guidance. There is an apparent need for the regulators of the specific sectors to issue guidelines on some aspects of CDD.

(3) ***Banking supervision:*** The supervisory responsibility of the BOT and the AMLO would be further clarified if a formal Memorandum of Understanding between the two agencies could be established as soon as possible.

(4) ***Life insurance:*** Despite its intention the DOI has not yet issued any regulations/guidelines relating to AML-CFT.

(5) ***DNFBPs:*** Lawyers, accountants, precious stone and metal dealers, and trust and company service providers are not subject to AML-CFT regulations.

4.7 UK Charity Commission's Analysis Report (2006 – 2007)

A team of the UK Charity Commission's International Program visited Thailand in July 2006, met with officials concerned from the public and private sectors and made a report in October 2006 on its observations about NGOs (non-governmental organizations) operating in Thailand. The second draft report was made in January 2007[53].

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[53] NGO Regulation in Thailand: Analysis and Recommendations; Second Draft Report by the Charity Commission's International Program, January 2007.

In its introduction, the report observes: "Recent times have seen a new breed of domestic NGO emerging in Thailand with roots in international NGOs. These organizations are bringing an increased vibrancy and professionalism to the sector, partly as a result of their roots and ethos, partly as a result of pressure from funders (government and otherwise)". It also added that more recently the political environment for NGOs has become less supportive mainly because of a few politically active NGOs – which the government regards as a nuisance – and that regulatory moves are seen as controlling, rather than supportive. Security and money laundering are locally perceived to be the two main risks to NGOs.

In its executive summary, it is further observed that "the legal and regulatory basis for effective regulation of NGOs in Thailand exists …. However, the law is not always implemented effectively and there is much duplication of regulatory activity. Legislation in places lacks strategic oversight …"

In making recommendations, the report divided into 16 areas and detailed its appropriate recommendations in each area. The 16 areas are as listed below:

1. Legal definitions
2. Registration threshold
3. Unregistered NGOs
4. Scrutiny of registration applications
5. Location for registration
6. Re-registration
7. Governance procedures
8. Monitoring process
9. Scrutiny of information
10. Identifying abuse
11. Investigating abuse
12. Dealing with abuse
13. Taxation
14. Investments
15. Fund-raising
16. Foreign NGOs

The recommendations made in the report, indeed, touch on the core issues of NGO regulatory framework and are comprehensive enough to cover a wide range of issues related to all NGOs – domestic and foreign – currently operating in Thailand.

4.8 IMF Mission's Detailed Assessment Report (2007)

The Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand (24 July 2007) provides a summary of the AML-CFT measures in place in Thailand at the time of the mission or shortly thereafter. Prior to the mission, Thailand handed in the Detailed Assessment Questionnaires filled with answers to the IMF team. The questionnaires are divided into 7 parts as follows:

1. General information on Thailand and its economy
2. Legal System and Related Institutional Measures

3. Preventive measures – financial institutions
4. Preventive measures – designated non-financial businesses and professions
5. Legal persons and arrangements – non-profit organizations
6. National and international cooperation
7. Other issues

The assessment team analyzed Thailand's AML-CFT activities based on the FATF 40 Recommendations (2003) and FATF 9 Special Recommendations (2001) and assessed the AML-CFT measures using the AML-CFT assessment Methodology 2004 as updated in June 2006. The assessors not only reviewed the institutional framework, the relevant AML-CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering and the financing of terrorism through financial institutions and Designated Non-financial Businesses and Professions but also examined the capacity, implementation, and effectiveness of all these systems.

The IMF team obtained the information and met with officials and representatives of all relevant government agencies and private agencies during its mission from 26 February till 13 March 2007. In addition, other verifiable information was subsequently provided by the authorities.

4.8.1 IMF mission's comments on compliance ratings

The Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand (24 July 2007) provides Thailand's level of compliance with the FATF 40 + 9 Recommendations with comments on compliance ratings (Please see Appendix (D).). It also provides recommendations on how certain aspects of the system could be strengthened (Please see Appendix (E).).

5. Chapter-wise comments

Two sectors of the AMLA stakeholders – public sector and private sector – consisting of 49 agencies have worked together to implement the plans and decisions for combating ML and FT. And yet Thailand should clarify the AML-CFT supervisory roles and give appropriate powers for conducting compliance examinations.

There may be certain problems that can be found during the implementation period. For example, Thailand has to impose obligations on real estate agents to obtain and verify certain pieces of information in relation to specific transactions. More researches should therefore be conducted to analyze strengths and weaknesses of the Thailand AML-CFT framework and provide recommendations in line with the international standards.

Thailand should be more active in creating financial and commercial transparency and allowing law enforcement authorities optimum access to the necessary information. In order to pursue and prevent economic crimes, Thailand should create more advanced channels for the sharing of information between the regulated institutions and the competent authorities, and among the competent authorities, and between the competent authorities and their foreign counterparts. Thailand should also extend the

AML-CFT obligations to non-financial businesses and professions.

The AMLO as the FIU of Thailand needs to place more emphasis not only on providing guidance, feedback and public awareness about ML and FT but also on reviewing its production of statistics on AML-CFT matters to ensure the integrity of those statistics. The key law enforcement agencies should obtain more training for FT cases and the RTP and NCCC should establish a dedicated special unit for investigating ML-FT offences other than narcotics.

The cooperation and exchange of information between the Customs Department and the AMLO, and between the Insurance Department and the AMLO should be enhanced when there is a suspicion of ML-FT. The law enforcement agencies should provide more training on ML-FT investigations to dedicated specialized staff, especially outside of Bangkok.

The statistics provided by the competent authorities to the IMF mission does not include the statistical information regarding money laundering typologies used by the criminals. Authorities should conduct researches on money laundering typologies in Thailand. It is also observed that there are hardly any investigations relating to financing of terrorism and no FT cases have been prosecuted so far according to the IMF's mission report[54] despite the fact that financing of terrorism seems to be much in use in the deep South.

The core agencies, the AMLO, the BOT, and the SEC have enthusiastically and diligently been taking steps aimed at dealing with the requirements for the Thailand AML-CFT regime. On the other hand, while implementing measures consistent with the updated FATF Recommendations, the implementation has been hampered by inadequate and antiquated laws. As compliance evaluations have been launched for the effective implementation of AML-CFT measures the authorities of Thailand have accordingly promulgated many measures to bring Thailand into better compliance with the FATF Recommendations.

It may be mentioned that specific details about the need for compliance with international standards and the need for improvement of Thailand's AML laws by amendment, new enactment, and modification of existing regulations, guidelines, etc. can be seen in the concluding Chapter X.

[54] IMF – Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.11, para. 10

CHAPTER VI

THAILAND'S AML-CFT COMPLIANCE

1. Keynote

"Compliance" being a buzzword in the professional and financial circles nowadays, this chapter is specifically devoted to the issue of Thailand's compliance efforts in relation to the international standards. It will show that full compliance as such would not be possible for most developing countries without foreign technical assistance, and technical assistance could play a crucial role in establishing and promoting an effective AML-CFT system. To that effect, international cooperation would be essential in providing assistance in terms of professional and financial help. Professional help in this case means technical skills, expertise as well as material objects needed for a projected subject-specific training course or seminar in a targeted area. International cooperation in this context refers to rendering of professional and financial help in the form of technical assistance as distinct from international cooperation in criminal matters.

2. Technical assistance and international cooperation

2.1 Technical assistance

Technical assistance comes in various ways: some in the form of cash; some in the form of expertise; some in the form of material; and some in the form of a combination of either two or three forms. The objective of providing technical assistance is to uplift or upgrade a country's system or mechanism. In the case of the global campaign against money laundering and terrorist financing the objective of technical assistance is to bolster up a particular country's AML-CFT regime. In the age of globalization in all spheres of life, technical assistance plays a much more crucial role than early industrial age. The emergence of the technological age or the 'high-tech' age invariably demands greater and faster spread of technology among countries in the world.

The real fact of life today, however, is that levels of development among countries are different: some are least developed. For those developing and least developed countries technical assistance is an absolute necessity. Their continued status will surely impede and incapacitate the world progress. Therefore the highly developed countries have the moral obligation to help fasten the development process of those undeveloped countries.

In the context of AML-CFT global campaign, any technical assistance usually is the result of the following three factors:

(1) Mutual evaluation by members of a regional group;

(2) Assessment of a country's needs by donors / sponsors; and
(3) Bilateral arrangement between the donor and the recipient.

In the case of Thailand mutual evaluation was first done by the APG in 2002, of which Thailand is a member. How mutual evaluation is done and what for is best explained in the following extract[1]:

> *The carrying out of mutual evaluation programs is a crucial aspect of not only the FATF itself but of the regional AML bodies. It provides a mechanism by which member States of each group can judge the degree of implementation of the relevant international standards by each member State and provides a significant encouragement towards full implementation of the Forty Recommendations. The mutual evaluation process enables experts from a number of member countries to assess performance and the effectiveness of a country's anti-money laundering regime. These processes place substantial pressure on countries to improve their internal systems in advance of mutual evaluation assessments or in response to criticisms contained in the evaluation report. (pp. 91-92)*

The June 2002 Report[2] of the APG, in short, focused on three main areas– legal, financial and law enforcement – and identified the issues that needed to be addressed. The Report made 17 recommendations encompassing legal, financial/ regulatory, law enforcement and analysis / research issues. Although most of the Report's findings are no longer applicable under the current changing situation, the fact remains that the Report did shed some light on Thailand's deficiencies in its AML-CFT regime and this, in turn, lent weight to subsequent rounds of assessment and technical assistance. The APG report in fact was the first assessment of its kind on Thailand pursuant to Thailand's enactment of the anti-money laundering law in August 1999. The Report was the outcome of the APG team's on-site visit, which was preceded by Thailand's earlier response to the APG standard mutual evaluation questionnaire (MEQ).

Next came the 2003 ASEM Consultant's Report[3], which contains an analysis of Thailand's needs for technical assistance and a number of recommendations for training and technical assistance. The recommendations relate to such areas as: investigative training, compliance training, awareness campaigns, financial system staff training, prosecutors training, judicial training, expert placements, and terrorist financing.

Quite interestingly, along with the Consultants' Report came out the AMLO's amended explanatory note with a covering letter, dated 31 October 2003, requesting the ASEM AML Project Coordinator to include it as part of the final Report. The note contains some dissenting views on some crucial issues of the Report.

The outcome of this Consultants' Report was that its findings and recommendations enabled the AMLO to compile a technical assistance needs matrix for submission to

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[1] Broome, J., Anti-Money Laundering: International Practice and Policies, (Hong Kong : Sweet & Maxwell Asia, 2005).

[2] The Mutual Evaluation Report on Thailand was adopted by APG at its Annual Meeting held from 4 – 7 June 2002.

[3] The document titled "ASEM Anti-Money Laundering Project; Training and Technical Assistance Needs Analysis – Thailand, Report by Consultants, February 2003", was formally distributed by UNODC, Bangkok, on 3 December 2003.

potential donors to solicit required technical assistance. Moreover, the Technical Adviser of ASEM AML Project made his own Report [4] in which he made a recommendation to the effect that Thailand's AMLO should be assigned as a lead agency to undertake the Research Paper 2 Project concerning 'establishment of a database of case studies on the links between organized crime groups in Asia and Europe' later known as 'JAEME' (Joint Asia-Europe Money Laundering Data Exchange Project). Both the Consultants' Report and the Technical Adviser's Report greatly influenced the steering committee's decision to approve of the AMLO's assignment. The Research Paper 2 Project was successfully completed around mid-2005.

In response to the AMLO's request, the IMF sent a mission to Thailand for assessment of Thailand's AML-CFT regime and the IMF legal team's visits during February and September/October 2004 resulted in a Report [5] - the IMF Legal Team's Report – issued in September 2005. The Report focused on five areas; (1) legislative framework; (2) financial sector supervision; (3) Office of Anti-Money Laundering; (4) awareness raising; and (5) drug trafficking, and made a number of recommendations for improvement of Thailand's mechanism for AML-CFT activities.

Next followed the ADB mission which visited Thailand and issued a Report[6] - the ADB Analysis Report. It also prepared a 3-year Action Plan for implementation of the technical assistance project, spanning a period from mid-2006 to mid-2009.

The focus of the Report being the subject of Thailand's international cooperation obligations assumed under international conventions, UN resolutions and FATF Recommendations, it discussed in great detail the level of Thailand's compliance in relation to requirements in each area. It then identified the issues Thailand needs to address so as to make Thailand in full compliance with the established international standards and norms.

According to the Action Plan the activities to be carried out comprise 51 items ranging from legal amendments to a series of training and seminars.

Parallel to the ADB mission's assessment activity is the visit of the second mission of the IMF. This time it is a technical team that visited Thailand from 21–27 April 2006 and made a Report on its findings. In other words, the technical team's mission is a follow-up to the IMF legal team.

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[4] The document titled "ASEM Anti-Money Laundering Project: Technical Adviser's Report and Recommendations, September 2003", was submitted to ASEM AML Project 1st Steering Committee Meeting held on 12 September 2003.

[5] The document titled "International Monetary Fund; Thailand: Anti-Money Laundering and Combating the Financing of Terrorism, September 2005" was written by a team of Mary Zephirim, Kiyotaka Sasaki (MFD), Peter Csonka & Cecillia Marian (LEG), and Abdel ouahab Bendimerad (Legal Expert).

[6] The document titled "Asian Development Bank, Technical Assistance to the Kingdom of Thailand for Promoting International Cooperation on Anti-Money Laundering and Combating the Financing of Terrorism (TAR:THA 39119); Analysis of Thailand's Legal Obligations Concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism, 9 April 2006" was written by John Broome and Dianne Stafford.

In its Report[7] the IMF technical team stated that "the Fund and other international organizations continue to have interest in assisting Thailand's efforts to improve its regime. The mission has identified key areas where further collaboration is proposed focused around preventative measures for the financial sector and for DNFBPs. ….." The Report contains a list of "technical assistance projects agreed with Thailand," showing 9 items covering DAQ, banking industry, securities industry, insurance industry, money remitters / money changers, DNFBPs workshop, and review.

The same time as the IMF technical team's visit there was also a World Bank mission that visited and made a brief report in the form of an Aide-Memoire[8]. As a matter of fact, the mission's visit was to wrap up the ongoing assessment on Thailand's technical assistance needs in specific areas, i.e. banking, securities, insurance and DNFBPs; currently the World Bank is providing technical assistance to Thailand in respect of (1) developing of regulations and supervisory manual, and (2) training of BOT's supervisory staff. The Aide-Memoire contains a "proposed technical assistance program", showing 9 items and covering exactly the same areas as in the IMF technical team's text.

All in all, it can safely be concluded that the various assessments have led to substantial amount of technical assistance Thailand has sought and has been receiving from various groups of donor community. The status of technical assistance during the period from July 2005 to July 2006, as reported to the 2006 APG Annual Meeting in Thailand Jurisdiction Report[9] is briefly mentioned as follows:

(1) IMF : Funding of IMF workshops participation for Thai officials on AML Measures for Criminal Justice Officials, July 2005; expert advice at AMLO AML-CFT seminar by IMF expert, by IMF, September 2005; joint IMF/WB expert advice on DAQ.

(2)ADB : TA needs analysis and 3-year action plan drafting on international cooperation obligations of Thailand by ADB consultant, April 2006.

(3)World Bank : Expert advice at AMLO AML-CFT seminar, September 2005; review of TBA Banking Policy, September 2005; review of BOT Supervisory Manual, January 2006; joint IMF/WB expert advice on DAQ.

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[7] See paragraph 5 of the document titled " International Monetary Fund, the Kingdom of Thailand: Technical Assistance Mission in Relation to the Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) Framework, April 2006," written by Stephen Dawe & Emmanuel Mathias

[8] The document titled "World Bank Group, Aide-Memoire: The Kingdom of Thailand, Mission Dates: April 21-27, 2006" was written by Mark Butler, FSEFI.

[9] See paragraphs 5 and 6 of Thailand Jurisdiction Report for July 2005 to July 2006 submitted to 2006 APG Annual Meeting.

(4)UK Charity Commission : Funding of workshop participation for Thai Officials on Practical Techniques for Maintaining a Healthy NGO, February 2006; review of adequacy of Thai laws and regulations in supervising NPO/NGO, July 2006.

(5)AUSTRAC : Funding of workshop participation for Thai officials on:

- § Intelligence Analysis and Intelligence Reports, September 2005;
- § Terrorism Typologies Workshop, November 2005;
- § Alternative Remittance Systems Training Workshop, March 2006.

In addition, it should be noted that during the period from 2001-2006 the US government agencies concerned provided Thailand with technical assistance of considerable importance. Assistance included, amongst others, computer hardware equipment and software for "AMCAT" (AMLO Consolidated Assets Tracking System) aimed at serving as a model for FIUs of other countries tackling assets management. It also subsidized Thailand's participation at the Egmont Group's first meeting in 2001.

2.2 International cooperation

In its broad sense international cooperation engulfs both bilateral and multilateral cooperation. In the context of AML-CFT framework bilateral cooperation generally covers two areas: (1) where two contracting States render assistance to each other in AML-CFT matters by exchanging information or data, by executing requests for inquiry, investigation, arrest, seizure, confiscation, prosecution, extradition in criminal matters, etc., and (2) where a contracting State provides to another contracting State technical and material assistance to enhance or upgrade the latter's AML-CFT mechanism.

Multilateral cooperation is naturally broader than bilateral cooperation in terms of its scope and application. In the context of AML-CFT framework multilateral or international cooperation is achieved through States' discharging of their duties assumed under multilateral agreements, international conventions, UN resolutions, international standards set by international agencies or bodies or organizations. Compliance with international obligations may be of two kinds: one mandatory and another optional. International cooperation is applied in such areas as: (1) compliance; (2) collaboration; (3) contribution; and (4) cooperation.

Compliance involves making of required domestic laws and their implementation, collaboration is the process by which concerted efforts are pooled together for a common cause, contribution is a member State's input in the form of expertise, material or effort into the organization's action program, and cooperation is the act of working bilaterally or multilaterally to implement the common objective.

In this regard, why international cooperation needs to be enhanced is explained in his work[10] by Gilmore as follows:

> *….. Modern money laundering techniques contain conspicuous transnational features. While national countermeasures, such as criminalization, confiscation, and the institution of comprehensive preventive strategies, are a precondition for making substantial progress it has been accepted from the outset that 'without appropriate international cooperation, all these efforts could yield few results while incurring large costs'. The facilitation of international interaction between law enforcement and prosecutorial authorities and financial regulators and supervisors was the central thrust of Recommendations 30 to 40 inclusive. The majority of the proposals to enhance cooperation between legal authorities (Recommendations 33 to 40) reaffirmed the processes and sought to consolidate the progress achieved in the 1988 UN convention. This was particularly so in respect of such areas as cooperation in the seizure and confiscation of the proceeds of crime, mutual assistance in criminal matters, and extradition. (pp. 97-98)*

Accordingly, Thailand on its part has concluded bilateral mutual legal assistance treaties, bilateral extradition treaties, multilateral regional legal assistance treaty, and MOUs with foreign FIUs in addition to ratification of pertinent international conventions and promulgation of domestic laws.

Besides membership in the UN, Thailand is an active member of AML regional groupings such as the APG, ASEM, and APEC. Through the APG, Thailand has attempted to strengthen its AML-CFT regime and at the same time it has been acting as a co-chair of the Implementation Issue Working Group relating to the FATF Recommendations. And through the ASEM AML Project Thailand has carried out a research known as the Research Paper 2 to study the ML and FT data and establish the linkage between the organized crime groups of Europe and Asia in ML and FT activities. Under this project a data exchange center has been set up at the AMLO for exchange of information among Egmont Group members.

2.3 Compliance obligations

As is widely known, compliance is an essential component of an efficient and effective AML-CFT regime. The FATF 40+9 Recommendations set out specific guidelines which States are expected to follow and implement in their fight against ML and FT. Since Thailand has already declared its intention to implement the FATF Recommendations in its AML-CFT framework, it has now become obligated to comply despite the fact that recommendations of FATF and such other international standard setters as the Basel Committee on Banking Supervision (Basel Committee), the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissioners (IOSCO), the Egmont Group of Financial Intelligence Units (Egmont Group), the FATF-style regional bodies, the Commonwealth Secretariat, Organization of American States, etc. have no mandatory character under international law. On the other hand, recommendations contained in UN resolutions and ratified treaty provisions invariably obligate Thailand to comply

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[10] Gilmore, W.C., Dirty Money: the evolution of international measures to counter money laundering & the financing of terrorism, 3rd edition (Germany : Council of Europe Publishing, November 2004).

mandatorily. In this regard, there are a number of requirements counties need to fulfill. They are, according to Broome,[11] as follows:

> *While the compliance obligations may be much more extensive in some jurisdictions than others, the minimum elements to satisfy the FATF Forty Recommendations will be requirements that each entity subject to the rules must:*
>
> - *adequately identify all customers;*
> - *apply sound KYC policies;*
> - *maintain records for at least five years, or such longer periods as may be required in particular circumstances;*
> - *report suspicions transactions to the FIU or other nominated entity;*
> - *report cash or other high value transactions to the FIU or other nominated entity;*
> - *conduct adequate training activities on an ongoing basis to ensure all relevant staff are aware of their responsibilities; and*
> - *develop internal policies and procedures to ensure that the regulatory regime is applied.*
>
> *In order to ensure these requirements are met each jurisdiction must have a well-established system to deal with compliance issues, in the event that they arise. (pp. 350-351)*

Hence, Thailand as an active combatant will have to put in place a sound and viable policy in relation to compliance issues arising from its commitment to implement the FATF Recommendations. In other words, Broome[12] says:

> *Implementation of effective money laundering strategies requires commitment by financial institutions not only to the letter but to the spirit of anti-money laundering regulations: efficient, fair and effective regulation by supervisory agencies, compliance policies which are transparent and evenly applied, and an understanding on all sides of the need to apply risk management strategies in developing and implementing compliance programs. (p.319)*

Formulation of a compliance policy needs to have clear aims and at a minimum a compliance policy should have four broad aims as follows:

1. Ensure compliance with the relevant laws and regulations by all of the institutions which are subject to these requirements;
2. Provide a framework for organizing an effective process of education, consultation with appropriate assistance to financial institutions to ensure that they are able to more effectively comply with the legislation;
3. Develop a consistent and fair framework for decision making; and
4. Provide a transparent basis for investigation and prosecution or other enforcement action.

Such broad aims will enable the regulatory policy to have a capacity for enforcement where compliance is not achieved voluntarily. When setting a compliance and enforcement policy, there should be clearly and widely understood principles[13] to base on, as stated below:

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[11] Broome, J., Anti-Money Laundering: International Practice and Policies.

[12] Broome, J., Anti-Money Laundering: International Practice and Policies.

[13] Ibid, pp. 351-354

1. *Commitment* : A strong commitment by the regulator to effective enforcement, achieved through cooperation and goodwill.
2. *Consistency* : Where it is necessary to take compliance action the regulator will apply consistent and transparent approaches.
3. *Publicity* : The use of publicity should be seen as a valuable and appropriate means of achieving compliance.
4. *Penalties* : Monetary and other penalties should be commensurate with the nature of the breach and the size and resources of the financial institutions.
5. *Range* : Regulators should have available to them a range of penalties applying to both individual and corporate wrongdoing and extending from the imposition of monetary penalties, to prosecuting and, in appropriate cases, license suspension or withdrawal.

Having enacted the AML-CFT law in 1999, Thailand has exerted its utmost effort to bring about a legal regime that will have to be effective enough to combat ML and FT activities within its borders and at the same time capable of achieving international cooperation towards the common goal.

2.4 AML-CFT Working Group

In implementing the policy designating the year 2002 as "the year of good corporate governance", the government established "The National Corporate Governance Committee (NCGC) on 5 February 2002, the details of which are shown is chapter V, subheading 2.1.2.

Pursuant to its formation the committee then set up 6 subcommittees[14] on 27 February 2002, namely (1) Subcommittee on Law Amendments and Enforcement, (2) Subcommittee on Accounting Standard, (3) Subcommittee on Listed Companies, (4) Subcommittee on Improvement of Corporate Governance of Commercial Banks, Finance Companies and Insurance Companies, (5) Subcommittee on Improvement of Corporate Governance: Securities Companies, and (6) Subcommittee on Investors Education and Public Relations and on Corporate Governance in Thailand. The committee also prescribed the respective responsibilities of the subcommittees.

For the purpose of this paper, the Subcommittee on Improvement of Corporate Governance of Commercial Banks, Finance Companies and Insurance Companies is of much relevance because the subject matter of the research paper partly falls within the domain of this subcommittee. The relevance arose from the NCGC's decision of 5 November 2003 wherein it was decided that Thailand would apply to participate in the Report on Observance of Standards and Codes (ROSCs) Project in order to be assessed in all 12 areas, which constitute the core modules of the Financial Sector Assessment Program (FSAP). Of the 12 ROSCs Areas[15], this subcommittee is

[14] NCGC Order No.1/2545, dated 30 April 2002
[15] IMF and WB evaluate a jurisdiction's compliance in 12 areas :

responsible for 7 areas[16] (1) Data Dissemination, (2) Fiscal Transparency, (3) Monetary and Financial Policy Transparency, (4) Banking Supervision, (5) Insurance Supervision, (6) Payment Systems, and (7) Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT). The subcommittee is headed by the BOT Governor, who is also a member of the NCGC, one of the mandates of which is to suggest to related agencies to improve their policy schemes and operating processes including legal reforms, ministerial regulations, rules and enactments to achieve good corporate governance.

This subcommittee then formed a working group – *Working Group of Report on Observance of Standards and Codes on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT)* – which is also know as the AML-CFT Working Group. (Please refer to chapter V, 2.1.2 for details.)

2.5 Compliance with international standards and criteria

It is to be recalled that in evaluating a jurisdiction's compliance there are two essential documents on which evaluation is based. One is the well-known FATF Recommendations[17] and the other Assessment Methodology[18] updated as at October 2004 and June 2006 respectively.

The Forty Recommendations are divided into 4 principal areas: (A)Legal systems containing Recommendations 1, 2 and 3; (B) Measures to be taken by financial institutions and non-financial business and professions to prevent money laundering and terrorist financing, consisting of Recommendations 4 to 25; (C) Institutional and other measures necessary in systems for combating money laundering and terrorist financing composed of Recommendations 26 to 34; and (D) International cooperation made up of Recommendations 36 to 40. These Recommendations are supplemented with two additional documents, i.e. Glossary and Interpretative Notes. It should be noted that there are a number of subject areas under each principal area.

The 9 *Special Recommendations* (SR) are the post-September 11, 2001 products by FATF and each Recommendation deals with specific issues. SR I concerns ratification and implementation of UN instruments, SRII touches on criminalizing the financing of terrorism and associated money laundering, SR III deals with freezing and confiscating terrorist assets, SR IV is for reporting suspicious transaction related to terrorism, SR VI relates to alternative remittance, SR VII deals with wire transfers, SR VIII is related to non-profit organizations, and SR IX dwells on cash couriers.

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*IMF evaluates (i) Data Dissemination, (ii) Fiscal Transparency, (iii) Monetary and Financial Policy Transparency, and (iv) Banking Supervision.

*World Bank evaluates (v) Corporate Governance, (vi) Accounting, (vii) Auditing, and(viii) Insolvency and Creditor Rights.

*IMF and WB jointly evaluate (ix) Insurance Supervision, (x) Securities Regulations, (xi) Payment Systems and (xii) AML-CFT.

[16] TBA, Anti-Money Laundering & Combating the Financing of Terrorism (AML-CFT) Policy, 5 August 2005: p. 3

[17] The Forty Recommendations by Financial Action Task Force on Money Laundering, 20 June 2003, and Special Recommendations on Terrorist Financing by Financial Action Task Force on Money Laundering, 22 October 2004.

[18] Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations by the Financial Action Task Force on Money Laundering, June 2006.

The *Assessment Methodology* exactly follows the division of areas as in the Forty Recommendations and adds on *essential criteria* and *additional elements* for each Recommendation. As regards Compliance Rating, there are 4 possible levels of compliance: (1) compliant; (2) largely compliant, (3) partially compliant; and (4) non-compliant. And, it is to be noted that in exceptional circumstances a Recommendation may also be rated as not applicable.

Table 29: Levels of compliance rating

Compliant : C	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant : LC	There are only minor shortcomings with a large majority of the essential criteria being fully met.
Partially compliant : PC	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant : NC	There are major shortcomings, with a large majority of the essential criteria not being met.
Not-applicable : NA	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country, e.g. a particular type of financial institution does not exist in that country.

It has now become clear that technical assistance is a key element of international cooperation as far as AML-CFT is concerned. Thailand is a developing country deeply committed to international obligations in relation to AML-CFT and seeks technical assistance from time to time in order to enhance its national capability to continue to maintain an efficient, effective legal and administrative mechanism to combat the twin evils, i.e. money laundering and terrorist financing.

3. Chapter-wise comments

Needless to say, assessment for assessment's sake without follow-up action and compliance for compliance's sake without properly assessed areas and defined obligations will not produce the desired result. In the case of Thailand, as indicated above, assessments by independent assessors have been done already but delay in or lack of follow-up action is practically hampering the full development of AML laws. Follow-up action, in fact, equates to compliance.

Another inhibiting factor seems to be the nature of compliance obligations. Some obligations may be *recommendatory* and some may be *mandatory*. For example, most recommendations in assessment reports may not be mandatory; some are recommendatory and some mandatory. But international legal instruments such as conventions, protocols, treaties, etc. are legally binding on the parties because their provisions are mandatory.

Currently, what is so challenging for Thailand is that follow-up action is slow to come and compliance factor is yet to be properly defined.

CHAPTER VII

ASSESSMENT ON THAILAND'S CAPABILITY IN RELATION TO ISSUES OF LEGAL SYSTEMS AND INTERNATIONAL COOPERATION

1. Independent assessments on Thailand

It is now necessary to see how the independent assessors found the level of Thailand's compliance with or implementation of the international standards. For that matter, there have so far been 8 independent assessments on Thailand's national capabilities as follows:

1.	APG:	Mutual Evaluation Report, June 2002
2.	ASEM AML Project:	Consultants' report on technical assistance needs assessment, February (December) 2003
3.	IMF:	Legal team's report, September 2005
4.	ADB:	Consultants' analysis report, April 2006
5.	IMF	Technical team's report, April 2006[1]
6.	World Bank:	Mission team's aide-memoire, April 2006[2]
7.	UK Charity Commission:	Analysis Report (draft) on Thailand's NGOs, January 2007
8.	IMF	Mission team's Detailed Assessment Report (DAR), July 2007.

For the purposes of comparative study and review, the earlier comments of the APG, ASEM AML Project consultants', and IMF and World Bank – while valuable but largely superseded by later comments – will not be recited; instead, the comments of the ADB (April 2006), UK Charity Commission (January 2007), and IMF (July 2007) – which are more recent – will be mentioned.

We are of the view that while it may be methodical to review and comment recommendation by recommendation in the individual report, it will be more logical to touch on issue-wise. Each report's pertinent point of assessment will come under the relevant issue, thereby affording a comparative view on each report as well.

Before we deal with each Recommendation, we may need to identify and mention briefly what subject areas are involved in the Recommendations. The following tables will help us a great deal.

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[1] IMF technical team visited Thailand from 20 to 27 April 2006 and made a report as a follow-up to the earlier mission of 2005.

[2] World Bank team visited Thailand along with IMF technical team in April 2006 and made a report (aide-memoire).

Table 30: Subject areas under FATF 40 Recommendations

Recommendation	Subject Area
R 1 – 2	Scope of the criminal offense of money laundering
R 3	Provisional measures and confiscation
R 4 – 12	Customer due diligence and record-keeping
R 13 – 16	Reporting of suspicious transactions and compliance
R 17 – 20	Other measures to deter money laundering and terrorist financing
R 21 – 22	Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations
R 23 – 25	Regulation and supervision
R 26 – 32	Competent authorities, their powers and resources
R 33 – 34	Transparency of legal persons and arrangements
R 35 – 40	International cooperation: mutual legal assistance and cooperation; other forms of cooperation

Table 31: Subject areas under FATF 9 Special Recommendations

Special Recommendation	Subject Area
SR I	Ratification and implementation of UN instruments
SR II	Criminalizing the financing of terrorism and associated money laundering
SR III	Freezing and confiscating terrorist assets
SR IV	Reporting suspicious transactions related to terrorism
SR V	International cooperation
SR VI	Alternative remittance
SR VII	Wire transfer
SR VIII	Non-profit organizations
SR IX	Cash couriers

While briefly describing the concepts of the FATF 40 + 9 Recommendations and pertinent AMLA provisions, we would also like to present independent assessors' comments on Thailand's level of compliance with each Recommendation in relation to existing AML law of Thailand as well as the "thesis analysis"—which in essence is a series of points of argument in defense of Thailand's AML-CFT legal system.

In doing so, FATF Recommendations are grouped under respective subject issues—as in the FATF Assessment Methodology—such as (A) Issues of legal systems, (B) Issues of preventive measures, (C) Issues of institutional measures, and (D) Issues of international cooperation.

In selecting the assessors' comments we have exercised a certain degree of discretion by picking out (1) the ADB consultants' analysis report (April 2006), (2) the UK Charity Commission's analysis report (January 2007), and (3) the IMF DAR (July 2007) for reasons stated below:

- Other assessments on Thailand, i.e. (1) APG mutual evaluation report on technical assistance needs assessment (February 2003), (3) IMF legal team's report (September 2005), (4) IMF technical team's report (April 2006), and (5) World Bank mission's aide-memoire (April 2006), all dealt with Thailand's AML-CFT regime—in whole or in part—and they were generally superseded by the aforementioned selected reports.

- The ADB consultants' analysis report can be regarded as a specialized treatment of international cooperation aspects of Thailand's AML-CFT regime.

- The UK Charity Commission's analysis report is an assessment specifically on NPO regulatory regime of Thailand.

- The IMF DAR is an assessment report comprehensively touching on the compliance aspects of Thailand's AML laws against the FATF 40+9 Recommendations.

The assessors' comments can be roughly divided into two types—(1) positive comment and (2) negative comment. The thesis analysis will depend on the type of comment; if the comment is positive the points of thesis analysis will not be defensive. On the other hand, if the comment is negative, the points of thesis analysis will take the form of argument provided there are grounds in terms of both law and fact in support of the argument.

As a rule, the assessors have employed the standard assessment methodology in making assessments—which may be either positive or negative. As positive comments would not need a counter comment, they are naturally given less highlight. On the other hand, more highlight is given to negative comments because they could pinpoint the deficient parts of Thailand's AML-CFT regime or (2) make appropriate recommendations for improvement, or (3) expose an assessee's weaknesses to international public opinion. For whatever their objective, the thesis analysis will attempt to (1) appreciate the good points in the comment, or (2) defend Thailand's AML-CFT regime where necessary, or (3) clarify the situation surrounding Thailand's legal framework.

2. Issues of Legal Systems

Of the four categories of issues, in this Chapter we will now begin analyzing the Recommendations and Special Recommendations falling under Issues of Legal Systems and Issues of International Cooperation as follows.

2.1 Recommendation 1 (Criminalization of ML)

Summarized text : Countries should criminalize money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention). The crime of money laundering should be applied to all serious offenses, with a view to including the widest range of predicate offenses. Predicate offenses may be described by reference to all offenses, or to a threshold linked either to a category of serious offenses or to the penalty of imprisonment applicable to the predicate offense (threshold approach), or to a list of predicate offenses, or a combination of these approaches.

AMLA's provision: The following respectively show criminalization of ML and prescription of predicate offences:

(a) Section 5 criminalizes as an offence of money laundering any act of transferring, accepting or converting the criminal property for the purpose of covering or concealing the origin of that property, or any act for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the criminal property.

(b) Section 6 penalizes any offender of an ML offence, even if it is committed outside Thailand, who is (i) a Thai national or has a residence in Thailand, (2) an alien committing an offence which has consequences in Thailand or which injures the Thai government, or (3) an alien committing an act constituting an offence under Thai law and falling under Thai jurisdiction but remaining in Thailand without being expedited.

(c) Section 7 penalizes any person who commits the act of (i) aiding and abetting the commission of the offence or assisting the offender, (2) providing or giving money or property or facilities, or assisting the offender to escape or evade punishment or obtaining any benefit from the commission of the offence.

(d) Section 8 penalizes any person attempting to commit an ML offence.

(e) Section 3 prescribes predicate offenses, summarized concepts of which are as follows:

1. Offenses relating to narcotic drugs
2. Offenses relating to sexuality
3. Offenses relating to cheating and fraud to the public
4. Offenses relating to embezzlement or cheating and fraud in financial institutions
5. Offenses relating to malfeasance in office
6. Offenses relating to extortion or blackmail
7. Offenses relating to Customs evasion
8. Offenses relating to terrorism

Besides, there are 8 additional predicate offenses – which have been proposed to and accepted by the Cabinet – as mentioned briefly below.

1. Offenses relating to national resources
2. Offenses relating to foreign exchange control
3. Offenses relating to unfair securities transactions
4. Offenses relating to gambling
5. Offenses relating to arms trading
6. Offenses relating to collusion in tender submission
7. Offenses relating to labor cheating
8. Offenses relating to liquor, tobacco and excise duties,

Assessor's comment :

> ***ADB consultants' comment***[3]: The ADB consultants made the following comment:
>
> *In our view Thai law already covers many of the issues listed in the glossary to the FATF 40 Recommendations. The additional predicate offenses proposed will extend the coverage by Thailand of the suggested list of categories….. Our conclusion is that Thailand meets the original FATF Recommendation 1 standard. In order to comply with the Revised Recommendation 1 Thailand will need to ensure that all offenses carrying a penalty of 4 years imprisonment or more are predicate offenses for the purpose of its anti-money laundering law. (pp. 86-87)*
>
> ***IMF (DAR) comment***[4]: The following is the comment in the report:
>
> *The Predicate offenses to ML, as set forth under Section 5 of the AMLA, do not cover all of the serious offenses under Thai law, nor the complete list of designated categories of offenses under the FATF 40 +9 …..* (DAR para 116)

Thesis analysis: The following is the analysis of the above comments:

<u>List of predicate offenses</u>: Thailand's AMLA uses the list of predicate offense approach. Predicate offenses are fairly limited and do not cover all serious offenses, nor do they include offenses punishable by a maximum penalty of more than a year's imprisonment. Each of the predicate offense refers to category and there are a number of specific offenses in each category.

2.2 Recommendation 2 *(Intent and knowledge, and criminal liability)*

Summarized test: This Recommendation relates to the questions of material elements (such as acquisition, possession, or use) and mental elements (such as knowledge intent, aim, or purpose) to prove the offense of money laundering and of criminal, civil or administrative liability of legal persons.

AMLA's provision: Section 5 covers both material and mental elements such as the act of transferring, accepting the transfer or converting the criminal property, or covering or concealing the origin of the property, or concealing or disguising the true nature, source, location, acquisition, distribution or transfer of the criminal property.

Assessor's comment :

> ***ADB consultants' comment***[5] : The consultants commented as follows:
>
> *Section 5 of [the] AMLA makes it an offense to receive an asset involved in the commission of an offense for the purpose of concealing or disguising the origin or source of the asset or to assist a person avoid a penalty. Clearly this satisfies the element of acquiring or possessing and the knowledge element. (p. 94 …..*

[3] ADB consultants' analysis report on Thailand, 9 April 2006

[4] IMF DAR, 24 July 2007

[5] ADB consultants' analysis report on Thailand, 9 April 2006

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Thai courts may draw inferences from factual circumstances that Section 5 of [the] AMLA deals with intent and knowledge. Sections 5, 6 and 7 of [the] AMLA, in creating money laundering offenses, refer to 'whoever'. The Supreme Court of Thailand has determined that this word covers both natural and legal persons. As the principle of stare decisis forms part of Thai law, it is clear to us that Thailand complies with this requirement. In practice Thailand would prosecute both the company, and in their individual capacities, the directors of the company. The former would receive a fine if convicted and the latter could be imprisoned. (p.88)

IMF (DAR) comment**[6]**: The report states as follows *:*

The offense of ML applies to persons that knowingly engage in ML activity. By application of the general principle established in section 59 of the PC, the offense of ML requires the knowledge that property being laundered is the proceeds of a predicate offense. (DAR para 131)

The law permits the intentional element of the offense of ML to be inferred from objective factual circumstances, as per the general principles of evidence. There is no specific provision to that effect in the law but the general principles establish that all circumstances should be taken into consideration when inferring the intentional element of an offense. This principle is known in Thailand as the "intention-inferred-from-act approach. (DAR para 134)

The criminal liability for ML extends also to juristic persons. Both natural and juristic persons can therefore commit the offense of ML. In accordance with section 61 of [the] AMLA "any juristic person who commits offenses under sections 5, 7, 8, or 9 shall be liable to a fine of 200,000 baht to 1 million baht ($5,280 to $26,400). Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offense shall be liable to imprisonment for a term of one year to ten years or to a fine of 20,000 baht to 200,000 baht ($528 to $5,280) or to both unless that person can prove that he or she has no part in the commission of the offense of such juristic person. (DAR para 137)

A legal person's criminal liability for ML does not preclude the possibility of parallel criminal, civil or administrative proceedings. Criminal, civil, and administrative proceedings are entirely separate from one another in Thailand. As such, criminal liability for ML does not bar civil or administrative proceedings where they can be pursued. (DAR para 139)

Natural and legal persons are subject to proportionate criminal and administrative sanctions for money laundering. (DAR para 140)

Criminal liability for ML for legal and natural persons can exist concurrently. For instance, if a natural person engages in ML on behalf of a legal person, both the legal and natural persons may be criminally liable for ML. (DAR para 143)

Thesis analysis : The analysis of the above comments is as follows:

§ Material elements:As the comments themselves acknowledge, the element of intent and /or knowledge is met by Section 59 of the Penal Code and the element of knowledge can be inferred from objective factual circumstances.

[6] IMF DAR, 24 July 2007

- § Applicability of criminal liability to legal persons: Section 61 of the AMLA is applicable to legal persons.
- § Multi-application of liability: Criminal liability for money laundering does not bar civil or administrative proceedings where they can be pursued.
- § Sanctions on juristic and natural persons: Sanctions are prescribed in AMLA's Section 60 for a natural person and Section 61 for a juristic person, and a criminal liability for money laundering for juristic and natural persons can exist concurrently.

2.3 Recommendation 3 (*Confiscation, freezing and seizing of proceeds of crime)*

Summarized text : Countries should adopt measures to confiscate property, proceeds of property, instrumentalities involved in money laundering, or property of corresponding value and such measures should include identifying, tracing and evaluating, freezing, seizing and restraining, and investigating. Confiscation of proceeds or instrumentalities without requiring a criminal conviction may also be considered.

AMLA's provision: Under Section 34 the Transaction Committee has the powers and duties: (1) to examine a transaction or property involved in the commission of an offense; (2) to restrain temporarily a transaction under Section 35 or 36; (3) to seize or attach the property temporarily under Section 48 ; (4) to report to the AMLB on its work performed; and (5) to undertake other functions designated by the AMLB. Procedures relating to provisional measures are described in Sections 35, 36, and 48.

Assessor's comment :

ADB consultants' comment[7] : The consultants made the following comments :

For the purposes of this report there are three laws in force in Thailand which deal with the confiscation of the proceeds and instrumentalities of crime. The first and most general is the Penal Code. Part 1 of Chapter 3 of the Code deals with penalties which are to be imposed following conviction. It contains forfeiture provisions which are traditional criminal forfeiture provisions. (p. 206)

The second law is the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics.

This legislation deals, inter alia, with the proceeds and instrumentalities of crimes relating to narcotics. It contains provisions relating both to forfeiture and to the step which can be taken to identify relevant property and ensure its preservation until the offender is dealt with by the courts for the narcotics offense. (p. 207)

The third is the Anti-Money Laundering Act (AMLA).

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[7] ADB consultants' analysis report on Thailand, 9April 2006

The AMLA creates a civil forfeiture regime which permits forfeiture in the absence of a conviction, or even a prosecution, for a criminal offense. It does not deal with the instrumentalities of any crime to which it applies. It applies only to money laundering and listed predicate offenses. (p. 208)

The operation of the three main Thai laws that deal with proceeds of crime and forfeiture leaves Thailand with no capacity to deal with the conversion of proceeds of crime, the intermingling of such proceeds or income derived from proceeds in cases where the offense that created the proceeds is not a predicate offense under [the] AMLA. This is because Section 33 of the Penal Code has no application to such property. Thailand will need therefore to extend the definition of predicate offense in [the] AMLA to allow it to use its civil powers to recover the proceeds of serious offenses or it will need to extend the provisions of the Penal Code to give the courts power to impose criminal forfeiture orders relating to property that is indirectly acquired from criminal conduct or intermingled with legitimate funds. (p. 210)

Currently Thai law does not require the making of a court order for the restraint or seizure of suspected proceeds of crime where the offense is a narcotic offense or a money laundering offense. This will make it difficult for Thailand to seek assistance from other countries where they want suspected proceeds in another country frozen or restrained. This is because most, if not all, countries require a court order from the requesting country. The laws need amendment to address this issue where the suspected proceeds are located in another country. (p. 214)

Also the AMLA only allows restraint or seizure before confiscation if there is probable cause to believe that the assets may be dealt with. This power is quite narrow and would not allow Thai authorities to take preventive action at the early stage of an investigation. (pp. 214-215)

IMF (DAR) comment[8]: The comment states:

Thai laws provide for the confiscation of property that has been laundered or which constitutes a) proceeds from; b) instrumentalities used in; and c) instrumentalities intended for use in the commission of any ML, TF or other predicate offenses, including property of corresponding value. (DAR para 191)

The confiscation of instrumentalities used in or intended for use in the commission of an offense is authorized under section 33 of the PC. Instrumentalities are not covered by the definition of "property connected with the commission of an offense" and are therefore not able to be vested in the State under the system provided by the AMLA. However, instrumentalities are covered by the civil-code definition of "property" and are therefore forfeitable under the rules provided by the PC. (DAR para 213)

The forfeiture provisions in the PC do not deal with the property derived from proceeds of crime. (DAR para 217)

The authorities claim that section 48 of the AMLA and section 22 of the Narcotics Suppression Act both allow for the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. The assessors remain to be convinced of this as neither provision explicitly provides for an ex-parte application to be made and that process may be in conflict with other laws and inconsistent with Ministerial Regulation No. 10. The authorities could not provide any evidence in the form of cases or statistics in support of their claims. (224)

[8] IMF DAR, 24 July 2007

It should be noted however that the powers under the AMLA can only be used in the context of the vesting procedure contemplated therein and the powers under the Narcotics Suppression Act are only applicable to offenses relating to narcotics. As a result, the identification and tracing of property in criminal procedures for offenses not related to narcotics would be limited to the application of the evidence gathering provisions of the CPC. These general criminal powers to identify and trace evidence are usually not considered sufficient just by themselves, as the objective of investigators may not be to gather evidence but rather to identify and trace property that is or may become subject to confiscation. Accordingly, the assessment team recommends that the authorities expand the powers under the CPC to enable the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence. (DAR para 227)

Measures providing protection for the rights of bona fide third parties are contained in the CCC, the AMLA and the Narcotics Suppression Act. Such measures are consistent with the standards provided in the Palermo Convention. (DAR para 232)

While the preventive authority is clearly set out in the seizing and attachment provisions, there are no specific provisions explicitly granting authority to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. (DAR para 238)

Both the AMLA and the Narcotics Suppression Act contain provisions covering property subject to confiscation in the freezing and attachment mechanisms, irrespective of certain actions taken by the persons involved, and of who is in possession or ownership of such property. However, there is no specific authority to void actions that may not be covered under such provisions and that could prejudice the authorities' ability to recover property subject to confiscation. (DAR, para 239)

The confiscation of property of organizations that are found to be primarily criminal in nature is not possible under the AMLA. However, the confiscation of property of such organizations could be possible under the PC. (DAR, para 247)

Thesis analysis : The analysis of the above comments is as follows:

§ Legal basis of forfeiture: There are three pieces of legislation providing for confiscation of property in Thailand, namely (1) the Penal Code (Sections 32 and 33, conviction-based);(2) the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics 1991 (both conviction-based and non-conviction-based); and (3) the Anti-Money Laundering Act 1992 (non-conviction-based).

§ Forfeitable property: Confiscation of property includes (a) proceeds from, (b) instrumentalities used in, and (c) instrumentalities intended for use in the commission of the offense, including property of corresponding value.

§ Property located abroad: The AMLA provisions allow to proceed against property wherever it is located and that is derived from a predicate offense or involved in money laundering.

- § Dual forfeiture regimes: Practice of dual forfeiture regimes gives greater options for law enforcement agencies to choose, and the domestic legal system has so far encountered no major challenges to the use of the dual forfeiture regimes.
- § Forfeiture of instrumentalities: Forfeiture of instrumentalities is made possible under Section 30 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics 1991 – any offense of which is defined as a predicate offense under Section 3 of the AMLA.
- § Preventability or voidability of actions: Provisional seizure or attachment of property connected with the commission of an offense is provided for in the AMLA (Sections 48 and 59) and the Civil Procedure Code (Sections 305 and 314) which prohibit creation, transfer or alteration of rights in the property made after seizure or attachment.

2.4 Special Recommendation II *(Criminalizing FT and associated ML)*

Summarized text : This special Recommendation urges each country to criminalize the financing of terrorism, terrorist acts, and terrorist organizations, and to designate them as money laundering predicate offenses.

AMLA's provision: Section 3 of the AMLA designates 'offenses relating to terrorism under the Penal Code' as predicate offenses pursuant to the August 2003 amendments of the AMLA Section 3 and the Penal Code Section 135.

Assessor's comment :

ADB consultants' comment[9]: The consultants' report made the following comment:

This Recommendation covers the same issues as those outlined in the FOT Convention Articles 2 and 4 (a) and we consider that the enactment of Sections 135/1, 135/2, 135/3 and 135/4 meets the requirements of SRII. (p. 115)

IMF (DAR) comment[10]: The DAR contains the following comments:

The TF offense in section 135/2 of the PC is not consistent with SR.II as it does not extend to the acts that constitute offenses within the scope of, and as defined in, the treaties listed in the annex of the UN Convention…... (DAR para 162)

Thailand has not criminalized the financing of the acts that constitute an offense within the scope of, and as defined in, those three treaties or any of the other treaties. (DAR para 164)

Thailand must amend the provisions of section 135/2 of the PC to criminalize the financing of the acts that constitute an offense within the scope of, and as

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[9] ADB consultants' analysis report on Thailand, 9 April 2006

[10] IMF DAR, 24 July 2007

defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II. (DAR para 165)

However, this claim is not relevant as Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization. This is because of a number of significant limitations. (DAR para 169)

In accordance with section 3(8) of the AMLA, offenses relating to terrorism under the PC are predicate offenses for ML. Accordingly, the TF offense criminalized under section 135/2 of the PC is a predicate offense to ML. (DAR para 177)

The TF offense is expressed without regard to the location of terrorist acts, a terrorist organization or an individual terrorist. Accordingly, the offense applies, regardless of whether the person alleged to have committed the offense(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organization(s) is located or the terrorist act(s) occurred/will occur. (DAR para 178)

AMLO's poor record for disseminating reports to LEAs, and its lack of focus in the criminal aspect of cases creates a serious problem of implementation for the TF offense….. (DAR para 184)

Thesis analysis : The analysis of the above comments is as follows:

Evidently, the comment of the ADB consultants on this Special Recommendation does not call for any specific analysis. However, the IMF DAR's comments do need an appropriate analysis as follows :

- § The respective statements made in sub-paragraphs 1, 2 and 4 of the DAR comment above are similar in concept to those made under Special Recommendations I. Therefore, points of analysis made in Special Recommendation I may be applicable to this Special Recommendation.
- § Of the remaining sub-paragraphs, comments contained in the last sub-paragraph would require an analysis.
- § As regards the statement that AMLO's poor record of disseminating reports to LEAs and its lack of focus on criminal aspects of cases create a serious problem of implementation for TF offense, the following answers may help clarify the negative impression:

(1) Admittedly, the AMLO usually does not disseminate reports to LEAs unless it has compelling reason to share the information with other LEAs when it either seeks evidence in support of its own investigation or is invited to participate in joint investigative operations by other LEAs. In fact, under the AMLA, the AMLO's Secretary-General is the sole authorized keeper of sensitive information and data and any unauthorized leakage of the information is subject to a severe punishment of long imprisonment and/or huge fine. For, Section 38, paragraph 3 reads :

All information obtained from the statements, written explanations or any account, document or evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.

As for penalty, Section 66 says :

Any person who having or probably having knowledge of an official secret in connection with the execution of this Act, acts in any manner that enables other persons to have knowledge or probable knowledge of such secret shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand Baht or to both, except in the case of doing such act in the performance of official duties or in accordance with the law.

Because of the above restriction in the AMLA it does not mean that the AMLO cannot disseminate reports to other LEAs. It can, but with some conditions. The question of AMLO's dissemination authority was once referred to the Council of State for legal opinion[11], which, in its Case No. 288/2003, expressed the view that "the Secretary-General of the Anti-Money Laundering Board may submit the various information obtained under Section 38 to the agencies or persons requiring such information as far as it is allowed by the provisions of the law."

In practice, the AMLO is indeed allowed to disseminate any analyzed and determined predicate offence, resulting from any suspicious report filed with it, to FIs or LEAs concerned to act on and report back the results to the AMLO.

(2) The AMLO's persistent use of civil forfeiture regime in ML cases is considered by many assessors as a policy-oriented self-serving practice to the neglect of complicated criminal investigations in ML predicate offenses. Under the civil vesting procedures the investigators involved are entitled to certain rewards—a system that persuades the staff to choose the civil vesting system more than the criminal investigation. The rewards system had thus come under heavy criticism so much so that a Prime Minister Office Regulation was issued on 9 October 2007, becoming effective on 18 October 2007. Under this Regulation the rewards system was canceled.

In fact, the AMLA allows a civil vesting system—which in practice is more facilitating than the criminal forfeiture system allowed under the Penal Code in terms of procedures, most notably the burden of proof. So the AMLO has every right to choose the system allowed by the law, if it thinks convenient and advantageous to it.

[11] Council of State, "Memorandum of the Council of State Re: The compliance with Section 38 and Section 40 of the Anti-Money Laundering Act, 1999," (wrongly dated as April 2003), Case No. 288/2003

2.5 Special Recommendation III *(Freezing and confiscating terrorist assets)*

Summarized text: This Special Recommendation requires countries to freeze terrorists' funds or assets and those who finance terrorism and terrorist organizations, as well as to seize and confiscate property related to the financing of terrorism, terrorist acts or terrorist organizations.

AMLA's provision: Restraint (freezing) of criminal assets under Sections 35 and 36, seizure under Section 48 and confiscation under Section 49 are respectively authorized in the AMLA.

Assessor's comment :

ADB consultants' comment[12]: The consultants' report states that "this Recommendation covers the same issues [as] those outlined in the FOT Convention Article 8 (i) and 8 (ii) and we consider that Thailand complies with it." (p. 115)

IMF (DAR) comment[13]: The DAR's comments are as follows:

There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated by the UNSCR 1267. The authorities have claimed that the mechanisms for seizing and attaching property under [the] AMLA, the CPC or the Special Investigations Act could be used to give effect to UNSCR 1267. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay. (DAR para 277)

There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. The authorities have claimed that the mechanisms for seizing and attaching property under [the] AMLA, the CPC or the Special Investigations Act could be used to give effect to UNSCR 1373. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay. (DAR para 285)

Thailand can render mutual assistance even in the absence of a mutual legal assistance treaty with the requesting State. However, reciprocity and double criminality conditions must be fulfilled….. (DAR para 292)

The freezing actions described under the AMLA could extend to property wholly or jointly owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organization and to the property derived or generated from property owned or controlled directly or indirectly by them. (DAR para 294)

There are no specific systems in place for communicating actions taken under the freezing mechanisms to the financial sector. (DAR para 295)

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[12] ADB consultants' analyses report on Thailand, 9 April 2006

[13] IMF DAR, 24 July 2007

No guidance is currently provided to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms. (DAR para 297)

The lists of designated terrorists/terrorist organizations are not currently being forwarded to FIs by the AMLO, the BOT or any other control entity and there is no legal basis in place to circulate these lists to the competent authorities and FIs….. (DAR para 298)

The rules and procedures provided under Ministerial Regulation 9 (2000) would also govern the revocation of seizures or attachments of the property of persons or entities inadvertently affected by a seizure or attachment under the AMLA. However, this regulation would not cover seizures or attachments ordered under the CPC, the Special Investigations Act or in response to a request from a foreign court. (DAR para 304)

There are no appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses. (DAR para 305)

In accordance with section 48 of the AMLA, the person affected by the property seized or attached may produce evidence that money or property is not the property connected with the commission of the offense in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures prescribed in Ministerial Regulation 9. (DAR para 306)

Criteria 3.1-3.4 and 3.6 in R.3 do not apply in relation to the freezing, seizing and confiscation of terrorist-related property in contexts other than those described in criteria III.1-III.10 (DAR para 310)

The measures protecting the rights of bona fide third parties described for under R.3 apply equally to this section….. (DAR para 311)

There is no authority designated to monitor compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property; However, the BOT and the SEC are being considered to be assigned as competent authorities to monitor and supervise such compliance in their respective sectors. (DAR para 312)

Thailand has not implemented the procedures to authorize access to funds or other assets that were frozen pursuant to UNSCR 1373 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. (DAR para 314)

Thesis analysis : The analysis of the above comments is as follows:

The ADB consultants' comment would require no analysis whereas those of the IMF DAR would. It involves a number of points as follows:

§ As regards the statement that there are no specific laws or procedures to freeze terrorist funds or other assets of persons designated either by UNSC Resolution 1267 (1999) or Resolution 1373 (2001), considering the points of analysis under Special Recommendation I Thailand does have mechanisms in place on this matter.

- § For the statements (1) that no specific systems are in place for communicating actions taken under freezing mechanisms to financial sector, (2) that no guidance is currently provided to FIs and others holding targeted funds or assets concerning their obligations under freezing mechanisms, and (3) that the UN sanction lists are not being distributed to FIs by the AMLO, the BOT, etc, the common answer generally is "yes", in confirmation.
- § The statement that Ministerial Regulation 9 (2000) would not cover seizures or attachments under the Penal Code, the Special Investigation Act or in response to a request from a foreign court can be answered as follows :

(1) Ministerial Regulation 9 (2000) was issued under the AMLA to deal with revocation of orders for seizure or attachment of property later found to be unconnected with the commission of an offense. So it will be applicable only to AMLA-based cases.

(2) Seizures or attachments of property under the Penal Code are governed by the provisions thereof. Revocation of a seizure or attachment order is provided in Section 36 where it states: "In the case where the Court has already given order for the forfeiture of the properties according to Section 33 or Section 34, if it appears afterwards by the submission of the real owner that he has not connived at the commission of such offense, the Court shall give order for the return of the properties if such properties are still in the possession of the official. But the submission of the real owner shall be made to the Court within one year reckoning from the day of the final judgment."

(3) As for seizures or attachments of property under the Special Case Investigation Act 2004, the Act does not specify specific provisions concerning revocation orders. But Section 24, paragraph 4 implies application of the Penal Code when it says: "A Special Case Inquiry Official who leads the search shall submit a copy of the record of reasonable doubt and reason to believe under paragraph three as well as a copy of search record and a record of properties being seized or attached to the provincial court having jurisdiction over the searched area or the criminal Court in Bangkok within 48 hours after the search ends as evidence."

Criminal jurisdiction of a court is a requirement under this Section and the record of seized/attached properties is filed with the court so it is obvious that any revocation matter is to be determined in accordance with the Penal Code.

(4) Regarding requests from foreign courts, the issue comes under international cooperation and the 1992 Act on Mutual Assistance in Criminal Matters and bilateral treaties will be applied to such foreign requests.

(5) The statement that Thailand has not implemented the procedures to authorize access to funds or other assets frozen pursuant to UNSC Resolution 1267 (1999) or 1373(2001) for basic expenses or for extraordinary expenses is fair enough. For the 2002 AMLO Regulation, dated 24 September 2002, merely deals with other expenses connected with property seizure/attachment such as (1) travel allowance, (2) lodging rental, (3) expenses on conveyance, (4) expenses for witnesses, and (5) expenses for hire of security guards to look after the property. Additionally, there also are other expenses such as (1) expenses on property price appraisal, (2) expenses on delivery and copies of inquiry record, (3) expenses on property storage and management, (4) postage and related expenses, (5) expenses on property damages and depreciation appraisal, and (6) expenses on remuneration for outside information.

3. Issues of international cooperation

3.1 Recommendation 35 *(Ratification of UN instruments)*

Summarized text: This Recommendation urges countries to ratify and implement the following:

1. The Vienna Convention;
2. The Palermo Convention;
3. The Convention against FOT; and
4. Other relevant international conventions (such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the 2002 Inter-American Convention against Terrorism).

AMLA's provision: (There is no specific provision in the AMLA to deal with this Recommendation.)

Assessor's comment :

ADB consultants' comment[14]: The consultants made their comments for Recommendations 35 to 40 under the generic chapter titled 'International Cooperation' of the report. Their view is that "the obligation of a country to provide international cooperation to combat crime arises in many treaties. Traditionally the subjects dealt with consisted only of extradition and mutual assistance in criminal matters but more recently other forms of cooperation are being addressed." (pp. 18-19)

According to the consultants' report[15], there are four areas involved in international cooperation as quoted below:

a. *Mutual Legal Assistance*

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[14] ADB consultants' analysis report on Thailand, 9 April 2006

[15] ibid: pp. 18 and 19

Mutual legal assistance in criminal matters is the process by which States receive and render assistance in gathering evidence for criminal investigations and presentations. The most recent statement of the internationally agreed elements of mutual legal assistance is contained in the TOC.

b. *Extradition*
Extradition is the oldest and most established form of international cooperation in criminal matters. It involves the delivery of a person to the country which intends to prosecute him or her for an offense against the laws of that country or to a country where he or she has already been convicted of an offense but has not served the sentence imposed by the court.

c. *Law Enforcement Cooperation*
Law enforcement cooperation standards are articulated in the Palermo Convention, the FATF 40 Recommendations and UN Security Council Resolution 1269 of 1999 which requires States to take appropriate steps to cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts; and to prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism.

Law enforcement cooperation is designed to deal with that part of the criminal justice system which precedes the laying of criminal charges or the commencement of criminal proceedings.

d. *Other forms of cooperation*
Other forms of international cooperation exist or are being developed and these include the transfer of proceedings and prisoners, the creation of joint investigative bodies and the exchange of information between specialist bodies such as FIUs.

Then the report goes on examining at length Thailand's relevant laws and the level of compliance vis-à-vis international instruments such as the Vienna Convention, the Convention against FOT, the Palermo Convention, UNSC Resolutions 1269 and 1373, and FATF Recommendations.

Financing of Terrorism: As regards the requirement under Article 2 of the Convention against FOT that the domestic law of States must create certain offenses relating to the collection or provision of funds or assets with the intention or knowledge that they will be used for terrorist acts, Thai law – Section 135/1, Section 135/2, and Section 135/3 – does cover the Convention requirement, the consultants' report[16] concluded that "accordingly the test in the Thai law is more stringent than what is contemplated in the Convention obligation," and that "accordingly Thai law clearly [satisfies] the requirement of the Convention against FOT Article 2 (1) (b)." (p. 22)

Where it comes to UNSC Resolutions, the consultants' comment[17] is that "Thailand has, in our opinion, substantially implemented the obligations imposed by the Convention against FOT. Accordingly, it has met its obligations under these UN Security Council Resolutions."

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[16] See p. 22 of ADB consultants' analysis report on Thailand, 9 April 2006
[17] ibid: p. 22

As for the FATF 9 Special Recommendations, the report[18] states "The FATF has adopted Special Recommendations (SR) for combating the financing of terrorism. The first three of these Recommendations deal with implementation of the Convention against FOT, offenses and freezing and seizing terrorist's assets. We consider that Thailand complies with these Recommendations." (p.23)

Mutual legal assistance: The Consultants' report discussed Thailand's obligations for mutual legal assistance based on the 1992 Act on Mutual Legal Assistance in Criminal Matters against the UNSC Resolution 1269, the Vienna Convention, the Palermo Convention (which Thailand has yet to ratify), the Convention against FOT and FATF Recommendations.

As regards general obligations, the report[19] observes: "Section 4 of the Thai Act defines 'assistance' as meaning assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters. We consider the scope of the Thai Act is broad enough to meet the requirements of these general obligation provisions in each of the three Conventions. (p. 24)

On issues relating to the proceeds of crime, the report[20] further observes; "We are advised that laws other than the MA Act can be relied upon in cases relating to proceeds of crime", adding "Although Thailand can provide some assistance with the interim measures relating to alleged proceeds of crime, we note that the MA Act makes no reference to freezing of property. We consider it important that Thailand deals with this lacuna in its mutual assistance regime." (p. 25)

Concerning the issue of 'dual criminality', the report[21] says: "Under Thai law dual criminality is a requirement for the granting of international assistance and accordingly, in addition to the offenses needed to ensure that assistance can be provided in terrorist financing cases, Thailand needs to ensure that its law criminalizes the offenses in respect of which it must grant mutual assistance and extradition."(p. 20) It further states: "Because Section 9 (2) of the Mutual Assistance Act requires dual criminality, until such time as the AMLA covers all the predicate offenses required by the Palermo Convention, Thailand will be unable to meet the obligations it will assume when it becomes a party to the Palermo Convention." (p. 25)

Extradition: The report made its observations of Thailand's obligations based on the 1929 Extradition Act in relation to the Vienna Convention, the Palermo Convention, the Convention against FOT, the UNSC Resolution 1269 and the FATF Recommendations.

[18] ADB consultants' analysis report on Thailand, 9 April 2006: p. 23
[19] ADB consultants' analysis report on Thailand, 9 April 2006: p. 24
[20] ADB consultants' analysis report on Thailand, 9 April 2006
[21] ADB consultants' analysis report on Thailand, 9 April 2006 : p. 25

First of all, the report[22] took note of the provision in Section 4 of the Act that "extradition from Thailand in the absence of a treaty is at the discretion of the Government and may be granted in cases where the offense for which surrender is sought is punishable by imprisonment for not less than one year." (p. 142)

The report then discussed such principal issues as (1) extraditable offenses, (2) extradition requests, (3) non-treaty extradition, (4) rules of procedures, (5) special grounds for refusal, (6) prohibited grounds of refusal, (7) timely response, (8) provisional arrest, (9) prosecution in lieu of extradition of non-nationals, (10) extradition of nationals, (11) extradition treaties, (12) consultation, and (13) prisoner transfer agreements.

On the scope of *extraditable offenses* issue, the report[23] states that the Conventions "impose no direct obligation except that Thailand, and its courts, must take these provisions into account in extradition cases relevant to the offenses required to be created by the Conventions. Of course, because dual criminality is a requirement of Thai extradition law, the relevant offenses must exist in Thai law." (p. 145)

As for the *extradition requests* issue, the report[24] observed that "Thailand does not make extradition conditional on a treaty but leaves it to the discretion of the Government to grant extradition in the absence of treaty. Accordingly these provisions raise no issue for Thailand." (p. 146)

On the issue of *non-treaty extradition* the report[25] commented: "The effect lay to deal with inconsistency between its law and these Conventions so as to ensure that these Conventions prevail or, preferably, ensure that it has created all the necessary Convention offenses … and that the offenses are punishable with imprisonment for not less than one year." (p. 146)

On the issue of *rules of procedures*, the report[26] concluded that the requirements of the Conventions raise no issue for Thailand and that Thai law satisfies the requirements by requiring the application of its rules of procedures to extradition cases.

As regards the *special grounds for refusal*, in view of the increasing use of a provision in multilateral treaties stating that surrender of a person may expose him to the risks involving prosecution or punishment on racial, religions, ethnic, political or nationality grounds, the report[27] opined that "Thailand may wish to consider whether it wants to include such a provision in its extradition law. There is, of course, no international legal obligation for it to do so." (p. 147)

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[22] ADB consultants' analysis report on Thailand, 9 April 2006 : p. 142
[23] ADB consultants' analysis report on Thailand, 9 April 2006 : p. 145
[24] ADB consultants' analysis report on Thailand, 9 April 2006
[25] ADB consultants' analysis report on Thailand, 9 April 2006 : p.146
[26] ADB consultants' analysis report on Thailand, 9 April 2006 : pp. 146 and 147
[27] ADB consultants' analysis report on Thailand, 9 April 2006 : p.147

Regarding the issue of *prohibited grounds of refusal*, the report[28] noted that since the Extradition Act 1929 does not deal with the issue of fiscal offenses and there is no ground in the current law for refusal, amendment may not be needed. As for a political offense exception, the report[29] recommended that Thailand enact a provision which states clearly that where Thailand is a State party to a treaty (including a multilateral convention), which requires that certain offenses are not, for the purpose of extradition, political offenses or offenses of a political character, then extradition shall not be refused by Thailand on the grounds that the offense for which extradition is requested is claimed by the person sought to be a political offense or an offense of a political character.

As for the issue of *timely response* to extradition requests, the report[30] observed that "Thai law appears to provide expeditious and simple procedures and in any case this provision imposes no obligation other than a best efforts obligation and accordingly Thai law is adequate." (p. 148)

On the issue of *provisional arrest*, the report[31] noted that the Convention obligations are met by Section 10 of Thai extradition law.

With respect to the issue of *prosecution in lieu of extradition of non-nationals*, the report[32] concluded that "Section 5 of the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics gives extraterritorial effect to Thailand's narcotic offenses and satisfies this requirement." (p. 149)

Regarding the issue of *extradition of nationals*, the report[33] observed that "on the basis of the decision of the Court of Appeal and the decision of the Cabinet on this issue we consider that Thailand complies with the provisions relating to the extradition of nationals but we note that Section 8 of the Penal Code limits the power to deal with nationals to specific offenses and Thailand must ensure that Section 8 covers the full range of offenses covered by the relevant multilateral conventions." (pp. 150-151)

On the issue of conclusion of *extradition treaties*, the report[34] opined that "Section 3 of the Thai law appears to be able to be read as applying to multilateral as well as bilateral treaties and accordingly Thailand will (when it ratifies the Palermo Convention), in effect, have extradition treaties with all States Parties to that Convention and already has, on this basis, extradition arrangements with all States Parties to the Vienna Convention because it has ratified that Convention." (pp. 151-152)

[28] ADB consultants' analysis report on Thailand, 9 April 2006 : pp. 147 and 148
[29] ADB consultants' analysis report on Thailand, 9 April 2006: p.143
[30] ADB consultants' analysis report on Thailand, 9 April 2006 : p.148
[31] See p. 149 of ADB consultants' analysis report on Thailand, 9 April 2006
[32] ibid: p.149
[33] ibid: pp. 150 and 151
[34] ibid: pp. 151 and 152

On the issue of *consultation* in cases of potential extradition refusal, the report[35] commented that "Section 14 of the Extradition Act allows for appeal by the prosecutor but it gives only 48 hours for the prosecutor to notify the court of an intention to appeal. This may not be sufficient time for Thailand to seek, and obtain assurances in relation to, further material from the requesting country. We suggest amendment of the law to allow additional time so that Thailand can realistically comply with the obligation under this provision." (p. 152)

As regards the issue of *prisoner transfer arrangements*, the report[36] concluded that the Vienna Convention provision imposes no legal obligation on Thailand which in practice has concluded treaties relating to the transfer of convicted prisoners and that Thailand meets the requirements of FATF Recommendation 39 and Special Recommendation V, as well.

Law enforcement cooperation: As regards law enforcement cooperation in AML-CFT matters, the principal bases are the Palermo Convention, the FATF 40 Recommendations and the UNSC Resolution 1269 of 1999, where the standards are articulated. According to the report[37], it says the UNSC Resolution "imposes a general obligation which encompasses law enforcement cooperation. Specifically it requests States to take appropriate steps to cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts; and to prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism." (p. 153)

The report[38] reproduced Article 27 of the Palermo Convention, which imposes obligations on States Parties to cooperate with one another by adopting effective measures:

(a) to enhance and establish channels of communication between competent authorities;
(b) to cooperate in conducting inquires;
(c) to provide necessary items or quantities of substances for analytical or investigative purposes;
(d) to facilitate effective coordination;
(e) to exchange relevant information on specific means and methods used by organized criminal groups; and
(f) to exchange information and coordinate administrative measures for early identification of offenses.

The report[39] then cited Thailand's Report to the 2005 UN Crime Congress and remarked that "it demonstrates to us Thailand's ability and willingness to comply with Article 27." (p. 154)

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[35] ADB consultants' analysis report on Thailand, 9 April 2006 : p. 152
[36] ADB consultants' analysis report on Thailand, 9 April 2006: pp. 152 and 153
[37] See pp. 153 of ADB consultants' analysis report on Thailand, 9 April 2006
[38] ibid: pp. 153 and 154
[39] ibid: p. 154

As for requirements under FATF Recommendation 40, which urges countries to provide the widest possible range of international cooperation to their foreign counterparts without unduly restrictive conditions, the report[40] noted the AMLO's signing of MOUs with its foreign counterparts and providing of a good service in responding to the requests of other countries in money laundering investigations, adding that their RTP cooperation also supplements the MOUs. The report concluded that Thailand complies with the Recommendation.

Other forms of cooperation: The report mentions transfer of criminal proceedings, establishment of joint investigative bodies and transfer of sentenced offenders as other forms of cooperation.

On the issue of *transfer of criminal proceedings*, the report[41] noted in relation to Article 21 of the Palermo Convention that "the provision does not impose any legal obligations on States Parties. We note that Section 31 of the Mutual Assistance Act could facilitate such transfer." (p. 156)

Regarding the issue of *establishment of joint investigative bodies*, the report[42] noted Thailand's compliance with Article 19 of the Palermo Convention.

As regards the issue of *transfer of sentenced offenders*, the report[43] found that Article 17 of the Palermo Convention "imposes no legal obligation; however we are aware that Thailand does have bilateral prisoner transfer treaties." (p. 157)

IMF (DAR) comment[44]: The DAR's comments run along the following lines:

Thailand has not yet ratified the Palermo Convention because many of the requirements of the convention have not been incorporated into domestic legislation. The following are examples of requirements of the Palermo Convention that have not yet been incorporated into domestic legislation:

- *The predicate offenses to ML, as set forth under section 5 of the AMLA, do not cover all of the serious offenses under Thai law as required by the Palermo Convention, nor the complete list of designated categories of offenses under the standards.*

- *Article 6(2)(c) of the Palermo Convention requires that predicate offenses include both domestic and extraterritorial offenses. However, not all of the predicate offenses for ML extend to conducts that occurred in another country, which constitute an offense in that country, and would*

[40] ADB consultants' analysis report on Thailand, 9 April 2006 : p. 156
[41] ADB consultants' analysis report on Thailand, 9 April 2006: p. 156
[42] See p. 156 of ADB consultants' analysis report on Thailand, 9 April 2006
[43] ibid: p. 157
[44] IMF DAR, 24 July 2007

have constituted a predicate offense had they occurred in Thailand.

- *Article 12(1) of the Palermo Convention requires countries to have laws that enable confiscation of proceeds of crime derived from offenses covered by the convention or property, the value of which corresponds to that of such proceeds. (DAR para 1226)*

There [are] a number of additional requirements of the Palermo Convention that still need to be incorporated into domestic legislation. (DAR para 1227)

No other relevant conventions have been signed. (DAR para 1232)

Thesis analysis : The analysis of the above comments is as follows:

- § Re. ADB consultants' comments: The comments as a whole are highly informative in that they touch on Thailand's current status on compliance with international legal instruments as well as the capability of providing legal assistance under bilateral and multilateral treaties. The comments are very positive reflecting the real situations surrounding the AML-CFT regime and ranging from suggestions to recommendations that could help improve Thailand's AML legal and administrative framework.
- § Re. IMF (DAR) comments: The comments contain a number of points concerning AML-related UN conventions and UNSC resolutions, of which only the Palermo Convention has remained to be ratified. Indeed, Thailand signed the Convention on 13 December 2000 but has not ratified it yet. This Convention, dealing with transnational organized crimes, contains several legal concepts that would require appropriate amendments in order to incorporate them into domestic Thai laws if Thailand were to comply fully with the Convention obligations. Draft amendment is currently in the process of parliamentary approval.

3.2 Recommendation 36 *(Mutual legal assistance)*

Summarized text: This Recommendation sets out standards for mutual legal assistance in AML-CFT investigations, and related proceedings.

AMLA's provision: (There is no specific provision on this Recommendation.)

Assessor's comment :

ADB consultants' comment: (Combined comments are made under Recommendation 35; please see comments under Recommendation 35.)

IMF (DAR) comment[45]: The DAR says:

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[45] IMF DAR, 24 July 2007

Under the Act on Mutual Assistance in Criminal Matters 1992, Thailand can provide assistance for the following:

- *taking the testimony and statement of persons;*
- *providing documents, records, and evidence;*
- *serving documents;*
- *searches and seizures;*
- *transferring persons in custody for the testimonial purposes;*
- *locating persons; and*
- *forfeiting assets. (DAR para 1242)*

The request may be refused in the following circumstances (section 9):

- *where execution would affect national sovereignty or security, or other crucial public interests, related to a political offense or related to a military offense; and*
- *in the absence of the treaty:*
  - *where the offense is not punishable under Thai laws; or*
  - *where the requesting State does not reciprocate. (DAR, para 1244)*

Upon receipt of the request for assistance from the Central Authority, the Competent Authority shall execute such request and, after completion, submit the execution result and all documents and articles concerned to the Central Authority (section 13)….. (DAR para 1249)

The request may only be refused in the circumstances provided in section 9 of the Act on Mutual Assistance in Criminal Matters 1992 prescribed above. Fiscal offense is not a refusal ground. Pursuant to the MLAT, matters relating to tax cases can be received and acted upon by Thai authorities. (DAR para 1252)

Although these provisions do not address specifically whether financial confidentiality can be raised against the exercise of the above powers, it is certainly the case that financial confidentiality is not an obstacle for criminal investigation….. (DAR para 1254)

Assistance may be postponed if any inquiry, investigation, prosecution, or other criminal proceeding has already been initiated in Thailand before the receipt of a request for assistance (section 11). (DAR para 1256)

The powers of competent authorities required under R.28 are not available for use when there is a direct request from foreign judicial or law enforcement authorities to their Thai counterparts. (DAR para 1257)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. Secrecy and confidentiality laws: In the previous rounds of assessment, banking secrecy under Section 24 of the CBA was a subject of severe criticism which viewed the provision as an impediment to competent authorities' access to financial information. Lately, this view has changed in a positive way, accepting that competent authorities can have access to such information.

§ Re. Essential Criteria: On all 7 essential criteria under this Recommendation the DAR recognizes, on the basis of DAQ answers, Thailand's capability to meet the requirements by –

1. providing the widest possible range of mutual legal assistance in AML-CFT investigations, prosecutions and related proceedings, and rendering such assistance in a timely, constructive and effective manner;
2. not imposing unreasonable prohibition or unduly restrictive conditions;
3. specifying clear and efficient process for execution of foreign requests;
4. not making fiscal matters as the sole ground of refusal;
5. not making secrecy or confidentiality of financial information as the grounds of refusal;
6. giving competent authorities the same powers exercisable under Recommendation 28; and
7. continuing with any inquiry, investigation, prosecution or other criminal proceeding initiated prior to the request, and postponing the assistance, where necessary.

3.3 Recommendation 37 *(Dual criminality)*

Summarized text: This Recommendation encourages countries to render mutual legal assistance notwithstanding the absence of dual criminality, as long as both the requesting party and the requested party criminalize the conduct underlying the offense.

AMLA's provision: (There is no specific provision on this Recommendation.)

Assessor's comment :

ADB consultants' comment: (Combined comments are made under Recommendation 35; please see comments under Recommendation 35.)

IMF (DAR) comment[46]: The DAR's comments are as follows:

One of the conditions for assistance is that the offense to which the request relates must be punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty otherwise specified. Note that no minimum punishment for the offense is required for this condition to be fulfilled (section 9). (DAR para 1258)

In principle, Thailand does not have any legal or practical impediment to extradite. Dual criminality is judged on the basis of conduct. The fact that the requesting State and Thailand categorize the conduct into different denominations does not matter as long as it is criminal in both countries. (DAR para 1282)

Reciprocity is not legally mandated in the extradition context. According to the Office of the AG, citing Thai case law, Thailand can extradite even if reciprocity is not obtained from the requesting State. Extradition in this scenario is often

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granted for reasons related with the better administration of justice and prevention of crime. (DAR para 1283)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. Dual criminality: This Recommendation urges countries to render mutual legal assistance to the greatest possible extent, notwithstanding the absence of dual criminality. In this regard, the DAR comment is nothing but reproduction of the DAQ answer, the concepts of which are summarized as follows:

§ The offense for which the request is made must be a criminal offense in both the requesting State and the requested State no matter what their denominations are.
§ The request is accepted on the basis of reciprocity in mutual legal assistance matters.
§ However, in extradition cases, reciprocity is not legally mandated.

3.4 Recommendation 38 *(Expeditious action regarding foreign requests)*

Summarized text: This Recommendation requires countries to designate a central authority to expeditiously deal with foreign requests concerning identification, freezing, seizure, confiscation of criminal property or proceeds of crime, instrumentalities, or property of corresponding value; and arrangements concerning coordination in seizure and confiscation proceedings, including asset sharing.

AMLA's provision: (There is no specific provision on this Recommendation.)

Assessor's comment :

ADB consultants' comment: (Combined comments are made under Recommendation 35; please see comments under Recommendation 35.)

IMF (DAR) comment[47]: The DAR contains the following comments:

The time taken to process MLAT requests does not appear to be an issue as the process is in place for handling requests and judicial authority exists to allow requests to be processed in reasonable periods of time. No feedback was received from other countries indicating that there were any issues with the amount of time Thai authorities took to respond. This confirms the experience of one of the assessors who has conducted an MLAT request with Thailand. (DAR para 1262)

For execution of the request for seizure or forfeiture, the Mutual Assistance in Criminal Matters Act 1992 requires that property to which the request relates must be seizable or forfeitable under Thai laws. However, seizure or forfeiture under Thai laws is property-based. In other words, property must be somehow connected with the offense or it must be tainted property, whether instrumentality used or intended for use in the commission of an offense, or

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proceeds from an offense. Thus, the seizure or forfeiture of property of corresponding value cannot be made. It follows that assistance in relation to property of corresponding value cannot be given. (DAR para 1268)

Thailand cannot provide assistance unless the property to be seized or forfeited is "tainted" property connected with the commission of the offense and thus they may not be able to offer assistance on corresponding value. (DAR para 1269)

Thailand does not have any arrangements for coordinating seizure and confiscation actions with other countries. (DAR para 1270)

Property forfeited under the PC and the AMLA is vested in the Kingdom of Thailand. There are no other Funds similar to the Fund for the Prevention and Suppression of Narcotics. (DAR para 1272)

Thailand executes foreign forfeiture orders on certain conditions. Apart from general conditions for executing foreign request for assistance, foreign forfeiture orders must be final and the property concerned must be forfeitable under Thai laws. If these are not met, execution will be refused. The Mutual Assistance in Criminal Matters Act does not allow for asset sharing. Property forfeited pursuant to foreign requests will be vested in Thailand. (DAR para 1273)

The position, [i.e. recognition of foreign non-criminal confiscation orders] is uncertain and it has not been tested in court yet. (DAR para 1277)

Thesis analysis : The analysis of the above comments is as follows:

§ <u>Re: Property-based seizure / forfeiture</u>: Seizure or forfeiture under the AMLA is property-based; this concept can be inferred from Section 3 of the AMLA, where it defines 'property connected with the commission of an offense" as –

(1) money or property obtained from the commission of an act constituting a predicate offense;
(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or
(3) fruits of the money or property under (1) or (2);

provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

And Section 33 of the Act on Mutual Assistance in Criminal Matters 1992 (the Mutual Assistance Act) empowers Thai authorities to execute the request for seizure or forfeiture of the property provided it must be seizable or forfeitable under Thai laws.

Under the AMLA and the Mutual Assistance Act the property to be seized or forfeited must be the property connected with the commission of an offense; in other words, the property must be the tainted property. So any other property unconnected with the commission of an offense cannot be seized or forfeited. This effectively makes any property of corresponding value unseizable or unforfeitable and, consequently, legal assistance for seizure or forfeiture of the property of corresponding value

is impossible under the aforesaid Thai laws. However, the provisions in Section 37 of the Penal Code and Section 83 of the Organic Act on Counter Corruption 1999 provide for forfeiture of property of corresponding value. (More discussion on this issue follows in Chapter VIII.)

§ Re. Asset sharing: Under the existing law the forfeited property would become the State asset and there is no provision for sharing with foreign counterparts concerned. In this respect, Section 35 of the Mutual Assistance Act says: "The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed."

3.5 Recommendation 39 *(ML as an extraditable offense)*

Summarized text: This Recommendation requires countries to recognize money laundering as an extraditable offense and sets standards as follows:

§ extradite its own national or prosecute under its domestic law;
§ take decision and conduct proceedings in the same manner as any other serious crime;
§ cooperate to ensure efficiency of prosecutions; and
§ simplify extradition process.

AMLA's provision: (There is no specific provision on this Recommendation.)

Assessor's comment :

ADB consultants' comment: (Combined comments are made under Recommendation 35; please see comments under Recommendation 35.)

IMF (DAR) comment[48]: The DAR's comments run as follows:

ML is an extraditable offense. In the absence of an extradition treaty, extradition may be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai law (section 4). The offense of ML is punished in Thailand with imprisonment for a term of one to ten years, or a fine of twenty thousand to two hundred thousand baht ($528 to $5,280), or both (section 60 of [the] AMLA) so it is considered to be an extraditable offense in Thailand. However, the dual criminality requirement restricts the scope of extraditions related to ML only to offenses that would also be considered to be ML in Thailand (i.e., only ML derived from one of the eight categories of predicate offenses prescribed under the AMLA). (DAR para 1284)

As noted in the analysis of the ML offense, the extent of Thailand's criminal jurisdiction is not entirely clear. Nevertheless, it should be stated that Thailand does not assert criminal jurisdiction based solely on the nationality of the offender. (DAR para 1286)

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Thailand can cooperate with another country, in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution. This cooperation would take place under the mechanisms provided by the Act on Mutual Assistance in Criminal Matters 1992 and the relevant treaties on Mutual Assistance in Criminal Matters. (DAR para 1291)

Thailand has adopted measures that would allow an extradition request to be handled without undue delay. Under the Extradition Act 1929, an extradition request may be made either in a normal or an urgent case. (DAR para 1292)

Proceedings relating to ML are considered separately from the extradition request. The fact that extradition relating to [an] ML case is pending does not bar the initiation of other proceedings relating to ML. Both may proceed concurrently. (DAR para 1295)

In the absence of extradition treaties, simplified procedures of extradition by allowing direct transmission of extradition requests between appropriate ministries are not allowed under Thai laws. (DAR para 1296)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. Extradition limited by scope of ML: Under Thai law to grant mutual assistance or extradition the request needs to meet the domestic requirement of being a punishable criminal offense. As long as Thailand's ML predicate offenses are limited in scope, i.e. non-coverage in full of FATF-designated categories of predicate offenses, Thailand's dual criminality requirement under Section 9 (2) of the Mutual Assistance Act can only be met partially in relation to money laundering. As at December 2007, the AMLA's list of predicate offenses covers only eight categories of predicate offenses.

§ Re. Extradition without treaty: Discretionary power is provided under Section 4 of the Extradition Act to the Thai government in extradition cases where persons accused of or convicted of crimes committed within the jurisdiction of the foreign State concerned can be extradited, provided such crimes are punishable with imprisonment of not less than one year by Thai laws.

§ Re. Simplified procedures in absence of treaties: As a general rule, the time consumed in processing extradition requests is not an issue at all because Thai legal procedures are capable of handling both normal and urgent cases. However, since all extraditions require a formal court order, foreign extradition requests must pass through the diplomatic agents of the requesting State and the requested State, or in the absence of such diplomatic agents through the competent consular officers. Hence, no direct transmission of extradition requests between appropriate ministries is allowed.

§ Re. Extradition limited by scope of FT: Similarly, Thailand's laws defining terrorist acts and terrorist financing will limit the

scope of application to the 2003 amended Sections 135/1, 135/2, 135/3 and 135/4 of the Penal Code as well as to three out of 9 international instruments forming an Annex to the Convention against FOT. The application beyond those sections is currently impossible and the result is that Thailand will not be able to satisfy the obligations fully under this Recommendation.

3.6 Recommendation 40 *(Other forms of international cooperation)*

Summarized text: This Recommendation encourages competent authorities to provide the widest possible range of international cooperation to their foreign counterparts by setting up clear and effective gateways to facilitate prompt and constructive exchanges of information on money laundering and underlying predicate offenses directly between counterparts, without unduly restrictive conditions particularly on grounds of secrecy or confidentiality and fiscal matters. It also encourages countries to make their competent authorities able to conduct inquiries and investigations on behalf of foreign counterparts, and to permit a prompt and constructive exchange of information with non-counterparts as well as to establish controls and safeguards in respect of proper use of exchanged information.

AMLA's provision: (There is no specific provision on this Recommendation.)

Assessor's comment :

ADB consultants' comment: (Combined comments are made under Recommendation 35; please see comments under Recommendation 35.)

IMF (DAR) comment[49]: The DAR's comments state as follows:

Mechanisms to provide assistance exist in Thailand. Channels of communication are – (1) through the Ministry of Foreign Affairs under the Extradition Act 1929, (2) through the OAG under the Act on Mutual Assistance in Criminal Matters 1992, and (3) through the OAG under the ASEAN regional MLA treaty 2004. These channels are generally known as "Central Authority." (DAR para 1307)

In addition, there exists direct ongoing informal communication between foreign counterpart agencies with domestic agencies. Domestic authorities who provide assistance such as the AMLO, the RTP Foreign Affairs Department, the ONCB and the DSI work frequently with foreign LEAs and FIU authorities. Authorities stated that these informal channels of "police to police" or "FIU to FIU" for seeking assistance are frequently used and Thai authorities respond by providing assistance which has in some instances required them to share evidence and testify in foreign jurisdictions. (DAR para 1308)

A number of foreign LEAs have liaison officers (LOs) who are located in Bangkok. Discussions with some of these LOs indicated that, in their view, the focus of Thai authorities has been narcotics over the past three or four years where they have received good cooperation from the local authorities, but as a result of this focus the LO's have had problems obtaining assistance for frauds or other ML predicate offenses not related to drugs. The LO's agreed that the

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reason for these problems was the lack of expertise and resources allocated within the police to investigate these types of cases. (DAR para 1309)

In the case of the FIU, the AMLO's exchange of information with foreign counterparts can be effectively done directly or through the Egmont Group of FIUs or through Interpol, etc. The AMLO has signed MOUs on exchange of information with 26 foreign counterparts so far. The AMLO also shares information through informal means outside of MOU when requested from a foreign FIU. (DAR para 1314)

Exchange of information is possible (a) upon request and (b) in relation to both ML and underlying predicate offenses….. (DAR para 1316)

Where there are grounds for making enquiries or conducting enquiries under Thai laws, the authorities can do the same on behalf of their foreign counterparts….. (DAR para 1318)

The AMLO claimed that it uses its own powers in the AMLA to make inquiries on behalf of foreign counterparts. However, there is no explicit authorization in the AMLA for this practice. (DAR para 1319)

Other LEA including [the] RTP, DSI and Customs stated that on a frequent basis they provide assistance to foreign LEAs in either "police to police" or MLAT requests capacities. Thailand has over 25 foreign LEAs who have representatives that are located in Thailand. Interviews conducted with these foreign law enforcement representatives confirmed that Thai authorities need to improve their capacity for responding to financial crime or ML–related requests especially on non–narcotic offenses. No other feedback was received from APG members indicating issues with the international assistance provided by Thailand. No information or statistics relating to requests received, nature or scope of requests, time required to complete etc. were provided by authorities making it difficult to fully assess this requirement. (DAR para 1320)

The authorities indicated that exchanges of information are not made subject to disproportionate or unduly restrictive conditions. (DAR para 1321)

The authorities stated that requests for cooperation are not refused solely because the request involves fiscal matters. (DAR para 1322)

The authorities stated that requests to obtain information in circumstances where laws impose secrecy or confidentiality requirements from FIs or DNFBPs may need to be made through mutual legal assistance channels under the Act on Mutual Assistance in Criminal Matters 1992 to avoid the application of the confidentiality or secrecy requirements. (DAR para 1323)

The authorities stated that information received would be protected in the same manner as information already held by the receiving competent authority. (DA, para 1324)

The AMLO, as the national FIU, can obtain from local competent authorities or other persons relevant information requested by a foreign FIU on the basis of the MOU and/or the powers granted under AMLA. This also applies to information requested by countries with whom the AMLO has not signed an MOU. (DAR para 1326)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. Lopsided focus on drugs: The general view expressed by foreign liaison officers (LOs[50]) at embassies in Thailand is that except in narcotic matters where they have received good cooperation from Thai authorities no such cooperation is possible in other areas such as frauds or ML predicate offenses seemingly due to the lack of expertise and resources of the LEAs concerned. To a large extent, their view is justified because during the past four years Thailand authorities launched a nation-wide campaign to wage a war on drugs, making all-out efforts to suppress drug-trafficking. Drastic actions were used, including arbitrary arrests and 'extra-judicial killings' causing the deaths of more than 2,500 people – the innocents and the guilty alike during a three-month period from 1 Feb-30 April 2003. When it comes to other ML predicate offenses, little or no investigation and prosecution on LEAs' part clearly demonstrates the lack of expertise and resources.

§ Re. Authority to act for foreign counterparts: While the AMLA is silent on the matter of international cooperation in mutual legal assistance, the Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office 2002, dated 9 October 2002, issued by the Minister of Justice, contains the concept of international cooperation. The specific details on how to collaborate with foreign agencies are not spelled out, yet the established practice is that the AMLO Secretary-General, by virtue of the provisions of AMLA's Section 38, exercises the power of searching or seizing property or evidence on behalf of foreign counterparts so long as a basis under the AMLA exists.

3.7 Special Recommendation I *(Ratification and implementation of UN instruments)*

Summarized text: This Special Recommendation urges countries to take immediate steps to ratify and implement fully the 1999 UN International Convention for the Suppression of the Financing of Terrorism as well as immediately implement UN resolutions, particularly UNSC Resolution 1373.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[51]: In their report the consultants commented that "Thailand has ratified the Convention against FOT and has implemented the relevant resolutions." (p. 114)

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[50] Foreign embassies in Thailand have a community established known as "FANC" (Foreign Anti-narcotic Community) made up of officials attached to their respective embassies.

[51] ADB consultants' analysis report on Thailand, 9 April 2006.

IMF (DAR) comment[52]: The DAR's comments run along the following lines:

Thailand signed the Convention for the Suppression of the Financing of Terrorism, New York, December 9, 1999, on December 18, 2001 and ratified it on September 24, 2004. The treaty became effective on October 24, 2004….. (DAR para 1221)

In order to fully comply with the Terrorist Financing Convention, the TF conduct under Thai legislation should, therefore, also extend the financing to the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II. (DAR para 1223)

The PC requires that the TF conduct be done with a specific purpose that limits the coverage required by the Convention (i.e., it does not allow coverage of the provision of property for purposes solely of supporting the terrorist or terrorist organization, as section 135/2 of the PC requires that the provision or compilation of property be done "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan"). (DAR para 1224)

As previously stated in the analysis of the TF offense, Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization. (DAR para 1225)

Resolutions—UNSCR 1267(1999) and UNSCR 1373(2001)—have been implemented through the Act on Mutual Assistance in Criminal Matters 1992 and a number of bilateral and multilateral treaties on the issue which authorize the forfeiture and seizure of property. (DAR para 1228)

The authorities claimed that the mechanisms outlined in the AMLA, the PC, and the CPC could be applied to give effect to the requirements of these resolutions. However, despite the numerous provisions described in the analysis of SR III, assessors are not satisfied that a legal mechanism exists to ensure that terrorist properties related with UNSCRs 1267 and 1373 may be subject to freezing without delay. (DAR para 1229)

It is unclear what obligations FIs have to take action under the freezing mechanisms. ….. The lists of designated terrorists/terrorist organizations are not currently being forwarded to FIs by the AMLO, the BOT or any other control entity and there is no legal basis in place to circulate these lists to the authorities and FIs. Furthermore, there is no authority designated to monitor compliance with relevant legislation, rules, or regulations concerning the freezing and confiscation of terrorist property. (DAR para 1230)

There are no specific administrative procedures for recognizing freezing orders or giving effect to out-of-court freezing orders from other jurisdictions. (DAR para 1231)

Thesis analysis : The analysis of the above comments is as follows:

While the ADB consultants' comment does not need any specific analysis, the IMF DAR comment however calls for it. Therefore, the analysis is as follows:

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§ As regards the issue, namely extending TF conduct under Thai legislation to cover the financing of the acts defined in the treaties listed in the Convention against FOT, when ratifying the Convention Thailand accepted only 3 out of 9 treaties. The listed 9 treaties respectively deal with the following types of acts:

(1) Unlawful seizure of aircraft;
(2) Unlawful acts against the safety of civil aviation;
(3) Unlawful acts of violence at airports serving international civil aviation;
(4) Crimes against internationally protected persons, including diplomatic agents;
(5) Taking of hostages;
(6) Physical protection of nuclear material;
(7) Unlawful acts against the safety of maritime navigation;
(8) Unlawful acts against the safety of fixed platforms located on the continental shelf; and
(9) Terrorist bombings.

Note : Thailand declared its acceptance of treaties related to only (1) to (3) above at the time of ratifying the Convention on 24 September 2004.

Considering the fact that Thailand had amended the AMLA's Section 3 by adding terrorism as the 8th predicate offense and the Penal Code Section 135 by adding Section 135/1, Section 135/2, Section 135/3 and Section 135/4, all related to terrorist financing, effective from 11 August 2003, it is hard to understand why the remaining 6 treaties from (4) to (9) above were not accepted by Thailand at the time of ratifying the Convention. The amended Sections would in fact be considered as covering almost all the types of criminal acts defined in the above 9 treaties.

The possible reason can perhaps be traced back to and found in an answer[53] compiled by the Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Thailand, in respect of Thailand's implementation report pursuant to paragraph 6 of UN Security Council Resolution 1373 (2001).

The reason for Thailand becoming a party to the treaties connected with the first three types of criminal acts, was that Thailand already had a municipal law—the Act on Certain Offenses against Air Navigation (1978)—which was made in the framework of the ICAO (International Civil Aviation Organization).

Besides, as regards the remaining 6 treaties dealing with the types of criminal acts shown in items (4) to (9) above, the Cabinet then decided to endorse, in principle, for Thailand to become a party thereto pending the

[53] MOFA, "Thailand's implementation report pursuant to paragraph 6 of Security Council Resolution 1373 (2001)", (dated wrongly as April 2001) : pp. 2-3

necessary amendments of domestic laws to enable full compliance with each treaty on 11 December 2001. That's why Thailand signed the Terrorist Financing Convention on 18 December 2001, followed by ratification on 24 September 2004.

However, despite the amendment of both the AMLA and the Penal Code, Thailand seemed to have found its domestic laws still inadequate to ratify the remaining 6 treaties. For instance, although Thailand signed the Palermo Convention (United Nations Convention against Transnational Organized Crime) on 13 December 2000, it has not yet ratified the Convention for want of adequate supportive domestic laws to fully implement the Convention provisions.

§ With regard to the statement—Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or terrorist organization—the Conventions' requirement and the Penal Code's amended provision, i.e. Section 135/2, are found to be conceptually different. The researcher would view this difference only as arising from literal translation of the provision. The phrase "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan" can be assumed to embrace the concept that provision or collection for or by listed terrorists or terrorist organizations could not be for any noble cause but obviously for criminal activities.

§ As for the statement that Thailand has no legal mechanism to ensure that terrorist properties related to UNSC Resolutions 1267 (1999) and 1373 (2001) may be subject to freezing without delay, it can be answered in two parts as follows :

(1) If the definition in the AMLA of "property connected with the commission of an offense" is strictly followed, then all types of terrorist properties may not be derived from a predicate offense. If so, they may not be subject to freezing. Only those proven terrorist properties derived from a predicate offense would be dealt with.

(2) If the legal categorization of terrorism is duly taken into account, namely a predicate offense under the AMLA, provisional measures of freezing or attachment would be applied to property where there is a reasonable ground to believe that such property is connected with the commission of an offense (see Section 48, AMLA). The UNSC Resolutions require States to freeze terrorist funds or properties without delay. The Resolutions do not mention about the origin—legal or illegal—of the fund or property, whereas the AMLA qualifies the property or fund to be of an illicit origin. This qualification seemingly limits the AMLA's application. However, there is a presumption under AMLA's Sections 51 and 52.

Section 51, paragraph 2 reads: "For the purpose of this Section, if the person claiming to be the owner or transferee of the property under Section 50 paragraph one is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that all such property is the property connected with the commission of the offense or transferred in bad faith, as the case may be."
Section 52 contains similar concepts except the difference in the type of the claimant who is a beneficiary. So on the basis of this presumption under Section 51 or 52, freezing of UN-listed terrorist funds or properties is possible under Thai laws.

§ Regarding the statement that there is no clear obligation for FIs to take action under the freezing mechanisms and that there is no authority designated to monitor compliance with relevant legislation concerning freezing and confiscation of terrorist property, the answers may be as follows:

(1) The obligation for FIs in matters of freezing of funds, particularly terrorist funds, is to comply with the freezing instruction issued by the supervisory authorities, i.e. the AMLO or the BOT. The AMLO is responsible for distribution of UN sanction lists as well as direction in respect of freezing of funds. To this effect, Ministerial Regulation 10 (2000) issued by the Prime Minister will serve as a guide to FIs. Clause 13 requires that once an attachment order has been made, a written notice informing the attachment must be sent to an owner of, a person having rights in, a possessor of, the attached property. When the attached property is a chose in action or a claim (i.e. under the right-of-claim category), a written notice must be made to a third party who has a duty in or liability for making payments or delivering things pursuant to such chose in action or claim. Accordingly, taking clause 13 into the context of FIs, they will be informed immediately upon issuance of the attachment order against such funds or other assets.

As for the BOT, pursuant to UNSC Resolution 1267 (1999) the BOT issued on 31 January 2000 a circular letter to all commercial banks and FIs directing them to comply with the Resolution by freezing funds of Talibans.

In view of the above, there exist in Thailand freezing mechanisms although there is no specific legal formulation in the form of written regulations or rules particularly on freezing of terrorist funds. As a matter of fact, freezing of terrorist funds in accordance with the UN sanction lists is a component of the AML-CFT regime as a whole Thailand is committed to.

§ With regard to the statement—no specific administrative procedures for foreign freezing requests exist in Thailand—the matter involving foreign freezing requests is governed by the provisions of the 1992 Act, i.e. Act on Mutual Assistance in

Criminal Matters 1992, as well as bilateral treaties that Thailand has concluded with other countries as part of international cooperation in criminal matters. In principle, foreign requests are executable in Thailand. For instance, under Section 33 of the 1992 Act, Thailand's action will depend on the foreign request—whether it is based on the foreign courts' final judgment or a pre-judgment order. In the former case, it is confiscable, and in the latter case the local court may order seizure if it is seizable under Thai laws.

3.8 Special Recommendation V *(International cooperation)*

Summarized text: This Special Recommendation requires countries to extend assistance to each other in matters relating to criminal, civil enforcement, and administrative investigations, inquiries and proceedings of FT, and not to provide safe havens for suspects but to extradite them.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[54]: The consultants' report contains a brief comment:

We consider that Thailand adequately complies with this Recommendation. (p. 141)

IMF (DAR) comment[55]: The DAR's comments state as follows:

One of the conditions for assistance is that the offense to which the request relates must be punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty that otherwise specifies. Note that no minimum punishment for offense is required for this condition to be fulfilled (Section 9). (DA para 1259)

Double criminality is judged on the basis of the conduct. According to the authorities, the fact that the requesting State and Thailand categorize the conduct into different denominations does not matter as long as it is criminal in both countries….. (DAR para 1260)

Thailand having TF as predicate offense allows cooperation to be provided under the provisions of the MLAT. However, the deficiencies in the TF offense identified in part 2 of this report restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite. (DAR para 1261)

Thailand does not have any arrangements for coordinating seizure and confiscation actions with other countries. (DAR para 1270)

Thesis analysis : The analysis of the above comments is as follows:

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[54] ADB consultants' analysis report on Thailand, 9 April 2006
[55] IMF DAR, 24 July 2007

While the ADB consultants' comment needs no analysis, the IMF DAR's comment would be analyzed as follows:

- As regards the statement—the deficiencies in the TF offense restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite—the comment is justifiable to the extent that the scope of AMLA's predicate offenses is limited and the requirement of dual criminality and reciprocity under the 1992 Act on Mutual Assistance in Criminal Matters is to be met.
- Regarding the statement—Thailand does not have any arrangements for coordinating seizure and confiscation actions with other countries—it needs to be answered in the context of the 1992 Act on Mutual Assistance in Criminal Matters.

  First, the Act in its Section 4, defines "assistance" as assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters.

  Second, the Act also defines "Central Authority" as the person having authority and function to be the coordinator in providing assistance to a foreign state or seeking assistance from a foreign state.

  Third, the Act defines "Competent Authorities" as the official having authority and function to execute the request for assistance from a foreign state as notified by the Central Authority.

  Fourth, the Act, in its Section 7, defines the authority and functions of the Central Authority as including, among others, the power to consider and determine whether to provide or seek assistance, to follow and expedite the performance of the Competent Authorities, to issue regulation or announcement for the implementation of the Act, etc.

  Fifth, the Act, in its Sections 32 to 35, stipulates procedures for foreign requests relating to forfeiture or seizure of properties.

  Sixth, pursuant to the Act the Central Authority (i.e. the Attorney General) issued a Regulation, dated 19 January 1994, related to providing/seeking assistance—which forms part of the Ministerial Regulation No. 2 of 1994, specifying the requirements in respect of foreign requests for assistance, including forfeiture or seizure of properties.

  Last, if the Special Recommendation is suggesting to put in place arrangements for recording foreign requests including seizure and confiscation actions, then the 1992 Act provides exactly for such arrangements. The above comment, therefore, is simply not justified.

4. Chapter-wise comments

Broadly speaking, this Chapter deals with two main categories of issues: issues of legal systems and issues of international cooperation. The first category covers Recommendation 1, (criminalization of ML), Recommendation 2 (intent and knowledge, and criminal liability), Recommendation 3 (confiscation, freezing and seizing of proceeds of crime), Special Recommendation II (criminalizing FT and associated ML), and Special Recommendation III (freezing and confiscating terrorist assets). The second category embraces Recommendation 35 (ratification of UN instruments), Recommendation 36 (mutual legal assistance), Recommendation 37 (dual criminality), Recommendation 38 (expeditious action regarding foreign requests) Recommendation 39 (ML as an extraditable offence), Recommendation 40 (other forms of international cooperation), Special Recommendation I (ratification and implementation of UN instruments), and Special Recommendation V (international cooperation).

Where the legal issues in the first category are concerned, except especially for the limited scope of predicate offences under the AMLA, Thailand's AML laws are generally adequate to deal with the other legal issues under this category.

As regards the issues in the second category, except the delay to ratify the Palermo Convention, Thailand is quite capable of meeting the international standards in relation to international cooperation in criminal matters required under these Recommendations.

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CHAPTER VIII

ASSESSMENT ON THAILAND'S CAPABILITY IN RELATION TO PREVENTIVE AND INSTITUTIONAL MEASURES

1. Ongoing analysis

While the preceding Chapter has dealt with the Issues of Legal Systems and Issues of International Cooperation, Thailand's AML-CFT regime will also need to address the remaining two categories of issues – Issues of Preventive Measures and Issues of Institutional Measures – which are now mentioned in this extended Chapter as follows.

2. Issues of Preventive Measures

2.1 Recommendation 4 *(FI secrecy or confidentiality)*

Summarized text: This Recommendation deals with the so-called bank secrecy, urging countries to ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

AMLA's provision : The following are the relevant provisions :

Section 38 empowers the Transaction Committee, the AMLO Secretary-General, or his designated competent official to (1) to inquire with or summon officials from any private sector or public sector for giving statements, explanations or any account, document or evidence and (2) to enter any suspected dwelling place or place or vehicle for search or seizure.

Section 46 authorizes the competent official to have access, through a court permission, to the suspected account, communicated data or computer data of a customer of an FI.

Section 64 penalizes any person failing to comply with the provision of Section 38.

There is no provision in the AMLA that inhibits its operation. In other words, the operation of the AMLA is not limited by bank secrecy. However, there is one provision in another law, i.e. Section 24 of the Commercial Banking Act, which has become the subject of criticism by independent assessors which provides:

> *The Minister is empowered to appoint inspectors of commercial banks for the purpose of examining and reporting on the affairs and assets of commercial banks or he may delegate to the Bank of Thailand the power to appoint its officers as commercial bank inspectors. However, in any eventuality, the Minister may not appoint or delegate to the Bank of Thailand the power to appoint commercial bank inspectors for the specific purpose of examining the*

affairs of a private individual or of his property which may be found or held at any commercial bank except in the case under Section 35(3).

Assessor's comment :

ADB consultants' comment[1] : The comment made is as follows:

Thailand is compliant as the operation of the AMLA is not limited by bank secrecy. However, Section 24 of the Commercial Banking Act….. is seen by some as preventing BOT auditors from examining the affairs of individual account holders for the purpose of auditing the AML-CFT compliance of the financial institution. It is by no means clear that this is the effect of Section 24. The limitation on the role of auditors is that they cannot be appointed for the 'specific purpose of examining the affairs of a private individual or of his property which may be found or held at any commercial bank'. But any auditor examining the conduct of the bank to ensure the bank is meeting its obligations is not appointed 'specifically' for the purpose of examining the affairs of particular customers. Any knowledge of the affairs of customers is incidental to the primary purpose of the audit. Nonetheless we understand the BOT intends to amend the CBA to remove any doubt. In our view Thailand complies with Recommendation 4. However, Section 24 of the Commercial Banking Act should be amended to ensure there is no doubt that BOT auditors can effectively monitor AML-CFT compliance by commercial banks. (pp.163-164)

IMF(DAR) comment[2]: On the issue of bank secrecy, the DAR states:

Discussions with the authorities and representatives of FIs indicated that the authorities in practice had appropriate access to information in FIs. No adverse comments were received from other countries indicating that they had experienced difficulty obtaining information from Thailand on the basis of secrecy considerations. (DAR para 711)

Thesis analysis : The analysis of the comments is as follows:

- Secrecy laws: The fact that the BOT inspectors or competent officers of any LEA can have access to the customers' accounts or data in any commercial bank is no longer questioned by the international consultants.

2.2 Recommendation 5 (*KYC/CDD)*

Summarized test: This Recommendation details the requirements for financial institutions when dealing with customers. They are required:

- not to keep anonymous accounts or accounts in obviously fictitious names;
- to undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:
  - establishing business relations;
  - carrying out occasional transactions: (i) above the applicable designated threshold; or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII;

[1] ADB consultants' analysis report on Thailand, 9 April 2006
[2] IMF DAR 24 July 2007

  - § there is a suspicion of money laundering or terrorist financing; or
  - § the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data; and
- § to consider making a suspicious transaction report in relation to the customer if the financial institution is unable to comply with CDD measures.

AMLA's provision: Reporting and identification responsibilities of a financial institution are prescribed in Sections 13 to 23 of Chapter 2. The concepts contained in each section are briefly as follows:

- § Section 13: A financial institution is required to make a report to the AMLO if a transaction: (i) involves cash exceeding the fixed threshold amount; (ii) involves an asset exceeding the threshold value; and (iii) is deemed a suspicious transaction.
- § Section 14: A financial institution must report without delay a previously unreported transaction, which should have been reported to the AMLO.
- § Section 15: Land offices are required to report registrations of immovable assets to the AMLO if a transaction (i) involves cash payment exceeding the fixed threshold amount; (ii) involves an estimated value exceeding the fixed threshold amount, excepting transfer by succession to a statutory heir; or (iii) is deemed a suspicious transaction.
- § Section 16: An investment business operator or consultant is required to report a suspicious transaction to the AMLO.
- § Sections 17 and 18: (These Sections prescribe required format for reporting.)
- § Section 19: Any individual making a report in good faith shall not be held liable for any damage caused to any person.
- § Section 20: Any new customer of a financial institution is required to show identification prior to conducting any transaction.
- § Section 21: If a customer refuses to provide all information requested in respect of a transaction described in Section 13, the financial institution is required to record such refusal and report to the AMLO.
- § Section 22: Financial institutions are required to maintain all records of customer identifications and data for five years.
- § Section 23: The provisions in Chapter 2 shall not apply to the Bank of Thailand (BOT).

However, there is no provision in the AMLA that provides guidelines for CDD.

Assessor's comment :

ADB consultants' comment[3] : The consultants' report contains, amongst others, a number of comments on CDD, some of which say as follows:

Chapter 2 of the AMLA deals with Reporting and Identification obligations. It establishes a system of cash reporting (transactions of 2 million Baht or more), asset transaction reporting (transaction of 5 million Baht or more) and suspicious transaction reporting. There is no threshold for suspicious

[3] ADB consultants' analysis report on Thailand, 9 April 2006

transaction reporting. The details of the reporting system are contained in Regulations. In this respect the Thai reporting system exceeds the FATF requirements which do not require reporting of either cash or asset transactions. However, the definition of financial institutions set out in the AMLA is based on the earlier iterations of the FATF Recommendations and does not reflect the expanded scope now included in the 2003 version of the Forty Recommendations. (p. 171)

The consultants' report further commented:

Adequate CDD provisions are critical for both AML and CFT. This is one area where deficiencies must be remedied as soon as possible. At this time both the Act and the regulations appear to be deficient. While the BOT has issued directives to the banks under its control, the scope of these [directives] is limited. The solution may be found in issuing new regulations, provided that they are consistent with Sections 20 and 21 of [the] AMLA ….. (p. 172)

IMF(DAR) comment[4]: The DAR contains a number of points as follows:

The representatives of the industries with which the assessors met, confirmed that they do not have any anonymous, numbered or fictitious name accounts. However, for the banking sector, there remains a possibility that such accounts exist, prior to 2001 when the BOT Notification on Accepting Deposits was adopted….. (DAR para 561)

There is no obligation applying to all FIs requiring them to undertake CDD measures when establishing business relations. Section 20 of the AMLA states that "A financial institution shall cause its customers to identify themselves on every occasion of making a transaction prescribed in the Ministerial Regulation unless the customers have previously made such identification". The Ministerial regulation in question (no. 6/2000) requires identification of customers "for the transactions to be reported by financial institutions to the AMLO", which are (according to AMLA section 13 and the Ministerial Regulation no.2/2000) those specified above. (DAR para 565)

The identification requirement for occasional transactions does not meet the standard of FATF R.5.2. b), as the threshold of 2 million baht ($52,800) is far greater than the international standard (15,000 USD/EUR)….. (DAR para 567)

There is no clear obligation for the insurance industry to undertake CDD….. (DAR para 573)

As noted earlier, the identification requirements set forth in the AMLA are applicable by virtue of section 20 only in the case of suspicious transactions, of cash transactions exceeding 2 million baht ($52,800) and transactions connected with property worth more than 5 million baht ($132,000). These transactions are subject to reporting to the AMLO….. (DAR para 574)

The obligation to identify appears to be placed on customers rather than on FIs (see the reference to the "self identification" in the notification of the Office of the Prime Minister). However, the relevant criminal sanction for failure to comply with section 20 (a fine not exceeding 300,000 baht - $7,920 – which can only be applied to an "individual" and not to a legal person) would appear to confirm that it is the responsibility of the employee of the FI to identify the customers. (DAR para 575)

[4] IMF DAR 24 July 2007

These requirements apply to the identification obligation provided in the case of transactions which are subject to reporting to the AMLO not universally for all situations where CDD is required. There are other provisions regarding identification procedures scattered in various regulations for the relevant industries.(DAR para579)

There is no requirement applying to all FIs—for customers that are legal persons—to verify that any persons purporting to act on behalf of the customer is so authorized and to identify and verify the identity of that person. As described above, the Prime Minister Office Notification Re: Self-Identification Procedure of Customer of Financial Institutions requires, among other information, the "signature of the authorized signatory on behalf of the juristic person," but it does not provide for the obligation to identify such a person nor does it require to verify the identity of such person. As already mentioned these provisions are applicable to all FIs, but only in the circumstances in which such FIs are required to report transactions to the AMLO (see AMLA sections 13 and 20). (DAR para 588)

There is no provision generally applicable to all FIs in Thai law requiring them to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner, nor are there provisions requiring FIs to determine whether the customer is acting on behalf of another person (and to obtain sufficient information data to verify the identity of that other person) or to determine who are the natural persons that ultimately own or control the customer. (DAR para 596)

There is no requirement applying to all FIs to obtain information on the purpose and intended nature of the business relationship. The only provisions are found in sector or institution specific requirements. (DAR para 608)

Currently there is no specific requirement under Thai law applying to all FIs to conduct ongoing due diligence on the business relationships. .....(DAR para 613)

There are no binding provisions applying to all FIs, requiring to perform enhanced due diligence for higher risk customers. The AMLO Policy Statement contains a recommendation for FIs to "have appropriate and enhanced due diligence measures for specifically attended customers"..... Moreover, though they are addressed to all FIs, there are some wording differences between the AMLO policy statement and other guidance provisions issued on enhanced due diligence by other authorities that may confuse industry. (DAR para 622)

There are no provisions with reference to reduced or simplified CDD measures in the AMLA. However the Ministerial Regulation No. 5 dated 11 September 2000 issued under Section 4 of the AMLA exempts from the reporting obligations set forth by Sections 13, 15 and 16 of the AMLA the following types of transactions:

- *Those to which H.M. the King and H.M. the Queen and certain members of the Royal family are parties;*
- *Those to which the government, state agencies and state enterprises are parties;*
- *Those to which the 3 foundations under the patronage of H.M. the King and H.M. the Queen namely Chaipattana Foundation, H.M. the Queen's Silapacheep Foundation and Sai Jai Thai Foundation are parties;*
- *Those, with the exception of wire transfers, made by FIs where transactions involve movable property such as ships, vehicles and machinery;*
- *General (non-life) insurance policies;*

- *Transactions involving transferring of rights over assets to become public property or by possession in accordance with Section 1382 or Section 1401of the CCC (with reference to the acquisition of property by virtue of statute of limitation and acquisition of servitudes). (DAR para 632)*

Considering that the identification requirements set forth by the AMLA are linked to the reporting obligations, it is unclear whether the exemptions from the obligation set forth by Sections 13, 15 and 16 would also trigger the identification requirements. In any case it has to be noted that an assessment of the ML/FT risk related to these categories has not been made (the issue is of particular concern in the case of transactions to which the government, state agencies and state enterprises are [parties] given the acknowledged problem with corruption by government officials in Thailand). (DAR para 633)

The Notification does not specify what "reduced KYC/CDD process" consist of; and no guidance has yet been given to the industry (as the notification was adopted during the mission). The assessors are not convinced that reduced KYC/CDD process for government agencies, state enterprise agencies, and statutory entities or juristic persons set up under special legislation can be justified in a country where corruption is considered a major risk…… (DAR para 638)

There is no general rule for FIs in the AMLA on the timing of verification of the identity of the customer and beneficial owner. (DAR para 640)

There is no requirement in the AMLA that FIs, in the case they are unable to comply to the identification/verification requirements of the customer/beneficial owner, should not be permitted to open the account, commence business relations or perform the transaction. (DAR para 644)

The AMLA provides no requirement that FIs consider, in the above mentioned circumstances, to consider to file an STR; only in the context of a refusal from the customer to state all facts in connection with a [transaction] subject to reporting [under] section 21 of the AMLA there is an obligation for FIs to immediately report to the AMLO. (DAR para 645)

Likewise there is no general obligation applicable to FIs subject to the AMLA to terminate the business relationship and consider to file an STR in the case of already commenced business relationship. (DAR para 646)

There is no requirement generally applicable to FIs, as the AMLA is silent on this point [i.e. applying CDD requirements to existing customers]….. (DAR para 650)

The lack of precise guidelines from the authorities on customer identification has led the industry to take initiatives to draft CDD guidelines under the TBA and the FBA umbrellas….. (DAR para 656)

Thesis analysis : The analysis of the comments is as follows:

§ Coverage of financial institutions: The AMLA's list and the proposed expanded list of financial institutions do not adequately cover those shown in the FATF Glossary.

§ Adequacy of coverage: The term "any transaction" in Section 20 of the AMLA could be interpreted as covering not only account opening or

opening of safety deposit boxes but also any business transaction with a financial institution.

§ Anonymous account/account in false name: Under Prime Minister's Office Notification of 11 September 2000 and the BOT's Notification of 24 December 2001, a stringent requirement is imposed on bank account opening of both legal and natural persons. No customer will be able to use a false name to open a bank account, let alone opening an anonymous account.

§ Customer identification : The text in clause 1 of Ministerial Regulation No. 6 (2000) namely "For the transactions to be reported by financial institutions to the Office …..", restricts and weakens the concept of Section 20 whereas the AMLA's provision is purported to require any customer to identify at every transaction with a financial institution unless having made earlier identification. The language in clause 1 has led to a chain of misinterpretation of Thai laws against core KYC/CDD requirements.

§ Sanction for non-compliance: Sanction for non-compliance with the AMLA provisions, Section 20 in particular, is applicable to any person. The use of the phrase "any person" in Section 62 does not merely refer to "individual"; under Thai laws, "person" covers both "natural person" and "legal person".

§ Signature of the authorized signatory of legal persons : The requirement for submission of evidence prescribed in the Prime Minister Office Notification of 11 September 2000 includes the signature of the authorized signatory on behalf of the juristic person. Under Thai law and practice, the authorized signatory is an established element as a legal requirement for a juristic person. Hence it is not necessary to identify or verify the authorized signatory as long as the juristic person's company registration papers certify the identity and authority of the authorized signatory.

§ Exemption from reporting : Exemption granted under Section 18 of the AMLA and Ministerial Regulation No. 5(2000) is essentially based on the following considerations:
  (1) The special social status accorded to the Royal Family
  (2) The noble objective of the foundations run by the Royal Family
  (3) Mandatory auditing requirements of governmental transactions
  (4) Irregularities subject to action by independent anti-graft agencies

  Accordingly, these considerations do not practically call for ML-FT risk assessment.

2.3 Recommendation 6 *(PEP)*

Summarized text : The Recommendation requires FI to have, in addition to normal CDD measures, appropriate risk management systems, to get approval from senior management, to establish the source of wealth, and to conduct ongoing monitoring in respect of business relationship with PEPs. :

AMLA's provision: (There is no specific provision dealing with PEPs as any customer's identification generally comes under KYC measures in Chapter 2 of the AMLA.)

Assessor's comment :

ADB consultants' comment[5]: The consultants' comments touched on some criticism of FATF's definition of PEPs that excludes domestic PEPs and made the following comment in relation to Thailand:

The AMLO has been engaged in negotiations with a commercial provider to enable all of the Thai institutions to have access to detailed and up-to-date lists of PEPs and other persons of interest which it hopes to be able to make available through a common access point. This is an important development and the AMLO [is] to be congratulated for taking this initiative. (p. 176)

The AML-CFT Policy developed for the banks by the Thai Bankers' Association Working Group deals with the need to identify PEPs and to take appropriate action. These policies, which will apply (with appropriate modifications) to other financial institutions and to the non-designated non-financial businesses and professions (DNFBPs), provide the basis for compliance with Recommendation 6.

While it is clear that not all institutions are presently identifying PEPs that should change with the new arrangements. It will then be important for the regulators to ensure institutions are regularly using this access to vet new and existing customers and other parties involved in transactions. With the expected capacity of the banks and other institutions to access information to assist them to identify PEPs Thailand should then be in a position to comply with Recommendation 6. (p. 176)

IMF (DAR) comment[6] : The DAR says:

It has to be noted that there are inconsistencies among these different provisions: the AMLO policy statement (which is directed to all FIs, including banks and securities) does not limit the notion of PEPs to foreign ones, whereas the BOT policy statement does. These definitions differ also in other aspects: the definition of PEPs in the AMLO policy statement is too generic (as it refers only to "customers relating to politics") and does not fully capture the concept [of] being or having been entrusted with "prominent public functions"; the reference of the AMLO to "any person having relationship" with the PEP would cover family members or close associates, whereas no reference to family members or associates is mentioned in the BOT policy statement; the OSEC Notification does not define what a PEP is and mentions only associates but not family members (though, according to the authorities, the term "associate" has been used in the securities sector to indicate family members as well). (DAR para 661)

There is no indication that where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, banks are required to obtain senior management approval to continue the business relationship. Also, while indicating that there should be enhanced customer acceptance policy and procedures in the case of PEPs there is no requirement for banks to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs..... (DAR para 664)

Thesis analysis : The analysis of the above comments is as follows:

[5] ADB consultants' analysis report on Thailand, 9 April 2006
[6] IMF DAR, 24 July 2007

§ PEPs : On 19 January 2007 the BOT issued its Notification, followed by the SEC's Notification regarding verification criteria including PEPs, whereas the AMLO's Policy Statement on KYC/CDD for FIs and DNFBPs was approved by the Cabinet only on 27 February 2007. As regards the question of "inconsistencies" among different provisions made by different agencies, it is best answered by the SEC in its additional clarification in the DAQ which says: "The SEC views that its Notification complements and not contradicts with the AMLO's Policy Statement. In addition, in order to avoid confusion and inconsistencies in the implementation process, under the SEC Notification, most of the definitions and prescriptions concerning high risk category clients are left largely to [the] AMLO, that is regarded as the central authoritative body, to decide, i.e. scope & definitions of PEPs, types of predicate offenses, high-risk occupations."

2.4 Recommendation 7 *(Cross-border correspondent banking)*

Summarized text : Financial institutions are required in addition to performing normal CDD measures to:

a) gather sufficient information on the profile of the correspondent institution to fully understand and determine its nature of business, reputation and quality of supervision;
b) assess its anti-ML and FT controls;
c) obtain senior management's approval before establishing new correspondent relationships;
d) document the respective responsibilities of each institution; and
e) request, if need be, relevant customer identification data of its customers regarding 'payable-through accounts'.

AMLA's provision: (There is no specific provision relating to correspondent banking relationships as any customer identification generally comes under KYC measures in Chapter 2 of the AMLA.)

ADB consultants' comment[7] : Their report contains the following comment:

> *The development of correspondent relationship is addressed in the new banking policy*[8]*. As appropriate it will apply to other financial institutions, businesses and professions. Provided the financial institutions implement these policies and that they are adequately supervised Thailand should comply with Recommendation 7.*
>
> *Financial institutions will need to implement effective policies and procedures to ensure that additional CDD measures are carried out in relation to cross-border correspondent banking to enable Thailand to comply with FATF Recommendation 7.*

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[7] ADB consultants' analysis report on Thailand, 9 April 2006

[8] The reference 'new banking policy' obviously means the policy paper prepared by the Thai Bankers' Association (TBA) of 5 August 2005.

Assessor's comment :

IMF (DAR) comment[9]: The report made the comment as follows:

There is no specific legal requirement for commercial banks to obtain senior management approval for establishing new correspondent relationships at this time….. (DAR para 678)

There is no existing legal provision requiring commercial banks to document the AML/ CFT responsibilities of their correspondent banks. (DAR para 680)

The assessors were unable to obtain any information about whether payable-through accounts exist in Thailand. It is clear that there are no explicit laws, regulations or OEM regulating their use for AML/CFT. Accordingly, the assessors are unable to conclude that Thailand has adequate measures in place to deal with payable through accounts. (DAR para 681)

Thesis analysis **:** The analysis of the above comments is as follows:

§ In the TBA AML-CFT Policy (December 2006 version), the specific legal requirement for commercial banks to obtain senior management approval to enter into business relationships is in connection with higher risk customers, i.e. PEPs, customers who are in tax haven countries or non-cooperative countries list, private and off-shore banking customers. So "respondent banks" are not considered higher risk customers.

§ In the same document, there is no mention about the requirement for commercial banks to document the respective responsibilities of each institution, i.e. the "correspondent" bank and the "respondent" bank, either.

§ Nonetheless, the TBA paper says "Banks should only establish correspondent relationships with foreign banks that are effectively supervised by the relevant authorities. For their part, respondent banks should have effective customer acceptance and KYC/CDD policies." This guidance combined with the management's overall AML-CFT responsibilities including the responsibility to have adequate systems and procedures for customer identification & verification, monitoring, investigating and reporting on suspicious money laundering transactions and retention of financial documents should well meet Recommendation 7 requirements.

2.5 Recommendation 8 *(Misuse of new technologies)*

Summarized text: The Recommendation urges FIs to beware of any ML threat arising from new and developing technologies and have appropriate policies and procedures in place to tackle any risks from non-face-to-face business transactions.

AMLA's provision: (There is no specific provision relating to new technologies as any customer identification generally comes under KYC measures in Chapter 2 of the AMLA.)

***Assessor's comment* :**

[9] IMF DAR, 24 July 2007

ADB consultants' comment[10]: The comment in the report states:

Recommendation 8 requires ongoing action by the AMLO, the BOT and the other regulators to identify the risks associated with new technologies (such as internet banking) and that they ensure that the institutions have appropriate policies in place to deal with emerging risk ….. (pp. 177-178)

IMF (DAR) comment[11]: The comment says

There is no existing legal provision applying to all FIs requiring them to take measures needed to prevent the misuse of technological developments in ML or TF. The sector specific provisions that apply are discussed below. (DAR para 685)

There is no general enforceable requirement applying to all FIs that addresses risks from new technologies or doing business with non-face to face business relationships. (DAR page 153)

The securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented. (DAR page 153)

Thesis analysis : The analysis of the above comments is as follows:

§ While the AMLA is silent on the issue of misuse of technological developments in ML or TF schemes, the TBA paper does deal with this issue by specifying the roles of "Compliance" that include promoting awareness of new trends in ML and new trends in the banking industry on ML control as well as providing regular refresher training courses to staff to clearly understand their responsibilities and new developments.

2.6 Recommendation 9 *(Third parties and introduced business)*

Summarized text : This Recommendation relates to introduced businesses where CDD measures have to be relied on intermediaries or other third parties while the ultimate responsibility for customer identification and verification remains with the principal financial institution relying on the third party.

AMLA's provision: (There is no specific provision related to introduced businesses as any customer identification generally comes under KYC measures in Chapter 2 of the AMLA.)

Assessor's comment :

ADB consultants' comment[12]: The consultants deemed it advisable to refer to their lengthy comments made on Recommendation 5, which include, amongst others, the following noteworthy observation:

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[10] ADB consultants' analysis report on Thailand, 9 April 2006

[11] IMF DAR 24 July 2007

[12] ADB consultants' analysis report on Thailand, 9 April 2006

We take the view that effective CDD requires both the necessary legislative obligation to conduct full CDD (supported by procedural and operational guidelines issued by the relevant regulators and intra-blank policies) and adequate supervision to ensure compliance. This is a fundamental part of the whole AML-CFT regime. Without it there can be no effective system. (p. 167)

IMF (DAR) comment[13]: The DAR states:

There is no general regulatory framework applicable for the whole FI sector to allow FIs to rely on intermediaries to perform some elements of the CDD process. The AMLO Policy Statement on Compliance with the Know Your Customer and CDD for Financial Institutions and DNFBPs contains a recommendation for FIs to "have intermediaries or other third parties conduct due diligence as if it is conducted by the institution itself". The recommendation appears to go beyond the international standard as, for it generically refers to due diligence, raises the issue of its applicability also to other circumstances which can be qualified as due diligence, but for which no reliance on third parties is permitted. Besides, as mentioned elsewhere in this report, it is not an enforceable obligation. (DAR para 700)

For the banking sector there is a brief provision in the BOT guideline for on-site examination on AML/CFT compliance, which states that banks should develop operating procedures and risk mitigation measures in light of transactions with introducers or intermediaries or non-face-to-face customers, but there are no enforceable provisions to detail the requirements set forth by the international standard. Some additional guidelines [it] contained [have] been issued by the TBA. (DAR para 701)

Enforceable provisions addressing the obligations set forth in R.9 exist only with reference to the securities sector, but there is no clear indication in those provisions that the ultimate responsibility for customer identification and verification remains with the FI relying on the third party. However, that principle is set out in the unenforceable industry guidelines issued by ASCO and AIMC. (DAR para 703)

Thesis analysis : The analysis of the above comments is as follows:

§ Pursuant to the issuance of the TBA paper and the AMLO's Policy Statement relating to KYC/CDD procedures for FIs and DNFBPs, the issue of the need for proper guidelines on KYC/CDD should have been settled. However, in the light of the above comments, particularly those of the IMF DAR, more clarifications are needed on the part of the regulatory authorities.

§ First, the AMLO Policy Statement's use of the phrase "to have intermediaries or other third parties conduct due diligence as if it is conducted by the institution itself" is acceptable if it is interpreted not in isolation but in conjunction with the TBA paper's guidelines.

§ Secondly, in this regard, the TBA's paper says: "Banks need to obtain all information necessary to establish to their full satisfaction the identity of new customer (including the true and beneficial owner of each account) and the purpose and intended nature of the business relationship. The extent and nature of the information depends on the type of applicant (personal, corporate, etc.) and the expected size of the account." (page 12) It also states: "Banks that use introducers should carefully access whether

[13] IMF DAR 24 July 2007

the introducers are 'fit and proper' and are exercising the necessary due diligence in accordance with the standards set out. The ultimate responsibility for knowing customers always lies with the banks. Banks should define the criteria to determine whether an introducer can be relied upon." (page 13) It further says : "In accepting business from non-face-to-face customers, banks should apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview and there must be specific and adequate measures to mitigate the higher risk." (page 14) In its detailed guidelines attached to the TBA policy paper, it emphatically states: "1.2.5 In case where a service provider represents the bank in dealing with customers, the bank should stipulate that such service provider perform customer due diligence (KYC/CDD) with the same standards as the bank's." (page 2)

§ In view of the above guidelines, it can be concluded that, although it uses the generic term for CDD, FIs are supposed to conduct their KYC/CDD measures within the regulatory framework set in accordance with the international standards. It should, however, be noted that the AMLO recognized that effective enforcement of the so-called Policy Statements and/or Guidelines would have to be subject to a pertinent law or regulation soon to be issued to that effect.

2.7 Recommendation 10 *(Record-keeping)*

Summarized text: The Recommendation requires financial institutions to maintain, for at least five years, all necessary records of both domestic and international transactions and to comply swiftly with information requests from competent authorities. They are required to keep records on the identification data obtained through CDD process, account files and business correspondence for at least five years and make available to domestic competent authorities upon appropriate authority.

AMLA's provision: Section 22 stipulates the requirement for FIs to retain information and record collected under Sections 20 and 21 for 5 years from the date of account closure or termination.

Assessor's comment :

ADB consultants' comment [14] : The consultants made the following comments:

The problem is that Section 22 of the AMLA, which relates to record-keeping , is expressed to relate only to CDD records under Section 20. Thus, it is also limited by the wording of Section 20. (p. 179)

The result is that the AMLA does not impose the necessary obligations on financial institutions to apply CDD procedures in all appropriate cases nor are they required to maintain all of the necessary records, including all account opening and transaction records. (p. 179)

[14] ADB consultants' analysis report on Thailand, 9 April 2006

It is therefore necessary to expand the scope of the recordkeeping obligation in Section 22 to ensure that all necessary records, relating to both CDD and individual transactions are maintained. (p. 179)

IMF(DAR) comment[15]: The DAR states:

Thailand has taken some substantive action to comply with R.10 and complies with some parts of all the essential criteria. However, further improvement is needed. In the AMLA records of ***all*** *transactions are not required to be kept; Section 22 of [the] AMLA requires FIs to maintain all customer identification records for the transactions subject to reporting to the AMLO, for a period of 5 years from the date the account was closed or the termination of relation with the customer or from the date that such transaction occurred, whichever is the longer, unless otherwise notified in writing by the competent officer. According to the authorities records of other transactions are required to be maintained for 10 years after the transaction date under Section 193/30 of the CCC; however this provision sets the "prescription" (statute of limitation) time in 10 years for cases in which the law does not provide for otherwise and it is unclear how it can be invoked as setting record keeping requirements. There is no legal provision applying to the financial sector requiring that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity nor any requirement that FIs ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities. (DAR para 714)*

Thesis analysis : The analysis of the above comments is as follows:

§ Record-keeping requirement still remains a subject of criticism. Under existing Thai system the period of record-keeping extends as far as to 10 years as prescribed in Section 193/30 of the Civil and Commercial Code, whereas under the AMLA the period for those types of records required in Section 22 is 5 years from the date of the account closure or termination of business relationship.

§ There is a recommendation in the TBA paper which says: "Banks should retain customer identity documents and transaction records for 10 years, after the closure of the accounts or the date of the transaction respectively." (page 16)
In actuality, this recommendation in the TBA paper exceeds the AMLA's requirement in Section 22 and accords with the provision of the CCC. However, the AMLA provisions only deal with KYC and do not cover CDD measures required under Recommendation 5.

2.8 Recommendation 11 *(Unusual and suspicious transactions)*

Summarized text : This Recommendation relates to transactions that require special attention such as complex, unusual large transactions, and unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

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[15] IMF DAR 24 July 2007

AMLA's provision: This issue is generally covered under KYC measures in Chapter 2 of the AMLA, and particularly in Section 13 where any suspicious transaction is subject to reporting.

Assessor's comment :

ADB consultants' comment[16]: The consultants' report contains the following comments:

There is no suggestion that financial institutions currently covered by the AMLA are not aware of the need to pay special attention to such transactions.(p. 179)

However, there are serious issues relating to those transactions which are exempt from the reporting obligations ..... and the need for a wider range of financial institutions to be covered ..... (p. 179)

The exemptions made under Section 18 need to be significantly reduced. We are conscious that the rationale behind the exemption of transactions in which a senior member of the Royal Family is involved reflects the high standing of the Royal Family and is consistent with the general exemption of the Royal Family from the application of Thai laws. We also note that similar exemptions from statutory provisions apply in other legal systems where the monarch is often exempt from the application of some laws. The exemption of transactions in which a government entity is a party is a much more serious issue. This effectively allows transfers of funds from government agencies to escape scrutiny and reporting under the provisions of the AMLA. The exemption of the transactions involving government agencies should be removed. Reporting such transactions to [the] AMLO could significantly aid the current strategies of the Thai Government to deal with corruption and assist work of the National Counter Corruption Commission. (p. 184)

IMF (DAR) comment[17] : The DAR says:

However, there is no specific requirement applying to FIs to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing nor a specific requirement, even though this could be inferred (at least for the transactions which have been reported to the AMLO) by the requirement of section 13 of [the] AMLA for the FIs to report to the AMLO any fact which might have appeared subsequent to the reporting. Nor is there a clear requirement to keep such findings available to competent authorities and auditors for at least 5 years. It has to be noted, however, that section 22 of the AMLA requires FIs to retain for 5 years (from the day the account is closed or the relation with the customer is terminated) the records of statements which customers are obliged to do with reference to facts related to transactions subject to recording (section 22). These, however, cannot be considered as 'findings" of the FIs with reference to the suspicious transactions. (DAR para 747)

Thesis analysis : The analysis of the above comments is as follows:

§ Pursuant to the TBA paper and guidelines and the AMLO Policy Statement the overall reporting system in Thailand's AML-CFT regime could have been greatly improved. Yet

[16] ADB consultants' analysis report on Thailand, 9 April 2006
[17] IMF DAR 24 July 2007

there still come criticisms from the international consultants to the effect that the records of statements made under Section 21 of the AMLA in connection with the customer's refusal to comply with the FI's request cannot be considered as "findings" of the FIs with reference to the suspicious transactions.

§ In this regard, the TBA paper requires that when a suspicious transaction or a suspicious customer is detected, staff should alert his immediate supervisor/ AML Officer and Compliance Officer who should take reasonable steps to access the background of the account or transaction. (TBA page 16) Obviously, this assessment of the Compliance Officer can be none other than the record of his findings. And it also requires to report as prescribed under Section 13 of the AMLA. (TBA page 16)

2.9 Recommendation 12 *(CDD and record-keeping of DNFBPs)*

Summarized text : This Recommendation stipulates wider application of CDD and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 to designated non-financial businesses and professions (DNFBPs), covering (a) casinos, (b) real estate agents, (c) dealers in precious metals and stones, (d) lawyers, notaries, other independent legal professionals and accountants, and (e) trust and company service providers.

AMLA's provision: Chapter 2 of the AMLA, in general, covers KYC measures required of financial institutions and individuals for reporting.

Assessor's comment :

ADB consultants' comment[18]: The comments say:

The present law does not impose CDD or record-keeping obligations in respect of the designated non-financial activities set out in Recommendation 12. While the AMLA and the Ministerial Regulations Nos. 2 and 6 made under the AMLA require the reporting of

(a) a transaction involving cash in an amount equal to or exceeding two million baht;
(b) a transaction involving an asset equal to or exceeding five million baht;
(c) any suspicious transaction, whether or not it is in accordance with (a) or (b) above; and
(d) the collection of customer identification information, the legislation requirements do not extend to the full range of transactions covered by Recommendation 12. Expansion of the scope of [the] AMLA to include those non-financial activities set out in Recommendation 12 is therefore needed. (p. 180)

IMF (DAR) comment[19]: The DAR says:

[18] ADB consultants' analysis report on Thailand, 9 April 2006
[19] IMF DAR 24 July 2007

> *The AMLA does not contain any specific AML/CFT obligation for DNFBPs. As for KYC and CDD measures, none of the professions under the DNFBPs category are required to have in place KYC and CDD procedures. In terms of reporting obligations, section 16 of the AMLA stipulates that "a person who is engaged in a business of operating, or advising to engage in investment transactions, or the movement of capital has a duty to report to the AMLO when there is probable cause to believe that such transaction may relate to asset involved in a commission of offense or in a suspicious transaction." One could infer from this provision that the reporting obligation also applies to lawyers and accountants when these professions provide advice for investment transactions and real estate operations. However, section 16 of [the] AMLA conflicts with the professional secrecy obligations that apply to these professions according to which any breach of the confidentiality obligation leads to criminal sanctions under the PC. (DAR para 1057)*
>
> *Moreover, the AMLO Policy Statement does not have any legal effect on the DNFBPs for three reasons: (i) it is not legally binding, (ii) it conflicts with the legal provision on professional secrecy that applies to lawyers and accountants, and (iii) the policy statement itself contains a provision which stipulates that DNFBPs should apply the KYC/CDD policy "insofar as it does not conflict with the normal business practice….. (DAR para 1060)*
>
> *There are no CDD or record-keeping requirements in force for DNFBPs that operate in Thailand. (DAR para 1063)*

Thesis analysis : The analysis of the above comments is as follows:

- § Under the recent AMLO Policy Statement the scope of the reporting entities has been expanded to include such DNFBPs as: (1) dealers in precious metals and stones, (2) dealers in hire-purchase business of motor vehicles, (3) dealers in personal loan businesses, and (4) dealers in electronic cash card businesses. (However, detailed guidelines for them have yet to be prescribed by the respective supervisory authorities concerned. In the absence of such detailed guidelines, the AMLO would certainly find the implementation of the Policy Statement practically ineffective.)
- § The DAR's inference seems to be correct that the reporting obligation under Section 16 of the AMLA also applies to lawyers and accountants, whose nature of profession involves, among others, consultancy on investment transactions and real estate operations of clients. However, since these professions fall under SROs (self-regulatory organizations) it is very likely that over time the imminent conflict between the reporting obligation and the professional secrecy will somehow be resolved through innovative methods.

2.10 Recommendation 13 *(STR)*

Summarized text: The Recommendation requires FIs to report promptly any suspicious transaction to the FIU.

AMLA's provision: Suspicious transaction reporting comes under KYC measures in Chapter 2, in particular under Section 13 of the AMLA where it imposes a duty on a

financial institution to file a report of any suspicious transaction to the AMLO. Section 62 penalizes any person failing to comply with the AMLA provisions.

Assessor's comment :

ADB consultants' comment[20]: While recognizing that the Thai system exceeds the FATF requirements in a number of useful ways by imposing reporting obligations on specified types of financial institutions as well as a legal obligation to identify the customer prior to conducting transactions, the report made the following comments.

Section 13 of the AMLA requires the report of suspicious transactions by financial institutions. This would, without any qualification, fully meet the requirements imposed by Recommendation 13 so far as it relates to financial institutions. There are two issues. Recommendation 13 also applies to non-financial businesses and professions (…..) and the scope of Section 13 is limited.

IMF (DAR) comment[21]: The DAR made a number of comments, some of which are as follows:

As mentioned under the analysis of R.1, the predicate offenses to ML are restricted to the eight categories mentioned in Section 3 of the AMLA under the definition of the predicate offense. As a result, the obligation to report suspicious transactions is limited to transactions that are related to those predicate offenses, which do not fully cover the designated category of offenses under the FATF Recommendations. (DAR para 765)

In addition, the persons who are required to report suspicious transactions are limited to the FIs as defined in the AMLA and these do not cover all of the categories of persons required to report suspicious transactions under the FATF 40 Recommendations. (DAR para 766)

The reporting requirements exempt transactions relating to those set out in Ministerial Regulation 5 of 2000 which leaves a gap in the reporting regime of the AML/CFT framework of Thailand, as it would appear that no assessment has been undertaken of the ML risk (especially in the case of transactions to which the Government state agencies or enterprises are parties). The exempted transactions include:

Transactions to which H.M. the King and H.M. the Queen and certain members of the Royal family are parties;

Transactions to which the government, state agencies and state enterprises are parties;

Transactions to which the 3 foundations under the patronage of H.M. the King and H.M. the Queen namely Chaipattana Foundation, H.M. the Queen's Silapacheep Foundation and Sai Jai Thai Foundation are parties;

Those, with the exception of wire transfers, made by FIs where transactions involve movable property such as ships, vehicles and machinery;

General (non-life) insurance policies; and

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[20] ADB consultants' analysis report on Thailand, 9 April 2006
[21] IMF DAR 24 July 2007

> *Transactions involving transferring of rights over assets to become public property or by possession in accordance with Section 1382 or Section 1401of the CCC (with reference to acquisition of servitudes or property rights by statute of limitation). (DAR para 767)*

It has been mentioned that the obligation to report suspicious transactions is regardless of the thresholds mentioned by section 13.1 and 13.2. of the AMLA, described above. However, reporting of attempted transactions that are suspicious is not covered. (DAR para 769)

Reporting entities are required to report transactions that fall within the definition of a suspicious transaction under section 3 of the AMLA even where they consider them to involve tax matters. Given that tax evasion is not a predicate offense for ML, this means that such transactions are likely to be considered as suspicious because they are complicated, lack economic feasibility, or are believed to have been made to avoid the applicability of the AMLA. (DAR para 770)

Thesis analysis : The analysis of the above comments is as follows:

§ Limited coverage of reporting on predicate offenses: If it is viewed from the standpoint of designated predicate offences, it is partly true that reporting coverage is limited to transactions that are related to those predicate offenses listed in the AMLA. As the list will grow when additional 8 predicate offenses are soon added, the reporting coverage will substantially expand as well. But, interpretation of AMLA's Section 13 may not be limited to the predicate offences listed in Section 3, meaning it could cover any type of predicate offence beyond the designated ones. Because FIs are required to report any suspicious transaction without defining the type of predicate offence to the AMLO, whose duty it is to analyze and define it.

§ Limited coverage of reporting entities: The current reporting persons include: (1) financial institutions, (2) land offices, and (3) persons described in Section 16 of the AMLA.

§ Reporting exemptions: Thailand honors the Royal Family in recognition of its unique social status in Thai society. As for exemption from reporting of government agencies, state agencies and public organizations, they nonetheless are subject to auditing by state auditors as well as subject to monitoring scrutiny and investigation by independent anti-graft agencies.

§ Attempted transaction: While AMLA's Section 13 requires FIs to make a suspicious transaction report on any transaction falling within the definition of suspicious transaction, regardless of any threshold and constituting any activity related to a juristic act, contract or conduct associated with financing, business or involving assets, the requirement of reporting under Section 21 is susceptible of diverse interpretations. Section 21 reads as follows:

> *In making a transaction under section 13, a financial institution shall also cause a customer to record statements of fact with regard to such transaction.*

> *In the case where a customer refuses to prepare a record of statements of fact under paragraph one, the financial institution shall prepare such record on its own motion and notify the Office thereof forthwith.*

§ Recognizing that the types of transactions mentioned in Section 13 all constitute transactions that are completed, and assuming that an attempt does not constitute a transaction, then the circumstances surrounding the requirement under section 21 can be interpreted as an attempted transaction –which is subject to reporting to the AMLO. For any transaction under Section 13 all facts are supposed to have been provided to the FI whereas for the transaction under Section 21 the customer's refusal to provide all facts related to the transaction is the main cause that triggers a report to the AMLO. In other words, the transaction could not have been a completed one but it could merely be an attempt because no financial institution would accept a transaction for which the customer refused to furnish the requested information or facts.

§ Tax evasion: If the wordings in the definition of suspicious transaction under Section 3 of the AMLA, i.e. "transaction reasonably believed to have been made in order to avoid the applicability of this Act" and "transaction connected or possibly connected with the commission of a predicate offense" are taken in the context of the AMLA-defined 8 predicate offenses then tax evasion is excluded. However, according to Section 13 (3) a suspicious transaction can involve any type of proceeds beyond the 8 predicate offenses. This interpretation is evident in KYC/CDD guidelines of both the Association of Securities Companies (ASC) and the Association of Investment Management Companies (AIMC).

§ One thing to note is that the reporting obligation and resultant action are two different things. Financial institutions are required to report any suspicious transaction under Section 13 (3) and it is the duty of the report receiving agency (AMLO) to analyze the report and identify the type of predicate offense the report is related to. Based on its analysis, further action such as investigation or prosecution is to be determined . If the report is about tax matters, prosecution may not be possible under the AMLA.

2.11 Recommendation 14 *(Protection for making STRs)*

Summarized text : This Recommendation deals with legal protection of reporting persons from criminal or civil liabilities regarding disclosure of information.

AMLA's provision: Section 19 of the AMLA exempts the reporter from legal liability if reporting made in good faith injures any person.

Assessor's comment :

ADB consultants' comment[22] : The following, amongst others, are the comments relating to the issues of disclosure and tipping off.

Recommendation 14 raises two issues. The first is the extent to which the AMLA adequately protects individuals and institutions that provide information to the AMLO or to other agencies involved in the investigation of money laundering and the underlying criminal offenses or terrorist financing. The second concerns the balance to be struck between a financial institution applying CDD requirements and obtaining transaction specific information and the prohibition against 'tipping off' contained in Recommendation 14. (p. 185)

Section 19 of the AMLA provides limited protection. It only covers reports submitted in accordance with Sections 13 to 16 and is not expressed to cover additional information provided to the AMLO or other investigative agencies as a result of requests for further information. It does not provide adequate protection and should be expanded. (p. 185)

IMF(DAR) comment[23]: The DAR contains the following comments.

The securities sector (excluding agricultural futures brokers) is the only one with a general prohibition on tipping off. Sections 64 and 66 of [the] AMLA set forth penalties for any person revealing confidential information except in the course of official duties or when required by law. Section 64, however, refers to the information retained under section 38 paragraph 4 of the AMLA (which sets forth the responsibility of the SG for "all information obtained from the statements, written explanations or any account, document or evidence" gathered under that section) and does not refer to FIs. Section 66 states that "Any person who, having or probably having knowledge of an official secret in connection with the execution of this Act, acts in any manner that enables other persons to have knowledge or probable knowledge of such secret shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand baht ($2,640) or to both, except in the case of doing such act in the performance of official duties or in accordance with the law." While the obligation is on "any person," assessors are not convinced that it could cover the case of "tipping off," as this would imply that the report that FIs file to the AMLO is classified as "official secret." This was suggested by the authorities. However, this interpretation would not appear to be supported by any relevant legal provision. In addition, it is not clear that section 66 would extend to cover notifying another person transaction." As this obligation applies also in the case of STRs, it can be tantamount to tipping off and would confirm that there is no legal prohibition of the mere fact that an STR had been made as opposed to disclosing its contents. (DAR para 785)

Moreover, it has to be noted that section 21 of the AMLA requires that "in making a transaction under section 13, [an] FI shall also cause a customer to record statements of fact with regard to such for FIs, their directors, officers, and employees to disclose the fact that an STR or related information is being reported/provided to the FIU. (DAR para 786)

[22] ADB consultants' analysis report on Thailand, 9 April 2006
[23] IMF DAR 24 July 2007

> *It is not clear that [sections] 64 and 66 ensure that the names and personal details of staff of FIs that make an STR are kept confidential by the FIU. (DAR para 788)*

Thesis analysis : The analysis of the above comments is as follows:

- § There are two elements involved under this Recommendation, i.e. legal protection for those individuals and institutions reporting suspicious transactions and legal prohibition for those individuals and institutions from disclosing STR or related information.
- § Legal protection: Section 19 of the AMLA provides for the required legal protection from individual liability or corporate liability for reporting an STR in good faith in case that causes any damage to any person.
- § Legal prohibition: AMLA's Section 64 paragraph 2 provides for the required legal prohibition for any person from disclosing any information retained under Section 38 to any other person whereas Section 66 prohibits any person from disclosing any official secret connected with the execution of the AMLA.
- § Hence it is true that the scope of prohibition under Section 64 paragraph 2 is limited to the type of information collected explicitly under Section 38 paragraph 4. The scope of prohibition under Section 66, on the other hand, engulfs all and any official secret under the AMLA.
- § Tipping off: Suspicious transactions under Sections 13, 15, 16 and attempted transactions under Section 21 are only made by designated institutions and individuals in the prescribed forms as such they are treated as confidential. There is, therefore, no way of the customer knowing suspicious transactions being reported. Consequently, there is no tipping off.
- § Confidentiality of personal details of staff: Given the confidential nature of STRs that are required to be reported in the prescribed forms it is to be concluded that personal details of the staff making such reports are equally treated as confidential.

2.12 Recommendation 15 *(Internal policies, procedures and controls)*

Summarized text : This Recommendation urges the financial institutions to develop internal AML-CFT programs that would include (a) internal policies, procedures and controls, (b) staff training, and (c) audit function.

AMLA's provision: (There is no specific provision relating to the elements of Recommendation 15. However, there is a provision in Chapter 5 of the AMLA, particularly in Section 40 (5), which would cover somewhat the concepts of the Recommendation.

Section 40 (5) requires the AMLO to provide assistance and support to both the public and private sectors in matters relating to awareness campaign, including training in the fields involving the execution of the AMLA.

Assessor's comment :

ADB consultants' comment[24]: The consultants' comment runs along the following lines:

[24] ADB consultants' analysis report on Thailand, 9, April 2006

…. Even if the law and the activities of all of the government agencies [were] to reflect best international practice the system would be ineffective without full private sector compliance. This needs to be encouraged and assisted, not just demanded. We see considerable scope for donor assistance to the Thai agencies to help develop AML and CFT skills within the private sector. Unfortunately this kind of assistance is not usually provided. The reasoning seems to be that as the private sector financial institutions are engaged in commercial activities they should fund all of the necessary training and system development. However, in many jurisdictions they lack the capacity and knowledge and there is little assistance available within the country itself. This is a particular problem for the small institutions. (p. 186)

More effort is needed to assist the financial institutions to develop and implement AML-CFT policies and training programs. (p. 186)

IMF (DAR) comment[25]: The DAR's comment runs as follows:

There is no general enforceable requirement for FIs to establish and maintain internal procedures, policies, and control to prevent ML and FT, nor are there provisions applicable to all FIs requiring designation of an AML/CFT compliance officer (empowered to have timely access to customer identification data and other CDD information). Scattered provisions exist for the banking, securities and insurance sector; however, only those provided for the securities sector would appear to be enforceable under the standard. (DAR para 802)

In practice, several banks claimed that AML/CFT responsibilities have been assigned to their compliance officer who actually plays the role of liaison officer with the AMLO. In most of the cases, the compliance officer is responsible for (i) receiving reports from the operational unit (including from branches, where applicable), (ii) analyzing the supporting evidence, and (iii) transmitting the report to the AMLO. Banks also claimed that management is systematically informed of STRs that were sent to the FIU; those banks also stated that management does not interfere in the STR process. However, other banks, including SFIs with which the mission met, acknowledged the fact that they have not yet appointed an AML/CFT officer. Some banks also admitted that they were still in the process of drafting their internal control procedures to better monitor ML/TF risks. One bank stated that its internal procedures were sent to the board for consideration and approval. In addition to that, some FIs admitted the fact that their internal audit unit has not yet included AML/CFT issues into the scope of their duties. The fact that some banks have not yet finalized their internal procedures with regard [to] AML/CFT raises concerns about the effectiveness of the internal control system. The assessors conclude that implementation of Thai requirements for R.15 is inconsistent across the banking system. (DAR para 815)

There are no requirements for insurance firms to conduct staff training on AML/CFT matters. However, discussions with the industry indicated that some firms did conduct extensive training on such matters to implement their obligations under the AMLA. (DAR para 830)

There is no general enforceable provision requiring FIs to put in place screening procedures to ensure high standard when hiring employees. (DAR para 831)

There are no requirements applying to FIs that provide that the compliance officer be independent other than for those parts of the securities sector where

[25] IMF DAR, 24 July 2007

> *there are requirements for an independent compliance function. It is only in the securities sector that there are requirements applying to FIs that explicitly provide that the compliance officer report to senior management or the board of directors. (DAR para 834)*

Thesis analysis : The analysis of the above comments is as follows:

§ In general, the issues required under this Recommendation have lately been dealt with under the AMLO Policy Statement on KYC/CDD, the BOT Policy Statement and the SEC Notification, etc. However, except for the securities sector, enforceability of the aforesaid Policy Statements is being challenged by the international assessors.

§ Legal basis: Legal basis derives from two sources; the first source is the "enabling law" or the "primary law", and the second source is the implementing provisions" or the "secondary/subsidiary law". In the case of AML-CFT matters, the AMLA is the enabling law while ministerial regulations, notifications issued under the AMLA are the implementing provisions. So far the Prime Minister, exercising the power given under Section 4 of the AMLA, has issued ten Ministerial Regulations (Nos. 1–10). Regulations in essence carry mandatory nature of compliance and impose sanctions for any violation or non-compliance.

§ Subsidiary legislation: What then is the status of such instruments as policy statement, guideline/guidance, directive, instruction, etc. commonly used in official communication and announcement? Do they have enforcement authority? In the case of the AMLA, there was issued the Prime Minister Office Regulation, dated 15 February 2001, regarding coordination and compliance in matters relating to the conduct of inquiry, investigation and report of AMLA-related cases. It was issued by virtue of the provisions of Section 4 of the AMLA. In clause 3 of the Regulation it is clearly stated as follows:

> *The authorities or agencies bound to comply herewith shall be authorized to issue regulations, notifications or directives for compliance herewith as far as they shall not be contradictory hereto.*

§ Under the Bureaucratic Restructuring Act 2002, issued on 2 October 2002, there was some restructuring of the AMLO. Previous to this, the AMLO was attached to the Prime Minister's Office under Section 40 of the AMLA. But according to Section 46 of the Bureaucratic Restructuring Act, the AMLO has now come under the command and control of the Minister of Justice.

§ Pursuant to the Bureaucratic Restructuring Act, the Minister of Justice issued the Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office, dated 9 October 2002, wherein it refers to the National Administration Act (No.4) 2000 and states in its Article 1 that the AMLO "shall take charge of prevention and suppression of money laundering activities by means of proposing policies and measures; analysis and inspection of financial and business transactions as well as properties; seizure and forfeiture of the properties of the offenders pursuant to the anti-money laundering law in order to curb and cut off the crime cycle."

§ The AMLO's two Policy Statements – one on KYC/CDD and another on international cooperation – obtained the Cabinet's approval on 27 February

2007, and this approval process is in total accord with Section 25 of the AMLA.

- § Enforceability: The authority of enforceability of policy statements or guidelines or notifications, etc. issued by such competent authorities as the AMLO, the BOT, the SEC, etc. would not come straight from the enabling law in the case of the AMLA. What is clear and direct is the provision of Section 4, which says:

> *The Prime Minister shall have charge and control of the execution of the Act and shall have the power to appoint competent officials, and issue Ministerial Regulations, Rules, and Notifications for the execution of this Act."*

- § Thus, the Prime Minister, exercising the authority under Section 4 of the AMLA, issued the Regulation of 15 February 2001 authorizing the authorities and agencies concerned to issue regulations, notifications or directives in respect of coordination and compliance in matters of AMLA-related case inquiry and investigation and report. The Bureaucratic Restructuring Act of 2 October 2002 assigned the Minister of Justice to take charge of the AMLO, who in turn issued the Ministerial Regulation of 9 October 2002, delegating the authority to the AMLO to take charge of prevention and suppression of money laundering activities by means of proposing policies and measures, etc. Hence, the AMLO's two Policy Statements, which were approved by the Cabinet on 27 February 2007.
- § Although, as explained above, the authority of enforceability of what the AMLO and the other regulatory authorities have issued up to now has come in a very roundabout way, they nonetheless are enforceable in law. The test of the validity lies in the challenge in a court of law. Throughout the eight years of AMLA's existence there has never been a challenge to its validity. Under these circumstances it can safely be concluded that the AMLO and the relevant competent authorities are mandated to issue what they have so far issued and that they are legally enforceable should there be any violation or non-compliance.
- § Screening procedures in hiring staff: Admittedly, while there are no general enforceable provisions requiring FIs to put in place screening procedures to ensure high standard, each regulatory authority including the AMLO has its own procedures for staff selection, setting forth appropriate qualifications, tests and interviews, criminal record checks, etc.

2.13 Recommendation 16 *(STR of DNFBPs)*

Summarized text : This Recommendation requires all DNFBPs to apply requirements set out in Recommendations 13 to 15 and 21 and sets qualified requirements for (a) lawyers, notaries, other independent legal professionals and accountants, (b) dealers in precious metals and stones, and (c) trust and company service providers to report suspicious transactions. However, the principle of professional secrecy or legal professional privilege can be applied and no reporting is required of lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals.

AMLA's provision: (Suspicious transaction reporting requirement under Section 13 is limited to financial institutions only and under Section 16 to a person engaged in a business of operating, or advising to engage in investment transactions.)

Assessor's comment :

ADB consultants' comment[26]: The following is the consultants' comment.

[The] AMLA needs to be amended to extend the application of Section 13 (reporting obligations) to the designated non-financial businesses and professions. (p. 4.2)

IMF (DAR) comment[27]: The DAR's comment is as follows:

There are no specific obligations on DNFBPs to report suspicious transactions to the AMLO. (DAR para 1072)

The closest thing to an obligation is section 16 of the AMLA as described above. However, as mentioned, the provision is vague, not specific for DNFBPs, does not cover the non-financial transactions for some of the DNFBPs such as lawyers and it cannot be enforced against lawyers and accountants as it conflicts with the professional secrecy obligations that apply to those professions. The AMLO could not provide information on the number of reports received on the basis of section 16 of [the] AMLA. (DAR para 1073)

As far as the precious stones and precious metals dealers [are concerned], there are no specific STR requirements. The Chamber of Commerce has been engaged in discussions with the AMLO since 2005 to clarify the specific requirements precious stones and metals dealers will be subject to. During initial talks, the parties have agreed on a reporting threshold of one million baht ($26,400). However, it is not clear if this will apply to cash transactions only or to all transactions. (DAR para 1076)

None of the following requirements currently apply to DNFBPs in Thailand:

- *STRs related to terrorism and its financing (applying c. 13.2 to DNFBPs);*
- *Reporting threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs);*
- *Making of ML and TF STRs regardless of possible involvement of fiscal matters (applying c. 13.4 and c. IV.2 to DNFBPs);*
- *Additional Element - reporting of all criminal acts (applying c. 13.5 to DNFBPs);*
- *Protection for making STRs (applying c. 14.1 to DNFBPs);*
- *Prohibition against tipping-off (applying c. 14.2 to DNFBPs);*
- *Confidentiality of reporting staff (applying c. 14.3 to DNFBPs);*
- *Establish and maintain internal controls to prevent ML and TF (applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPs);*
- *Independent audit of internal controls to prevent ML and TF (applying c. 15.2 to DNFBPs);*
- *Ongoing employee training on AML/CFT matters (applying c. 15.3 to DNFBPs);*

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[26] ADB consultants' analysis report on Thailand, 9 April 2006
[27] IMF DAR, 24 July 2007

- *Employee screening procedures (applying c. 15.4 to DNFBPs);*
- *Independence of compliance officer (applying c. 15.5 to DNFBPs);*
- *Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1);*
- *Examinations of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c. 21.2); and,*
- *Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 21.3). (DAR, para 1078)*

Thesis analysis : The analysis of the above comments is as follows:

§ Partial coverage of DNFBPs: Although the AMLA and AML regulations do not specifically refer to DNFBPs, AMLA's Section 16 may partly meet the requirements of this Recommendation. If the meaning of Section 16 is stretched and interpreted to the utmost limit it may render much wider meaning than the international assessors tend to think.

§ According to the Council of State's translation, AMLA's Section 16 reads as follows:

> *Any person engaging in the business involving the operation of or the consultancy in a transaction related to the investment or mobilization of capital shall report to the Office in the case where there is a reasonable ground to believe that such transaction is associated with the property connected with the commission of an offense or is a suspicious transaction.*

§ Various ways of interpretation are possible in this Section. Reporting obligation is imposed on a person who –

(a) operates himself a business of investment; or
(b) operates a consultancy business of advising others to engage in investment ; or
(c) operates himself a business of capital mobilization; or
(d) operates a consultancy business of advising others to engage in capital mobilization.

In other words, the types of businesses in this Section may cover some of the types of businesses defined in the FATF Glossary under "financial institutions" and "designated non-financial businesses and professions" (DNFBPs). For, the person who deals in type (a) business will fall under the category of financial institutions, type (b) business under DNFBPs, type (c) business under financial institutions and type (d) business under DNFBPs respectively.

§ Now that the AMLO's Policy Statements have been approved by the Cabinet, four more DNFBPs, namely (1) dealers in precious stones and metals, (2) dealers in hire-purchase of motor vehicles, (3) dealers in personal loans whose businesses are under the BOT supervision, and (4) dealers in electronic cash cards whose businesses are under the BOT supervision, will come within the purview of the AMLA. They will therefore have reporting obligations once

their respective supervisory authorities have made appropriate regulations or guidelines.

§ DNFBPs and STR obligation: Real estate agents are included in the FATF Glossary on DNFBPs. While real estate agents are required under this Recommendation to report suspicious transactions, under the AMLA the reporting on transactions – both threshold-based and suspicious – is done by the government land offices. Registration of immovable property right and juristic act – such as sale and purchase, lease, mortgage, transfer of ownership – has to be carried out at the land offices, so the reporting obligation is imposed on them rather than real estate agents, as stipulated in Section 15 of the AMLA. It should, however, be noted that there may be some loopholes in the reporting system considering the fact that switching of real properties is done by real estate agents without official transferring at land offices in some cases.

2.14 Recommendation 17 *(Sanctions for non-compliance)*

Summarized text: The Recommendation requires countries to have in place effective, appropriate and dissuasive sanctions, whether criminal, civil or administrative, to deal with natural or legal persons that fail to comply with AML-CFT requirements.

AMLA's provision: Sanctions for failure to report specified transactions, or for making false reports, or for failure to report specified actions are prescribed in Sections 62 and 63.

Assessor's comment **:**

ADB consultants' comment[28]: The consultants commented:

The AMLA and the relevant provisions of the Penal Code dealing with the money laundering offense, predicate offenses and associated acts are sufficient to meet this Recommendation. (p. 187)

IMF (July 2007) comment[29]: The DAR states:

While sanctions provided for by the AMLA and other relevant legislation would appear to be proportionate in principle, it is difficult to establish whether they are effective or dissuasive, as no sanctions have ever been issued under the AMLA or other legislation against an FI for AML/CFT matters, despite the supervisory authorities reported to have encountered violations of some of the provisions in the exercise of their supervisory responsibilities. For example, during an on-site visit, the BOT examiners discovered that a bank did not completely report to the AMLO the transactions of mortgage and sales of assets worth more than 5 million baht ($132,000). As a result, the board of directors and audit committee of the bank were required to monitor the bank operations and to report such transactions to the FIU in addition to report the progress to the BOT within 30 days; but the BOT was unable to explain to the assessors why steps were not taken to report the breach to the appropriate authority for the imposition of criminal action against the bank. In another example, BOT examiners found out that many transactions requiring reporting to the AMLO

[28] ADB consultants' analysis report on Thailand, 9 April 2006
[29] IMF DAR, 24 July 2007

had been undertaken by the same party in a single day but the BOT took no steps to ensure that criminal action against the FI was pursued. (DAR para 994)

It is also not clear the extent to which sanctions have been applied pursuant to the relevant industry's legislation. (DAR para 995)

There are no sanctions available to the DOI under the Life Insurance Act for breaches of AML/CFT requirements by life insurance firms. (DAR para 998)

As the sanctions set forth under the AMLA are of criminal nature, it would appear that there is not a designated authority empowered to impose these sanctions. Section 25.5 of the AMLA indicates that a responsibility of the AMLB is to "monitor and evaluate the effectiveness of the enforcement" of the AMLA; but given the penal nature of the sanctions it would be unlikely, nor have the authorities ever referred to, that the AMLB can be responsible for issuing such sanctions. However, the authorities did not provide clear answers to explain how the penal sanctions provided for by the AMLA would be applied in practice. Given their criminal nature, one could assume that they are issued by a court upon conviction of the offender; but it is not clear who would initiate the criminal procedure and if there is a legal obligation on the supervisory authority in their capacity as a public official to file a denunciation under the CPC in the case where they would detect a violation of the AMLA in the exercise of their supervisory responsibilities. Nonetheless, one could reasonably expect that the AMLO would play a key role in ensuring compliance with the AMLA and initiating action to enforce identified compliance deficiencies. (DAR para 999)

The DOI has no sanction powers against insurance companies and their directors for failure to comply with AML/CFT requirements. The DOI claims that the AMLO is responsible for monitoring compliance with the AMLA. (DAR para 1001)

As the penalties set forth by the AMLA apply to the "person" violating the relevant provision, it is unclear whether sanctions for failure to comply with the relevant obligations apply to the person materially responsible for the violation or if this triggers a responsibility of directors and senior management as well. Considering the criminal nature of the sanctions under the AMLA, the latter case would appear remote. (DAR para 1002)

The DOI has no sanction powers against insurance companies and their directors for failure to comply with AML/CFT requirements. (DAR para 1006)

Thesis analysis : The analysis of the above comments is as follows:

- § As admitted by the international assessors themselves, the AMLA's sanction regime as a whole is proportionate and sufficient but they are doubtful about the extent of its effectiveness in the absence of proven application to the breaching natural or juristic persons.
- § Designated authority to apply sanctions: Under Section 25 (5) of the AMLA the AML Board's duties include monitoring and evaluating the effectiveness of the enforcement of the AMLA. Except this, the other duties are mostly of advisory nature related to proposing AML-CFT measures, recommending rules and regulations, and promoting public cooperation. Where sanctions are concerned, they need to be distinguished between sanctions for violation of any ML predicate offenses under the AMLA (*PO-based sanctions*[30]) and

[30] Predicate offence-based sanctions as distinct from regulatory sanctions under the AMLA

sanctions for violation of rules and regulations prescribed by regulatory authorities within the respective industries (*regulatory sanctions*).

- PO-based sanctions: AMLA's Sections 60 to 66 relate to sanctions for any violation of any AMLO provision. Of these, Sections 60 and 61 are PO-based sanctions. Penalty for Section 60 carries a term of imprisonment of 1 to 10 years, or a fine of Baht 20,000 to 200,000, or both. Penalty for Section 61 involving any juristic person is a fine of Baht 200,000 to 1,000,000, and, if involving a director, a manager, or any person responsible for juristic person's operation, is a term of imprisonment of 1 to 10 years, or a fine of Baht 20,000 to 200,000, or both.
- Judicial process for PO-based sanctions starts with investigation authorities, i.e. police or law enforcement agencies concerned; the case then goes to prosecuting authorities, i.e. public prosecutors at the Office of the Attorney General, who examine the evidence and pertinent legal aspects; and, if the prosecuting authorities are satisfied, the case will be filed with the criminal court for judicial trial and decision.
- Regulatory sanctions: AMLA's Sections 62, 63, 64 and 66 all concern sanctions for non PO-based offenses. For compliance with the AMLA provisions regulatory authorities of respective industries – banking, securities, insurance, non-financial, DNFBPs and others – are empowered to issue necessary regulations to ensure they fully comply with the regulatory guidelines. Non-compliance or violation will trigger criminal or administrative sanctions against any violator. As a rule, for example, to supervise and monitor the compliance functions of a commercial bank a Compliance Officer or an AML Officer is appointed by the Management. It is the duty of the Compliance Officer to undertake all AML-CFT reporting on behalf of the Management. When it comes to any non-compliance or violation case it, of course, is the duty of the Management to take legal or administrative action against the violator. For any legal action – criminal or civil – the case will be reported to the law enforcement agencies concerned, and for administrative action the Management will handle it in accordance with its industry regulations, meting out appropriate disciplinary punishment.
- The role of AMLO : Under the AMLA and related regulations the AMLO's role is diverse, performing multiple duties, as summarized below:

    - Under Section 40 the AMLO has to (1) execute the resolutions of the AML Board and the Transaction Committee; (2) receive transaction reports; (3) collect, trace, monitor, study and analyze reports and any other information related to financial transactions; (4) collect evidence needed for prosecution; (5) conduct projects to disseminate knowledge to give education and training in the fields involving the execution of the Act, or to provide assistance or support to both public and private sectors in organizing such projects.
    - Under Sections 35, 36, 38, 46, 48, 56 and 57, the AMLO, on behalf of the Transaction Committee or in some cases on its own behalf, has to carry out such tasks as (1) restraining transactions; (2) conducting field operations; (3) seeking court approval for access to customers' accounts; (4) seizing or attaching criminal property; and (5) managing seized or attached property, including auctioning.

- § If these various functions of the AMLO are classified, they will fall under (1) FIU function, (2) law enforcement function, and (3) regulatory/supervisory function.
- § It can therefore be concluded that under the current AMLA and related regulations, there is no single designated authority to apply sanctions for violation or non-compliance of the law or regulations. Sanction-applying authorities will vary depending on the respective industry regulations where regulatory sanctions are concerned. In the case of PO-based sanctions, the AMLO obviously is the authority that will conduct investigations of ML and proceeds of crime for collecting evidence that can be used for civil forfeiture or criminal cases. If the AMLO determines that the case is criminal in nature it will turn over the case to other competent authorities for criminal ML and TF investigations. The AMLO works with other law enforcement agencies on joint operations to assist with the ML aspect of the predicate offense investigations, and it assists with seizing assets and seeking evidence in support of forfeiture of those assets seized by the law enforcement agencies pursuant to the AMLA civil provisions.

2.15 Recommendation 18 *(Shell banks)*

Summarized text: The Recommendation discourages countries not to approve the establishment or accept the continued operation of shell banks. T0 enter into, or continue, a correspondent banking relationship with shell banks.

AMLA's provision: (There is no specific provision dealing with the issue of shell banks.)

Assessor's comment :

ADB consultants' comment[31] : The report contains a very brief comment as follows:

Thailand complies with the Recommendation. (p. 187)

IMF (DAR) comment[32]: The DAR states:

By practice shell banks are not permitted in Thailand since an application for a license to establish a bank requires approval from the Minister of Finance under sections 5 and 6, of the CBA. The MOF has issued the rules, procedures, and conditions for establishing a bank. According to the authorities, the implementation of these rules, procedures and rules by the BOT does not, in practice, allow the establishment of shell banks in Thailand. Although there is no legal provision explicitly prohibiting establishment of shell banks, applications for a banking license are subject to the scrutiny of the BOT before the Ministry of Finance would grant approval. As indicated by the authorities, commercial banks are also subject to rigorous laws and regulations and stringent examinations by the BOT after the financial crisis in 1997. (DAR para 842)

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[31] ADB consultants' analysis report on Thailand, 9 April 2006
[32] IMF DAR, 24 July 2007

The assessors are therefore satisfied that Thailand does not approve the establishment or accept the continued operation of shell banks. (DAR para 843)

There is no enforceable prohibition on banks entering into or continuing correspondent banking relationships with shell banks. (DAR para 844)

There is no enforceable obligation requiring FIs to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks. (DAR para 845)

Thesis analysis **:** There are no critical or adverse remarks about Thailand in relation to this Recommendation because Thailand does not have shell banks registered or any correspondent banking relationship with them.

2.16 Recommendation 19 *(CTR)*

Summarized text : This Recommendation urges countries to consider the feasibility and utility of a system where banks and other financial institutions and intermediaries could report all domestic and international currency transactions above a fixed amount to a national central agency with a computerized database and make available to competent authorities for use in ML and FT cases, subject to strict safeguards to ensure proper use of the information.

AMLA's provision: Section 13 (1) requires reporting of cash transactions exceeding the prescribed threshold, which according to Ministerial Regulation 2 (2000) is two million Baht.

Assessor's comment :

ADB consultants' comment[33]: The report contains a brief and effective comment as follows:

Thailand has a system for the report of cash transactions above the value of two million baht. It therefore meets this Recommendation. (p. 188)

IMF (DAR) comment[34]: The DAR says:

It is not clear that sections 64 and 66 ensure that the names and personal details of staff of FIs that make an STR are kept confidential by the FIU. (DAR para 788)

Thailand has a reporting obligation for cash transactions exceeding 2 million baht ($52,800), as provided by section 13.1 of the AMLA. (DAR para 789)

The AMLO operates such a database [i.e. computerized database for currency transactions above a threshold]. (DAR para 790)

The AMLO has incorporated the appropriate policies and security measures for securing of information they collect. (DAR para 375)

The assessors conclude that the information held by the AMLO is securely protected. (DAR para 376)

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[33] ADB consultants' analysis report on Thailand, 9 April 2006
[34] IMF DAR 24 July 2007

Thesis analysis : The analysis of the above comments is as follows:

- § The Ministerial Regulation No.2 (2000), dated 11 September 2000, issued pursuant to AMLA's Section 13, sets the threshold of 2 million Baht and above for any cash transaction and requires FIs to make a cash transaction report (CTR) to the AMLO. In this regard, "AERS" (AMLO Electronic Reporting System) handles both CTRs and STRs.
- § Except expressing some concern about the AMLO's ability to cope with the increasing volume of CTRs that might result from the planned reduction in threshold for CTRs, the comments of international assessors contain no critical remarks.

2.17 Recommendation 20 *(Non-DNFBPs)*

Summarized text : The Recommendation urges countries to consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions, that pose a money laundering or terrorist financing risk and encourages countries to develop modern and secure techniques of money management that are less vulnerable to money laundering.

AMLA's provision: (There is no specific provision to cover non-financial businesses and professions and development of modern, secure techniques for money management.)

Assessor's comment :

ADB consultants' comment[35]: The consultants' comments say:

Thailand is yet to extend the scope of AML-CFT system to all of the non-financial businesses and professions now covered by the (Revised) FATF Recommendations. In the process of amending the AMLA to extend its coverage Thailand should also consider if other businesses and professions should be covered. (p. 188)

Amendments to the AMLA to expand its coverage to all required non-financial businesses and professions are required. (p. 188)

IMF (DAR) comment[36]: The DAR states:

According to the authorities, the RTG has announced its intention to make pawnshops subject to the AMLA. However, the assessors were not provided with anything that confirmed this. Note that pawnshops are technically FIs in Thailand as they offer lending services. (DAR, para 1091)

There may be other vulnerable businesses and professions operating in Thailand, particularly given the Thai preference for using cash to conduct their affairs. The authorities are encouraged to assess what ML and TF risks exist in Thailand and encouraged to amend the AMLA, if necessary, to apply appropriate AML/CFT requirements to any vulnerable businesses and professions that pose specific risks. (DAR para 1092)

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[35] ADB consultants' analysis report on Thailand, 9 April 2006

[36] IMF DAR, 24 July 2007

The authorities do not appear to be taking sufficient measures to reduce the use of cash in Thailand or to encourage more activity to come within the formal sector. (DAR para 1093)

Thesis analysis : The analysis of the above comments is as follows:

§ Other businesses and professions: The AMLO's Policy Statement on KYC/CDD, approved by the Cabinet on 27 February 2007, contains the following:

(a) Any person or juristic person trading in precious stones or metals, such as gold and jewelry.
(b) Any person or juristic person trading or undertaking a hire-purchase in motor vehicles.
(c) Any person or juristic person undertaking personal loan business under the supervision of the Bank of Thailand on non-financial businesses.
(d) Any person or juristic person undertaking electronic cash card businesses under the supervision of the Bank of Thailand.

Of the above 4 types, those in (a), (c) and (d) fall under the category of DNFBPs defined in the FATF Glossary, whereas the one in (b) will come under other non-financial businesses and professions, also called "non-DNFBPs". Admittedly, the AMLO Policy Statement's coverage of both DNFBPs and non-DNFBPs is not wide enough, while such DNFBPs as (1) casinos, which are illegal (2) trusts, which are not allowed and (3) lawyers and accountants, who belong to SROs, are not subject to reporting under the AMLA.

§ Modern and secure techniques: In matters relating to banking transactions there have already been in place secure mechanisms such as BAHTNET (Bank of Thailand Automated High-Value Transfer Network), SMART (System for Management Automated Retail Funds Transfer) and ORFT (Online Retail Fund Transfer) for inter-bank transactions, ATM for cash withdrawals and deposits as well as cash transfers, plastic cards and internet banking. As regards reducing reliance on cash, at present Thailand has no plan to issue greater denomination bank-notes than the current Baht 1,000/- note in circulation.

2.18 Recommendation 21 *(NCCTs)*

Summarized text : This Recommendation requires financial institutions to give special attention to business relationships and transactions with persons, including companies and financial institutions from NCCTs.

AMLA's provision: (There is no specific provision to deal with NCCTs. However, the issue generally comes under Chapter 2 of the AMLA relating to KYC measures.)

Assessor's comment :

ADB consultants' comment[37]: The report contains a general comment of cautionary nature as follows:

[37] ADB consultants' analysis report on Thailand, 9 April 2006

Financial institutions in Thailand are aware of the need to pay special attention to transactions involving high risk jurisdictions. The supervisory agencies need to ensure that financial institutions are carefully examining such transactions. (p. 188)

IMF (DAR) comment[38]: The DAR states:

There is no general enforceable requirement for the FIs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations. (DAR para 751)

At present, there is no measure by the authorities in place to ensure that FIs are advised of concerns about weaknesses in the AML/ CFT system of other countries. (DAR para 752)

Likewise, there is no requirement with specific reference to transactions with countries not sufficiently applying FATF recommendations for FIs to examine their background and purpose of these transactions when they do not have apparent economic or visible purpose, other than the requirements described above under R.11. (DAR para 753)

At present, Thailand does not have a mechanism to impose any counter-measures on transactions or relationships with countries that apply insufficient AML/CFT measures. Some FBA members' internal policies include enhanced monitoring and reporting, limiting or ceasing transactions, and terminating relationships. (DAR para 760)

Thesis analysis : The analysis of the above comments is as follows:

§ Following the Cabinet approval of the AMLO's Policy Statement on KYC/CDD as well as the issuance of the BOT Policy Statement and Guidelines and the SEC Notification, appropriate measures and counter-measures are now in place to deal with business relationships and transactions with both natural and juristic persons from NCCTs and high-risk jurisdictions. It is now required to give special attention to and enhanced due diligence measures for such customers.

§ The AMLO's Policy Statement defines "specially attended customers" (customers requiring special attention, according to the BOT Policy Statement) as meaning a customer relating to politics, or any person having relationship with such a customer; or a customer coming from NCCTs; or a customer undertaking suspicious transactions or listed as having relationship with a person that may commit a predicate offense or money laundering; or a customer that the AMLO has notified FIs as such; or a customer that has been listed as a high-risk business or profession such as trading in precious metals or stones or illegal loans, etc. Please note, however, that there is still no actual implementation of the Policy Statement for want of a relevant law relating to CDD.

2.19 Recommendation 22 *(Foreign branches and subsidiaries)*

Summarized text: This Recommendation extends requirements of financial institutions to their branches and subsidiaries located in NCCTs.

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[38] IMF DAR 24 July 2007

AMLA's provision: (There is no specific provision to deal with branches and subsidiaries located in NCCTs, as in the case of NCCTs.)

Assessor's comment :

> ***ADB consultants' comment***[39]: The brief comment states as follows:
> *Foreign branches of Thai banks are required to apply Thai law and regulatory requirements as well as those imposed in the jurisdiction in which they operate. This is an area which should be included in the supervision manuals currently being updated by [the] BOT for its supervisory staff. (p. 189)*
>
> ***IMF (DAR) comment***[40]: The DAR says:
>
> *There is no legal requirement specifying that foreign branches and subsidiaries of a locally incorporated FI should observe AML/CFT measures consistent with Thailand's requirements. (DAR para 835)*
>
> *There are no enforceable obligations requiring FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe its appropriate AML/CFT measures. (DAR para 838)*
>
> *There is no enforceable obligation applying to banks, including SFIs, securities firms or insurance firms requiring them to apply consistent CDD measures at the group level. (DAR para 839)*

Thesis analysis : The analysis of the above comments is as follows:

§ The AMLO's Policy Statement, approved by the Cabinet on 27 February 2007, recommends all FIs to "have appropriate and continuous policies in organizational management, personnel training, and an audit function to test the compliance system", and the BOT's Guidelines[41] for On-site Examination on AML-CFT Compliance, of 26 December 2005, states in its Article 3 " ..… All the measures in the policy must be adherent to regulations and international standards. Therefore, policy and operating procedures should at least consist of ….. Policy and procedures for FIs branch or office [located] in countries whose anti-money laundering policy is [of] lower standard."

§ Besides, in the paper titled "Bank of Thailand's Roles and Responsibilities[42]," under the subject heading "Financial Institutions Supervision in Practice", article 3.2 "Foreign Supervisory Agencies," it is stated as follows:

> *To ensure that supervision of both the Thai FIs operating overseas and foreign bank branches operating in Thailand is efficient and in line with the rules and regulations imposed by other supervisory agencies, the BOT regularly exchanges knowledge, experience and material information with relevant foreign supervisory authorities. The BOT's emphasis on forging close links with relevant foreign supervisory authorities not only facilitates the implementation of global, consolidated supervision, but it also provides a sound basis to exchange relevant information that will be needed to validate risk models under the Basel II capital framework.*

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[39] ADB consultants' analysis report on Thailand, 9 April 2006

[40] IMF DAR, 24 July 2007

[41] BOT, Guideline for On-site Examination on Anti-Money Laundering and Combating Financing of Terrorist (AML-CFT) Compliance, (unofficial translation), 26 December 2005: pp. 4-5

[42] BOT, Bank of Thailand's Roles and Responsibilities, (undated): p. 5

2.20 Recommendation 23 *(Regulation and supervision of FIs)*

Summarized text: This Recommendation requires competent authorities (i) to take legal and regulatory measures regarding beneficial owners in a financial institution, (ii) to apply similar regulatory and supervisory measures that are applied for prudential purposes to AML-CFT purposes as well, and (iii) to regulate and supervise other financial institutions by licensing or registering them.

AMLA's provision: (There is no specific provision dealing with regulatory and supervisory aspects of AML-CFT in the AMLA. These aspects come under the authority of the AMLB, whose responsibilities include the duty "to consider and give opinions to the Minister with regard to the issuing of Ministerial Regulations, rules and notifications for the execution of this Act" and the AMLO, whose responsibilities include, among others, the duty "to carry out acts in the implementation of resolutions of the Board and the Transaction Committee and perform other secretarial tasks; " and "to perform other activities under this Act or under other laws." The AMLA's provisions, particularly Sections 25 and 40, effectively mandate the AMLO to act in the manner prescribed in pertinent Ministerial Regulations. Besides, the Governor of the BOT being a member of the AMLB can exercise the authority in respect of regulatory and supervisory aspects of the AMLA.)

Assessor's comment :

ADB consultants' comment[43]: The report made a lengthy discussion of the issues involved and among many comments, the following is selected:

> *…we agree there is a need for greater clarity in the respective roles of the supervisory agencies in relation to AML-CFT issues. We also note that the Thai authorities are well aware of this issue and that they are working actively to improve both the scope and depth of their supervisory activities and to clarify their respective roles. These improvements are not dependent on legislation and can be undertaken over the next six months. We would encourage the Thai authorities to do this using the coordinating mechanisms already in place. (pp. 189-190)*

IMF (DAR) comment[44]: The DAR made the following comments among others:

> *None of the laws or regulations in force specifies clearly which designated competent authority or authorities are responsible for ensuring that FIs adequately comply with their AML/CFT requirements. The assessor's impression is that the allocation of duties between the different supervisory authorities to monitor compliance with AML/CFT requirements is based on an undocumented understanding between the different national agencies than on a specific legal provision. As indicated by the authorities, "it has been agreed within the ROSC Working Group by the Secretary-General of AMLO <u>that the financial regulators, i.e. BOT, SEC, will be considered as the lead or frontline regulator to ensure that proper AML/CFT measures have been in place through</u>*

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[43] IMF technical team's report on Thailand of April 2006

[44] IMF DAR, 24 July 2007

> <u>*its routine examination programs*</u>*. However, this will not have any impact on the AMLO surveillance or enforcement programs. (DAR para 869)*
>
> *The assessors note that the AMLA is unclear about whether the AMLO has a specific power to monitor compliance with the AMLA. In terms of government administration, the AMLO is probably meant to have a prime role to monitor compliance given that it administers the AMLA but, it is not clear to the assessors that the AMLO is actually carrying out any monitoring (other than when following up on STRs). Moreover, one source of this confusion is that BOT staff often also act as AMLO competent officers. The assessors understand how in legal terms the BOT staff can move from their BOT role to their AMLA role in the course of the same inspection but do not see how that demonstrates that there is effective monitoring of compliance with [the] AMLA other than to follow up on STRs. (DAR para 873)*
>
> *Hence, the assessors are not convinced that either the AMLO or the financial regulators are effectively monitoring compliance with the AMLA (other than to follow up on STRs). The assessors are also not convinced that the AMLO and the financial regulators have effectively agreed on how to share the responsibility for monitoring compliance with the AMLA. Likewise, the assessors are not satisfied that the AMLO and each of the financial regulators have agreed on what information to share regarding their monitoring roles. (DAR para 874)*

Thesis analysis : The analysis of the above comments is as follows:

- § Admittedly, the clear breakup of AML-CFT compliance oversight between the AMLO and industry regulators needs much improving, and to this effect authorities concerned have been striving hard to address this issue. Some understanding has already been reached at the AML-CFT Working Group coordination meetings that the financial regulators, i.e. the BOT, the SEC, will be considered as the respective lead or front line regulator to ensure that proper AML-CFT measures have been in place through its routine examination programs. However, this will not have any impact on the AMLO surveillance or enforcement programs. As cited in the DAR itself, this understanding was documented in the form of a Memorandum of Understanding, dated 20 February 2007, between the AMLO and the BOT. Clause 2 (1) of the MOU states: "The AMLO and the BOT shall cooperate with each other to support the exchange of financial intelligence prepared by each organization. This will enable both parties to have available information for supervision of financial institutions, investigation, inquiry or prevention and suppression of ML as well as of TF under the law governing the supervision of both contributors." And clause 3 (3) indicates that "The BOT shall proceed on examination of financial institutions under the governing provision of the BOT in [regard] to policy, practices and internal control for AML-CFT."

- § While the "monitoring and evaluation" authority given to the AML Board under Section 25 (5) for the execution of the AMLA appears to designate the Board as the compliance oversight authority, in practice, supervision of industry compliance with AML-CFT measures is partly split between the AMLO and the other authorities concerned, as is evident in the arrangement made in the above-mentioned MOU.

2.21 Recommendation 24 *(Regulation and supervision of DNFBPs)*

Summarized text : This Recommendation relates to regulatory and supervisory measures for DNFBPs, including casinos and the other categories of DNFBPs – such as real estate agents, dealers in precious metals and stones, lawyers, notaries and accountants.

AMLA's provision: (There is no specific provision for DNFBPs. Please refer to remarks made in respect of Recommendation 23 above.)

Assessor's comment :

ADB consultants' comment[45] : The comment in the report says:

In relation to casinos there are no legal casinos in Thailand. Discussions have been held with representatives of each of the non-financial businesses and professions covered by Recommendation 12 concerning the need for these businesses and professions to be subject to the AMLA. Agreement has been reached and legislation is being prepared. This will reflect similar arrangements to those applying to financial institutions. (p. 193)

The AMLA will need to be amended to reflect the extension of the Act to non-financial businesses and professions. As noted in the discussion concerning Recommendation 12 Thailand will need to determine the appropriate entities to supervise compliance by non-financial businesses and professions. (p. 193)

IMF (July 2007) comment[46] : The DAR states:

Lawyers are regulated by the Lawyer Act of B.E. 2528 creating the Lawyers' Society of Thailand, the lawyers' SRO….. (DAR para 1081)

…..As mentioned above, the SRO for [accountants] is the FAP. The FAP has the authority to license, suspend, and revoke individual accounting licenses; register all accounting services firms; establish auditing, accounting or other relevant standards; and establish code of conduct rules. A supervisory committee on accounting professions has been set up to regulate the activities of the FAP, to endorse Thai Accounting Standards and rules issued by the FAP, and to consider appeal regarding the FAP's orders. The BOT and the SEC are represented on the supervisory committee. There is also a committee on professional ethics, which can sanction accountants for not complying with the rules on professional ethics. Accountants are regulated by the Accounting Profession Act, B.E. 2547 (2004). The Minister of Commerce administers this Act and has the power to issue Ministerial Regulations and to supervise compliance with the Act. Auditors are regulated by the Auditor Act, B.E. 2505 (1962)….. (DAR para 1083)

Dealers in precious metals and stones are lightly organized and not effectively regulated for AML/CFT. (DAR para 1084)

The real estate agents are not strongly organized….. Every real estate transaction has to be registered with the Department of Land. (DAR para 1085)

The awareness of this sector with regard [to] ML/TF risks is close to zero…..(DAR para 1085)

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[45] ADB consultants' analysis report on Thailand, 9 April 2006
[46] IMF DAR, 24 July 2007

> *Casinos are prohibited from operating in Thailand. However, many illegal casinos and gambling dens operate throughout Thailand. The authorities could take firmer action to suppress illegal casinos. ..... (DAR para 1087)*
>
> *No guidelines have been issued for DNFBPs as none of them are subject to AML/CFT requirements. The nearest relevant instrument is the AMLO Policy Statement. However, that is more in the nature of a statement of political intent regarding the cabinet's and the AMLO's desire to, among other things, apply AML/CFT measures to certain DNFBPs. It does not set out guidelines on how to apply AML/CFT requirements for DNFBPs as there are no requirements that exist. (DAR para 1088)*

Thesis analysis : The analysis of the above comments is as follows:

- § Apparently the comments reflect the situation existing prior to the issuance of the AMLO's Policy Statement on KYC/CDD – which was approved by the Cabinet on 27 February 2007. Under the Policy Statement four types of businesses and professions, namely dealers in (1) precious stones and precious metals, (2) hire-purchase of motor vehicles, (3) personal loans, and (4) electronic cash cards, have now been brought under transaction reporting regime. The extended scope of reporting obligations may not fully cover the types of DNFBPs defined in the FATF Glossary, it can be seen as a measure of sagacious effort to improve the existing reporting regime.

2.22 Recommendation 25 *(Guidelines for FIs and DNFBPs)*

Summarized text: The Recommendation requires the competent authorities to establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat, and in particular, in detecting and reporting suspicious transactions.

AMLA's provision: (There is no specific prevision concerning this Recommendation. Please refer to the remarks made in respect of Recommendation 23 above.)

Assessor's comment :

ADB consultants' comment[47]: The brief comment made in the report says:

> *The AMLO, the Royal Thai Police and supervisory agencies are providing advice and guidance to the financial sector but there is scope for increased activity in this area. (p. 194)*

IMF (DAR) comment[48]: After detailed analysis of respective guidelines, both previous and recent, issued by regulatory authorities, the DAR identified a number of weaknesses that need to be improved. Its comments in para 940 run as follows:

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[47] ADB consultants' analysis report on Thailand, 9 April 2006

[48] IMF DAR, 24 July 2007

Although the issuance of the guidelines mentioned above is an important step forward, the assessors consider that several improvements need to be made as follows:

a. The BOT and the AMLO guidelines have been issued very recently, while the AMLA has been passed in 1999. The FIs have been left without guidance on how to implement the requirements under the AMLA or the Notifications that have been in place from the authorities for more than 7 years. The TBA, along with FBA, acknowledged that they had worked together to develop guidelines for the Thai banks which lacked internal AML/CFT procedures. This situation illustrates that the AML/CFT requirements may not have been properly implemented in the financial industry since 1999.

b. The AMLO Policy Statement is descriptive and does not clearly describe what steps FIs should follow to conform to the AMLA. For example, the Policy Statement states that "FIs should pay special attention to unusually large or suspicious transactions" but does not provide examples of what could be considered as unusual or suspicious operations. The banking industry stated several times the need for the authorities to issue typologies of ML. The AMLO Policy Statement also does not provide any indication on how to assess the "customer's risk level." As for the "Specially Attended Customers", the AMLO Policy Statement does not specify the type of enhanced CDD measures that FIs should conceive and implement.

c. The AMLO and BOT Policy Statements are incomplete inasmuch as they do not cover critical issues as recommended by the FATF. For example, the documents do not contain any reference to the obligation to identify beneficial owners or take reasonable measures to verify the identity of beneficial owners such that the FI is satisfied that it knows who the beneficial owner is. In this regard, the Guidelines issued by the TBA and by the FBA are much more detailed and cover more issues (requirements for new account opening, KYC for different types of customers, general exemption for KYC, warning list). Besides, these guidelines provide precise indications on how banks should conduct risk assessment to find out what risk category their customer belongs to.

d. The assessors found several inconsistencies in some guidelines that may cause some confusion among FIs. For example, the AMLO Policy Statement refers to the concept of "Specially Attended Customers" which encompasses a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently comply with the FATF recommendations, while the BOT guidelines for foreign exchange business refers to the concept of PEPs that are "individuals holding important positions in Government or publics sectors." In the BOT Guideline, foreign exchange businesses are required to "keep the record of the customer ID valued at $10,000 or more," while the AMLO Policy Statement does not specify any threshold. Furthermore, foreign exchange businesses as well as insurance companies are required to "know their employees,"[49] while the AMLO Policy Statement does not require banks to screen the background of their staff. On the other hand, the BOT Policy Statement for non-bank FIs stipulates that suspicious transactions are to be reported to the BOT (and not to the AMLO).

e. The level of detail varies from one guideline to another, which might generate information asymmetry, different practices and therefore a lack of uniformity in the dissemination of KYC/CDD standards throughout the industry. For example, the BOT Policy Statement is more detailed and accurate on the KYC procedures than the AMLO Policy Statement on the same issue. The BOT

[49] See the policy statement for Money Exchange Businesses and section 15.4 of the TLAA policy statement on KYC/CPC.

[Policy] Statement as well as the DOI Policy Statement for insurance companies also give examples of "red flags," while the AMLO guidelines are silent on suspicious activity indicators. A better collaboration between the AMLO and the BOT on one hand and between the different departments within the BOT on the other would ensure stronger consistency in the policy framework.

f. It appears from the discussions with banks that there is a need for further guidance. As an example of this is the lack of description of ML and TF techniques and methods in both the AMLO's and the BOT's guidelines. Banks stated that they need support from the authorities on how to better detect suspicious transactions. Some private sector representatives insisted on the fact that "they had to learn by themselves" and that further assistance from the AMLO and the BOT would be most helpful, notably on how to comply with the reporting obligations. The same concerns were expressed by the financial industry associations that would prefer to receive more guidance from the AMLO regarding how to detect suspicious transactions as well as typologies of ML/FT. They also wish to receive feedback from the AMLO on the reports that they submit. The assessors noted from its meetings with FIs that excessive numbers of STRs may be filed due to a lack of clear guidance from the AMLO and a lack of effective internal controls for AML/CFT compliance, particularly for STRs, leading to STRs being filed with only a slight suspicion by FI staff and possible defensive filing by the FIs.

g. Along the same lines, the financial industry associations also would like more guidance/guidelines issued by each financial sector supervisor that might help each firm to establish internal controls for AML/CFT. Such guidelines could also be useful for each firm to explain to customers about requirements for AML/CFT, in particular CDD requirements. The lack of awareness among the public is an important obstacle that hampers the identification process. In addition, the industry associations noted the need to upgrade awareness of AML/CFT among firms, in particular for senior management of each firm.

Thesis analysis : The analysis of the above comments is as follows:

- <u>BOT and SFIs</u>: As indicated in the paper titled "Bank of Thailand's Roles and Responsibilities", the BOT is delegated by the MOF to conduct only on-site examination of SFIs – which are governed by their respective enabling acts. In matters relating to issues of AML-CFT compliance, SFIs are subject to the MOF guidance. However, on 23 November 2006, the MOF ordered SFIs to adopt the TBA's banking policy and KYC/CDD policy. The TBA documents, in fact, formed the basis of the BOT guidelines.
- <u>AMLA and industry guidelines</u>: Prior to the enactment of the AMLA the financial industry, banking in particular, was traditionally under the direct supervision of the BOT by virtue of the Bank of Thailand Act 1942 and the Commercial Banking Act 1962 (CBA), and it continues to remain so insofar as the overall prudential oversight is concerned even during post-AMLA period. Long before the AMLA's existence industry regulators and supervisors had been taking training courses, participating in seminars, exchanging information and knowledge about overall aspects of banking in general, and specific subjects such as Basel Core Principles and other international standards relating to customer identification and risk management. In other words, the banking industry is quite familiar with the requirement of international banking standards. Under the guidance of the

BOT, the TBA and the FBA, commercial banks in Thailand have been practicing self-monitoring and control so as to ensure compliance with banking industry standards. They may not be under the single, uniform set of guidelines, yet they have followed the industry standards, as much as they could, in the area of AML-CFT as a whole. With the coming of the AMLA the situation has not changed very much – the banking industry kept on observing the standards – until independent international assessors conducted a series of assessments of Thailand's financial sector. Consequently, loopholes and weaknesses that have been brought to light are being addressed and remedied, slow as they may be. It may not be fair, as the assessors have portrayed to say that the AML-CFT requirements may not have been properly implemented in the financial industry since 1999. All along these years the banking industry has in fact been operating without problems of sizable magnitude in terms of non-compliance with or breaching of AML-CFT measures. The industry regulators and supervisors have reported no major cases of violation from any financial institution, nor have there been any serious sanctions – criminal or administrative – imposed on any financial institution for failure to comply with industry guidelines. To be fair to both the industry and the international assessors, all that can be termed as shortcomings are as follows:

1. Although there have already existed industry guidelines or instructions for the banking industry to follow international banking standards in general, AMLA–specific guidelines or instructions have been slow to come and incomprehensive.

2. Even AMLA-specific guidelines or instructions have recently been issued, the question of clear, designated authority particularly of supervision still remains to be addressed.

3. The intent of the AMLA itself seems to leave it broadly open to interpretation in relation to details of practical implementation of its provisions. For example, the AMLA defines only 'property connected with the commission of an offense' in Section 3 but it does not define the term 'property'. It is because in the context of the AMLA special meaning is required. The expression 'property' is, however, defined in Section 99 of the Civil and Commercial Code as including 'things' and 'incorporeal objects susceptible of having a value and of being appropriated' and 'things' is defined in Section 98 thereof as 'corporeal objects'. This definition will govern the meaning of the term 'property' for the purpose of the AMLA. As such , the term 'property' in the AMLA has the same meaning as defined in the CCC.
   Another example is the monitoring authority of the AML Board under Section 25 (5) of the AMLA; among the powers and duties is included the power and duty 'to monitor and evaluate the execution of the Act'. The power to 'monitor' is so vague and open to varying interpretation, indeed. Is the Board required to physically conduct supervision or examination, on-site or off-site, of financial institutions as an industry regulator does to see if they

are fully compliant with the AML-CFT policy matters under the AMLA? It is not supposed to be so. The Board also serves as an advisory body in AML-CFT policy matters. As such, it is quite obvious that the Board would rather delegate its supervisory authority to an appropriate industry regulator that would conduct on-site examinations and supervise the industry concerned. In the process, delegation of authority may be passed down the line from the top to the regulator and to the man-on-the-spot. Thus, the Board formulated the policy via the AMLO that distributed it to the whole industry. Then the respective industry regulators compiled detailed guidelines in line with the broad policy and issued them as industry guidelines for all the industry to follow, as is the case with the recent KYC/CDD guidelines.

§ AMLO and Policy Statement: In fact issuance of the AMLO's Policy Statement was preceded by the two industry guidelines, i.e. the TBA's AML-CFT Policy and the BOT's Policy Statement regarding AML-CFT guidance for FIs. The industry guidelines contain detailed and specific elements concerning KYC/CDD, classification of customer risk levels, risk management, STR, record retention, ongoing monitoring, etc. In comparison, the AMLO's Policy Statement merely mentions in general terms on the following issues:

§ Re. Typologies of ML: The Policy Statement urges the FIs to "pay special attention to unusually large or suspicious transactions which have no apparent economic or visible lawful purpose" and to examine the background and purpose of such transactions. Why typologies are not specified is understandable if the following points are taken into consideration.

First, ML methods are many and varied and not easily identifiable. Second, the financial sector is already aware of the most commonly used methods via seminars, symposiums and training courses. They are also aware that the methods keep changing with the development of new information technologies. Third, there are, however, various detectable means; one of them is vigilance. Vigilance is synonymous with special attention given to unusually large or suspicious transactions lacking apparent economic or visible lawful purpose. Applying vigilance to such transactions and measuring them against KYC/CDD standards will ultimately expose the types of methodologies used in such transactions. Fourth, newer methods of money laundering are variable by nature so they are better left for expert discussion and dissemination at seminars and training courses. Last, the Policy Statement recommends FIs to "issue regulations, policies, procedures and manuals in accordance with the Policy Statement."

§ Re. Customer risk level: The Policy Statement generically urges the FIs to "have appropriate due diligence measures and classify customers by risk of committing predicate offenses or money laundering offenses under the Anti-Money Laundering Act, including applying these

procedures in their branches in foreign countries". While the AMLO's Policy Statement is devoid of specifics the industry guidelines classify the customers' risk levels as – level 1 (low), level 2 (medium) and level 3 (customers requiring special attention) – and assign respective KYC/CDD and review process.

§ Re. Enhanced CDD measures: The Policy Statement simply recommends the FIs to "have appropriate and enhanced due diligence measures for specially attended customers". In this respect, the industry guidelines specify enhanced CDD measures for risk-level 3 customers, i.e. customers requiring special attention or higher-risk customers. The measures are more stringent than those for other levels and more requirements are prescribed in addition to those of customers at levels 1 and 2.

§ Re. Policy Statement and critical issues: The comment that the AMLO and BOT Policy Statements are incomplete inasmuch as they do not cover critical issues as recommended by the FATF can be answered from the angle of theoretical approach. The example cited in the comment relates to the obligation to identify beneficial owners in the area of KYC. In theory, the AMLO Policy Statement states that the FIs should "assess the customer's risk level using relevant information obtained from the customer or other sources. Information kept must be appropriately and sufficiently verified against reliable sources and be analyzed and reviewed periodically". This expression is a policy statement. The AMLO under the AMLA, and in the case of the BOT under the BOT Act, are the authorities representing respective policy–formulating bodies. A policy statement is a policy statement; that in theory can be nothing more. A policy, when put into practice, needs to be backed up with details of action plan and procedures for proper implementation – which typically fall within the remit of respective regulators or supervisors. The above policy involves a number of critical elements of KYC/CDD, which are already prescribed in detail in the industry guidelines.

§ Re. Lack of uniformity between AMLO and BOT guidelines: Differences in the definition of PEPs (politically exposed persons) are cited as a lack of uniformity between the AMLO's and BOT's Policy Statements and the SEC's Notification in the DAR. The DAR's comment is spot on as far as varying concepts in the definition are concerned. What is mentioned in the AMLO's Policy Statement is the definition of "specially attended customer" – the text of which runs as follows:

> *"Specially Attended Customer" means a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently complies with the Financial Action Task Force Recommendations, a customer from a country not having anti-money laundering measures, or a customer that the Anti-Money Laundering Office has informed a financial institution to treat as such accordingly, or a customer that has been listed as a high risk*

business or profession such as trading in [precious] metals or precious stones, money exchange or illegal loans, etc.

First, it should be noted that the AMLO Policy Statement's definition of specially attended customers (SAC) covers not less than 8 types of customers that include PEPs. Since the definition of PEPs is the main subject of DAR comments in this particular case, it needs to compare with the definition of the FATF Glossary. The Glossary definition runs as follows :

Politically Exposed Persons (PEPs) are individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior executive of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

The FATF definition no doubt is very extensive in terms of categories covered but is limited to PEPs in a foreign country. The AMLO Policy Statement's definition, on the other hand, is inclusive of not only foreign PEPs but also domestic PEPs, and the expression "any person having relationship with such a customer" is capable of interpreting to cover family members or close associates of PEPs. In other words, this definition goes beyond what the FATF Glossary defines. When interpreted in the literal sense of the word "a customer relating to politics", the definition is seemingly generic. But if interpreted in the context of AML-CFT terminology, it can be far extensive; being generic in a way allows greater room for interpretation, which in turn yields greater benefit to the authorities combating ML and TF. Given the prevailing situation where policy-oriented corruption and abuse of power in particular is rampant, the policy-makers might have thought of making the definition deliberately broad and generic.

Industry guidelines may contain inconsistent, varying ways of defining PEPs. Obviously, differences stem from differences in interpretation, and as a result different interpretations would cause some confusion among different categories of FIs. This is a potential situation the financial sector is likely to face sooner or later. Nonetheless, this likely scenario may not create a crisis in both the government and private sectors. The AMLO Policy Statement's definition, as it is, is capable of settling the issue when it comes to legal interpretation of PEPs for the purpose of legal proceedings.

§ Re. Risk of information asymmetry and different practices: The risk undoubtedly exists but it is not insoluble. As a matter of fact, the fight against ML and TF is a collective campaign and as such coordination and collaboration is a standard practice among authorities concerned, as is evident in the joint efforts of the public and private agencies that have resulted in current industry guidelines.

§ Re. Inconsistencies in guidelines: One of the important factors to consider is that long before the launch of AML-CFT legislation businesses of financial institutions have been operating under the guidance of respective industry regulators that set industry guidelines mostly in conformity with international standards and best practices. For instance, the BOT has acted as the overall regulator and supervisor of commercial banks and non-banking institutions particularly by virtue of such laws as the Bank of Thailand Act 1942 (as amended), the Commercial Banking Act 1962 (as amended), the Exchange Control Act 1942, the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business 1979 (as amended), etc. Guidelines or instructions issued prior to the AMLA would not generally reflect AML-CFT matters as required by the AMLA and related laws but they essentially would be within the legal framework of international best practices. Each industry regulator, such as the BOT, the SEC, and the DOI, would make rules and regulations that would best meet their respective sector's requirements. With the enactment of the AMLA, obligations under the new Act pose a new challenge to the sectors which require a uniform implementation procedures and a central national authority to deal with. Amendments of existing rules and regulations or making entirely new ones are slow to come, the chief reasons being the absence of a clearly designated central regulatory authority and the lack of expertise in core ML and TF subjects and related issues. However these shortcomings would not make good excuses for any lack of action. The situation in Thailand and beyond warrants active moves on the part of authorities to cope with the growing threat of ML and TF in the financial sector in particular, and in society in general. Accordingly, exercising traditional authorities granted under their respective laws and utilizing expertise acquired through seminars and training, the industry regulators reacted by prescribing rules and regulations that later turn out to be inconsistent with the Policy Statements of the AMLO – the overall regulatory authority in AML-CFT matters. The following answers in the DAQ will support this statement.

> *One of the purposes of the TBA establishment is to make agreements and or lay down regulations on matters to be followed by the members, or matters that are not to be followed by the members, with the object of ensuring an orderly execution in banking practices. Therefore, the TBA has set up its own internal Joint-Working Group (JWG) consisting of its own member banks, which focuses on banks' AML-CFT policy, with the objective of setting up the minimum standards and guidelines to help all banks to write up their own policies and procedures for management control and risk prevention. The goal is to provide some standard policies, procedures and training that are designed to help all banks to ensure the integrity and security of their banks' businesses and to be in compliance with applicable laws and regulations.*[50]

[50] BOT's answers to the DAQ under Section 3.10.1 (p. 341), February 2007

As a result of this established practice, the TBA's banking policy on AML-CFT (December 2006 version) came out to serve as the industry guidelines for the banking sector.

On non-bank institutions, the BOT answers under Section 3.10.1 also states: "AML-CFT compliance of money-changers and money transfers, which are non-bank institutions, is the responsibility of the Exchange Control and Credits Department under Financial Operations Group of the BOT." (DAQ page 346)

The DAR's comment that "on the other hand, the BOT Policy Statement for non-bank FIs stipulates that suspicious transactions are to be reported to the BOT (and not to the AMLO)" (DAR page 209) is very likely a misstatement of fact. In the BOT's Policy Statement Re: Measures on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) for Financial Institutions issued on 19 January 2007, the closest provision in Article 2.4 (1) – which the DAR comments most probably referred to and its comment derived from – reads as follows:

> *2.4 Risk Management*
>
> *The board of financial institutions should pay attention to and arrange to have clear and appropriate risk management for anti-money laundering and combating financing of terrorism as well as communicate to all staffs to acknowledge and comply with so that their implementation will be effective. For example,*
> *(1) Establishing clear and written procedures for reporting suspicious transactions to the supervisory authorities as well as communicating to all relevant staffs to acknowledge and comply with.*

Clearly, in the above provision there is no instruction saying that non-bank FIs are to report suspicious transactions to the BOT. The possible misinterpretation is taking the duty of making STRs to the supervisory authorities as the staff duty to report suspicious transactions to the supervisory authorities within the financial institution. Even assuming it as true, then under the AMLA, the FI concerned is required to make STRs to the AMLO. That obligation is already implied in the term "the supervisory authorities", the meaning of which does not merely mean the supervisory authorities within an institution it also covers the designated authorities under the AMLA, i.e. the AMLO.

§ Re: Need for further guidance: Further guidance from the AMLO is undoubtedly needed in respect of ML and TF techniques and methods, feedback for STRs filed with the AMLO, etc. In fact, the AMLO and related authorities are planning to conduct more awareness raising seminars and refresher courses for all the stakeholders under the ADB technical assistance "Three-Year Action Plan"[51] regarding AML-CFT Regime Development for the period from mid-2006 to mid-2009. The

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[51] ADB, Asian Development Bank Technical Assistance to the Kingdom of Thailand for Promoting International Cooperation on Anti-Money Laundering and Combating the Financing of Terrorism (TAR: THA 39119): Three-Year Action Plan, 9 April 2006

Action Plan will include, among others, the following activities particularly for the financial sector:

5. *Conduct training/workshops to "train the trainers." This will be done by ADB.*

   This will involve relevant agencies (AMLO, BOT, SEC, DOI and CPD) in collaboration with the Thai Bankers' Association and other industry associations on how to train staff of FIs .

9. *Conduct training workshops to "Train the Trainers" (possibly aimed at a core cross-sectoral group) in collaboration with the Thai Bankers' Association and other industry associations.*

10. *Conduct workshops/seminars to raise awareness for senior management and staff of DNFBPs. The issues to be covered include:*
    particular AML-CFT issues surrounding DNFBPs,
    increased awareness of ML-FT risks to the broader business and financial sectors,
    enhanced KYC and CDD requirements,
    effective internal controls for AML-CFT,
    suspicious transaction reporting,
    cash transaction reporting arrangements,
    international funds transfer,
    information reporting,
    compliance procedures, and
    other requirements under AMLA.

11. *Develop and adopt a compliance program with specific objectives for the end of 2006, 2007 and 2008.*

    Program to cover FI's and DNFBPs

13. *Develop feedback guidelines for FIU, FIs and DNFBPs; to be done by AMLO.*

22. *Conduct workshops/seminars to raise awareness for the staff of DNFBPs. These issues to be covered include:*
    particular AML-CFT issues surrounding DNFBPs,
    increased awareness of ML-FT risks to the broader business and financial sectors,
    enhanced KYC and CDD requirements,
    effective internal controls for AML-CFT,
    suspicious transaction reporting,
    cash transaction reporting arrangements,
    international funds transfer, information reporting,
    compliance procedures, and
    other requirements under AMLA.

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41. *FATF requirement to expand the range of financial sector entities and nonfinancial businesses; and professions which must meet AML-CFT responsibilities will require extensive training. This will require a number of separate activities targeted at different groups.*

    The first target group will be senior management and staff of FIs (including securities, futures, and fund management companies).

    This group needs workshops/seminars to cover
    increased awareness of the ML-FT risks to the financial sector;
    enhanced KYC and CDD requirements;
    effective internal controls for AML-CFT;
    suspicious transaction reporting;
    cash transaction reporting arrangements;
    international funds transfer; information reporting;
    compliance procedures;
    other requirements under AMLA; and
    AML-CFT issues surrounding DNFBPs.

42. *Conduct workshops/seminars to train securities, futures and fund management companies, as well as SEC staff, concerning*
    - *STR reporting requirements under AMLA & penalty involved;*
    - *techniques to identify and verify beneficial owners and controlling persons (in CDD process); and*
    - *techniques to identify suspicious transactions.*

45. *AMLO to develop and run training on changes to the law concerning:*
    - *new reporting entities,*
    - *obligations of those entities, and compliance procedures.*

46. *Organize awareness-raising seminars for all stakeholders (FIs and DNFBPs) on requirements of international standards and provisions in the AML-CFT framework.*

48. *Develop and implement a training module for compliance officers and those with responsibilities for training bank and other reporting entity staff to address issues such as:*
    - *suspicious transaction reporting,*
    - *cash transaction reporting,*
    - *international funds transfer information reporting,*
    - *KYC and CDD obligations,*
    - *compliance with directives on ML, and*
    - *FT issues.*

It can be observed that the suggested activities under the 3-year action plan are aimed not only at filling the gaps existing between the regulatory authorities and the financial sector but also at enhancing the

effectiveness of the regulatory system of Thailand's AML-CFT regime as a whole. Time is needed to implement the plan and in the meantime both the regulatory authorities and the regulated industry have to settle for stopgap measures, as has been the case so far.

§ Re: Internal controls and public awareness: Despite the authorities' on-going efforts the current level of internal controls of the financial sector still remains weak and of public awareness of AML-CFT requirements in general remains low, pointing to an urgent need for upgrading. As indicated above, the 3-year action plan includes activities to address these issues.

§ Re DNFBPs and lack of guidelines: Of the 5 categories of DNFBPs mentioned in Recommendation 12, (a) casinos are illegal in Thailand so guidelines are not applicable; (b) real estate agents have no guidelines because the obligations to report threshold-based reporting and suspicious transaction reporting are imposed on land offices concerned where any transaction is required to be registered; (c) dealers in precious metals and precious stones have recently been brought under the reporting regime pursuant to the AMLO's Policy Statement; (d) lawyers, notaries, accountants, and other independent legal professionals belong to respective self-regulatory organizations (SROs) and they are therefore not subject to the reporting regime; and (e) trusts are not allowed in Thailand so no reporting obligations are applicable whereas company service providers are mostly law firms and they are self-regulatory entities, requiring no reporting obligations.

Under the AMLO's Policy Statement, reporting obligations have been extended to 4 more categories, i.e. (a) dealers in precious metals and precious stones, (b) dealers in hire-purchase of motor vehicles, (c) dealers in personal loans, and (d) dealers in electronic cash cards. Of them, (c) and (d) would fall in the categories of financial institutions, while (a) would belong to DNFBPs, whereas (b) would come under the categories of non-DNFBPs or other non-financial businesses and professions.

As regards the question of enforceability of the AMLO's Policy Statement, detailed discussions are made under Recommendation 15, which may be referred to.

2.23 Special Recommendation IV *(Reporting suspicious transactions related to terrorism)*

Summarized text: The Special Recommendation requires FIs or other entities to report forthwith to the competent authorities any suspicion of funds linked to FT.

AMLA's provision: (AMLA's Section 13 requires financial institutions to report to the AMLO any suspicious transactions.)

Assessor's comment :

ADB consultants' comment[52]: The comments contained in the consultants' report are as follows:

In relation to SR IV, which requires the reporting of suspicious transactions related to possible or actual terrorism and terrorist organizations, Section 13 of the AMLA requires the reporting of transactions related or possibly related to a predicate offense. As the list of predicate offenses now includes Sections 135/1, 135/2, 135/3 and 135/4 of the Penal Code which deal with terrorism and its financing any suspicious transaction possibly relating to these offenses must be reported. (p. 41)

SR IV only requires reporting by entities subject to AML-CFT requirements. When the businesses and professions to which the AMLA applies are extended these businesses and professions will then have to comply with the reporting obligations in Section 13 of the AMLA. (p. 41)

IMF (DAR) comment[53]: The DAR's comments are summarized as follows:

In addition, the persons who are required to report suspicious transactions are limited to the FIs as defined in the AMLA and these do not cover all of the categories of persons required to report suspicious transactions under the FATF 40 Recommendations. (DAR para 766)

The reporting requirements exempt transactions relating to those set out in Ministerial Regulation 5 of 2000 which leaves a gap in the reporting regime of the AML/CFT framework of Thailand, as it would appear that no assessment has been undertaken of the ML risk (especially in the case of transactions to which the Government state agencies or enterprises are parties)..... (DAR para 767)

Reporting entities are required to report transactions that fall within the definition of a suspicious transaction under section 3 of the AMLA even where they consider them to involve tax matters. Given that tax evasion is not a predicate offense for ML, this means that such transactions are likely to be considered as suspicious because they are complicated, lack economic feasibility, or are believed to have been made to avoid the applicability of the AMLA. (DAR para 770)

Thesis analysis : The analysis of the above comments is as follows:

The ADB consultants' comments contain no critical remarks and will not require an analysis.

As regards the IMF DAR, the following is the analysis of the comments:

§ The statement that STR reporting persons are limited to the FIs as defined in the AMLA and they do not cover all of the categories of persons defined in the FATF Recommendations is partly true. In fact, the AMLA-defined reporting persons are not limited to the FIs but would cover some

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[52] ADB consultants' analysis report on Thailand, 9 April 2006
[53] IMF DAR, 24 July 2007

DNFBPs if Section 16 is thoroughly analysed. (See explanations under Recommendation 16.)

§ The statement that reporting exemptions under Section 18 of the AMLA and Ministerial Regulation 5(2000) leaves a gap in the reporting regime is justifiable to the extent that Thailand has not undertaken any assessment of ML risk of the exempted persons and entities. (See explanations under Recommendation 13.)

2.24 Special Recommendation VI *(Alternative remittance)*

Summarized text: This Special Recommendation requires countries to have businesses providing money or value transfer service licensed or registered and to make them subject to all the FATF Recommendations applicable to banks and non-bank financial institutions, as well as to make illegal service providers subject to administrative, civil or criminal sanctions.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[54]: The following is the extract of comment made in the consultants' report:

Dealing with illegal informal systems is notoriously difficult. In making such systems unlawful Thailand has met the obligations accepted by it under the FATF Recommendations. However, Thailand will need to place emphasis on identifying and dealing with unlicensed operators. (p. 44)

IMF (DAR) comment[55]: The DAR's comments read as follows:

A person who operates as a money transfer agent must obtain a license. The Ministry of Finance is authorized to issue such licenses while the BOT processes applications and makes recommendations..... (DAR para 1026)

Authorized money transfer agents are not subject to the AMLA. However, a number of measures have been taken to ensure that authorized money transfer agents comply with the applicable FATF Recommendations..... (DAR para 1032)

Several organizations monitor and restrict illegal remittances activities- among them [are] the BOT, the AMLO, the MOF and the RTP. (DAR para 1036)

At present, a money transfer license is specifically granted to each branch or agent of a money transfer operator, enabling the Competent Officer to maintain a current and complete list of all money transfer operators including their branches or agents at all times. However, as mentioned above, many illegal remittances are operating throughout the country. The assessors were also informed that some authorized money changers act as illegal remitters. (DAR para 1040)

[54] ADB consultants' analysis report on Thailand, 9 April 2006
[55] IMF DAR, 24 July 2007

> *In theory, the sanctioning arsenal looks broad and adequate….. (DAR para 1041)*
>
> *The authorities could not provide any information about the nature of sanctions, if any, that have been imposed for the cases of illegal remittances that have been detected. (DAR para 1046)*
>
> *Thailand has yet to amend section 5 of the AMLA and implement the measures set out in the FATF Best Practice Paper for SR.VI. (DAR para 1047)*
>
> *There are systems in place to ensure that regulated MSBs comply with the limited AML/CFT requirements that apply to them. However, some remitters are able to operate without the need for any licensing or registration and many others operate illegally. (DAR para 1048)*

Thesis analysis : The analysis of the above comments is as follows:

Both the ADB consultants' and the IMF DAR's comments in general do not require an analysis, except for a certain point of comment of the latter, which is mentioned below:

§ The statement that many illegal remittances are operating throughout Thailand is correct to a certain extent despite the lack of supporting statistics either on the assessors' or the assessee's part. It is common knowledge that there exist not only in Thailand but also in other nations, most notably in Asia, remittance systems—whether they are called "alternative remittance systems" or "informal remittance systems" or " underground bank" or "underground banking systems". Especially in developing economies they are an essential element, providing the only viable means of transferring value domestically and abroad and a comparable service.

The Thai authorities are well aware of this significant role played by the underground banking systems. Under existing laws only those legal persons are eligible for registration and licensing. Those operating illegal remittance businesses are liable to criminal punishment.

It should be noted that besides such money service businesses (MSB) as the Central Department Store Ltd., the Thailand Post Co., Ltd., and the "7-Eleven", there also is "Western Union" that operates the money transfer business and whose transfers are mostly external. As a general rule, money transfer agents are required to apply for a license and in this regard the BOT processes the applications and the Ministry of Finance issues licenses. Registered agents are then subject to supervision and examination by the Competent Officer of the Ministry of Finance and "are required to comply with the principles and practices which are consistent with applicable FATF Recommendations especially those regarding KYC/CDD, reporting requirements, and maintenance of identification data and transaction records." (DAQ, p. 379)

2.25 Special Recommendation VII *(Wire transfer)*

Summarized text: This Special Recommendation requires financial institutions, including money remitters, to include accurate and meaningful originator information on funds transfers and related messages, and to conduct enhanced scrutiny and monitor for suspicious activity funds transfers with incomplete originator information.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[56]: The comment made by the consultants' in their report runs as follows:

Money transfer agents are regulated by the BOT under the Exchange Control Act. They are subject to on-site and off-site examination by the BOT and monthly transaction reporting to the BOT (date of transaction, value and purpose of transaction, currency denomination, client's name and address, beneficiary). (p. 47)

IMF (DAR) comment[57]: The DAR contains the following comments:

[The] AMLA requires ordering and beneficiary FIs to report any wire transfer, domestic or cross border, with a value equal to or above 2 million baht ($52,800) for cash transactions and 5 million baht ($132,000) for non-cash transactions. Cross-border wire transfers are additionally subject to the regulations of the Exchange Control Officer which require FIs to arrange for the customer to complete a foreign exchange form for any transaction equal to or above $20,000…… (DAR para 727)

As specified above, full originator information is only obtained for wire transfers equal to or above the threshold of 5 million baht ($132,000) where cash is not involved or 2 million baht ($52,800) if cash is involved. (DAR para 731)

These thresholds exceed the $1,000 threshold in the FATF Recommendations and, in any event, are too high, especially when compared to average incomes. …. (DAR para 732)

Full originator information as well as purpose of the transaction is obtained for cross-border wire transfers involving foreign currencies for any transaction of value equal to or above $20,000 as specified above. FIs are also required to complete a simplified form for foreign currency transfers of less than $20,000 (or equivalent). However, there is no obligation that such information be transmitted in the wire transfer as required in SR.VII. (DAR para 733)

According to the authorities, BOT Regulation on BAHTNET Services B.E. 2549 (2006) requires originators to fill in their name and/or account number, which will permit the authorities to trace back to the originator, as well as beneficiary's name and account number in the payment instruction. (DAR para 735)

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56 ADB consultants' analysis report on Thailand, 9 April 2006
57 IMF DAR, 24 July 2007

In addition, the full information can be provided by the ordering FIs to the beneficiary FIs or appropriate authorities upon request since the ordering FIs must keep transaction records for 10 years according to the CCC which complies with the FATF's Revised Interpretative Note to SR.VII. (DAR para 736)

As a general rule, all FIs are required to keep records relating to sections 20 and 21 under [the] AMLA for 5 years and any other transaction records for 10 years under the CCC. (DAR para 738)

There are no applicable requirements imposed in Thailand [for beneficiary FIs re. risk-based procedures for transfers without originator information]. (DAR para 740)

The BOT monitors compliance of BAHTNET members with the system's rules and regulations that support SR.VII..... (DAR para 741)

The BOT oversees the payment system as empowered by the provisions of the BOT Act 1942, the Royal Decree Regulating the Affairs of the BOT 1942, the Currency Act 1958, and certain related rules and regulations. Regarding [-] the BOT regulation on BAHNET services B.E. 2549, the BOT does have the power to terminate the service for any user who does not fill-in all required information. (DAR para 742)

Thesis analysis : The analysis of the above comments is as follows:

The ADB consultants' comment does not call for an analysis whereas the IMF DAR's would. The points of analysis are as follows :

§ The statement that the thresholds for reporting transactions under the AMLA exceed the $1,000 threshold in the FATF Recommendations is fairly justified, given the fact that Thailand's economy is still largely cash-based. For, the AMLA threshold for a cash transaction is 2 million Baht (approximately $ 52,000) and for a non-cash transaction 5 million Baht (approximately $ 132,000), and for any cross-border wire transfer a customer is required to complete a foreign exchange form if the amount is equal to or above $20,000.

  As for the FATF thresholds, the following need to be noted:
  The thresholds designated in the Interpretative Notes to the FATF 40 Recommendations are :

  (1) For transactions of FIs for occasional customers—USD/EUR 15,000
  (2) Transactions of casinos, including internet casinos—USD/EUR 3,000
  (3) Transactions of precious metals and stones dealers—USD/EUR 15,000

  Note : For all cross-border wire transfers of USD/EUR 1,000 or more, full originator information is required.

§ The statement—there are no applicable requirements for beneficial FIs regarding risk-based procedure for transfers without originator information—is also quite justified considering the lack of such requirements.

2.26 Special Recommendation VIII *(NPOs)*

Summarized text: The Special Recommendation requires countries to review the adequacy of laws and regulations that relate to non-profit entities such as non–profit organizations (NPOs) that can be abused for the financing of terrorism.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[58]: The consultants' report contains the following comment:

SR VIII requires that 'countries should review the adequacy of their laws and regulations that relate to entities that can be abused for the financing of terrorism'. (p. 48)

Thailand has recently received technical assistance from the United Kingdom [Charity] Commission and will be reviewing its regulatory arrangement. (p. 48)

UK Charity Commission's comment[59]: The second draft report of the UK Charity Commission of January 2007 made the following comments:

§ *The legal and regulatory basis for effective regulation of NGOs in Thailand exists. There is also a clear understanding within government of why they are regulating the sector. However, the law is not always implemented effectively and there is much duplication of regulatory activity. Legislation has been developed piecemeal and is outdated, and as a result regulation in places lacks strategic oversight and does not always achieve its aim. (p. 7)*

§ *The impact of the regulatory and legislative system on the effectiveness of the sector is mixed. For most NGOs there is little scrutiny, thereby leaving them free to operate. However, those NGOs that are more exposed to regulation (such as those with foreign employees) found the regulatory system to be at times bureaucratic and slow. Meanwhile, the focus of regulation on specific areas meant that legitimate NGOs operating in sensitive areas may find it impossible to operate whilst many NGOs avoid detailed scrutiny and may possibly be victims of unnoticed abuse. (p. 7)*

§ *Overall, however, it is encouraging to note the increased professionalism and impact of the NGO sector and the developing operational partnership with government. However, there is still great unfulfilled potential which could be developed with a less cautious and risk-averse approach from both parties. (p. 7)*

IMF (DAR) comment[60]: The DAR made a number of comments as follows:

Thailand has not yet completed a full review of the adequacy of laws and regulations that relate to non-profit organizations that can be abused for FT….. (DAR para 1178)

No effective outreach to NPOs has been undertaken yet with a view to protecting the sector from TF abuse. Apart from isolated references in annual seminars conducted by some government authorities, no outreach has been practiced in

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[58] ADB consultants' analysis report on Thailand, 9 April 2006
[59] UK Charity Commission's second draft Report on Thailand's NGO Regime, January 2007
[60] IMF DAR, 24 July 2007

terms of (i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; or (ii) promoting transparency, accountability, integrity and public confidence in the administration and management of all NPOs. (DAR para 1181)

The authorities do not conduct an effective supervision or monitoring of such NPOs which have a significant portion of the financial resources under control of the sector. (DAR para 1182)

However, all NGOs are subjected to regulatory oversight in terms of monitoring, accountability, and reporting in compliance with applicable laws and regulations. When required, the authorities may exercise their power to have full access to information on the administration and management of a particular NPO. (DAR para 1183)

Under the existing laws and regulations relating to NPOs, all NPOs are required to maintain and furnish essential information including (1) the purpose and objectives of their stated activities and (ii) the identity of those who control or direct their activities. This information is publicly accessible. (DAR para 1186)

Sanctions for violations of any rules by NPOs are available under several laws ….. (DAR para 1187)

Sanctions range from fine, dissolution, or de-registration to imprisonment of NPO officials. The application of such rules does not preclude parallel civil, administrative, or criminal proceedings. (DAR para 1188)

All NPOs are required to register in accordance with applicable laws. …. (DAR para 1189)

….. NPOs are not covered by the AMLA for AML/CFT reporting purposes as yet. Assessors were not satisfied that there is effective cooperation, coordination, and information sharing among all levels of appropriate authorities or organizations that hold relevant information on NPOs. (DAR para 1190)

While LEAs have general investigative powers, Thailand has not implemented specific measures to ensure that it can effectively investigate and gather information on NPOs. No measures have been taken to ensure effective domestic cooperation, coordination, and information sharing among all levels of appropriate authorities or organizations that hold relevant information on NPOs of potential terrorist concerns. …. (DAR para 1191)

….. However, no contact points have been identified for dealing specifically with international requests for information about NPOs. (DAR para 1194)

The assessment team observed that little has been done by Thailand in terms of working collaboratively with the NPO sector to promote transparency, integrity, and public confidence in the administration and management of NPOs. Thailand did not demonstrate that it has undertaken outreach programs to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse. No work has been done with the NPO sector to develop and refine best practices to address TF risks and vulnerabilities and thus protect the sector from terrorist abuse. (DAR para 1196)

Given the threat level posed by ongoing terrorist activity in the south of the country, it is of concern that Thailand has not yet undertaken measures to mitigate the FT risks that NPOs may be posing. (DAR para 1197)

Thesis analysis : The analysis of the above comments is as follows:

The following are respective analyses of the comments of the ADB consultants, the UK Charity Commission and the IMF DAR:

§ The ADB consultants' statement that Thailand has recently received technical assistance from the UK Charity Commission and will be reviewing its regulatory arrangement confirms Thailand's ongoing review process of its NGO legal regime.

§ A team from the UK Charity Commission made an on-site visit to Thailand in July 2006 and prepared a draft analysis report (second draft, January 2007). The view taken by the report is that the most effective strategy would be to develop an NGO regulation system that collects new, comprehensive and accurate information on the NGO sector. The report then made eight **strategic recommendations** as follows :

(1) Undertake a strategic review of the NGO sector and its regulations.
(2) Open dialogue between government and the NGO sector.
(3) Help NGOs comply with regulations.
(4) Provide incentives to NGOs to comply with regulations.
(5) Enforce compliance.
(6) Establish a single, independent specialist regulator.
(7) Create a comprehensive national database of NGOs.
(8) Encourage self-regulation by the NGO sector.

While these strategic recommendations are meant for development of an overall NGO regulation system, there also are a total of 61 **specific recommendations** made by the team that are particular to certain areas of regulation in respect of the following 16 areas:

(1) Legal definitions (3 recommendations)
(2) Registration threshold (2 recommendations)
(3) Unregistered NGOs (4 recommendations)
(4) Scrutiny of registration applications (6 recommendations)
(5) Location for registration (1 recommendation)
(6) Re-registration (2 recommendations)
(7) Governance procedures (2 recommendations)
(8) Monitoring process (9 recommendations)
(9) Scrutiny of information (4 recommendations)
(10) Identifying abuse (1 recommendation)
(11) Investigating abuse (4 recommendations)
(12) Dealing with abuse (3 recommendations)
(13) Taxation (8 recommendations)
(14) Investments (1 recommendation)
(15) Fund-raising (1 recommendation)
(16) Foreign NGOs (10 recommendations)

It is obvious that the Thai authorities have now to consider taking appropriate measures in respect of the suggested strategic and specific recommendations.

§ .As regards comments in the IMF DAR, the statement that the authorities do not conduct an effective supervision or monitoring of NPOs with a significant portion of the financial resources under control of the sector is correct to the extent of the lack of effective ongoing supervision and monitoring. However, when it comes to threshold-based or suspicious transactions, such transactions are essentially subject to reporting regime, through which financial activities of NPOs concerned could be traced back and made liable to legal sanctions according to the applicable laws.

The statement that NPOs are not covered by the AMLA for AML-CFT reporting purposes as yet is quite correct. When the overall review of the NGO regulatory system currently in process is completed the situation is very likely to be improved.

Regarding the statement that no contact points have been identified for dealing specifically with international requests for information about NPOs, it may not be true considering the fact that where AML-CFT-related information, i.e. exchange of financial intelligence between the AMLO and foreign counterparts, is concerned the AMLO is designated to deal with international requests.

With regard to the statement—little has been done by Thailand collaboratively with the NPO sector to promote transparency, integrity and public confidence in the administration and management of NPOs—it is clear that the Thai authorities have to address this important aspect of the NPO regime as a matter of priority.

3. Issues of institutional measures

3.1 Recommendation 26 *(FIU)*

Summarized text: This Recommendation relates to setting up of a national FIU of each jurisdiction. It requires countries to establish [an] FIU that serves as a national center for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential ML or FT and that the FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR.

AMLA's provision: Thailand's national FIU – the AMLO – was set up under Chapter 5, Sections 40 to 47, and **Section 40** prescribes its powers as follows:

(1) to carry out acts in the implementation of resolutions of the Board
and the Transaction Committee and perform other secretarial tasks;

(2) to receive transaction reports submitted under Chapter 2 and acknowledge receipt thereof;
(3) to gather, monitor, examine, study and analyze reports and information in connection with the making of transactions;
(4) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;
(5) to conduct projects with regard to the dissemination of knowledge,
the giving of education and the training in the fields involving the execution of this Act, or to provide assistance or support to both Government and private sectors in organizing such projects;
(6) to perform other activities under this Act or under other laws.

Assessor's comment :

ADB consultants' comment[61]: The consultants' comments contain a number of crucial points but what is most relevant to this Recommendation is as selected below:

Any doubts about the powers and functions of the AMLO as the Thai FIU should be removed by clarifying legislation. In particular the legislation should explicitly provide that the powers conferred on the Transaction Committee can also be used by the staff of the AMLO to give effect to decisions of the Transaction Committee…. (p. 196)

IMF (DAR) comment[62]: The DAR made, among others, the following comments:

In practice, the AMLA creates a structure for setting and enforcing AML/CFT policy, identifying, tracing and vesting illegal proceeds in the State, and investigating ML activities for civil vesting. The structure includes the AMLB, the TC, and the AMLO. The functions of the FIU envisaged in FATF R.26 are carried out within the AMLO by the Information and Analysis Center (IAC).

The assessors recommend that the AMLA be amended to provide an explicit power for ALMO to disseminate information instead of relying on other generic authorities for government bodies. The authorities spoken to concurred that the AMLO needs to increase the number of pro-active cases disseminated to LEAs, and agreed that has not been an operational priority to date as the AMLO has focused on civil seizure cases. (DAR para 342)

The AMLO needs to re-focus its operations to address pro-active analysis and targeting. LEAs highlighted that the AMLO does not provide many unsolicited disclosures of intelligence that could further its ML or TF criminal investigations. (DAR para 344)

The AMLO only provides feedback to reporting entities, LEAs and other partners through participating in a number of AML/CFT related committees and "day to day" operations where they are in contact for operational reasons. There is no formal mechanism or consultative flora established for two- way

[61] ADB consultants' analysis report on Thailand, 9 April 2006
[62] IMF DAR, 24 July 2007

feedback which is something that outside agencies expressed would be helpful. (DAR para 351)

The AMLO's analysts have direct access to a number of government, LEA, financial and public databases which facilitate the proper analysis of STR reports pursuant to provisions of the AMLA….. (DAR para 353)

The assessors are therefore satisfied that the AMLO has access to sufficient information to undertake its functions. (DAR para 357)

Sections 38 and 46 of [the] AMLA provide authority to obtain further information to assist with the analysis process….. (DAR para 358)

The AMLA does not provide specific authority for the AMLO to disseminate financial information to the competent authorities for investigation when there are grounds to suspect ML or FT. Instead, the AMLO relies on generic authority for all government bodies to disseminate such financial intelligence with LEAs….. (DAR para 361)

The AMLA should be amended to provide specific authority for the AMLO to disseminate STR information to LEAs and to respond to queries from LEAs. (DAR para 362)

The assessors consider that the AMLO has sufficient operational independence and autonomy to ensure that it is free from undue influence or interference. (DAR para 370)

The AMLA Regulation on Essential Basic Rules in Performing Functions, Clause 8, makes it unlawful for the AMLO's employees to disclose the AMLO's information. Other measures including limiting access to records to certain employees unless authorized by the Deputy [Secretary-] General in charge of the IAC are all steps taken to ensure the protection of the information. (DAR para 373)

The assessors conclude that the information held by the AMLO is securely protected. (DAR para 376)

The AMLO should release its annual report in more timely fashion to assist with improving ALMO's image by demonstrating transparency of its operations. There is also[a] need for improvement and commitment of resources for communication of ML trends and typologies to LEAs, reporting entities and the general public. (DAR para 378)

The AMLO has been a member of the Egmont Group since June 2001. (DAR para 379)

The AMLO exchanges financial intelligence with other foreign FIU's based on the Egmont Principles and Guidelines which are used in determining the extent of information to exchange. These provisions of information exchanged are outlined by means of signing Memoranda of Understandings (MOU's) bilaterally with foreign FIU's….. (DAR para 380)

The authorities indicated that requests received from countries that do not have an MOU with the AMLO may still be responded to provided that the requesting agency is an FIU and follows the Egmont principles. There is an issue about the authority for sharing this information as section 40 of the AMLA does [not] specifically grant these powers but, in practice, as supported by statistics, the AMLO does share financial intelligence with foreign counterparts. The AMLO is not involved in information sharing pursuant to MLAT. (DAR para 381)

Thesis analysis : The analysis of the above comments is as follows:

- § Re: Complex structure of AMLO: Admittedly, by all standards, the structure of the AMLO is complex – which is the result of the complex nature of the AMLA itself. Despite abundant precedents of AML laws of other jurisdictions besides the UN model laws, why Thailand's AML law is so complex is a matter of conjecture only. Perhaps, the AMLA may be a piece of compromise legislation emanating from the dictates of the times when various interest groups exerted quite considerable influence on the legislative body which was usually made up of coalition partners of several political parties – large and small. Or, maybe, the typical socio-political structure usually demanded a piece of legislation that was deemed commensurate. Whatever the structure of the AML law, the standard test is whether or not the law works when it comes to its practical implementation. According to our experience thus far, the AMLA has been effective and has considerably achieved its objectives of suppressing and preventing money laundering activities within Thailand. Moreover, even in the realm of international cooperation, the AMLA and related laws have proven successes. Assistance to and from Thailand in ML and TF matters has been mutually effective and no complaint from any foreign country has so far been recorded.

  As a matter of fact, the main thrust of the government policy is to make the AMLO an independent agency with extensive powers to effectively and swiftly deal with the growing threat of ML and TF in answer to the prevailing international situation. The post-Twin Towers attacks in the US in September 2001 put by far the greatest pressure on the world community to adopt and put in place immediately anti-terrorist financing measures. This pressure impacted on Thailand and it responded by criminalizing terrorist acts as a predicate offense in the AMLA in August 2003.

  To make a high-powered, independent agency, the thought naturally turned to structuring the AMLO with a very high-ranking AML Board which sets AML-CFT policies, a Transaction Committee which implements the Board's policies and overseas the compliance of the AMLA, and the AMLO which operates as a regulatory body and law enforcement agency,. Respective assigned duties and authorities are prescribed in the AMLA for these bodies. The provisions are written in such a way that they have become the subjects of severe criticism, ranging from complaints about confusion to overlapping of authorities to the need for amendment due to the lack of core functional aspects. As far as the AMLO's functions are concerned, the most glaring examples are pointed out as duty overlap between the Transaction Committee and the AMLO, lack of authority for dissemination of STRs and other information, unclear designated authorities, lack of guidelines to regulated institutions, lack of supervisory oversight, use of inappropriate reward system in civil forfeiture cases, etc.

On the face of it, the criticism seems to be justified. However, when viewed from the entire perspective of the AMLA's legal framework the criticism may not be that justifiable. For, in practice, the AMLO has every legal basis to act and has since its inception been acting as such, without facing any legal challenge from the offenders in a court of law.

§ Re: Reward system: The AMLO's reward system in civil forfeiture cases practiced by virtue of the Prime Minister's Office Regulations No. 23 and No. 24 of 2003 has recently been revoked.

3.2 Recommendation 27 *(Designation of authorities)*

Summarized text: This Recommendation encourages designated law enforcement authorities to support and develop special investigative techniques suitable for the ML investigation as well as other effective mechanisms and cooperative investigations with appropriate foreign competent authorities.

AMLA's provision: Section 40 (4) of the AMLA empowers the AMLO to gather evidence for the purpose of taking legal proceedings against offenders under this Act. Besides, under Section 46 the competent official of the AMLO Secretary-General can have, through the court permission, access to the suspected account of a customer of an FI.

Assessor's comment :

ADB consultants' comment[63]: The consultants' report contains informative and positive comments as follows:

This Recommendation raises two issues: first, the delineation of responsibility for investigating money laundering, predicate offenses and terrorist financing and, secondly, the use of special investigative techniques. (p. 196)

The AMLO is authorized to investigate money laundering activities and collect related financial intelligence. It is not authorized to investigate the predicate criminal activity which generated the laundered funds, nor is it authorized to investigate terrorist financing but rather to identify relevant information and evidence which might be relevant to a prosecution of such activity. These delineations are clear and Thailand complies with this part of Recommendation 27. (p. 196)

Most special investigative techniques are used in Thailand. Their use is controlled by law and only certain agencies have access to the most intrusive means on investigation such as telephone interceptions and the use of listening devices. The new DSI has these powers and it is working closely with the AMLO and other agencies on the investigation of money laundering offenses and related criminal activity. (p. 196)

Thailand, therefore, complies with Recommendation 27. (p. 196)

IMF (DAR) comment[64]: The DAR contains, among others, the following comments:

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[63] ADB consultants' analysis report on Thailand, 9 April 2006

The competent authorities that have been mandated to investigate the eight predicate offenses for ML are the RTP, ONCB, [Department] of Special Investigation (DSI) and the NCCC. All of these organizations are national enforcement agencies whose powers extend across all of Thailand. (DAR para 414)

The AMLO is not [an] LEA and cannot investigate any criminal offenses. (DAR, para 415)

The RTP, DSI, NCCC and ONCB have the authority to investigate ML offenses and to seize assets associated with the eight predicate offenses under provisions in the laws that govern their respective operations. In practice, NCCC do not exercise these authorities while the RTP, ONCB and DSI focus most efforts on ML cases related to narcotics. Limited information was provided by the authorities that would support that ML charges have been pursued or assets have been seized relating to the other seven predicate offenses. Generally, ML offenses are not considered for investigation in relation to the other predicate offenses by LEAs. (DAR para 416)

The effectiveness of the criminal investigation actions of the LEAs is supplemented by the civil investigations conducted by the AMLO. The AMLO, pursuant to [the] ALMA, can investigate ML offenses with the intention of vesting assets in the State pursuant to civil provisions. During this investigation stage if the AMLO determines the matter is criminal in nature it can refer the case and intelligence gathered to the relevant LEA for investigation under the PC - or Narcotics Suppression Act if drug related….. (DAR para 444)

The assessors were able to establish that LEAs investigating ML cases can postpone or waive the arrest of suspected persons and/or postpone or waive the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. (DAR para 445)

LEAs use a wide range of special investigative techniques. (DAR para 446)

Authorities meet the requirements for the availability and use of special techniques for ML and TF investigations. Authorities need to consider using these techniques more frequently in ML investigations other than narcotic related cases. (DAR para 451)

The agencies involved in investigating ML and TF offenses relating to predicate offenses including the DSI, the RTP, the ONCB, the NCCC and the AMLO have the authorities to work collectively on joint investigations. This occurs frequently in narcotics cases as all agencies will work together on both the predicate and ML offenses using their collective powers and special investigative techniques to seize assets and pursue ML charges. (DAR para 452)

The agencies involved in AML/CFT investigations meet regularly through a number of consultative committees, including the Board of Special Case, AMLB, the PEC and a number of other working groups. (DAR para 453)

Sharing of AML/CFT trends and methods between LEAs is limited to when they are working ongoing investigations or when they interact at the above-mentioned committees….. (DAR para 454)

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[64] IMF DAR, 24 July 2007

The AMLO receives notification of asset seizure pursuant to [the] AMLA but does not publish any reports regarding trends or typologies relating to ML or TF to be shared with LEAs. (DAR para 455)

Authorities need to improve methods for sharing trends and typologies relating to AML. (DAR para 456)

Thesis analysis : The analysis of the above comments is as follows:

- § Re. Delineation of responsibility: In matters relating to criminal investigation and prosecution of ML and predicate offenses, the AMLA clearly defines the role of the AMLO. Under Section 40, particularly items (3) and (4), the AMLO's responsibility is limited to gathering, monitoring, examining, studying and analyzing reports and information in connection with the making of transactions as well as gathering evidence for the purpose of taking legal proceedings against offenders under the AMLA. In other words, the AMLO is authorized only to investigate ML activities and collect related financial intelligence in support of prosecution. Investigation of predicate criminal activity and ML offense is the responsibility of other law enforcement agencies concerned. Similar procedures apply to TF investigation as well.

- § Re. Use of special investigative techniques: Thai law enforcement agencies in general are allowed to use special investigative techniques according to law. For instance, the Special Case Investigation Act 2004 allows the DSI to use certain specified means in investigation, of course with judicial approval. Such techniques include interception of information sent by post, telegraph, telephone, facsimile, computer, or any other electronic equipment, or information technology under Section 25, and making a document or evidence or falsifying identity in a particular organization or a group of persons for the purpose of investigation under Section 27. Similarly, AMLA's Section 46 provides for the competent official "to take action with the aid of any device or equipment as it may think fit" subject to judicial approval.

- § Re. Lack of interest or expertise in ML-TF investigation: It is true that throughout the 8 years of the AMLA's existence, most law enforcement agencies have shunned complex investigations involved in ML; they would instead focus on investigating self-laundering connected with the predicate offense, mainly drug-related predicate offense. In this regard, lack of expertise seems to be the dominating factor that contributes to such reluctance. The end result is that the AMLO is usually dumped with transferred cases from other agencies for proceeding with asset forfeiture under the civil forfeiture regime – which is more convenient but less complicated than criminal forfeiture regime under the Penal Code which is essentially conviction-based. It is however expected that as more and more expertise is gained law enforcement agencies would make greater efforts to properly conduct criminal investigations in predicate offenses that generate proceeds of crime for the purposes of subsequent laundering and/or financing terrorism.

§ Re. Information sharing: Considering the fact that Thailand's AML legislation is comparatively newer in temporal terms and more severe in terms of penalty for a breach or violation of its provisions, the main responsible agency – the AMLO – armed with extensive powers to implement the Act has to exercise utmost caution in its execution of the policies. A slight lapse or neglect of duty will land the AMLO in dire straits. This overriding concern combined with controlling rules and regulations tend to determine as well as guide the AMLO's extent of sharing information with other agencies. It is a standard practice that only those agencies that are one way or another involved in the process of investigation or operation will be provided with limited information. In other words, the AMLO's information is released only on a need-to-know basis. The AMLO's information being sensitive and confidential by nature, a procedure has to be devised whereby mutual exchange of information would take place. As between agencies a memorandum of understanding serves as an established norm. In the case of the AMLA, this procedure originated from the Prime Minister's Office Regulation, dated 15 February 2001, concerning coordination in compliance with the AMLA and the AML Board's Agreement under aforesaid Prime Minister's Office Regulation, dated 31 May 2001, which sets forth (1) category and type of cases to be reported, (2) rules for requisition of applicable expenses, and (3) rules of operations of an agency regarding property proceedings.

§ Re. Trends or typologies of ML-TF: As regards non-publishing of reports on trends or typologies of ML-TF by the AMLO, detailed discussion made under Recommendation 25 may be referred to.

3.3 Recommendation 28 *(Ability to compel production of evidence)*

Summarized text: The text of this Recommendation is summarized as follows:

When conducting investigations competent authorities should be able to obtain pertinent documents and information and use compulsory measures for the production of records, for the search of persons and premises, and for the seizure and obtaining of evidence.

AMLA's provision: Under Section 38 of the AMLA wide–ranging powers are given to the Transaction Committee, the Secretary-General and the designed competent official and they include to:

- address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;

- address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;

- enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed or converted from its original state.

Assessor's comment :

ADB consultants' comment[65]: The comment in the report says:

Section 38 of the AMLA contains wide powers to obtain evidence. So too does the legislation which established [the] DSI. Other relevant legislation includes the Narcotic Control Act (Section 14), the Customs Act (Section 112), the Excise Act (Sections 15 and 87) and the Revenue Code (Section 23). (p. 197)

Thailand complies with Recommendation 28. (p. 197)

IMF (DAR) comment[66]: The DAR states:

For the purpose of criminal proceedings in relation to ML, TF, and other underlying predicate offenses, the Inquiry Official (RTP) or the Special Case Inquiry Official (DSI) has powers under the CPC or the Special Case Investigation Act 2004, as the case may be, to compel production of, search persons or premises for and seize and obtain relevant documents and information for use in investigations. (DAR para 457)

Section 133 of the CPC authorizes the Inquiry Official to summon to appear before the Inquiry Official the injured person or any person where there is reason to believe that the person's testimony may be useful to the case. (DAR para 459)

Although these provisions do not address specifically whether financial confidentiality can be raised against the exercise of the above powers, it is certainly the case that financial confidentiality is not an obstacle for criminal investigation. In fact, section 46 of the CBA explicitly prescribes criminal investigation as an exception for financial secrecy….. (DAR para 460)

All the competent authorities responsible for undertaking ML or TF investigations have the authority either pursuant to the AMLA, Special Investigations Act or the CPC to take statements from witnesses in ML, TF or related predicated offense investigations. The criminal and civil procedures require "reverse onus" on the accused to prove that assets seized were not the proceeds of crime. Witnesses are required to testify in court and the police have no powers to compel a person to give a statement. (DAR para 466)

The RTP, DSI and ONCB can also utilize the provisions of the Mutual Legal Assistance Act (1992) when obtaining statements for other jurisdictions or attempting to use statements in foreign countries [with whom] Thailand has signed MOU's. (DAR para 467)

[65] ADB consultants' analysis report on Thailand, 9 April 2006
[66] IMF DAR, 24 July 2007

Thesis analysis : The analysis of the above comment is as follows:

As the DAR itself has admitted, the competent authorities do have the powers to conduct investigations, to search persons and premises to compel FIs and other persons to produce records, and to seize and obtain evidence for use in investigations, and in prosecutions and related actions.

3.4 Recommendation 29 *(Power of supervisors)*

Summarized text: This Recommendation deals with monitoring functions of supervisors who should be authorized to monitor and ensure FIs' compliance with AML-CFT requirements.

AMLA's provision: Generally, the principal sources of supervisory authority are AMLA's section 25 (2), which authorizes the AMLB to recommend to the relevant Minister regarding Ministerial Regulations, Rules and Notifications to enforce the Act, and Section 34 (1), which empowers the Transaction Committee to examine transactions or assets involved in the commission of an office. Resultant Ministerial Regulations and appointment of supervisors are thus derived from these principal sources.

Assessor's comment :

ADB consultants' comment[67]: The brief comment reads:

> *The supervisory authorities in Thailand have adequate powers to monitor compliance with AML-CFT requirements. The issue is not one of power but of application. (p. 197)*
>
> *Thailand complies with Recommendation 29. (p. 197)*

IMF (DAR) comment[68]: The DAR made the following comment:

> *The BOT is vested by virtue of the CBA, with the power to monitor and ensure compliance by FIs with prudential requirements. It is not clear, however, whether the BOT is also competent to conduct oversight of AML/CFT compliance in FIs. Both the BOT Act and the CBA are silent on this issue. The AMLA, although not entirely clear, seems to give the primary monitoring and compliance responsibility to the AMLO. The AMLA also gives power to the AMLO to delegate its responsibility to the BOT for on-site inspection purposes. Indeed, on occasions, examination staff of the BOT are appointed as a "competent authority" under the AMLA in order to carry out compliance monitoring for the AMLO (a formal accreditation is required in such circumstances as stipulated in section 38). (DAR para 941)*
>
> *As described above, the SEC has adequate powers to monitor and ensure compliance by securities firms with their AML/CFT requirements. The SEC has full powers to conduct surveillance, inspections and investigations….. (DAR para 944)*

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[67] ADB consultants' analysis report on Thailand, 9 April 2006

[68] IMF DAR, 24 July 2007

The DOI maintains that it has no powers to monitor insurance companies for compliance with the AML/CFT requirements in the AMLA. (DAR para 945)

As indicated by the authorities, the BOT is responsible for examining, analyzing, and supervising the operations and risk management systems of commercial banks including foreign bank branches, finance companies, and credit foncier companies under the provision of the CBA and the Act on the Undertaking of Finance Business and Credit Foncier Business to ensure the overall prudence of FIs, which includes AML/CFT issues. The supervision scope also covers money changers and money remitters, AMC, and non-bank activities (e.g., credit cards, personal loans, and E-money). (DAR para 946)

For the purpose of their AML/CFT on-site inspections, the BOT has designed a methodology called Guidelines for On-site Examination on AML/CFT Compliance….. (DAR para 956)

…..It should be recalled that the Guidelines for On-site Examination on AML/CFT conceived by the BOT has been issued on December 26, 2005 only. These guidelines are very detailed and give examiners precise information and guidance on how to conduct on-site visits….. (DAR para 961)

Questions are still pending as to whether BOT inspectors are legally empowered to assess compliance with the AML/CFT requirements set forth in the AMLA, as any other type of prudential risks ….. the legal support for BOT supervision is currently, to some extent, not explicit. (DAR para 962)

Under section 35 of the CBA, the BOT inspectors have power to enter into business premises of a commercial bank or into places ….. in order to examine the affairs, assets and liabilities of the commercial bank, including documents, materials, or information….. (DAR para 967)

The BOT inspector —or a competent officer— once entrusted by the S-G of the AMLO to perform on-site visits, needs special clearance to obtain access to all records pertaining to any account of [an] FI's customer. As stipulated in section 46 of the AMLA, the competent official may file an ex parte application with the Civil Court for an order permitting the inspector —or the competent official— to have access to the account, communicated data or computer data, for the acquisition thereof….. In other words, the access to accounts and other records pertaining to customers is restricted to particular circumstances and require formal judicial approval. As a result, it does not seem possible to compel production of records, just for monitoring compliance with CDD/KYC/record keeping and STRs requirements under the AMLA. (DAR para 968)

Under section 264 of the SEA and section 103 of the DA, the SEC competent officers are equipped with a number of powers….. (DAR para 970)

Under section 109 of the SEA and section 19 of the DA, the SEC may request regulated entities to submit reports or present any documents for any period or from time to time, or to provide an explanation to elaborate or clarify such report or document in accordance with the rules and within the period as specified in the OSEC Notification. (DAR para 971)

Under section 45 of the Life Insurance Act and section 49 of the Non-Life Insurance Act, the Insurance Commissioner has the power to order a company to submit reports and documents. The Insurance Commissioner may order the company to explain or clarify the contents of the said report or documents. However, the DOI maintains that these powers cannot be used in relation to AML/CFT compliance. (DAR para 972)

The AMLA contains several provisions on sanctions..... (DAR para 973)

To date, with the exception of corrective measures imposed by the BOT, no enforcement action has been imposed by the BOT or the MOF for breaches of AML/CFT requirements. The AMLO has also not taken any action to initiate procedures to impose sanctions under the AMLA..... (DAR para 978)

To date, no enforcement action has been taken by the SEC for AML/CFT breaches..... (DAR para 990)

The DOI has no powers of sanction against insurance companies and their directors for failure to comply with AML/CFT requirements. (DAR para 991)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. Question of BOT inspector's authority: Previously, Section 24 of the Commercial Banking Act (CBA) was viewed as a hurdle for BOT inspectors to have access to accounts of a commercial bank's customers. Later on this question of bank secrecy or confidentiality was settled by virtue of the provision in Section 35 (2) of the CBA.

Yet again, a new issue has been brought up, surrounding the same provision in Section 35 (2). This time the authorities' – particularly the BOT's – interpretation that the BOT inspectors have full authority to have access to individual accounts in the course of an inspection was challenged as its principal purpose is to examine the affairs, assets and liabilities of a commercial bank, including documents, evidence or information relating thereto but not a customer's account. Still again, the authority granted under Section 46 paragraph (1) of the AMLA is seen as being restricted to particular circumstances, i.e. reasonable ground to believe that, the account of a customer is used or probably used in the commission of an ML offense, and this power is exercisable subject to formal judicial approval. As such this power is seen not exercisable for monitoring compliance with the AMLA's requirements in respect of KYC/CDD, record keeping and STR.

Whatever nuances about the formulations of the aforesaid provisions of laws, insofar as the AMLA is concerned, the power given under Section 38 of the AMLA is clear and succinct enough to override any other laws when it says:

> *For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows: (1) to address a written inquiry towards or summon a financial institution, government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any*

> *account, document or evidence for examination or consideration;….*

- § Re. CBA and AML-CFT sanctions: As long as the proposed amended CBA is not passed yet, the CBA's sanctions will not have any reference to ML and TF failures. At the time of the passage of the CBA – which was 1962 – ML and TF issues had not come to the forefront to attract international attention and concerted action. Only after the enactment of the AMLA was the need for appropriate amendment of the CBA felt, and the authorities have begun drafting an amendment that would hopefully meet the requirements of the AMLA in the banking sector.

3.5 Recommendation 30 *(Adequate resources for competent authorities)*

Summarized text: The Recommendation requires countries to provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources including staff with high integrity.

AMLA's provision: (There is no specific provision in relation to this Recommendation. Under AMLA's Sections 24, 32 and 41 the AMLO Secretary-General is the secretary of the AMLB, chairman of the Transaction Committee and the head of the AMLO respectively. The AMLO provides all necessary human and technical resources as far as the AMLO's and Transaction Committee's functions are concerned.)

Assessor's comment :

ADB's consultants comment[69]: The consultants' comment says:

> *Few countries could claim to fully comply with Recommendation 30. It is a statement of aspiration rather than an obligation compliance with which can be satisfactorily measured. By regional standards Thai agencies are well resourced. They have access to human resources and some technical capacity. The situation varies across agencies and between regions. (p. 198)*

IMF (DAR) comment[70]: The DAR comments run as follows:

> *…..However, the assessors consider that the AMLO requires further resources in all areas of its operations to carry out its existing and planned AMLA responsibilities and be able to discharge its core FIU role effectively. (DAR para 383)*
>
> *The AMLO must recruit pursuant to the provisions of the Civil Service Regulations….. (DAR para 393)*
>
> *The AMLO provides staff training in analysis, compliance, investigation, and management of assets seized pursuant to the AMLA. The AMLO seeks assistance*

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[69] ADB consultants' analysis report on Thailand, 9 April 2006

[70] IMF DAR, 24 July 2007

from other international partners involved in AML/CFT activities such as the UNGPML, APG, WB, IMF, etc. to secure and develop the required training. (DAR para 394)

The AMLO's officials have to undergo training for language skills, computer programming and administration arranged by various government agencies and institutions….. (DAR para 395)

The assessors consider that the AMLO staff are provided with adequate and relevant training for combating ML and TF. (DAR para 398)

The assessors are satisfied that the OAG has sufficient staff to deal with the number of ML and TF cases that are referred to it currently. (DAR para 474)

Under section 303 of the [1997] Constitution, public prosecutors, unlike many other government officials, are subject to scrutiny by the Senate for dismissal on the grounds of malpractice. The qualifications required for public prosecutors are stringent….. (DAR para 475)

From discussions with the authorities the assessors are satisfied that, as part of the routine Prosecutors Training Course, prosecutors receive adequate and relevant training on financial crimes, including ML….. (DAR para 477)

The competent authorities designated to investigate ML and TF are national enforcement agencies whose budgets and resources are controlled by the Minister of Justice. (DAR para 478)

…..The attention to drug related cases and involvement of the ONCB and the AMLO in these cases have shown a dramatic increase in seizing and forfeiture of assets as shown by statistics. The ONCB has 40 dedicated resources in its assets forfeiture group while the AMLO has 133 officers who could indirectly support criminal investigations by providing evidence they seize during the civil vesting investigation. (DAR para 479)

Other serious predicate offenses such as corruption, fraud or other economic crimes have been neglected from an ML investigation perspective….. (DAR para 480)

No TF investigations have taken place, except in the DSI where there is one ongoing case. The lack of TF investigations is alarming when considering the ongoing terrorist related activity in the South of Thailand. (DAR para 481)

The RTP is a large organization (over 200,000) and presently has no dedicated units or resources that are solely responsible for ML investigations in both Bangkok and regional operations….. (DAR para 482)

….. [the] DSI appear to be well funded, resourced and provided with significant powers for attacking organized crime, terrorist offenses and economic crimes….. (DAR para 483)

Authorities stated that corruption is an ongoing problem in Thailand at all levels of government and in LEAs….. (DAR para 484)

The ONCB and the AMLO investigators have received the most extensive training in ML investigation techniques from foreign LEAs or programs developed domestically. While the AMLO is not an LEA it is the focal agency for AML/CFT matters and its staff are responsible for conducting much of the domestic training that occurs for the LEAs….. (DAR para 486)

Both the RTP and NCCC have participated in some training but statistics of seizures and cases indicate that there is a lack of trained financial investigators in fraud, corruption and other predicate offense areas. (DAR para 491)

Thesis analysis : The analysis of the above comments is as follows:

This Recommendation touches on two areas that are essential for proper and effective functioning of competent authorities – i.e. (1) adequacy of financial, human and technical resources and (2) integrity of staff.

§ Re. Adequacy of resources: Competent authorities, especially the AMLO, the RTP, the DSI, the BOT and the SEC, are adequately resourced in terms of funding and staffing. As for technical resources, the level of expertise is much to be desired; this shortcoming is seen as a major problem confronting the competent authorities. The most recent IMF assessment of Thailand's overall financial structure testifies to this weakness, further confirming the urgent need to address it. Therefore, the authorities have been soliciting technical assistance from pertinent international agencies and organizations to help improve Thailand's technical expertise. It is an ongoing process and a right step in the right direction for the right purpose.

§ Re. Integrity of staff: This subject can be dealt with from three aspects. The first is integrity of industry-specific staff such as those in financial, banking, securities, insurance, and non-financial sectors. The second is integrity of regulatory/supervisory staff such as those from the AMLO, the BOT, the SEC, the RTP, etc. performing supervisory oversight and law enforcement. The third is integrity of prosecutorial and judiciary staff such as those from the OAG, public prosecutors, and judges dealing with ML and TF cases.

Except those in the private sector, all staff in the government sector generally are governed by the Civil Service Regulation Act B.E. 2535 (1992) and the National Security Regulations B.E.2517 (1974). In addition, specialized services have their own laws, and they are subject to law, professional rules and ethical code of conducts. For example, as regards public prosecutors, they have the Act on Code of Conduct for Prosecution Officials B.E.2521 (1978) and the Ethical Code of Conducts of Public Prosecutors to observe in their performance of duties. Another example is the DSI; the staff of the DSI are governed as well by the Special Case Investigation Act B.E. 2547 (2004) and the Penal Code in addition to the above-mentioned Civil Service Regulation Act and the National Security Regulations. Still one more example is the AMLO, whose staff are guided by six essential basic rules in their performance as prescribed in the AMLO Regulation on Good Public Administration, dated 19 December 2002, namely each AMLO official shall hold as the principles for performing duties (1) the rule of law, (2) the rule of virtue, (3) the rule of transparency, (4) the rule of participation, (5) the rule of responsibility, and (6) the rule of worthiness.

3.6 Recommendation 31 *(Domestic cooperation and coordination)*

Summarized text: The Recommendation urges countries to ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to cooperate and where appropriate coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

AMLA's provision: (The Anti-Money Laundering Board set up under Section 24 is a high-powered Board consisting of ministers and senior officials and the 26-member AML-CFT Working Group formed under the Corporate Governance Committee, comprising senior officials from various government agencies and private sector organizations are meant to work in proper cooperation and coordination.)

Assessor's comment :

ADB consultants' comment[71]: The positive comment is made in the report as follows:

Thailand has established a number of formal and informal mechanisms to coordinate AML-CFT activities. The AMLA established the Anti-Money Laundering Board which consists of very senior government officials and is chaired notionally by the Prime Minister. In practice it is chaired by a Deputy Prime Minister. While the Board consists of ministers and agency heads a second informal committee of senior officials operates to ensure day to day issues are identified and dealt with. If necessary the Board can address these issues. (p. 46)

Thailand complies with this Recommendation. (p. 46)

IMF (DAR) comment[72]: The DAR's comments read as follows:

The primary mechanism is the AMLB, described previously starting at paragraph 323. However, it was not clear to the assessors that the AMLB acted as a driver of the overall AML/CFT regime in Thailand. The authorities seemed to have difficulty clearly articulating which part of government was responsible for initiating policy matters on AML/CFT and for monitoring overall effectiveness of the system. Moreover, some agencies that play a key role in AML/CFT are not represented at the AMLB (e.g., no agency from the DNFBP sector is represented, none of the NIA, NSC, NCATTC, or NCCC are represented). (DAR para 1199)

In order to improve the effectiveness of supervision, the BOT and other regulatory agencies such as the MOF, the MOC, the SEC, the AMLO, and the SET, work in close cooperation to exchange supervisory information..... (DAR para 1201)

To ensure that supervision of both the Thai FIs operating overseas and foreign bank branches operating in Thailand is efficient and in line with the rules and regulations imposed by other foreign supervisory agencies, the BOT regularly exchanges knowledge, experience, and material information with relevant foreign supervisory authorities..... (DAR para 1202)

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[71] ADB consultants' analysis report on Thailand, 9 April 2006
[72] IMF DAR, 24 July 2007

The BOT shares information, which includes AML/CFT information, with domestic financial sector supervisory authorities, namely, [the] SEC and DOI via an arrangement of MOU concerning exchange of information. [The] BOT shares information related to AML/CFT with foreign financial sector supervisory authorities indirectly through the AMLO….. (DAR para 1207)

In practice, all entities, including supervisors, cooperate with LEAs and the AMLO in any investigation, prosecution, or proceeding relating to a serious offense, ML, or FT….. (DAR para 1208)

….. The assessors are satisfied that mechanisms are in place to enable consultation to take place between the authorities and industry. (DAR para 1209)

Thesis analysis : The analysis of the above comments is as follows:

§ Re. AMLB and policy initiation: Policy making in AML-CFT matters can be viewed from two levels; the first is at the national level and the second at the industry level.

The role of the AML Board (AMLB), established under Section 24 of the AMLA, can be considered as the national level. The powers and duties, assigned to the AMLB under Section 25 include proposing to the Council of Ministers (Cabinet) measures for combating money laundering and terrorist financing. By virtue of this mandate the AMLB has been instrumental in initiating and formulating the following:

1. Ministerial Regulations by the Prime Minister and the Minister of Justice, AMLB Regulations, and AMLO Regulations all relating to matters under the AMLA
2. AMLO Policy Statements on KYC/CDD for FIs and DNFBPs and on international cooperation
3. Draft amendment of the AMLA
4. Programs aimed at promoting public cooperation in providing information for combating ML and FT

By virtue of the provisions in Article 1 of the Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office BE 2545 (AD 2002), issued by the Minister of Justice on 9 October 2002, the AMLO essentially acts as a *de facto* representative of the AMLB in matters relating to AML-CFT policy and measures. Such being the case, the policy statements and regulations issued by the AMLO are to be treated as those from the national level, because they have the prior approval of the AMLB. National level policies or guidelines are usually broad and devoid of details, setting forth only basic concepts for a particular issue. This means that the details are left to respective industry regulators to define and prescribe within the scope of the policy framework. For instance, in the AMLO policy statement on KYC/CDD it merely states in regard to the risk level of customers that financial institutions should "assess the customer's risk level using relevant information obtained from the customer or other sources. Information kept must be appropriately and sufficiently verified against reliable

sources and be analyzed and reviewed periodically." It does not spell out in detail such as the risk levels, verification procedure, methods of analysis and review, etc. In this regard, the required details are worked out, levels classified and methods and procedures laid down in industry regulators' guidelines, as in those issued by the BOT, the SEC, and the TBA.

Another issue relates to monitoring of overall effectiveness of the AML-CFT system. The AMLB's powers and duties also include monitoring and evaluating the execution of the AMLA. As explained above, the AMLO practically representing the AMLB is the overall competent authority regardless of the existing practice concerning oversight in the financial sector. However, in practice, the AMLO does not conduct supervisory oversight and, instead, respective industry regulators usually carry out the function. For monitoring and supervision, the AMLO and the BOT have mutually agreed to split the supervisory duties in relation to the financial sector. The BOT will be responsible for, both on-site and off-site examinations while the AMLO will take on the responsibility for on-site examination in the course of collecting evidence for investigation matters rather than supervisory oversight in respect of compliance with AML-CFT obligations. For example, the Memorandum of Understanding (MOU), dated 20 February 2007, between the AMLO and the BOT sets out points of agreement regarding exchange of financial intelligence for supervision of FIs, investigation, inquiry or prevention and suppression of ML and FT. The MOU also indicates that "the BOT shall proceed [with] examination of financial institutions under the governing provision of the BOT in [regard] to policy, practices and internal control for AML-CFT."

§ Re. Limited power of AMLO in ML-FT cases: In actual fact, the AMLO's power under the AMLA is limited in investigation and litigation matters. AMLA's Section 40 limits the AMLO's authority to gather evidence for the purpose of taking legal proceedings against offenders under the Act, meaning that the AMLO has no authority to conduct criminal investigation of ML predicate offenses – which fall under the jurisdiction of the other law enforcement agencies. Besides attachment or seizure of property is to be conducted, applying the CCC, under Section 56 of the AMLA, and forfeiture of property under Section 59. In other words, the AMLA authorizes only the civil forfeiture regime. On the other hand, except a few specialized agencies such as the ONCB for drugs-related cases and the DSI for special investigation cases, most of the law enforcement agencies (LEAs) responsible for criminal investigations have to follow the Penal Code in attachment, seizure or forfeiture cases. By nature, the criminal forfeiture regime involves greater intricate procedures and burden of proof on the part of the prosecution compared with those involved in the civil forfeiture regime. This intricacy, combined with relative lack of expertise, most probably discourages the LEAs to conduct ML-FT-based investigations but instead encourages them to conveniently adopt non-ML-FT investigation and prosecution.

3.7 Recommendation 32 *(Comprehensive statistics)*

Summarized text: This Recommendation relates to review of the effectiveness of AML-CFT systems in place by maintaining comprehensive statistics on STRs; investigations, prosecutions and convictions; property frozen, seized and confiscated; and mutual legal assistance or international cooperation.

AMLA's provision: The provisions in Section 38, paragraph 4, impliedly implement to some extent the requirements of this Recommendation. The AMLO Secretary-General is responsible for retention and utilization of the collected information of specific character. And under Section 47, paragraph 1, the AMLO is required to prepare an annual report on the result of its work performance for submission to the Council of Ministers. .

Furthermore, Section 57, paragraph 1, requires systematic retention and management of the seized or attached property.

In addition, the provisions in Chapter 6 - Sections 48 to 59 - deal with the asset management, including protection of third party's right in cases of restrained, seized or forfeited assets.

Assessor's comment :

ADB consultants' comment[73]: The comment contained in the report is as follows:

The AMLO collects statistics on the operation of the AMLA and on the use of provisions dealing with recovery of the proceeds of crime. The ONCB collects and publishes on its website statistics concerning the investigation of drug offenses in Thailand. The RTP also publishes statistics of criminal cases sorted by offenses on its website. There is always scope for additional information to be collected and Thailand is no exception. (p. 198)

Thailand complies with this Recommendation. (p. 198)

IMF (DAR) comment[74]: The DAR's comments read as follows:

The AMLO maintains comprehensive annual statistics for transaction reports received (by total, by category, by type of reporting entity, by geographic region etc), seizure and vesting of assets in the State, and cases generated under predicate offenses. The AMLO also publishes comprehensive statistics in its Annual Report. (DAR para 399)

Despite being requested, with the exception of narcotics related statistics, authorities involved in other predicate offenses and AML/CFT have provided limited statistics for ML or TF investigations. It is not known whether these types of statistics are maintained or if the agencies do not have any occurrences or seizures to report regarding this activity. (DAR para 493)

The ONCB, the DSI and the AMLO were the only agencies who could supply statistics relating to ML or TF investigations. Other competent authorities

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[73] ADB consultants' analysis report on Thailand, 9 April.2006
[74] IMF DAR, 24 July 2007

should maintain these types of statistics to facilitate sharing with domestic and foreign partners. (DAR para 494)

Thesis analysis : The analysis of the above comments is as follows:

While maintenance of required statistics under this Recommendation by all the competent authorities leaves much room for improvement the AMLO and such other agencies as the ONCB, the DSI and the RTP do have statistics related to their respective activities.

3.8 Recommendation 33 *(Legal persons)*

Summarized text : This Recommendation, when summarized, will read as follows:

Countries should take measures to prevent the unlawful use of legal persons by money launderers that should include –

- adequate, accurate and timely information on beneficial ownership and control of legal persons;
- misuse of bearer shares for money laundering; and
- facilitating access to beneficial ownership and control of information to financial institutions undertaking CDD requirements under Recommendation 5.

AMLA's provision: (This Recommendation comes partially under KYC measures which are generally covered in Chapter 2 of the AMLA.)

Assessor's comment :

ADB consultants' comment [75] : (Combined comments are made for Recommendations 33 and 34; please see comments under Recommendation34.)

IMF (July 2007) comment[76]: The DAR made the following comments:

The CCC does not allow nominee directors or shareholders. …. (DAR, para 1115)

Competent authorities can have access in a timely fashion to current information on the direct ownership and control of legal persons. However, such information may fall short of meeting the adequacy and accuracy standards as the law does not require legal persons to disclose beneficial ownership information. (DAR para 1121)

There are no secrecy laws that would limit access to beneficial ownership information. However, since there are no legal requirements to report or hold beneficial ownership information, it remains unclear how the competent authorities could access such information in Thailand. (DAR para 1131)

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[75] ADB consultants' analysis report on Thailand, 9 April 2006

[76] IMF DAR, 24 July 2007

Although no company has issued bearer shares, presumably for the reasons explained above, there are no measures in place to ensure that bearer shares are not used for ML. In particular, there are no mechanisms to identify the beneficial owner of bearer shares. (DAR para 1137)

Thesis analysis : The analysis of the above comments is as follows:

For assessment there are 3 essential criteria and 1 additional element. Comments in the assessment reports have found no critical conditions under all the essential criteria. Nonetheless, the DAR in particular recommends the competent authorities to introduce appropriate measures to ensure that bearer shares are not misused for ML and to put in place mechanisms to identify the beneficial owner of bearer shares.

3.9 Recommendation 34 *(Legal arrangements)*

Summarized text: The text of this Recommendation is summarized below:

Countries should take measures to prevent the unlawful use of legal arrangements by money launderers that should include –

- adequate, accurate and timely information on express trusts, including information on settlor, trustee and beneficiaries; and
- facilitating access to beneficial ownership and control of information to financial institutions undertaking CDD requirements under Recommendation 5.

AMLA's provision*:* (This Recommendation falls under Chapter 2 of the AMLA dealing partially with KYC measures.)

Assessor's comment :

ADB consultants' comment[77]: The combined comments on Recommendation 33 and this Recommendation read as follows:

While the use of domestic legal entities for money laundering purposes is a problem, the much larger problem relates to such entities created off-shore in ways which make access to beneficial ownership details almost impossible. Recommendations 33 and 34 are related. They require countries to 'take measures' but do not really include any specific requirements as to how this is done. In so doing they reflect the reality that the most that can be helped for is a best efforts approach. Indeed it is often legal entities established in FATF member countries which are used as money laundering vehicles because the domestic laws allow the establishment of entities whose beneficial ownership is undisclosed. (p. 199)

Thailand is addressing the CDD issue but needs to be more active in this area. See the comments on Recommendation 5. (p. 199)

IMF (DAR) comment[78]: The DAR concluded its remarks as follows:

While trusts cannot be established under Thai law, the authorities do not exclude in the MEQ that there might be accounts opened in the name of trustees

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[77] ADB consultants' analysis report on Thailand, 9 April 2006
[78] IMF DAR, 24 July 2007

of foreign trusts. The authorities and the banks that were interviewed, however, were not aware of such phenomenon. Moreover, the assessors made independent enquiries and were unable to find services being advertised for trust creation or administration services for people in Thailand. Thailand does not appear to be a jurisdiction that is a substantial provider of trust-related services or which holds unique information about trusts. (DAR para 1142)

Thesis analysis : The analysis of the above comments is as follows:

At present, Thailand has no law to govern trusts and therefore no trusts can be established in Thailand. Consequently, the requirements under this Recommendation are not applicable. When a trust law being contemplated comes into existence, appropriate measures will be taken in compliance with Recommendation 34.

3.10 Special Recommendation IX *(Cash couriers)*

Summarized text: This Special Recommendation requires countries to detect cross-border transportation of currency and bearer negotiable instruments and to have a declaration system or other disclosure obligation. Competent authorities need to have the legal authority to stop or restrain the suspected currency or instruments. Effective, proportionate and dissuasive sanctions need to be available for false declarations or disclosures, and there need to be measures enabling confiscation of criminal currency and instruments.

AMLA's provision: (There is no specific provision on this Special Recommendation.)

Assessor's comment :

ADB consultants' comment[79]: The consultants' comment made in the report says:

Countries are required to have measures in place to detect cross-border transportation not only of currency but of all bearer negotiable instruments. Thailand does not comply with SR IX. (p.48)

IMF (DAR) comment[80]: The DAR's comments read as follows:

There are no restrictions in Thailand to import or export foreign currency (or bearer negotiable instruments) nor are there restrictions to import domestic currency. As a result, there are no declaration or disclosure requirements for the above mentioned circumstances….. (DAR para 503)

In the case of exporting domestic currency in the circumstances described above, it is not clear whether the person wishing to export the currency, besides applying for the prescribed authorization, must also disclose it to the Customs authorities. …. (DAR para 510)

There is no specific reference to the false declaration/disclosure as empowering Customs the authority to request/obtain further information of the carrier….. (DAR para 511)

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[79] ADB consultants analysis report on Thailand, 9 April 2006
[80] IMF DAR, 24 July 2007

The Customs has no authority to stop or [restrain] currency or other bearer negotiable instruments in order to ascertain whether evidence of ML or FT may be found. In the case in which Customs officials find out that the authorization to export domestic currency in the circumstances described above has not been obtained, they have the authority to seize the aforesaid currency for prosecution under customs law. (DAR para 512)

The Customs keep hard copies of the authorizations to export domestic currency in the circumstances described above. This documentation is only kept in a hard copy archive. This inhibits Customs from monitoring the flow of currency or persons (the information could be useful, for instance, to determine how often a particular person carries domestic currency out of the country). (DAR para 513)

Information of all seizures which are done under the Customs law – including seizures resulted as a violation to comply with the authorization requirements prescribed in the case of exportation of domestic currency – is kept in a central database that can be queried by all Customs points. (DAR para 514)

It would appear that the information obtained through the process described above with reference to the exportation of domestic currency is not made available to the AMLO. (DAR para 515)

…..Customs report that they have close cooperation with the AMLO and that they are regularly invited to training initiatives organized by the AMLO; however it would appear that only occasionally the AMLO would provide customs information that may be useful to target people suspected to be involved in criminal activities or in terrorist organizations. (DAR para 517)

Thai Customs signed MOUs and cooperative arrangements on cooperation and mutual assistance in Customs matters with Australia, Cambodia, China (including one with Hong Kong), Korea, Malaysia, New Zealand and the USA. (DAR para 518)

Failure to comply with the authorization requirements under the restrictions provided for the importation of domestic currency triggers the sanctions provided for by section 27 of the CA,…. Untruthful disclosures (and other related wrongdoings) carry the sanctions provided for by section 99 of the CA ….. Sanctions can be also inflicted to a legal person (including the managing director, the managing partner or the person responsible for the operation of the legal person) …... (DAR para 519)

There are no sanctions available for cross-border physical transportation of currency for purposes of ML or TF. (DAR para 521)

As mentioned above, there is no possibility for Customs to seize or confiscate assets related to ML or FT; if Customs detect an offense related to the CA it will have to report the case to the AMLO for its consideration regarding the adoption of the civil vesting process. (DAR para 522)

There is no particular arrangement in the case of discovery of an unusual cross border movement of gold, precious metals or precious stones to notify Customs or other competent authorities of countries from which these items originated….. (DAR para 523)

The authorities were unable to assure the assessors that their system for reporting cross border transactions – in the circumstances described above - is subject to strict safeguards to ensure proper use of the information or data that is recorded. (DAR para 524)

Thailand has not implemented the FATF SR.IX Best Practices paper. (DAR para 526)

Thailand does not have a computerized database of the reports that are collected. (DAR para 527)

Thesis analysis : The analysis of the above comments is as follows:

The following are the respective analysis of the comments of the ADB consultants and the IMF DAR.

- § In general, the ADB consultants' statement that Thailand does not comply with SR IX is correct.
- § As regards the IMF DAR's comments, the statement relating to the lack of restrictions on importation or exportation of foreign currency or bearer negotiable instruments as well as importation of domestic currency is no longer completely true now. For, the Minister of Finance has issued Ministerial Regulation No. 25 (2007), dated 19 September 2007, imposing a declaration requirement on importation or exportation of foreign currency into or out of Thailand exceeding a value of US$ 50,000 or equivalent. This Ministerial Regulation became effective on or about 29 October 2007. It is however to be noted that the subject of restriction is only foreign currency either in bank notes or coins, and the Ministerial Regulation is silent about other bearer negotiable instruments.

As for the other remaining statements (1) that there are no sanctions available for cross-border physical transportation of currency for ML or TF purposes, (2) that there is no possibility for the Customs to seize or confiscate assets related to ML or TF, (3) that there is no particular arrangement of the Customs with counterparts or other competent authorities to notify unusual movements of gold, precious metals or precious stones which originated from their countries, and (4) that Thailand has not implemented the FATF SR IX Best Practices Paper, it must be admitted that they are fully justified.

4. Chapter-wise comments

In this Chapter two more categories of issues : issues of preventive measures and issues of institutional measures are discussed. The first category covers Recommendations 4 to 25 and Special Recommendations IV, VI, VII, and VIII. Of these, Recommendations 4 to 12 relate to matters of CDD and record-keeping, Recommendations 13 to 16 concern matters of STR compliance, Recommendations 17 to 20 deal with other measures to deter ML and FT, Recommendations 21 and 22 are concerned with NCCTs, and Recommendations 23 to 25 are related to matters of regulation and supervision. Special Recommendations IV concerns STR on FT, Special Recommendation VI is concerned with alternative remittance, Special Recommendation VII relates to wire transfer, and Special Recommendation VIII is related to NPOs.

As for the second category, issues of institutional measures cover Recommendations 26 to 34 and Special Recommendation IX. Of these, Recommendations 26 to 32 deal

with matters of competent authorities, their powers and resources, Recommendations 33 and 34 relate to transparency of legal persons and arrangements, and Special Recommendation IX concerns cash couriers.

Detailed discussion of the issues reveals that Thailand has to go a long way to improve its preventive measures particularly concerning CDD, NCCTS, and NPOs. Similarly, existing measures relating to clearly defined competent authorities, regulation and supervision are much to be desired.

5. Implications of Assessments

Generally, independent assessments—particularly those of the international specialized agencies such as the IMF, WB, ADB, and APG—exert much influence on assessed jurisdictions' decision-making process in regard to their AML-CFT system improvement.

However, in the case of recent Thailand's AML-CFT assessments—especially by the ADB, the UK Charity Commission and the IMF (DAR)—special attention needs to be given to certain points of findings which can be essentially treated as crucial issues.

CHAPTER IX

SELECTIVE CRUCIAL ISSUES

1. Notable background about earlier assessments

Among the assessments of the teams briefly described in Chapter VII on Thailand's current AML-CFT regime, the two assessments in particular—the ASEM AML Project consultants' report of February 2003 and the IMF legal team's report of September 2005—were found to be as much analytical as critical. On some issues the views were so controversial that, at one point, Thailand had to make an explanatory note of its own so as to have it attached to the final report in the case of the ASEM report. And, at another point, Thailand had to counter the critical views by submitting its own comments or explanations in order to have some of the critical views modified or deleted because they were considered damaging to Thailand's national capability in the case of the IMF legal team's report. This countering resulted in the drastic revision of the IMF legal team's report, leaving only those points of views that are critical and justifiable, but no longer contentious, and are mostly acceptable to Thailand as a whole. These reports are two of eight reports made between 2002 and 2007.

With somewhat modified assessments the reports of the independent assessors have, in one way or another, paved the way for Thailand to review and reassess its own legal framework and to commence taking appropriate measures of improvements in line with the recommendations and suggestions contained in the respective reports. At the same time it is very important to see that the image of Thailand is upheld to the best of its ability. To that end, Thailand needs to strike a delicate balance between the two extremes – one is outright rejection of the assessments and another is portrayal as a non-compliant jurisdiction.

As regards the remaining six reports, only three of them, namely (1) the ADB consultants' analysis report on Thailand of April 2006, (2) the UK Charity Commission's analysis report on Thailand's NPOs of January 2007, and (3) the IMF mission's Detailed Assessment Report (DAR) on Thailand of July 2007, would be chosen for review and comment. For, the findings made in these three reports not only are detailed and comprehensive in their respective areas of assessment but also supersede those of the earlier reports of the APG, the ASEM, the IMF legal and technical teams and the World Bank.

These reports—the ADB, the UK Charity Commission and the IMF DAR—contain views, critical but not contentious, and worthy of review and comment in the context

of Thailand's fast-developing AML-CFT regime. In fact, their respective findings are generally correct to the extent that they are based on facts observed and their recommendations in most cases are appropriate and logical. Nonetheless, there are still some critical areas where their findings may not truly reflect the prevailing situation under which Thailand's AML-CFT regime has been functioning since the inception of the AMLA and related laws. In some cases, their incorrect findings may apparently stem from misinterpretation of particular Thai laws due to shortcomings in English translations of the relevant texts.

On closer examination, the crucial issues are found to mostly center on the legal aspects of the AMLA in relation to the international standards and criteria, particularly set out in the international conventions and the FATF Recommendations. For example, the assessments in the reports concluded (1) that international conventions and other AML-CFT standards are not yet fully reflected in the AML-CFT legislation, (2) that AMLA's definition of ML and FT is incomplete, (3) that the list of predicate offenses in the AMLA is not broad enough, (4) that FIU's powers should be made explicit, (5) that assets should specifically cover assets abroad as well as proceeds of crime for purposes of forfeiture, and (6) that the narrow scope of the 1992 Act on mutual legal assistance restricts Thailand's ability to provide assistance in international cooperation. The implications of the assessments may be twofold. At one extreme, accepting the points of assessments, as they are, will inevitably lead to substantial amendment or overhauling of the existing laws at best. And at another extreme, rejecting the points of assessments outright will paint Thailand as a non-compliant jurisdiction in the eyes of the law at worst. In other words, Thailand will be viewed as a jurisdiction with an ineffective AML-CFT regime incapable of fulfilling its international obligations.

On the surface of it, the review work may seem easy and straightforward, tempting one to readily agree with the assessments and recommendations for legal amendment. However, on a closer scrutiny, it will reveal (1) that some recommendations for amendment are unnecessary, (2) that some suggestions seem to be too technocratic, placing form over substance, (3) that some suggestions merit serious consideration for amendment, and (4) that some recommendations should be accepted for appropriate amendment.

Having thus classified the types of recommendations as above, we will now proceed to sift out the crucial issues from the respective reports and to review and reassess the selected issues vis-à-vis the existing Thai laws and practice. In this regard, what we will attempt to touch on are the following selective crucial issues:

(1) Scope and definition of predicate offenses
(2) Matters pertaining to confiscation of property involved in crime
(3) Matters pertaining to CDD
(4) STR (suspicious transaction reporting/report)
(5) DNFBP
(6) Designated authority
(7) Guidelines and feedback
(8) Conventions : Implementation and mutual assistance

(9) Cooperation : Assistance re. property of corresponding value
(10) Cooperation : Extradition
(11) Criminalization of terrorist financing
(12) Freezing of terrorist funds

In the course of reviewing each issue, one will come to realize as to whether or not that particular issue is necessary, or merits serious consideration for amendment, or needs to be accepted for appropriate amendment of the AMLA and/or related laws. As indicated earlier, for the purpose of review only the most recent reports of the ADB consultants, the UK Charity Commission and the IMF (DAR) will be cited because most of the crucial issues are contained in these reports.

2. Issues selected and commented

2.1. Scope and definition of predicate offense

ADB consultants' view[1] : The report of the consultants' contain the following comment :

- *In our view Thai law already covers many of the issues listed in the glossary to the FATF 40 Recommendations. The additional predicate offenses proposed will extend the coverage by Thailand of the suggested list of categories. (p 86)*

- *Our conclusion is that Thailand meets the original FATF Recommendation 1 standard. In order to comply with the Revised Recommendation 1 Thailand will need to ratify the Palermo Convention and to do that it will need to ensure that all offenses carrying a penalty of four years imprisonment or more are predicate offenses for the purpose of its anti-money laundering law. (p 87)*

- *We recommend that for an abundance of caution, Thailand should consider making it clear in [the] AMLA that the predicate offense may occur anywhere. Such a provision would be able to operate so as to cover a new definition of predicate offense in line with the requirements of the Palermo Convention and would avoid the necessity of amending various provisions in the Penal Code ..... (p 96)*

IMF DAR[2] : The DAR made the comments as follows:

- *The predicate offenses to ML, as set forth under Section 5 of the AMLA, do not cover all of the serious offenses under Thai law, nor the complete list of designated categories of offenses under the FATF 40+9 ..... (DAR para 116)*

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[1] ADB consultants' analysis report on Thailand, 9 April 2006
[2] IMF DAR, 24 July 2007

- *[The] AMLO has drafted a proposal to add eight additional categories of offenses under Section 5 of the AMLA ….. (DAR para 118)*

- *Even if this proposal is approved by Parliament, the list of predicate offenses would still fall short of covering all serious offenses or a range of offenses within each of the designated categories of offenses ….. (DAR para 119)*

- *Not all of the predicate offenses for ML extend to a conduct that occurred in another country, which constitute[s] an offense in that country, and would have constituted a predicate offense had it occurred in Thailand. Although the AMLA clearly extends the offense of ML to offenses committed abroad, it is silent on the extension of predicate offenses to offenses committed abroad. There is no case law to clarify this uncertainty because the matter has not been tested yet in Thai courts. (DAR para 122)*

Thesis discussion : To make a reply to the above respective comments, it needs first to find out what common points the comments contain. One can deduce the following :

- That the AMLA's list of predicate offenses is inadequate to meet the requirements of Recommendation 1.
- That the predicate offense does not cover the conduct that occurred abroad.

As regards "predicate offenses", Recommendation 1 provides four types of approaches that countries can choose for designation of ML predicate offenses. Predicate offenses may be described by reference to (a) all offenses; (b) a threshold linked either to (i) a category of serious offenses or (ii) the penalty of imprisonment; (c) a list of predicate offenses; (d) a combination of these approaches, whereas countries are required to criminalize ML on the basis of the 1988 Vienna Convention and the 2000 Palermo Convention.

While the Vienna Convention merely mentions criminalization of offenses in its Article 3, the Palermo Convention's Article 6 not only mentions criminalization of offenses but also deals with approaches relating to designation of predicate offenses—which state as follows:

Article 6 (2)

For purposes of implementing or applying paragraph 1 of this Article :

(a) Each State Party shall seek to apply paragraph 1 of this Article to the widest range of predicate offenses;

> (b) *Each State Party shall include as predicate offenses all serious crime[*] as defined in Article 2 of this Convention and the offenses established in accordance with Articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offenses, they shall, at a minimum, include in such list a comprehensive range of offenses associated with organized criminal groups;*

It is to be noted that the above Article describes two types of approaches—"threshold approach" and "list approach." What then is the AMLA's choice? The AMLA has adopted the list approach, meaning designating predicate offenses by categories of offenses as well as adding some specific offenses. In this regard, the DAR in its para 117 pointed out that the AMLA, as it is, has yet to cover 13 out of 20 designated categories of offenses. It also commented that even if the so-called eight additional predicate offenses proposed by the AMLO are approved and prescribed by Parliament, it would still fall far short of covering all serious offenses or a range of offenses because only three out of eight proposed additional predicate offenses would cover the remaining 13 designated categories of offenses.

Whatever the line of thinking of related Thai authorities when deciding on the designation of predicate offenses, it is clear that the AMLA has a long way to go to fully cover the predicate offenses shown in the list designated categories. The status of the FATF Recommendations had remained to be of recommendatory nature until the UN Security Council Resolution 1617 (2005), dated 29 July 2005, strongly urged all member States to implement the comprehensive international standards. This resolution seemingly imposes legal obligations on member States in relation to the FATF Recommendations 40+9. However, it does not mean that it is mandatory for countries to comply fully with the FATF Recommendations. Since Thailand has already made the AMLA and committed to implement the international standards, compliance with the FATF Recommendations is a desirable thing enabling Thailand to combat ML and TF more effectively and, at the same time, enhancing Thailand's good image in the international community.

With regard to another issue **"foreign predicate offense"**, the AMLA does not say whether the predicate offenses extend to conducts that occurred in another country. In this regard, the view expressed by the OAG is quite interesting when it says : "The definition of predicate offenses in AMLA 1999 does not speak clearly about this; it is silent. Further, the issue has not yet been tested in court. It is, however, certain that whether a conduct constitutes a predicate offense would be determined under Thai

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[*] In Article 2, 'serious crime' is defined as meaning conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

laws only. In other words, the conduct must be committed within the criminal jurisdiction of Thailand. It should nevertheless be noted that an offense need not be committed within the Thailand's territory to be subjected to its criminal jurisdiction. Criminal jurisdiction may be exercised on the bases of territory, nationality, and protective principles. Furthermore, in some cases, jurisdiction is extended to offenses wholly committed outside the Kingdom". (Answer to criterion 1.5 in Section 2.1.1, DAQ)

The OAG further states : "For example, in drug-related offenses, the Act on Measures for the Suppression of Offenders in Offenses relating to Narcotics 1991 grants the jurisdiction in the case where the alien offender has committed drug-related offenses in foreign countries and he appears in the Kingdom and has not been extradited (Section 5). Thus, as long as conduct at issue constitutes a predicate offense under Thai laws and within the jurisdiction of Thailand, it does not matter where it was committed or whether it constituted an offense in the country where it was committed. On the other hand, if the conduct is committed outside the jurisdiction of Thailand, it will not be considered a predicate offense irrespective of whether it would constitute a predicate offense had it occurred in Thailand." (Answer to criterion 1.5 in Section 2.1.1, DAQ)

Thesis conclusion : Based on the points in the above discussion the following conclusion can now be drawn :

- On "**predicate offenses**", the reports' comments are justified in that wider coverage of categories of predicate offenses is still needed in the AMLA, and
- On **"foreign predicate offense"**, in the absence of any judicial ruling concerning the application of Thai criminal jurisdiction to predicate offenses, one has but to agree with the OAG view that the conduct of an offense is to be determined on the basis of Thai criminal jurisdiction and that if the conduct is committed outside of Thai jurisdiction it will not be considered as a predicate offense.

2.2 Matters pertaining to confiscation of property involved in crime

ADB consultants' view[3] : The consultants' report contains views on confiscation issues under Recommendation 3, which, among others, state as follows :

> *The operation of the three main Thai laws that deal with proceeds of crime and forfeiture leave[s] Thailand with no capacity to deal with the conversion of*

[3] ADB consultants' analysis report on Thailand, 9 April 2006

proceeds of crime, the intermingle of such proceeds or income derived from proceeds in cases where the offense that created the proceeds is not a predicate offense under [the] AMLA. This is because Section 33 of the Penal Code has no application to such property. Thailand will need therefore to extend the definition of predicate offense in the AMLA to allow it to use its civil powers to recover the proceeds of serious offenses or it will need to extend the provisions of the Panel Code to give the courts power to impose criminal forfeiture orders relating to property that is indirectly acquired from criminal conduct or intermingled with legitimate funds. (p. 210)

IMF DAR[4] : The DAR made its comments as follows:

Thai laws provide for the confiscation of property that has been laundered or which constitutes (a) proceeds from; (b) instrumentalities used in; and (c) instrumentalities intended for use in the commission of any ML, TF or other predicate offenses, including property of corresponding value. (DAR para 191)

The forfeiture provisions in the PC do not deal with the property derived from proceeds of crime. (DAR para 217)

At the same time, the DAR, on the other hand, holds an opposite view with regard to forfeiture of property of corresponding value by stating as follows:

"For execution of the request for seizure or forfeiture, the Mutual Assistance in Criminal Matter Act 1992 requires that property to which the request relates must be sizeable or forfeitable under Thai laws. However, seizure or forfeiture under Thai law is property-based. In other words, property must be somehow connected with the offense or it must be tainted property, whether instrumentality used or intended for use in the commission of an offense, or proceeds from an offense. Thus, the seizure or forfeiture of property of corresponding value cannot be made. It follows that assistance in relation to property of corresponding value cannot be given." (DAR para 1268)

"Thailand cannot provide assistance unless the property to be seized or forfeited is "tainted" property connected with the commission of the offense and thus they may not be able to offer assistance on corresponding value" (DAR para 1269)

Thesis discussion: The common issues involved in the above comments can be described as follows:

- On "**proceeds of crime**", Thai laws do not adequately deal with conversion or intermingling of proceeds of crime;

- On "**property of corresponding value**", there are divergent views not only in the DAR itself but also between the DAR and the OAG; and

- On "**property derived from proceeds of crime**" it is not forfeitable under the Penal Code.

[4] IMF DAR, 24 July 2007

Regarding the first issue—**proceeds of crime**, the ADB consultants apparently based their comment on the provisions of Sections 32 and 33 of the Penal Code, which provide for the court to forfeit (i) property of which possession is illegal; (ii) property used or intended for use in the commission of an offense; and (iii) property acquired by a person through the commission of an offense. Unlike the AMLA or the 1991 Narcotics Suppression Act, proceeds of crime or income derived from proceeds of crime are not covered in the Penal Code. The 1991 Narcotics Suppression Act provides for a conviction-based forfeiture in respect of such proceeds of crime while the forfeiture under the AMLA is a non-conviction-based civil regime. Accordingly, when it comes to predicate offenses under the AMLA the provisions of the Penal Code to deal with the proceeds of crime will not be applicable, but the issue can be dealt with under the AMLA or the 1991 Narcotics Suppression Act. So the ADB consultants comment is partly justified.

As for the second issue—**property of corresponding value**, the AMLA's definition of the "property connected with the commission of an offense" does not include "property of corresponding value." The OAG, in its answers to the DAQ in Section 6.3, criterion 38.2, unequivocally stated as follows :

> *….. However, seizure or forfeiture under Thai laws is property-based. In other words, property must be somehow connected with the offense or it must be tainted property, whether instrumentality used or intended for use in the commission of an offense, or proceeds from an offense. Thus, the seizure or forfeiture of property of corresponding value cannot be made…..*

Again, the OAG in its answer to the DAQ in Section 23.1, criterion 3.7, reaffirmed the view as follows :

> *…..Property of equivalent value which is not connected with the commission of an offense is not forfeitable.*

However, Section 37 of the Penal Code states otherwise. In the context of general criminal cases, the Penal Code provides as follows:

> *If the person who is ordered by the Court to deliver the forfeited property does not deliver it within the time determined by the Court, the Court shall have the power to give order as follows:*
>
> *(1) to seize such property;*
> *(2) to pay its value, or to seize other property of such person to compensate for its value in full; or*
> *(3) …..*

In addition, the Panel Code's Section 37 is reinforced by the provision of the Organic Act on Counter Corruption 1999 where the property of corresponding value is capable of being forfeited. Section 83 of the 1999 Act provides as follows:

> *"Section 83. If the Court gives an order that the alleged culprit's property in respect of which the N.C.C. has passed a resolution confirming its representing the unusual increase devolve upon the State but the execution is unable to be conducted of the whole or part of such property, the execution maybe conducted of other property of the alleged culprit within the prescription of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the Court to devolve upon the State."*

If so, why the OAG expressed such a view very firmly needs to be ascertained. The possibilities are that since (1) the AMLA's definition of the "property connected with the commission of an offense" in Section 3 does not cover "property of corresponding value", (2) the Penal Code's Section 33 does not mention "property of corresponding value" in the list of properties which the court can forfeit, and (3) the power given to the court to order seizing of other property of a person failing to deliver the forfeited property within the specified time to compensate for its value in full is provided in Section 37 of the Penal Code, the OAG might have concluded that under Thai laws forfeiture is property-based and that the property is tainted because it is connected with the commission of an offense. The term "property connected with the commission of an offense" used in the AMLA itself is very specific and it is distinguished from the meaning of "property" in general, as defined in Section 138 of the Civil and Commercial Code. Besides, the OAG might have construed the power to forfeit the property of equivalent value as a sanction for failure to deliver the forfeited property rather than forfeiture itself of the property of corresponding value due to unavailability of the property involved in the criminal offense.

The DAR, on the other hand, interpreted straightforwardly Section 37 of the Penal Code as authorizing the court to forfeit the property of corresponding value, without delving further into the context of the seizure order made so as to compensate for the full value of the undelivered forfeited property. It may however be noted that in its discussion and findings on Thailand's AML laws in regard to Recommendation 38 of DAR express the view contrary to that it holds in respect of Recommendation 3.

With regard to the third issue—**property derived from proceeds of crime**—the ADB consultants' comment is fully justified considering the fact that there is no reference to proceeds of crime in Penal Code's Section 33—which says as follows :

> *For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:*
>
> *(1) a property used or possessed for use in the commission of an offense by a person; or*
> *(2) a property acquired by a person through the commission of an offense, unless such property belongs to the other person who does not connive at the commission of the offense.*

The DAR findings are also correct that the Penal Code's forfeiture provisions do not deal with the property derived from proceeds of crime.

Thesis conclusion: From the above discussion we can now draw the conclusion as follows :

- On **proceeds of crime** and **property derived from proceeds of crime**, the AMLA will be able to deal with such proceeds or property only in case where they are connected with the designated predicate offenses and the Penal Code is not applicable as it does not cover such proceeds or property. Such being the case, it needs

either to expand the scope of predicate offense or to amend the Penal Code so as to cover such proceeds and property, and

- On **property of corresponding value**, since the Penal Code specifies such property as forfeitable whereas the AMLA limits the type of property to that of the property connected with the commission of an offense only, the OAG's view is justified in terms of the AMLA definition. So if one takes up the forfeiture proceeding under the AMLA it will be a non-conviction-based civil forfeiture system and the property of corresponding value cannot be dealt with. If, on the other hand, one resorts to the Penal Code, then it will be a conviction-based forfeiture system capable of dealing with the property of corresponding value.

2.3 Matters pertaining to CDD

ADB consultants' view[5] : In its report the consultants made their comment as follows :

> *The AMLA does not yet impose the necessary obligation on financial institutions to apply CDD procedures in all appropriate cases nor are they required to maintain all of the necessary records, including all account opening and transaction records. (p.39)*
>
> *Adequate CDD provisions are critical for both AML and CFT. This is one area where deficiencies must be remedied as soon as possible. At this time both the Act and the regulations appear to be deficient. While the BOT has issued directives to the banks under its control, the scope of these [directives] is limited. The solution may be found in issuing new regulations, provided that they are consistent with Sections 20 and 21 of the AMLA….. (p.172)*

IMF DAR[6] : The DAR contains the following comment, among others, in relation to CDD procedures:

> *Apart from setting provisions which criminalize ML, establish an FIU and provide for civil vesting and provisional measures, the AMLA contains identification and record-keeping requirements for transactions which are subject to reporting to the AMLO (threshold-based or suspicious). (DAR para 537)*
>
> *The identification requirement for occasional transactions does not meet the standard of FATF R.5.2(b), as the threshold of 2 million baht ($52,800) is far greater than the international standard (15,000 USD/EUR). (DAR para 567)*
>
> *The legal framework setting provisions regarding CDD is extremely fragmented and consists of [the] AMLA, ministerial regulations and other secondary legislation and guidelines issued by supervisory authorities are referred to as "Notifications" (sometimes circular letters) or "Policy Statements." The latter would only set unenforceable guidelines. (DAR para 531)*

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[5] ADB consultants' analysis report on Thailand, 9 April 2006

[6] IMF DAR, 24 July 2007

Thesis discussion : When drawing common issues from the above points of view, one can get the following :

- On customer identification and record-keeping requirements, the AMLA provisions are not compliant with Recommendation 5 and such provisions are applicable only to those transactions subject to reporting to the AMLO; and

- On fragmented CDD provisions, they are not only scattered but most of them are unenforceable under FATF standards.

As regards the first issue—**customer identification and record-keeping requirements**, AMLA's Section 20 requires financial institutions to let customers identify at every transaction, unless previously identified, and Section 22 imposes obligations on financial institutions to keep records of identification data and records of statements of fact made under Section 21 for five years. The AMLA is silent about other records relating to transactions, account statements, correspondence, etc. However, the general rule as regards these records is that the provision of Section 193/30 of the Civil and Commercial Code prescribes a 10-year period for maintaining the records.

What seems to have led the DAR to conclude that identification and record-keeping requirements are applicable only to those transactions reportable to the AMLO is the language used in the Ministerial Regulation No. 6 (2000)—particularly clause 1. The text of clause 1 reads as follows:

> *Clause 1. For the transactions to be reported by financial institutions to the Office, the financial institutions shall make arrangement for the customers to identify themselves every time prior to the transactions unless the customers have already identified themselves previously.*

As a matter of fact, the language of Section 20 does not embrace the concept contained in the qualifying phrase, "….. to be reported by financial institutions to the Office"—because paragraph one of Section 20 says : "A financial institution shall cause its customers to identify themselves on every occasion of making a transaction prescribed in the Ministerial Regulation unless the customers have previously made such identification." Clearly, the concept of this Section simply refers to all transactions without limiting the identification requirement to those transactions that must be reported to the AMLO.

Accordingly, all those, including international consultants or assessors, who have read the text in the Ministerial Regulation are inclined to interpret that the identification requirement is needed only for those transactions to be reported to the AMLO. The inevitable consequence is that throughout the assessment process the minds of these international consultants or assessors remained impressed with the same interpretation, making them to stick to it in all subsequent assessment of related issues. As issues are interrelated, once a wrong conclusion is made on a certain issue it is likely to impact on the conclusion of the remaining related issues.

With respect to the second issue—**fragmented CDD provisions**, admittedly, regulations or guidelines on CDD requirements are not collated in a single

document—which ideally is a much desirable thing to see. But, in practice, it is not so, and relevant regulations or guidelines have remained scattered and fragmented for reasons that are cited before.

First, it is the temporal factor contributory to the fragmentation of CDD regulations or guidelines. At the time of AMLA's enactment in April 1999 and coming into force in October the same year, the CDD provision had only the FATF 40 Recommendations to use as reference; there were no essential and additional criteria to guide then. For instance, what is stated in Recommendation 5 was taken as guide in formulating the AMLA's CDD provisions. When the AML-CFT regime was assessed the standard guide was the FATF Assessment Methodology—which first came out in October 2002 and which contains detailed criteria for each and every Recommendation and Special Recommendation. In the case of Recommendation 5, there are 18 essential criteria against which Thailand's CDD provisions were assessed. And 9 Special Recommendations were issued only in October 2001. Similarly the UN Security Council Resolutions No. 1269 of October 1999 and No. 1373 of September 2001 were passed after the AMLA. As for UN conventions, only the Vienna Convention (1988) preceded the AMLA whereas the Palermo Convention (1999) and the Convention against FOT (2000) followed the AMLA.

Second, the post-AMLA enactment saw the Thai authorities being pressured to keep AML laws and regulations up to date and to catch up with the fast-developing international standards. Faced with time-consuming and multi-layered legislative process to get its AML laws revised or amended, Thai authorities have had to resort to stop-gap measures by issuing, from time to time, such regulations and directions as notifications, regulations, circulars, policy statements, etc. In taking such measures Thai authorities have sincerely believed that the regulatory and supervisory directives are legally enforceable. (The question of legal enforceability of these directives raised by the IMF DAR is discussed in later Chapters.)

Third, one has to accept the fact that once a reasonably workable enabling law is made, it is very rarely necessary for such a law to be frequently amended each time there is a new development in the area the law deals with. Coverage of new issues or developments is effected through a legal process known as secondary legislation. In the case of the AMLA, exactly such things have happened, and respective regulatory and supervisory authorities have issued their directives aimed at compliance with the international standards. That's why Thailand's AML laws and regulations are fragmented and scattered.

Last, be that as it may, despite the fragmented nature of the CDD provisions the practical test is whether the provisions are capable of being enforced or not.

Thesis conclusion : Considering the points as discussed above, we can now draw the conclusion as follows:

- On **customer identification and record-keeping requirements,** the AMLA's provisions have been apparently misinterpreted due to a mistake in clause 1 of the Ministerial Regulation No. 6. (2000); and

- On **fragmented CDD provisions**, they are fragmented and scattered indeed but their effectiveness is yet to be tested.

2.4 STR (suspicious transaction reporting/report)

ADB consultants' view[7]: While recognizing that the Thai system exceeds FATF requirements in a number of useful ways by imposing reporting obligations on specified types of financial institutions as well as a legal obligation to identify the customer prior to conducting transactions, the report made the following comment:

Section 13 of the AMLA requires the report of suspicious transactions by financial institutions. This would, without any qualification, fully meet the requirements imposed by Recommendation 13 so far as it relates to financial institutions. There are two issues. Recommendation 13 also applies to non-financial businesses and professions (…..) and the scope of Section 13 is limited. (p. 182)

Any exemption from the reporting of suspicious transactions is undesirable….. The exemption of any transaction in which the senior members of the Royal Family are involved and the entities which are closely associated with the Royal Family reflects the position of the Royal Family in Thailand. However, it is an undesirable precedent….. Of much greater significance is the exemption of any transaction ….. involving government agencies and; given the documented existence of serious corruption involving some agencies….. (p. 184)

IMF DAR[8]: The DAR, while pointing out the limited application of AMLA's Section 13 to only eight predicate offenses, made the following comments as well:

In addition, the persons who are required to report suspicious transaction are limited to the FIs as defined in the AMLA and these do not cover all of the categories of persons required to report suspicious transactions under the FATF 40 Recommendations. (DAR para 766)

The reporting requirements exempt transactions relating to those set out in Ministerial Regulation 5 of 2000 which leaves a gap in the reporting regime of the AML-CFT framework of Thailand, as it would appear that no assessment has been undertaken of the ML risk (especially in the case of transactions to which the Government state agencies or enterprises are parties)…..(DAR para 767)

It has been mentioned that the obligation to report suspicious transactions is regardless of the thresholds mentioned by Section 13.1 and 13.2 of the AMLA….. However, reporting of attempted transactions that are suspicious is not covered. (DAR para 769)

Thesis discussion : From the ADB's and IMF's comments above, we can now describe the following common issues on which their comments focus:

- On **the scope of the AMLA** it is limited in its application to eight predicate offenses and consequently STR is limited to these predicate offenses;

[7] ADB consultants' analysis report on Thailand, 9 April 2006
[8] IMF DAR, 24 July 2007

- On **reporting entities**, reporting is limited to FIs, as defined in the AMLA, and is not applicable to DNFBPs as well as other non-financial businesses and professions and it does not cover attempted transactions; and

- On **reporting exemption** and **attempted transactions**, exemption is granted without risk assessment of exempted entities.

As regards the first issue—the **scope of the AMLA**, one has to admit that inasmuch as the number of predicate offenses is limited to current eight predicate offenses, very much falling short of the FAFT designated list, the coverage is deemed utterly inadequate. It may, however, be noted that where reporting of STRs is concerned, reporting entities are not limited to these eight predicate offences. They are in fact required to report any suspicious transaction to the AMLO, without determining or being able to determine the type of activities.

Another related issue—**reporting entities**—is concerned with the limiting nature of reporting entities, which in the case of the AMLA is confined to FIs only. This assertion may not be absolutely correct if the provision of Section 16 is taken into account. Section 16 reads as follows:

A person engaging in the business involving the operation of or the consultancy in a transaction related to the investment or mobilization of capital shall report to the Office in the case where there is a reasonable ground to believe that such transaction is associated with the property connected with the commission of an offense or is a suspicious transaction.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported under paragraph one, that person shall report such fact to the Office without delay.

The provision in paragraph one above is open to various interpretations. For instance, the person in question can be any of the following:

(i) He himself is an operator of investment business.
(ii) He is a consultant in investment business.
(iii) He himself is an operator of capital mobilization business.
(iv) He is a consultant in capital mobilization business.

Bearing in mind that the generic term "person" can be either a natural person or a legal person, if the person in question is regarded either as (i) or (iii), then that person can be an FI. Or, if the person is treated either as (ii) or (iv), then that person can be an independent professional, meaning belonging to the category of DNFBP.

With regard to the third issue—**reporting exemption** and **attempted transactions**, the international consultants and assessors are very critical of the AMLA's provisions in Section 18 and the Ministerial Regulation No.5 (2000) granting exemption to certain specified persons and entities. In fact, Thailand is not the only one exercising such exemption power; there are many other countries in the world granting

exemption to certain classes of people in their society. Thailand views that the Royal Family deserves to be accorded the special privilege in recognition of their unique position in Thai society.

It is interesting to note that according of the special privilege proves sometimes to be problematic, as in the case of he *lese majeste*[9] laws. The military-appointed NLA (the National Legislative Assembly) has recently attempted to propose two bills[10] the first one amending the Penal Code in order to extend the legal protection against criticism to all family members and representatives appointed by the monarchy; and the second bill banning the media coverage of *lese majeste* cases. However, the two bills were withdrawn at the last minute at the mention of concerns about the move from the Privy Council, which deemed such protection unnecessary. As a constitutional monarchy, Thailand upholds His Majesty in a position of extreme reverence and the *lese majeste* laws are in place to punish those who criticize the King. The problem is the frequent use of these laws for political expediency; anyone can file a lawsuit accusing someone of insulting the King for the purpose of discrediting or silencing a political opponent instead of genuinely seeking to protect the monarchy. Some skepticism was raised stating : "The need to resort to such a severe law in a country where the overwhelming majority of the population are likely to revere the monarchy, is questionable. People who insult the monarchy are likely to face widespread social condemnation without any need to resort to criminal proceedings"[11]

As for the government entities, Thailand considers that after all their transactions are subject to internal audit as well as state audit no matter whether their transactions are suspicious or otherwise. Besides, there are some independent anti-graft agencies for monitoring, scrutiny and investigation of suspected transactions of government entities.

Regarding **attempted transactions,** AMLA's Section 21 can be interpreted as applicable to attempted transactions. The provisions read as follows:

> *Section 21. In making a transaction under Section 13, a financial institution shall also cause a customer to record statements of fact with regard to such transaction.*
>
> *In the case where a customer refuses to prepare a record of statements of fact under paragraph one, the financial institution shall prepare such record on its own motion and notify the Office thereof forthwith.*
>
> *The record of statements of fact under paragraph one and paragraph two shall be in accordance with the from, contain such particulars and be in accordance with the rules and procedure as prescribed in the Ministerial Regulation.*

When it comes to the record of the statement of fact, i.e. facts about the transaction, the customer's refusal would cause an unsuccessful transaction, and such unsuccessful transaction is a kind of an attempted transaction, because the customer

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[9] A French word meaning "the act or crime of insulting the king, queen or other ruler" according to OALD 7th Edition, 2005

[10] A serious and sensitive issue, Editorial in Bangkok Post, 10 October 2007

[11] Another nail in the coffin of Thai democracy, Article by Jon Ungphakorn, Bangkok Post, 10 October 2007

commences a transaction but declines to proceed with it, possibly as a result of the questions being asked by the financial institution. However, according to the provision in paragraph one, reporting of such transaction is limited to transactions that must be reported to the AMLO.

Thesis conclusion : In consideration of the above points of comments and discussion we can now conclude as follows :

-On **the scope of the AMLA**, despite the current efforts of Thai authorities to try to add eight more predicate offenses to the existing list of eight, the scope of the AMLA will still fall short of the FATF designated list;

-On **reporting entities**, the provisions in Section 16 of the AMLA can be interpreted as applicable not only to FIs but also to some categories of DNFBPs; and

-On **reporting exemption** and **attempted transactions**, the suggestion of the assessors to have an ML-risk assessment undertaken should be given serious consideration by Thai authorities concerned.

2.5 DNFBP

ADB consultants' view[12] : The consultants' report contains the following comment:

[The] AMLA needs to be amended to extend the application of Section 13 (reporting obligations) to the designated non-financial businesses and professions. (p.187)

IMF DAR[13]: The DAR made the following comments:

There are no specific obligations on DNFBPs to report suspicious transactions to the AMLO. (DAR para 1072)

The closest thing to an obligation is Section 16 of the AMLA ….. However, ….. the provision is vague, not specific for DNFBPs, does not cover the non-financial transactions for some of the DNFBPs such as lawyers and it cannot be enforced against lawyers and accountants as it conflicts with the professional secrecy obligations that apply to those professions. The AMLO could not provide information on the number of reports received on the basis of Section 16 of [the] AMLA. (DAR para 1073)

Thesis discussion : From the above comments we can now find out the common issues as follows :

- On reporting obligations of DNFBP, generally, the findings of the assessors that the AMLA imposes no such obligations on

[12] ADB consultants' analysis report on Thailand, 9 April 2006

[13] IMF DAR, 24 July 2007

DNFBPs are correct provided interpretation of Section 16 is not stretched to the limit, as previously discussed in section 2.4 above,; and

- On professional secrecy, there exists a conflict of laws between the AMLA and the Penal Code (Section 323 relating to offenses of disclosure of private secrets).

Regarding the first issue—**reporting obligations of DNFBP**, the AMLA does impose reporting obligations on certain categories of DNFBP under Section 16 of the AMLA although the provision is not specific to that effect. The AMLO has already sought and obtained the cabinet approval for extension of reporting regime to the following four more entities :

(i) Any person or juristic person trading in precious stones or metals, such as gold and jewelry
(ii) Any person or juristic person trading or undertaking a hire-purchase business in motor vehicles
(iii) Any person or juristic person undertaking personal loan businesses under the supervision of the Bank of Thailand on non-financial business
(iv) Any person or juristic persons undertaking electronic cash card business under the supervision of the Bank of Thailand

Of the above four entities, hire-purchase business operators (item 2), personal loan business operators (item 3) and electronic cash card business operators (item 4) fall in the category of financial institutions, while precious metals and stones dealers come under the category of DNFBP.

As regards the second issue—**professional secrecy**, there is a likelihood of conflict between the AMLA-imposed reporting obligations particularly of lawyers and accountants and their Penal Code-imposed professional secrecy. Their professional organizations being SROs (self-regulatory organizations), the potential conflict of laws will not remain unresolved for long because it is quite certain that Thai authorities will somehow come up with an innovative method to solve the problem. It only is a matter of when and how.

Thesis conclusion : Based on the above points of comments and discussions we can now draw the conclusion as follows :

- On **reporting obligations of DNFBP**, the scope currently existing will be expanded as more categories of DNFBPs are brought under the ambit of the AMLA, as the amendment is already in process; and

- On **professional secrecy**, evidently there now exists a conflict of laws, which, however, is not beyond remedy as the Thai legal system is capable of redressing any defect.

2.6 Designated authority

ADB consultants' view[14] : The consultants' report contains the following comment :

> *….. we agree there is a need for greater clarity in the respective roles of the supervisory agencies in relation to AML-CFT issues. We also note that the Thai authorities are well aware of this issue and that they are working actively to improve both the scope and depth of their supervisory activities and to clarify their respective roles. These improvements are not dependent on legislation and can be undertaken over the next six months. We would encourage the Thai authorities to do this using the coordinating mechanisms already in place. (pp. 189-190)*

IMF DAR[15]: The DAR made its comments as follows :

> *None of the laws or regulations in force specifies clearly which designated competent authority or authorities are responsible for ensuring that FIs adequately comply with their AML-CFT requirements. The assessor's impression is that the allocation of duties between the different supervisory authorities to monitor compliance with the AML-CFT requirements is based on an undocumented understanding between the different national agencies than on a specific legal provision …… (DAR para 869)*
>
> *The assessors note that the AMLA is unclear about whether the AMLO has a specific power to monitor compliance with the AMLA. In terms of government administration, the AMLO is probably meant to have a prime role to monitor compliance given that it administers the AMLA but it is not clear to the assessors that the AMLO is actually carrying out any monitoring (other than when following up on STRs). Moreover, one source of this confusion is that BOT staffs often also act as AMLO competent officers. The assessors understand how in legal terms the BOT staff can move from their BOT role to their AMLA role in the course of the same inspection but do not see how that demonstrates that there is effective monitoring of compliance with [the] AMLA other than to follow up on STRs. (DAR para 873)*

Thesis discussion : From the above comments of the ADB consultants and the IMF assessors we can now identify the following common issues :

> - On **designation of authority,** the lack of clear designation of authority responsible for monitoring compliance with the AMLA needs to be addressed; and
>
> - On **AMLO's prime role**, despite being the administrator of the AMLA, the AMLO seemingly is not carrying out any compliance monitoring.

With respect to the first issue—**designation of authority**, it is evident that the authorities concerned are now addressing this unclear and undefined compliance oversight responsibility of regulatory and supervisory authorities. Over time this issue is expected to be cleared as the AMLO and respective industry regulatory authorities come to harness greater understanding as a concerted effort to make the AMLA more

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[14] ADB consultants' analysis report on Thailand, 9 April 2006

[15] IMF DAR, 24 July 2007

effective. By means of concluding MOUs, the AMLO and the industry regulators have already defined their respective roles in relation to monitoring of FIs' compliance with the AMLA.

As regards the second issue—**AMLO's prime role**, while the AMLA is silent on the AMLO's role, the law designates the AML Board as the overall monitor of compliance under Section 25(5) of the AMLA. If one carefully looks at the structure of the Board, one will realize that it is a national-level body with monitoring authority. Being as such, the Board will monitor and evaluate the compliance matters only at the national level whereas industry-level monitoring is left to respective industry regulators and supervisors. This breakup of responsibility is not documented but it must be assumed that it is an unwritten rule and a common practice among State authorities in implementing the requirements under any domestic laws.

Besides, in all practical purposes the AMLO represents the AML Board in all matters related to the AMLA and accordingly any guidance or directive issued by the AMLO is regarded as something prescribed by the national-level body. In other words, in most cases, the AMLO's action is deemed synonymous with that of the Board.

Up to this moment, however, the AMLO does not appear to practically perform the monitoring function in relation to FIs' compliance with the AMLA as a routine function of monitoring compliance required by the FATF Recommendations, except in certain cases involving gathering evidence from FIs in support of the AMLO's investigation.

Thesis conclusion : Considering the points of comments and discussions above, the following conclusion can now be drawn:

- On **designation of authority,** the AMLA's weakness is so clear that early addressing is needed; and

- On **AMLO's prime role**, the AMLO as a *de facto* representative of the AML Board should be more proactive in addressing any lacuna particularly related to compliance monitoring.

2.7 Guidelines and feedback

ADB consultants' view[16] : The consultants' made a brief comment in their report as follows:

> *The AMLO, the Royal Thai Police and supervisory agencies are providing advice and guidance to the financial sector but there is scope for increased activity in this area. (p. 194)*

IMF DAR[17]: The DAR has the following comment with regard to this issue:

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[16] ADB consultants' analysis report on Thailand, 9 April 2006

[17] IMF DAR, 24 July 2007

a. The BoT and the AMLO guidelines have been issued very recently, while the AMLA has been passed [since] 1999. The FIs have been left without guidance on how to implement the requirements under the AMLA or the Notifications that have been in place from the authorities for more than 7 years. The TBA, along with the FBA, acknowledged that they had worked together to develop guidelines for the Thai banks which lacked internal AML-CFT procedures. This situation illustrates that the AML-CFT requirements may not have been properly implemented in the financial industry since 1999. (DAR para 940)

e. The level of detail varies from one guideline to another, which might generate information asymmetry, different practices and therefore a lack of uniformity in the dissemination of KYC/CDD standards throughout the industry ….. (DAR para 940)

f. ….. Some private sector representatives insisted on the fact that 'they had to learn by themselves' and that further assistance from the AMLO and the BoT would be most helpful, notably on how to comply with the reporting obligations. The same concerns were expressed by the financial industry associations that would prefer to receive more guidance from the AMLO regarding how to detect suspicious transactions as well as typologies of ML-FT. They also wish to receive feedback from the AMLO on the reports that they submit. …. (DAR para 940)

The AMLO provides very little feedback to reporting FIs. As noted, the annual report is not regularly updated and it does not contain information or statistics on current techniques and sanitized examples. Also case-by-case feedback is extremely limited. (DAR para 794)

Thesis discussion : The comments of the consultants and assessors deal with the following common issues:

- On **guidelines for FIs,** they are as much incomprehensive as inconsistent; and

- On **feedback to reporting FIs**, the AMLO feedback to reporting FIs is, in practice, as good as nil.

As regards the first issue—**guidelines for FIs**, the types of guidelines can be broken down as follows:

- Guidelines relating to KYC/CDD
- Guidelines relating to ML trends and typologies
- Guidelines relating to STR
- Guidelines relating to internal controls, compliance and audit
- Guidelines relating to monitoring and sanctions
- Guidelines relating to cooperation

While the AMLO is regarded, in a way, as the **primary authority** in relation to overall regulation, supervision, monitoring of FIs' compliance with the AMLA and international standards, there also are **industry-specific authorities** that regulate,

supervise and monitor the activities of the entities under their respective jurisdictions such as the BOT, the SEC, the DOI, etc. From time to time these authorities have issued guidelines related to AML-CFT compliance matters either at the behest of the AMLO or at their own initiative by virtue of their respective enabling laws. In the case of the AMLO the enabling law is the AMLA and as regards the BOT, the BOT Act B.E. 2485 and the Commercial Banking Act B.E. 2505 are the main sources of authority. As for the SEC, the Securities and Exchange Act B.E. 2535 and as for the DOI, the Life Insurance Act B.E. 2510 are the enabling laws respectively.

To serve as guidelines, the AMLO issued in March 2007 two Policy Statements, one dealing with KYC/CDD and the other with international cooperation. Similarly, the BOT issued its Policy Statement in January 2007 spelling out KYC/CDD practices for all FIs under its supervision. The SEC on its part issued its Notification in March 2007 concerning CDD measures. The DOI issued two Notifications: one in September 2006 setting forth operational guidelines for compliance functions and another in February 2007 instructing insurance companies to adopt the guidelines contained in the DOI's Policy Statement on KYC/CDD. Earlier, in December 2006, the TBA—although a non-regulatory body—has issued a comprehensive banking policy on KYC/CDD—known as the TBA Banking Policy—that practically serves as a detailed manual in respect of KYC/CDD requirements under the FATF Recommendations.

Judged against the requirements of the FATF Recommendations on regulation, supervision, monitoring and compliance issues, the AMLO's Policy Statement on KYC/CDD is found to be not comprehensive whereas the BOT Guidelines and the TBA Banking Policy are much more detailed. It, in fact, is not surprising if the role of the AMLO under the AMLA is taken into consideration. It is very likely that the AMLO will not be concerned itself with every detail because as a national-level regulatory body it would rather issue a set of policy guidelines while the operational details are better left to the respective industry regulators to issue and implement.

The allegation that, judging from the belated issuance of guidelines by the authorities, the AML-CFT requirements may not have been properly implemented in the financial industry since 1999 is partly true. For the AML-CFT regime had experienced the lack of comprehensive guidelines for about 7 years until August 2006 when the TBA Banking Policy was first issued, followed by subsequent guidelines from industry regulators and the AMLO Policy Statements. As a matter of fact, the intervening period between the promulgation of the AMLA and the issuance of comprehensive guidelines can be considered as a formative period of the AML-CFT regime particularly because most of this period was best spent on assessment activities by international assessors from the APG, the ASEM, the IMF and the World Bank, the ADB, and the UK Charity Commission. Their assessments did help improve Thailand's AML-CFT legal framework. However, on the implementation side respective industry regulatory authorities have managed to keep their sphere of supervision under control, without having to tackle notable problems of ML and TF in their respective industry.

With the latest IMF assessment of Thailand' AML-CFT regime, however, there has come up a big problem for the regulatory authorities, i.e. the question of enforceability of regulations or directives issued by regulatory authorities. This

question was never raised by previous international assessment teams that visited Thailand starting with the APG from 2002 to the UK Charity Commission's visit of June/December 2006. The previous assessment teams also included the IMF legal team (September 2005) and the IMF technical team (April 2006). Their reports touched on other crucial issues but not the question of enforceability. This time during their on-site visit relating to DAQ matters the IMF assessment team raised this issue by pointing out that the AMLO and the other regulatory authorities—with some exceptions—have no authority to issue legally binding regulations or directives under the AMLA because the AMLA authorizes only the Prime Minister under Section 4.

The DAR's discussion of the type of legislation and the legal effect of each type is quite interesting and informative particularly as it has direct bearing on the AMLA and related legislation. In this regard, the DAR's paragraph 531 states: "The legal framework setting provisions regarding CDD is extremely fragmented and consists of [the] AMLA, ministerial regulations and other secondary legislation and guidelines issued by various supervisory authorities. In the Thai system the secondary legislation and guidelines issued by supervisory authorities are referred to as 'Notifications' (sometimes circular letters) or 'Policy Statements'. The latter would only set unenforceable guidelines."

The DAR's above comment is essentially based on the FATF Assessment Methodology (updated June 2006), which on its page 5, paragraph 21, explains the types of legislation as follows :

> *..... **Law or regulation** refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorized by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. **Other enforceable means** refers to guidelines, instructions or other documents or mechanisms that set out enforceable acquirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or an SRO. In both cases, the sanctions for non-compliance should be effective, proportional and dissuasive .....*

Based on the above explanation in the FATF Assessment Methodology and the DAR's comment, the nature and the legal effect of each type can be further described as in the following table:

Table 32: Nature and legal effect of legislation

Issuing authority	Type of legislation	Type of instrument	Remark
Legislative body	Primary legislation	Laws, decrees, etc. with sanctions for non-compliance	Enabling law
Ministry/Minister	Secondary legislation	Implementing regulations—ministerial regulations, rules, notifications, etc. with sanctions for non-compliance	Power deriving directly from enabling law
Competent/-supervisory authority	Other enforceable means (OEM)	Guidelines, instructions, notifications, etc. with indirect sanctions for non-compliance	Power deriving indirectly from enabling law
Supervisory authority	(N.A.)	Policy statements, notifications, guidelines, etc. with no sanctions for non-	Not legally enforceable for lack of legal

		compliance	basis

Here comes the crucial question : Are the policy statements, regulations and guidelines issued by the AMLO and other industry regulatory agencies legally enforceable? According to the FATF standards, the criteria are—(i) for such instruments to be enforceable there must be a legal basis, i.e. enabling law, and (ii) for any non-compliance with such instruments there must be appropriate sanctions—administrative, civil, or criminal—to enforce. In the case of the AMLO and other regulatory bodies, satisfactory answers may not be readily available unless one goes through a myriad of laws and regulations to establish enforceability. There are a number of notifications, rules, regulations, directives and policy statements issued by various agencies in the matter of AML-CFT compliance. For convenience's sake, they can be grouped under (a) enabling laws, (b) implementing regulations, and (c) other enforceable means.

In matters relating to AML-CFT compliance issues, the authority of the AMLO and other regulatory bodies essentially derives from and is based on various instruments—most relevant pieces of legislation of which are as described below:

(a) Enabling laws :

(i) AMLA 1999

- Section 4 gives power to the Prime Minister to have charge and control of the execution of the Act. The text reads: "The Prime Minister shall have charge and control of the execution of this Act and shall have the power to appoint competent officials and issue Ministerial Regulations, Rules and Notifications for the execution of this Act.

(ii) Bureaucratic Restructuring Act 2002

- Section 46 gives power to the Minister of Justice to have command and control of the AMLO—which previously was attached to the Prime Minister's Office under Section 40 of the AMLA.

(b) Implementing regulations

(i) Ministerial Regulation Nos. 1-10 of 2000, issued by the Prime Minister.

- These instruments all relate to matters under the AMLA.

(ii) Prime Minister Office Regulation, dated 15 February 2001

- This instrument relates to the matter of cooperation especially concerning conduct of inquiry/investigation and report to the AMLO and compliance with the AMLA and its clause 3 authorizes all authorities and agencies concerned to issue necessary regulations, notifications, or directives within areas under their respective supervision. As for the overall charge of compliance with the AMLA, clause 18 empowers the Secretary-General of the AMLO to issue necessary regulations, notifications or directions for the operations.

(iii) Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office, dated 9 October 2002, issued by the Minister of Justice pursuant to the Bureaucratic Restructuring Act.

- Its article 1 authorizes the AMLO to "take charge of prevention and suppression of money laundering activities by means of proposing policies and measures; analysis and inspection of financial and business transactions as well as properties; seizure and forfeiture of the properties of the offenders pursuant to the AMLA in order to curb and cut off the crime cycle."

(c) Other enforceable means (OEM)

(i) AMLO's two policy statements—one on KYC-CDD for FIs and another on international cooperation, approved by Cabinet on 27 February 2007

(ii) BOT's guideline for on-site examination on AML-CFT compliance, dated 26 December 2005

- It serves as guidance for BOT examiners in reviewing banks' AML-CFT policies, procedures, internal controls and compliance with laws and regulations.

(iii) BOT's policy statement regarding AML-CFT guidance for FIs, issued on 19 January 2007

(iv) SEC's notification No. 3/2550 on rules and procedures concerning the management of risks to prevent the use of securities business for ML and FT, dated 1 March 2007 and becoming effective from 16 March 2007

(v) DOI's two notifications—one dated 25 September 2006, setting forth operational guidelines for compliance function of insurance companies, and another dated 13 February 2007, informing life insurance companies to use DOI's policy statement of KYC/CDD as practical guidelines

(vi) AIMC's notification No. 1/2550 regarding guidelines on KYC/CDD, becoming effective from 2 April 2007.

(vii) ASCO's guideline on KYC/CDD, becoming effective from 28 March 2007.

(viii) TBA's AML-CFT policy (December 2006 version)

- This policy document contains detailed guidelines covering a wide range of issues such as customer acceptance policy, KYC/CDD, risk management, suspicious transaction reporting, record retention, staff training, etc.

Note : The above instruments are only a selective bunch most relevant to AML-CFT compliance issues. There are various other notifications issued by industry regulators, most notably the SEC, that deal with other AML-CFT issues.

If we trace the authority of the AMLO to make regulations or notifications or directives connected with AML-CFT matters, we can find the trail as follows:

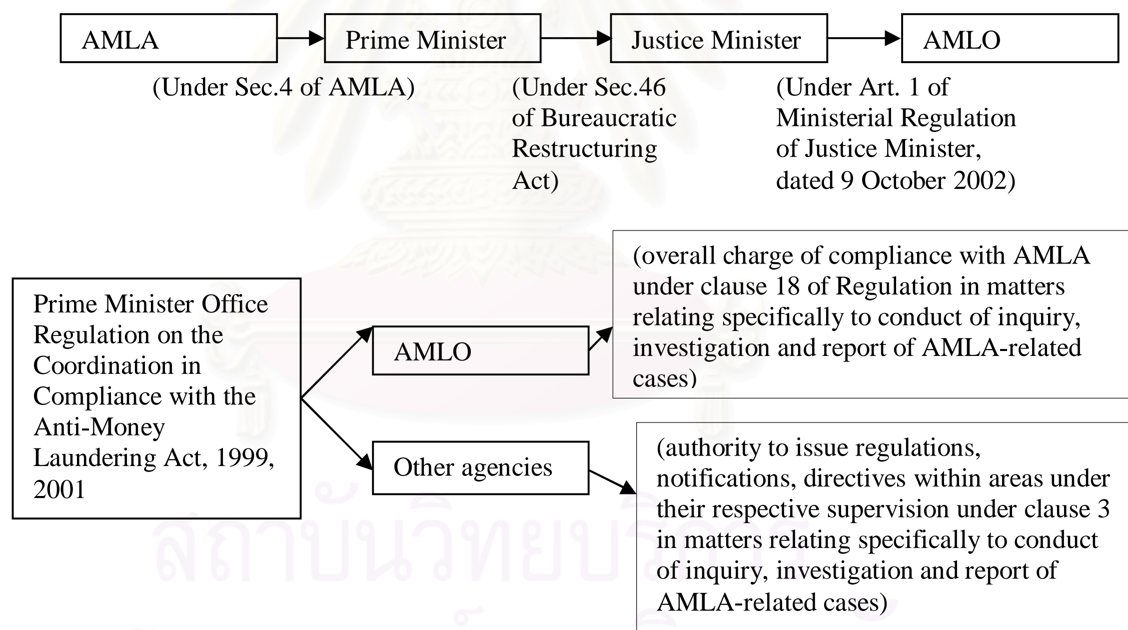

Figure 9: Showing the trail of sources of authorities

The above illustration will show that as far as the AMLA is concerned, the AMLO's such authority derives indirectly so regulations, notifications, directives or policy statements issued by the AMLO are indirectly enforceable and sanctions for non-compliance enforceable indirectly. However, the authority deriving from the Prime Minister Office Regulations is directly enforceable and sanctions for non-compliance is enforceable directly as well.

It should be noted that the AMLA's sanction provisions and those of the Penal Code are applicable to any sanction for non-compliance the AMLO may impose on any reporting entity.

As regards the other regulatory agencies, the respective agencies' enabling laws are as follows :

- SEC for securities sector :	(1) The Securities and Exchange Act 1992
	(2) The Derivatives Act 2003
- BOT for financial and non-financial sector :	(1) The Bank of Thailand Act 1942
	(2) The Commercial Banking Act 1962
- DOI for insurance sector :	(1) The Life Insurance Act 1967
- CPD for cooperative sector :	(1) The Cooperatives Act 1999

In AML-CFT compliance matters, the SEC is particularly active in issuing notifications or guidelines from time to time as the situation warrants. In addition to the SEC, the Office of the Securities and Exchange Commission (OSEC) also issues such instruments as the Notification of OSEC on "Rules, Conditions and Procedures Concerning the Management of Risks to Prevent the Use of Securities Business for Money Laundering and Financing of Terrorism." While the authority to issue directives is given to the SEC under the SEA (Securities and Exchange Act), the power of the OSEC to issue such directives is not directly in the enabling law. Accordingly, most of the directives issued by the SEC could be considered as **law or regulation**, whereas those of the OSEC's would come under the category of **other enforceable means**. Anyhow, both types impose mandatory requirements and their sanctions are legally enforceable.

Besides, in the case of the AMLO, the power to issue directives is not directly in the AMLA; its power derives indirectly through a Ministerial Regulation issued by the Minister of Justice, under whose supervision the AMLO has been placed pursuant to the Bureaucratic Restructuring Act. Still the legal enforceability particularly of the AMLO is subject to legal arguments that took place following the comments in the IMF DAR. Realizing that there needs to be a clearer authorization for issuing directives under the enabling law, the authorities have proposed and obtained approval of certain amendments to the AMLA. The proposed amendment to Section 4 now gives power to the Minister of Justice instead of the Prime Minister as follows :

> *The Minister of Justice shall be in charge of the enforcement of this Act and has the power to appoint competent officials and to issue Ministerial Regulations, Rules and Notifications in accordance with this Act.*

It should be noted that the above amendment is in confirmation of the restructuring effected by Section 46 of the 2002 Bureaucratic Restructuring Act under which the Minister of Justice was assigned to take charge of the AMLO. Another amendment to Section 40 explicitly empowers the AMLO to "set any other orders, rules, or notifications in execution of this Act." These amendments read with the 2002 Ministerial Regulation issued by the Minister of Justice will further reinforce the

authority of the AMLO and will make its authority to issue directives much clearer.

Regarding the second issue—**feedback to reporting FIs**—as part of its routine function the AMLO does not give feedback to the reporting FIs. However, the AMLO does notify the reporting FI whenever investigative action is taken in relation to the reported transaction.

Thesis conclusion: In consideration of the points of discussion as stated above, the following conclusion can now be drawn:

- On **guidelines for FIs**, despite their inconclusive and inconsistent nature, guidelines for FIs do exist and are operating, and

- On **feedback to reporting FIs**, except for some action-related feedback, the AMLO does not give feedback to reporting FIs on the transactions they have reported.

2.8 Conventions: Implementation and mutual assistance

ADB consultants' view[18] : The comment relating to foreign requests involving freezing of property made in the consultants' report is as follows :

> *Although Thailand can provide some assistance with the interim measures relating to alleged proceeds of crime, we note that the MA Act makes no reference to freezing of property. We consider it important that Thailand deals with this lacuna in its mutual assistance regime. (p. 25)*
>
> *We are advised that under Thai law the use of the words 'for the purpose of' requires direct and purposeful intention, which may not be the same requirement that an act be done in the knowledge that funds or assets are to be used to carry out terrorist acts and accordingly the test in the Thai law is more stringent than what is contemplated in the Convention obligation..... (p. 22)*

IMF DAR[19] : The DAR's comments read as follows:

> *As stated in the analysis of R.1, the acquisition, possession, or use of property in Thailand's ML offense is conditioned to specific purposes that go beyond the requirements of the Vienna Convention. (DAR para 1218)*
>
> *The PC requires that the TF conduct be done with a specific purpose that limits the coverage required by the Convention (i.e. it does not allow coverage of the provision of property for purposes solely of supporting the terrorist or terrorist organization, as Section 135/2 of the PC requires that the provisions or compilation of property be done "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan"). (DAR para 1224)*

Thesis discussion : The issues involved in the above comments can be described as follows:

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[18] ADB consultants' analysis report on Thailand, 9 April 2006

[19] IMF DAR, 24 July 2007

- that Thailand's Act on mutual legal assistance does not cover foreign requests for freezing of property, creating a legal gap in international cooperation, required by international conventions, and

- that the Penal Code's requirement of a specific purpose in Section 135/2 relating to offenses of terrorism limits the coverage required by the conventions.

As regards the first issue—**freezing of property**—requested by a foreign State, Section 32 of Thailand's 1992 Act does not mention freezing of property; it merely refers to seizure of property. Therefore, the ADB consultants saw a need for Thailand to fill up this legal gap. In this regard, the opinion expressed by the OAG in answer to the question in the DAQ is worthy of note when it says:

> *There are no definitions for these terms in the AMLA [i.e. 'seizure' and 'attachment']. Those terms are used in other laws, such as the Criminal Procedure Code, the Civil Procedure Code, etc. But they are not defined. However, from the practice and decisions of the courts, they have meaning as follows:*
>
> *Seizure is the taking of property into the control of an officer and therefore the officer has the responsibility in caring it. In attachment, by contrast, the officer does not take the property into his care; the owner still possesses the property but he cannot transfer, move, or otherwise dispose it, i.e., any transaction in relation to it is barred and void. The purpose of the attachment order is to prevent any dealing in the property against which the order is made. As such, the attachment order is similar to the freezing or restraining order in common law. (DAQ p. 84)*

In view of the OAG's opinion cited above, it can be concluded that under Thailand's mutual legal assistance Act foreign requests for freezing of property can be accepted and complied with provided the requests meet the standard norms set under the Act and the property is freezeable under Thai laws.

Regarding the second issue—**Penal Code's requirement of a specific purpose**—the use of the expression "for the purpose of" seems to have become unnecessarily a subject of debate, leading to the comment that Section 135/2 does not appear to be consistent with the terrorist financing conduct required by the Convention. In this regard, it will need to see the entire framework of law-making rather than focusing on the language of the particular Section. Sections 135/1 to 135/4 were passed in the context of criminalizing all terrorist acts, including terrorist financing. Any activity—be it collecting manpower or stockpiling weapons, providing or compiling any property, or organizing any preparation or conspiring—in the context of criminal behaviour cannot be meant for any purpose other than ongoing or future terrorist activities. Provision or compilation of property in the context of criminalizing terrorism cannot obviously be for any moral, noble or benevolent cause. So the use of the expression in Section 135/2 is apparently "emphasizing the obvious"; the expression does not mean to capture any other purpose than conducting terrorist activities. Therefore, this expression should not have become an issue at all.

The general concept of the law being anti-terrorism, the nature of the offense being a crime, and the context of the law-making process being combating terrorist financing, the use of the expression "for the purpose of" is justified if the language used in the Terrorist Financing Convention's Articles 2(1) and (3) is taken into focus.

In Article 2(1), the text says:

> *Any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out .....*

In Article 2 (3), the text reads:

> *For an act to constitute an offense set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraphs (a) or (b).*

While the expression "with the intention" is used in Article 2(1) of the Convention, the Penal Code's Section 135/2 uses the expression "for the purpose of" instead, meaning that the two expressions carry the same sense or concept.

Moreover, the concept of Article 2(1) is qualified by the optional nature of explanation made in Article 2(3), meaning the actual use of the funds is not a requirement. Under Article 2, one provides or collects funds intentionally which may not be actually used. Under Section 135/2, one collects or provides property or funds purposefully which may not be actually used. So what is the difference? We could see no difference at all.

Thesis conclusion : Considering the above points of discussion, we can now make the conclusion as follows:

- On **freezing of property**, although the 1992 Act does not refer to freezing of property in executing foreign requests, assistance is possible under Thai practice. Attachment is equated with freezing according to the practice and decisions of the courts, and attachment by extension is synonymous with seizure for legal effect in that the order would prohibit the owner or holder of the property from taking any action in relation to the property in question; and

- On the **Penal Code's requirement of a specific purpose,** the expression "for the purpose of" is no more than mere emphasizing of the obvious intention associated with terrorist activities.

2.9 Cooperation: Assistance re. property of corresponding value

ADB consultants' view[20]: Regarding foreign requests for seizure or forfeiture of property of corresponding value, the consultants made the following comment in their report :

> *We have been advised that Thailand has no existing law which permits a court to order the forfeiture of a sum of money equivalent to the value of property which may be the proceeds of a crime….. (p. 119)*
> *Because Thailand does not have a system of value-based confiscation, it is unclear to us how Thailand would deal with a property where it was proved that the property had, for example, been purchased in part with proceeds of a narcotic offense and in part with legitimate funds ….. (p.p. 212-213), :*

IMF DAR[21] : The comment contained in the DAR states as follows:

> *For execution of the request for seizure or forfeiture, the Mutual Assistance in Criminal Matters Act 1992 requires that property to which the request relates must be seizable or forfeitable under Thai laws. However, seizure or forfeiture under Thai laws is property-based. In other words, property must be intended for use in the commission of an offense, or proceeds from an offense. Thus, the seizure or forfeiture of property of corresponding value cannot be made. It follows that assistance in relation to property of corresponding value cannot be given. (DAR para 1268)*
>
> *Thailand cannot provide assistance unless the property to be seized or forfeited is 'tainted' property connected with the commission of the offense and thus they may not be able to offer assistance on corresponding value. (DAR para 1269)*

Thesis discussion : The following common issue can now be drawn from the above comments:

> - On **property of corresponding value**, Thailand may not be able to give assistance in respect of foreign requests for seizure or forfeiture of property of corresponding value as Thailand's forfeiture system is property-based.

The above issue can be discussed on the basis of the AMLA, the Penal Code and the OAG's opinion.

First, AMLA's Section 3 defines "property connected with the commission of an offense" as meaning (1) money or property obtained from the commission of an act constituting a predicate offense or from aiding or abetting or rendering assistance in the commission of an act constituting a predicate offense; (2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or (3) fruits of the money or property under (1) or (2).

According to the AMLA's definition seizure or forfeiture refers only to the property connected with the criminal act. That's why the OAG called such property as "tainted property" that is seizable or forfeitable under Thai laws and opined that "property of

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[20] ADB consultants' analysis report on Thailand, 9 April 2006

[21] IMF DAR, 24 July 2007

equivalent value which is not connected with the commission of an offense is not forfeitable" (DAQ p. 90).

In the Penal Code, however, Section 37 gives the courts power to enforce forfeiture orders either by seizure of property or by ordering the payment of an amount equivalent to the value of the property or seizure of other property so as to compensate for its value in full. It also allows the courts to imprison a person who does not comply with a forfeiture order. Because of this power granted to courts under Section 37 to seize or forfeit property of corresponding value, the IMF DAR expressed the following view in respect of Thailand's forfeiture system:

> *The laws provide for the confiscation of property that has been laundered or which constitutes (a) proceeds from ; (b) instrumentalities used in; and (c) instrumentalities intended for use in the commission of any ML, TF or other predicate offenses, including property of corresponding value. (DAR para 191)*

Besides, the Organic Act on Counter Corruption 1999 also provides, in its Section 83, confiscation of the property of corresponding value. (Please see discussion under 2.2 of Chapter VIII.)

Thesis conclusion : From the above points of discussion we can now make the conclusion that contrary to the views expressed above, besides being property-based, Thailand's forfeiture system is also capable of seizing or forfeiting the property of corresponding value.

2.10 Cooperation : Extradition

ADB consultants' view[22] : Of various issues connected with extradition the following comment relates to political offense issues :

> *In this respect the Thai law could usefully be modernized. We note that extradition can, under general international law, be refused where the person sought establishes that the offense for which extradition is requested is a political offense or an offense of a political character. This general rule of extradition law is increasingly being limited by express provision in treaties. We recommend that Thailand enact a provision which states clearly that where Thailand is a State party to a treaty (including a multilateral convention) which requires that certain offenses are NOT, for the purpose of extradition, political offenses or offenses of a political character, then extradition shall not be refused by Thailand on the grounds that the offense for which extradition is requested is claimed by the person sought to be a political offense or an offense of a political character. Such an amendment will ensure that the law does not need amendment each time Thailand becomes a party to a relevant convention. (p. 143)*

IMF DAR[23] : Some of the comments made in the DAR are as follows:

> *Extradition of Thai nationals may be denied, and there are no legal requirements in such circumstances to submit the case to the prosecutors without delay or to conduct proceedings in the same manner as in the case of any other offense of a serious nature under the domestic law. (DAR para 1305)*

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[22] ADB consultants' analysis report on Thailand, 9 April 2006

[23] IMF DAR, 24 July 2007

Thesis discussion : From the above comments the issues that can be deducted are as follows :

- On **refusal grounds of political offenses**, the Thai law (the 1929 Extradition Act) needs to be amended to clearly abide by treaty-defined types of offenses that cannot serve as grounds for refusal of extradition, and

- On **extradition of Thai nationals**, there exist no legal requirements, in case of non-extradition, for domestic, expeditious trial instead.

As regards the first issue, **refusal grounds of political offenses**, we should first see what the Terrorist Financing Convention says about it. Article 14 states as follows:

> *None of the offenses set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offense or as an offense connected with a political offense or as an offense inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offense may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives.*

The law governing extradition matters is the Extradition Act 1929, important aspects of which are as stated below :

(1) In the absence of the extradition treaty, extradition can be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai laws (Section 4) and <u>it must not be a political offense</u> (Section 12).

(2) Reciprocity is generally required but not a legal requirement. This allows Thailand to extradite even if reciprocity is not fully obtained, i.e., in case the requesting State cannot commit reciprocity because the offense to which extradition relates carries death penalty under Thai laws.

(3) Extradition will not be granted if the accused has already been tried and discharged or punished in any country for the crime requested (Section 5).

(4) Under the current law, Thai nationality is not an absolute bar for extradition.

(5) An extradition request must be sent through diplomatic channels (Section 6) and must contain the conviction and warrant of arrest for the requested person, together with related evidence (Section 7).

(6) In case of a request for provisional arrest, the nature of the offense and the arrest warrant of the requesting court must be submitted. The public prosecutor will apply to the court for the issuance of a provisional arrest warrant. The extradition request must be submitted to the court within two months from the date of the order for detention (Section 10).

In view of Convention-designated types of criminal offenses that are required to be regarded as non-political offenses for the purposes of extradition or mutual legal assistance, the question now is—whether it is necessary for Thailand to amend the Extradition Act so as to reflect the Convention obligations each time Thailand becomes a party to a relevant Convention. We do not think it is necessary. Ant it should not raise an issue for Thailand. For, the Extradition Act in Section 12(3) explicitly excludes political offenses from extradition. All that it needs to do is in case of a claim of political offense the court must be satisfied that the offense in question is a genuine political offense not merely a pretext. The task of proving to the court will not be that difficult; the most direct and effective way is to prove against the type of criminal offenses designated as non-political offences in the relevant Convention to which Thailand is a party.

With regard to the second issue—**extradition of Thai nationals**—under the Extradition Act extradition of Thai nationals is possible and the law requires simply that before making an order for the release of a Thai national, the court forward the matter to the Minister of Justice for consultation (Section 16). This would mean, by implication, that consultation is not required if the court would extradite him. However, there are certain conditions set by the government in March 1997 in a cabinet resolution under which Thai nationals are extraditable only if (1) it is permissible under the extradition treaty with the requesting State, and (2) Thailand does not have jurisdiction over the act upon which the extradition request is based and such Thai national is not being charged or prosecuted in any case pending the handling in Thailand.

If a case falls within the circumstances under which the requested Thai national is not extradited, he may then be tried under the domestic law through domestic initiative or at the request of a foreign State concerned under the 1992 Act. Prosecution, however, is not compulsory and it is possible only if the offense is within the criminal jurisdiction of Thailand.

If the relevant competent authorities once decided to prosecute the non-extradited Thai national, prosecution process will follow the same procedures applicable to all cases of serious criminal offenses. So the question of specific legal requirements for expeditious submission of the case to the prosecutors or for similar treatment as any other serious cases does not arise.

Thesis conclusion : Based on the above points of discussion the following conclusion can now be drawn :

- On **refusal grounds of political offenses**, the provision in Section 12(3) of the Extradition Act will not be applicable if it can be proved that the offence in question is not a non-political offence or

falls under any of the designated types of non-political offences under the relevant convention to which Thailand is a party, and

- On **extradition of Thai nationals**, subject to certain conditions, extradition of Thai nationals is possible and no specific legal requirements are set for expeditious prosecution of non-extradited Thai nationals.

2.11 Criminalization of terrorist financing

ADB consultants' view[24]: The ADB consultants made an analysis of Thailand's AML laws against each relevant Convention against FOT article and found almost all compliant with the Convention requirements, as is clear from the following comment:

> *This recommendation covers the same issues as those outlined in the FOT Convention Articles 2 and 4(a) and we consider that the enactment of Sections 135/1, 135/2, 135/3 and 135/4 meets the requirements of SR II. (p. 115)*

IMF DAR[25]: The IMF DAR made the following particular comment about the lack of specific definition of a terrorist or a terrorist organization:

> *However, this claim [inferring the terms from Section 135/4] is not relevant as Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization. This is because of a number of significant limitations. First, as previously mentioned, the law requires that the provision or collection of property was 'for the purpose of committing a terrorist act or any offense which is part of a terrorist plan' and this does not cover the provision for purposes solely of supporting the terrorist or terrorist organization. Secondly, while one could argue that there could be a presumption that the provision or collection of property for or by listed terrorists or terrorist organizations is done 'with the purpose of committing a terrorist act or any offense which is part of a terrorist plan,' if the presumption was rebutted (i.e. if it was shown that such provision or collection of property was not for any of such purpose), there would not be a conviction. In addition, the collection or provision for or by others—those not on the lists—is not covered. (DAR para 169)*

Thesis discussion : From the above comment in the DAR we can take out the following issue :

- On **specific definition of a terrorist or terrorist organization**, Thai authorities' claim of inference from Section 135/4 of the Penal Code is not relevant.

Before discussing this issue, we need to first see what Section 135/4 says. The paraphrased version of the English translation of Section 135/4 would read as follows:

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[24] ADB consultants' analysis report on Thailand, 9 April 2006

[25] IMF DAR, 24 July 2007

Whoever is a member of a group of individuals designated by a resolution or declaration of the United Nations Security Council to have performed an act of terrorism and the said resolution or declaration has already been endorsed by the Thai government, shall be punished with imprisonment not exceeding seven years and fine not exceeding one hundred and forty thousand Baht. (see OAG's answers in DAQ, February 2007, p. 76)

What this Section suggests is (1) that Thailand's AML-CFT regime is implementing the Convention against FOT as well as the UN Security Council Resolutions, particularly No. 1373 (2001), and (2) that in addition to those offenders falling within the meaning of Sections 135/1, 135/2 and 135/3, the UN-designated terrorists and terrorist organizations are also subject to the AML laws of Thailand. In this regard, it becomes necessary to see further what Sections 135/1, 135/2 and 135/3 say. The following are the paraphrased versions of the English translation:

Section 135/1*. Whoever commits the following criminal offenses:*

(1) Committing an act of violence, or causing death or serious harm to the body or freedom of any person;
(2) Committing any act that causes serious damage to a public transportation system, telecommunication system, or infrastructure of public interest;
(3) Committing any act that causes damage to the property of any state, any person, or the environment, which causes or is likely to cause significant economic damage;

if such act is committed with intent to threaten or coerce the Thai government, a foreign government, or an international organization to do or refrain from doing any act that may cause serious damage or to create unrest in order to cause fear among the public;
shall be deemed to have committed an act of terrorism and shall be punished with death or imprisonment for life, or imprisonment of three to twenty years and fine of sixty thousand to one million Baht.

An act during a demonstration, gathering, protest, objection or movement in order to demand government assistance or justice, which is an exercise of freedom under the constitution, shall not be deemed an act of terrorism.

Section 135/2*. Whoever*

(1) threatens to commit an act of terrorism, by displaying an act that is reasonable to believe that such person will carry out what such person has threatened to do; or
(2) collects forces or arms, procures or gathers property, provides or receives terrorist training or makes other preparations, or conspires to commit an act of terrorism or to commit any offense that is part of a plan for a terrorist act, or instigates the public to participate in a terrorist act, or knows of any imminent terrorist act by any person and commits any act to cover it up;

shall be punished with imprisonment of two to ten years and fine of forty thousand to two hundred thousand Baht.

Section 135/3*. Whoever is a supporter for an act of offense under Section 135/1 or 135/2 shall be liable to the same punishment as the principal in such offense. (see OAG's answers in DAQ, February 2007, p.p. 75-76)*

Given the above provisions in the Penal Code, one can see that Thai criminal law covers all offenses in Article 2(5) of the g Convention against FOT. Under these Sections 135/1, 135/2 and 135/3, offenders, abettors, conspirators, supporters etc. of terrorist acts are defined. If we want to make out the meaning of a terrorist and a terrorist organization, we can refer to these Sections as well as Section 83. From the criminal provisions we can infer as follows:

- A terrorist is a person who has performed acts described in Sections 135/1 and 135/2 as well as a member of terrorist organization designated in UN lists endorsed by Thailand.

- A terrorist organization is an organization that has performed acts described in Sections 135/1 and 135/2 as well as a terrorist organization designated in UN lists endorsed by Thailand.

On an individual basis, whoever is found to have committed any act under Sections 135/1 and 135/2 is a terrorist and, on the basis of an organization, any organization that is found to have committed any act under Sections 135/1 and 135/2 is a terrorist organization. The lists of individual terrorists and terrorist organizations designated by the UN and endorsed by Thailand serve as a handy guide for Thailand in its implementation of the international obligations.

The question of Penal Code's requirement of a specific purpose in Section 135/2 is in fact a translation issue. The use of the phrase "for the purpose of" has drawn special attention of the IMF assessment teams and the ADB consultants and created a critical issue. In addition, the use of this particular phrase has led to a chain of somewhat distorted interpretation of Thai AML laws. If one looks in the above quoted paraphrased version of Section 135/2 one can see that the concept of Section 135/2 is not limited in its application and there is no controversial point in this Section. Earlier in this Chapter we have already discussed the implications deriving from the use of the phrase "for the purpose of", where we have concluded that the use of the phrase is no more than "emphasizing the obvious."

Thesis conclusion : Having made the points of discussion as above, we can now draw the following conclusion:

- On **specific definition of a terrorist or a terrorist organization**, there is no need to make a specific definition to that effect because Thailand's AML laws, as they are, are clear enough and capable of drawing inference from Section 135/4 of the Penal Code.

2.12 Freezing of terrorist funds

ADB consultants' view[26] : The ADB consultants' view is not critical as far as Special Recommendation III is concerned because they made the following comment in their report:

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[26] ADB consultants' analysis report on Thailand, 9 April 2006

This recommendation covers the same issues [as] those outlined in the FoT Convention Article 8(1) and 8(2) and we consider that Thailand complies with it. (p.115)

IMF DAR[27]: The DAR contains critical comments as described below:

There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated by the UNSCR 1267. The authorities have claimed that the mechanisms for seizing and attaching property under [the] AMLA, the PC or the Special Investigations Act could be used to give effect to UNSCR 1267. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay. (DAR, para 277)

The freezing and attachment mechanisms for property connected with the commission of an offense described under the AMLA's AML framework apply also to terrorist funds. However, such mechanisms may only be used to freeze or attach <u>property derived from an illegal origin</u>, as property derived from a legal origin would not be considered property connected with the commission of an offense. The assessors consider that this is an important limitation to the use of these provisions. First, because for TF purposes it should not matter whether the funds are from a legal or an illegal origin. Second, because the source of the property is usually not known until long after the property is identified, making it difficult to use these provisions with the immediacy needed in TF matters. (DAR para 278)

The authorities believe that this limitation could be partially overcome by the application of the presumption against the listed persons set forth under Section 135/4 of the PC. The presumption, which covers also designated terrorists under UNSCR 1267, establishes that listed persons shall be deemed to have committed an act of terrorism. Building from this basis, the authorities are also of the view that the property of listed persons shall be deemed to be property connected with the commission of an offense (an act of terrorism) and may therefore also be seized or attached under the AMLA. The assessment team is not convinced that there is a solid legal basis for this interpretation and it should be noted that there are still no precedents validating it. It is, in fact, quite stretched to conclude that just because listed persons are deemed to have committed an act of terrorism, all of their property shall also be deemed to be derived from an act of terrorism. In any case, even if the authorities' interpretation prevails, should the person affected by the seizure or attachment be able to rebut the presumption by proving that the property was not derived from an offense, the property would not be released. (DAR, para 279)

Thesis discussion : From the above comment of the DAR we can now describe the issue as follows :

- On **freezing of terrorist funds**, Thailand has no specific laws to that effect and the presumption under AMLA's Sections 51 and 52 to apply to UNSC Resolution 1267 (1999) does not have a legal basis.

Regarding this issue, it is necessary to see what AMLA's Sections 51 and 52 say about the question of presumption. The following are the respective extracts:

Section 51, paragraph 2 :

[27] IMF DAR, 24 July 2007

> *For the purpose of this Section, if the person claiming to be the owner or transferee of the property under Section 50 paragraph one is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that all such property is the property connected with the commission of the offense or transferred in bad faith, as the case may be.*
>
> *Section 52, paragraph 2:*
>
> *For the purpose of this Section, if the person claiming to be the beneficiary under Section 50 paragraph two is the person who is or was associated with the offender of a predicate offense or an offense of money laundering, it shall be presumed that such benefit is the benefit the existence or acquisition of which is in bad faith.*

Under the provisions of the above Sections 51 and 52, the presumption is as follows :

- If the claimant as owner or transferee is/was associated with the offender, the property in question is presumed to be criminal property or transferred in bad faith; and

- If the claimant as beneficiary is/was associated with the offender, the benefit is presumed to be acquired in bad faith.

Such being the case, the claimant's attempts to get the property released would fail and the court's order vesting the property in the State would stand.

As for the question of freezing terrorist funds, the UN Security Council passed a resolution on 15 October 1999; operative paragraph 4(b) of UNSC Resolution No. 1267 (1999) reads as follows:

> *Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any other undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;*

Under this Resolution all UN member States are required to implement the Resolution, among others, by freezing forthwith terrorist funds and report the steps taken to the so-called "Taliban Committee".

Seeing that Thailand's forfeiture system is property-based, i.e. only tainted property or criminal property is subject to forfeiture, the assessment team considered (1) that Thailand's lack of specific laws or procedures will make it unable to deal with terrorist funds under UNSC Resolution 1267 (1999), and (2) that the presumption under Sections 51 and 52 of the AMLA would not be applicable to the property of the terrorists/terrorist organizations listed by the UN. Applying the presumption would be based on the logical reasoning as follows:

- Individuals or organizations shown in the UN lists or declarations are terrorists or terrorist organizations.
- Such being the case, their property or funds have an illegal origin.
- Thailand has endorsed the UN lists or declarations, so property or funds belonging to those in the UN lists or declarations are capable of being frozen or forfeited because of the presumption that they are of criminal original.

However, here comes a hitch. According to the IMF assessment team, given Thailand's property-based system if it can be proved that the property is not derived from an offense it has to be released, whereas the Resolution's requirement is to freeze the property without regard to its source or origin. Moreover, as Thailand's laws need to identify taintedness of the property, it will make Thailand difficult to cope with the immediacy needed in TF matters.

The above comment may not be fully justified if one can review the vesting process under AMLA's Sections 48 through 52, which can be briefly described as follows:

- Section 48 relates to provisional seizure or attachment of property on a reasonable ground;
- Section 49 relates to submission of case to court for vesting of property in the State based on convincing evidence;
- Section 50 relates to claimant's rights to protection;
- Section 51 relates to presumption of transfer of property in bad faith if the claimant is or was associated with the offender; and
- Section 52 relates to presumption of acquisition of benefit in bad faith if the claimant as beneficiary is or was associated with the offender.

What is most important in the process is that contrary to what the IMF assessors believed, the presumption under Sections 51 and 52 are all able to give immediate effect to the requirements of UNSC Resolution No. 1267 (1999). As a matter of fact steps under Section 50, or Section 51 or Section 52 are preceded by actions under Section 48 or Section 49. Presuming that property of those in the UN Lists is tainted property, provisions relating to measures for provisional seizure or attachment can be invoked without delay, meeting the Resolutions' requirements.

Thesis conclusion : Based on the above points of discussion, we can now draw the following conclusion :

- On **freezing of terrorist funds**, presumption under AMLA's Sections 51 and 52 is capable of giving immediate effect to the requirements of UNSC Resolution No. 1267 (1999).

3. Summing up

Discussion and analysis of the 12 crucial issues stated above would show without doubt that Thailand's AML laws are not that deficient as the assessments tend to portray. Instead, the existing legal framework itself can continue to cope with the prevailing ML-FT activities. But in consideration of the overall analysis of Thailand's

AML laws against the FATF Recommendations and international standards, the level of compliance and the degree of effectiveness may not fully meet the aforesaid international standards. The chief reason is quite obvious; Thailand's AML laws need to be upgraded so as to meet the growing challenges of the times.

Upgrading Thailand's AML laws will involve not a simplified single process but a variety of different processes ranging from amendment to new enactment to implementation. These processes are implied in the findings of the international assessors. The IMF DAR, in particular, has suggested an action plan aimed at upgrading Thailand's legal framework, as in the table reproduced from their report and annexed to this paper as Appendix E.

4. Chapter-wise comment

According to the calculation of IMF team leader Stephen Dawe, the total number of IMF DAR recommendations for improvement of Thailand's AML–CFT system comes up to 147. These recommendations cover issues embracing a broad spectrum of the AML regime, namely, issues of legal systems, issues of preventive measures, issues of institutional measures, and issues of international cooperation. These recommendations are seemingly aimed at creating a "**perfect**" AML regime—which is the ultimate goal of the international standards. However, in practice, no country in the world can create a perfect AML regime given one kind of constraint or another that may be due to its own existing legal or institutional systems.

In the case of Thailand, given its nature of basically a civil law system, adoption or adaptation of international standards for internal application may not be easily accomplished due largely to the fact that most international standards are drawn up by countries basically practicing a common law system. The differences in legal systems, however, may not be a good excuse for remaining passive in the face of growing threats posed by ML and FT activities. Thailand must prove to the international community that it is proactive if the situation so warrants. To do that, Thailand needs to revamp its legal and institutional frameworks to the extent that facilitates creation of a viable AML regime.

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CHAPTER X

CONCLUSION

1. The need for compliance

1.1 Compliance with international standards

Earlier Chapters have extensively described and discussed the compliance issues in relation to the international standards, particularly the ones set out in the FATF 40+9 Recommendations. During the period from 2000 to early 2007 Thailand's AML-CFT regime had been subjected to a series of assessments by independent international assessors ranging from the APG to the IMF. The practical benefit from these assessments can be seen in the ongoing efforts of Thai authorities to improve its legal framework to the extent that is possible under the existing legal system.

Judged against the FATF 40+9 Recommendations, the Thai AML-CFT legal framework has been found to have been deficient in a number of key areas, as already indicated before. In terms of compliance ratings made in line with the FATF Assessment Methodology Thailand's compliance level scored 13 NCs (non-compliant) out of the 49 Recommendations. The score, in fact, is not an encouraging sign yet given Thailand's continued effort at improvement of its legal regime as a whole. The following are the key areas where Thailand's level of compliance was given non-compliant ratings:

- **Non-compliant (NC)**

(1)	Customer due diligence (CDD)	- R.5
(2)	Politically exposed persons (PEP)	- R.6
(3)	Correspondent banking	- R.7
(4)	New technologies & non-face-to-face business	- R.8
(5)	Third parties and introducers	- R.9
(6)	DNFBP (R.5, 6, 7, 8, 11)	- R.12
(7)	DNFBP (R.13, 15 & 21)	- R.16
(8)	Special attention for high-risk countries	- R. 21
(9)	Foreign branches and subsidiaries	- R. 22
(10)	DNFBP (Regulation, supervision and monitoring)	- R. 24
(11)	Wire transfer rules	- SR. VII
(12)	Non-profit organizations (NPO)	- SR. VIII
(13)	Cross-border declaration and disclosure	- SR. IX

Besides, the respective ratings for the respective areas are as described below :

- **Partially compliant (PC)**

(1)	ML offense	- R. 1

(2) Record-keeping - R. 10
(3) Unusual transactions - R. 11
(4) Suspicious transaction reporting (STR) - R. 13
(5) Protection and no tipping-off - R. 14
(6) Internal controls, compliance & audit - R. 15
(7) Sanctions - R. 17
(8) Shell banks - R. 18
(9) Other NFBP & secure transaction technique - R. 20
(10) Regulation, supervision & monitoring - R. 23
(11) Guidelines & feedback - R. 25
(12) FIU - R. 26
(13) Law enforcement authorities - R. 27
(14) Supervision - R. 29
(15) Resources, integrity and training - R. 30
(16) National cooperation - R. 31
(17) Statistics - R. 32
(18) Legal persons – beneficial owners - R. 33
(19) Conventions - R. 35
(20) Mutual legal assistance (MLA) - R. 36
(21) Dual criminality - R. 37
(22) MLA on confiscation and freezing - R. 38
(23) Extradition - R. 39
(24) Implementation of UN instruments - SR. I
(25) Criminalization of terrorist financing - SR. II
(26) Freezing and confiscation of terrorist assets - SR. III
(27) STR relating to FT - SR IV
(28) International cooperation - SR V
(29) AML-CFT requirements for money/value transfer services - SR VI

- **Largely compliant (LC)**
  (1) ML offense--mental element and corporate liability - R. 2
  (2) Confiscation and provisional measures - R. 3
  (3) Power of competent authorities - R. 28
  (4) Other forms of cooperation - R. 40

- **Compliant (C)**
  (1) Secrecy laws consistent with Recommendations - R. 4
  (2) Other forms of reporting - R. 19

- **Not applicable**
  (1) Legal arrangements--beneficial owners (express trusts) - R. 34

From the above lists the breakdown is 13 for NC, 29 for PC, 4 for LC, 2 for C, and 1 for NA. While Thailand seems to deserve 13 NC-rating for reasons cited in the DAR, 29 PC-rating however is open to question. For instance, Thailand truly deserves much more than the PC-rating particularly in such areas as—(1) shell banks, (2) national cooperation, (3) conventions, (4) mutual legal assistance, (5) dual criminality, (6) extradition, (7) criminalization of terrorist financing, (8) freezing and confiscation of terrorist assets, and (9) international cooperation. Why Thailand deserves better scoring has already been discussed in Chapters VII, VIII, and IX.

Be that as it may, what the compliance ratings have indicated is that Thailand's AML laws need much improving if Thailand wants to have in place an efficient, effective AML-CFT regime and, at the same time, honor its international commitment. Based on their findings, international assessors have made numerous suggestions and recommendations in respect of Thailand's AML laws. They range from simple adjustment of working styles of agencies concerned to legislative amendments. The fact that further amendments to the AML laws are urgently needed is indisputable. But the important question is how fast the required amendments can be made. Another point of realization is that Thailand's AML-CFT regime—as it currently exists—is deficient. But then, the critical question is how smart the measures can address the shortcomings. These and other related issues will keep challenging the authorities involved in AML-CFT activities.

1.2 Post-AMLA legislative compliance measures

The period following the promulgation of the AMLA saw Thailand taking substantial measures that involve both fulfilling of the international obligations and domestic implementation, as stated below:

- **International**

  (1) Signing of the 2000 Palermo Convention on 13 December 2000
  (2) Ratification of the 1988 Vienna Convention on 1 August 2002
  (3) Making of Ministerial Regulations in response to UN Resolutions relating to terrorism between September 2000 and July 2003
  (4) Ratification of the 1999 Convention against FOT on 29 September 2004
  (5) Signing of the ASEAN regional treaty for mutual legal assistance in criminal matters on 17 January 2006
  (6) Signing of MOUs between AMLO and 31 foreign counterparts up to 17 July 2007

- **Domestic**

  (1) Amendments of AMLA and Penal Code making terrorism a predicate offense on 11 August 2003
  (2) Issuance of Ministerial Regulations Nos. 1-10 of 2000 under AMLA and other related Regulations, Notifications by Prime Minister Office, Minister of Justice and AMLO
  (3) Issuance of Notifications, Regulations, Circulars, Directives, etc. by BOT, SEC, DOI on AML-CFT compliance
  (4) Issuance of two Policy Statements by AMLO in March 2007
  (5) Issuance of TBA Banking Policy (December 2006 version)
  (6) Approval by National Legislative Assembly of draft Amendment to AMLA on 14 November 2007

1.3 Impact of DAR on AML-CFT regime

The IMF DAR, dated 24 July 2007, is divided into 7 Sections : Section 1, General; Section 2, Legal System and Related Institutional Measures; Section 3, Preventive Measures—Financial Institutions; Section 4, Preventive Measures—Designated Non-financial Businesses and Professions; Section 5, Legal Persons and Arrangements & Non-Profit Organizations; Section 6, National and International Cooperation; and Section 7, Other Issues. In other words, the review and assessment of Thailand's AML-CFT regime against the FATF 40+9 Recommendations essentially covers the entire spectrum of AML-CFT issues. Notwithstanding one would fully agree with the DAR views or not, section-wise recommendations of the DAR referred to in the preceding Chapter and annexed as Appendix E.

According to IMF team leader[1] the total number of recommendations in Appendix E is found to be 147. If these recommendations are roughly categorized, the grouping will be as shown below:

- Recommendations requiring decision
- Recommendations requiring drafting and passing legislation
- Recommendations requiring making of regulations
- Recommendations requiring implementation

The IMF mission intended to assign actioning priority for each recommendation to help facilitate the Thai authorities' setting of programs for implementation on the DAR recommendations.

The findings of the DAR will certainly have a considerable impact, one way or another, on the AML-CFT regime of Thailand as a whole. While the impact on the financial and related sectors may not be felt very much initially, the impact on the authorities may be of considerable magnitude. Most probable reasons are : (1) it is feared that Thailand's image as an active combatant of ML and FT will be tainted to a certain extent; (2) if legislative amendments are an absolute necessity then the authorities have to undergo a time-consuming law-making process for necessary amendments; and (3) the impact on the respective industries, particularly the financial sector, may prove to be disastrous in the long run if deficiencies are not addressed at the earliest opportune moment.

1.4 Required steps for better improvement

For the purpose of this research categorization of issues may not be exactly the same as that of the DAR. The reason is that we have, as already discussed in Chapter IX, expressed our dissenting views on some specific issues where we have taken a different approach from that of the DAR. In some cases, we have pointed out that the view of the DAR may present a differing idea due to misinterpretation of the relevant AML laws as, for example, misinterpreting Section 20 of the AMLA, as if customer identification is required only for transactions that are to be reported to the AMLO. And in some other cases, the DAR comments overlooked the existence of a Penal

[1] Mr. Stephen Dawe's e-mail communication of 27 November 2007 to the AMLO

Code provision, namely Section 37, and made the conclusion that the Thai legal regime is incapable of forfeiting the property of corresponding value. In consideration of these differences in view, we have ventured to categorize the issue the way that we consider consistent with our view.

In selecting the issues, it is our firm belief that only those vitally important issues should be taken for urgent consideration while trivial issues are better omitted. Bearing this in mind, we would now describe the categories as follows.

1.4.1 Issues requiring policy decision

In view of the consensus opinions expressed by the independent international assessors which are found to be well-grounded, the issues that require urgent policy decision are in respect of the following:

(1) Ratification of the remaining 6 instruments shown in the Annex to the Convention against FOT, where Thailand has already ratified 3 instruments;
(2) Ratification of the Palermo Convention, which Thailand has already signed;
(3) Further expansion of the predicate offenses in line with the designated list of predicate offenses shown in the glossary to the FATF 40 Recommendations;
(4) Further amendment of the AMLA so as to be reflective of the recommendations made in the DAR; and
(5) Further amendment of the Penal Code to reflect the recommendations made in the DAR.

1.4.2 Issues requiring legislation

Once the policy is set in respect of the issues stated above, commensurate legislative amendment is to be made in relation to the following :

(1) Amendment of the AMLA; and
(2) Amendment of the Penal Code.

1.4.3 Issues requiring making of regulations

In conformity with the upcoming amended AMLA and the Penal Code, the following regulations will need to be made in respect of --

(1) Reporting requirements of DNFBPs, other NFBPs and NPOs;
(2) Fuller and more detailed requirements governing supervision, controls and monitoring of FIs, DNFBPs, other NFBPs and NPOs;
(3) Fuller and more detailed requirements on CDD; and
(4) Fuller and more detailed guidelines on forfeiture and management of assets.

1.4.4 Issues requiring implementation

Issues requiring implementation can be divided into two -- (a) implementation of issues pursuant to the issuance of the AMLO's two policy statements on KYC/CDD and on international cooperation, the BOT's policy statement and guidance on KYC/CDD, the SEC notification 3/2550, the DOI's policy statement on KYC/CDD and the TBA banking policy, and (b) implementation of issues that will follow the cabinet-approved AMLA amendment and relevant notifications.

2. The need for improvement

It has now become such a succinct need for amendment of Thailand's AML laws that it is impossible for the authorities concerned to remain complacent about what they have achieved so far in terms of asset forfeiture, public awareness and international cooperation. Thailand still has to go a long way to have a truly capable AML-CFT regime in place judging from the poor scoring in the most recent comprehensive assessment, most notably the IMF DAR.

Given the ever-growing threats of ML and FT using the most sophisticated techniques in the world today, the Thai authorities have to take measures, as comprehensive and fast as possible.

Realizing that Thailand's distinct law-making process and unique cultural traditions will not permit an expeditious action for badly needed legislative amendments for a perfect AML law, efforts must nevertheless be made to that effect. How fast and how far Thailand can move forward seems to be a big question at this critical moment.

The track record shows that since the inception of the AMLA in 1999 there has been amendment only once, i.e. in August 2003. Following the earlier recommendations of the international assessments, excluding those of the ADB, the UK Charity Commission and the IMF DAR, further amendment of the AMLA has been initiated. Yet, the proposed amendment is a couple of years in the making. The bill relating to the AMLA amendment has recently been passed by the NLA (National Legislative Assembly) established by the CNS (Council for National Security) after the September 2006 military coup.

It is quite interesting to learn that the NLA has recently been urged by the political activists to stop deliberating the bills—particularly controversial ones—currently under consideration. The activists reasoned that given the imminent general elections scheduled for 23 December 2007, deliberations of controversial bills had better be left to the incoming elected legislators. It has therefore become very doubtful whether or not any other AML-CFT related bill dealing with ratification of or accession to pertinent international conventions can get through the current session of the NLA. In this regard, the comment made in the editorial[2] entitled "NLA no longer has a mandate" of the Bangkok Post of 15 December 2007 issue is worth mentioning where it says the following :

> *….. The coup-appointed legislators have come under increasingly strong criticism from legal experts and civic groups in recent months for hastily passing or deliberating bills without discussing the issues with those affected by*

[2] Editorial, "NLA no longer has a mandate", The Bangkok Post (15 December 2007): p. 8

> *their actions..... There is no longer any logical basis under which it can consider bills all by itself and exclude the soon-to-be-elected House of Representatives. Simply put, it is morally wrong for an unelected interim administration to enact into law any radical proposals that are not part of its reason for taking power in the first place.....*
>
> *..... Rushing them through in a frenzy of rubber stamping will merely add more badly thought-out and ambiguous laws to our statute books and we already have more than enough of those.*

This recent story may prove to be one of many hurdles that the law-making process has to undergo before a bill's successful passage. Nonetheless, it is the duty of the authorities to draft and submit the required legislation in the most efficient and fastest way as they could. To do so, the authorities have two options to choose: (a) UN model laws and (b) indigenous creation.

2.1 UN model laws

We are well aware that when ML and FT matters first became a matter of international concern, the UN, especially the UNODC, has taken initiatives to make two model laws: one applicable to civil law countries and another to common law countries. These model laws are meant to serve as a practical guide to countries planning to enact an AML-CFT law.

2.2 Indigenous creation

Having promulgated an AML law of its own already, it is better still to draft necessary amendments that would not only address the identified deficiencies but also enhance the capability of legal enforcement that has long been a subject of criticism by independent international assessors of various sorts.

Contemplated amendments would ensure (1) that in the areas of international cooperation—extradition in particular—Thailand will not need to amend its Extradition Act as well as the Mutual Legal Assistance Act each time Thailand becomes a party to an international convention, (2) that in the area of forfeiture of assets, the AMLA's scope is extended to cover foreign assets, (3) that in the area of predicate offenses, the AMLA's application is extended to foreign predicate offenses as well, (4) that in the area of criminalization of terrorism and terrorist financing the Penal Code's coverage is explicitly extended to organized crimes as defined in the Palermo Convention and to financing of individual terrorists as well as terrorist organizations that are outside the UN sanctions lists, (5) that in the areas of KYC/CDD reporting requirements are inclusive of DNFBPs, other NFBPs and NPOs, and (6) that in the area of compliance regulatory and supervisory authorities' directives are comprehensive enough to deal with matters related to effective supervision and monitoring as well as imposition of proportionate, dissuasive sanctions against non-compliant entities under their respective supervision.

In creating amendments indigenously, the authorities will see to it that proposed amendments will (i) <u>not</u> impair Thailand's sovereignty and integrity, (2) <u>not</u> disrupt the delicate and sensitive balance between legislative independence and social harmony, (3) <u>not</u> infringe on basic and fundamental human rights, (4) uphold the fair

and just criminal justice system, and (5) make Thailand's AML law a viable and workable legal framework supportive of a truly effective AML-CFT regime.

3. Some specific recommendations for improvement

Improvement of Thailand's AML-CFT legal framework will involve such actions as : (a) amendment of existing laws, (b) enactment of new legislation, and (c) modification of existing regulations, guidelines, etc. The issues that are involved under each action are described briefly as follows:

3.1 Legislative amendment

3.1.1 AMLA

To amend the AMLA for the purposes of --

(1) further expanding the list of predicate offenses;
(2) empowering the AMLO to undertake criminal investigations and prosecutions for ML and FT cases, where possible, in preference to civil processes;
(3) empowering the AMLO to disseminate financial information analyses to domestic competent authorities for investigation;
(4) making all FATF glossary-defined FIs carrying out financial activities in Thailand subject to AML-CFT requirements under the AMLA;
(5) incorporating fully all CDD requirements in the AMLA;
(6) making all DNFBPs subject to the AMLA requirements in respect of submission of STRs, protection from liability for reporting STRs, prohibition of tipping-off, development of programs against ML and FT, and giving special attention to business relationships and transactions with non-compliant or less-compliant countries; and
(7) expanding coverage of representation on the AML Board from DNFBP sector and agencies concerned such as the NIA, NSC, NCATTC, or NCCC.

3.1.2 Extradition Act

To amend the Extradition Act for the purpose of –

- ensuring that, when extradition of Thai nationals is denied, the case shall be submitted to the prosecution authorities without delay and the proceedings shall be conducted in the same manner as the case of any other offense of a serious nature under domestic laws.

3.1.3 Penal Code

To amend the Criminal Procedure Code for the purpose of –

(1) increasing the sanctions for legal persons committing FT so as to make them proportionate and dissuasive; and

(2) expanding the forfeiture provision to deal also with property derived from the proceeds of crime.

3.1.4 Criminal Procedure Code

To amend the Criminal Procedure Code for the purpose of--

- enabling the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence.

3.2 New enactment (law / regulation/ OEM)

New law or laws may need to be enacted for the purposes of --

(1) enabling freezing of terrorist funds or other assets of persons designated under UNSC Resolutions 1267 (1999) and 1373 (2001) without delay; and
(2) regulating wire transfers in accordance with SR. VII.

3.3 Modification of existing regulations, guidelines, etc.

To modify the existing regulations, guidelines and policy statements for the purposes of --

(1) making various policy statements of different agencies consistent in terms of definition, concept and guidance;
(2) making KYC/CDD requirements of FIs, DNFBPs, other NFBPs more comprehensive;
(3) extending reporting regime to all types of FIs, DNFBPs, other NFBPs, and NPOs;
(4) making all guidelines in respect of compliance, supervision, internal controls and monitoring consistent and effective;
(5) delineating clearly the responsibilities of regulatory and supervisory agencies as well as designating the agency responsible for overall AML-CFT policies;
(6) enhancing domestic cooperation and coordination among agencies responsible for AML-CFT activities;
(7) making regulatory and supervisory agencies concerned to maintain comprehensive and up-to-date statistics of matters in their respective charge;
(8) making regulatory and supervisory agencies concerned to be more serious about non-compliant or breaching entities by imposing appropriate sanctions;
(9) establishing effective and publicly known procedures in respect of de-listing requests and unfreezing of funds or other assets of de-listed persons or entities
(10) establishing appropriate procedures for authorizing access to seized or attached property in respect of basic expenses;
(11) Requiring competent authorities to develop trends and typologies relating to ML and FT cases for distribution to other AML-CFT partners and the general public;
(12) Introducing enforceable obligations for FIs requiring them to put policies and procedures in place to address risks from new technologies;
(13) introducing a mechanism to apply countermeasures against non-compliant or less-compliant countries;

(14) expanding the cross-border declaration/disclosure requirements to all circumstances set forth by SR. IX and to bearer negotiable instruments as well;
(15) strengthening regulation, supervision and enforcement of remittance activity by promulgating cross-border currency control regulations and by enforcing existing licensing and registration requirements for all known informal remittance services ; and
(16) undertaking a comprehensive review of the adequacy of existing laws and regulations governing NPOs.

3.4 Others

Among actions for improvement the following would also be needed:

(1) Ratification of the Palermo Convention;
(2) Ratification of the remaining 6 instruments shown in the Annex to the Terrorist Financing Convention;
(3) Designation of an official contact point to deal with international requests for information on NPOs; and
(4) Demonstration through the use of statistics and other evidence that Thailand's mechanisms for international cooperation are fully effective.

4. Chapter-wise comments

In earlier Chapters of this paper—especially Chapters III to V—a host of information contained therein has collectively provided a springboard for systematic development of a theme for serious discussion in latter Chapters, i.e. Chapters VI to IX. From critical discussion of the issues involved we have learned a number of things that have hitherto remained unknown or unnoticed --- the things that are supposed to form component parts of a composite whole or that are supposed to play a vital part in AML-CFT mechanisms. In this regard, the IMF DAR's recommended action plan contains no less than 147 recommendations for improvement. The sheer amount of suggestions is good proof enough for Thailand to seriously think about taking expeditious remedy and redress aimed at improving its AML-CFT system as a whole.

5. A right move forward

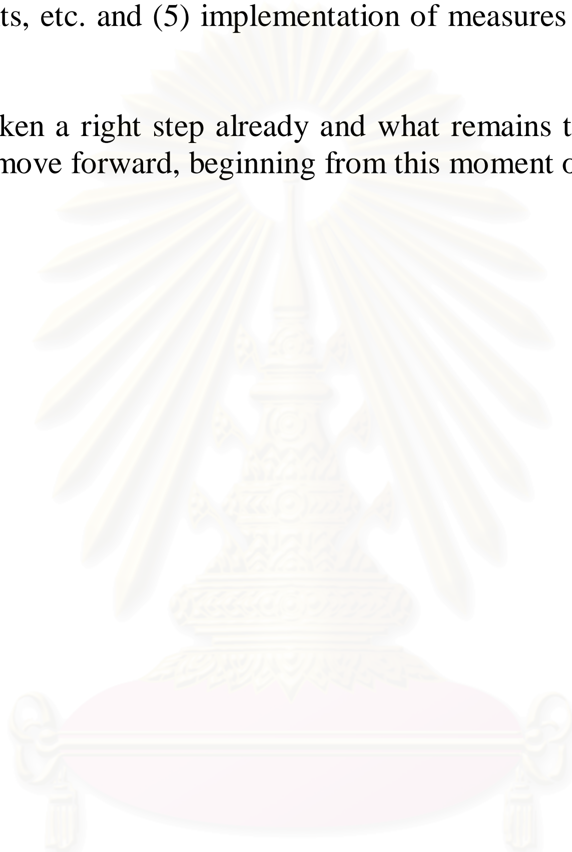
Having recognized such a need to improve Thailand's AML-CFT system, the authorities concerned have already begun taking appropriate measures—albeit bit by bit as the situation permits—in order to enhance the national capability to combat ML and FT. The initiative in fact has first started pursuant to the 2002 APG evaluation report on Thailand.

Under Thailand's system the responsibility for improving the AML-CFT regime falls on the AML-CFT Working Group—which is headed by the AMLO Secretary-General—insofar as compliance issues are concerned. As for the overall responsibility, it rests with the AMLO—which is regarded as the central regulatory and supervisory authority in charge of AML-CFT activities. The AMLO, as a *de facto* representative of the AML Board, represents the public sector and works constantly

with the private sector, most notably the financial industry, to achieve better improvement in the AML-CFT regime.

To sum up all that has been said about Thailand's AML-CFT system, the various assessments of independent international assessors have greatly contributed to the systematic review of Thailand's overall national capability. It is earnestly hoped that thorough review of its AML-CFT legal framework will undoubtedly lead to: (1) re-formulation of some specific policies, where necessary, (2) amendment of AML laws and enactment of new legislation in line with reformulated policies, (3) ratification of pertinent international legal instruments, (4) modification of existing regulations, policy statements, etc. and (5) implementation of measures that have already been in place.

Thailand has taken a right step already and what remains to be seen is whether it is making a right move forward, beginning from this moment on.



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สถาบันวิทยบริการ
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Appendices

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Appendix (A)

Thailand's existing legislation

Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999)
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Money Laundering Control Act, B.E. 2542 (1999)
Narcotics Control Act, B.E. 2519 (1976)
Non-Life Insurance Act B.E. 2535 (1992)
Official Information Act, B.E. 2540 (1997)
Organic Act on Counter Corruption, B.E. 2542 (1999)
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Prevention and Suppression of Prostitution Act, B.E. 2539 (1996)
Prices of Goods and Services Act, B.E. 2542 (1999)
Provident Fund Act, B.E. 2530 (1987)
Public Limited Companies Act, B.E. 2535 (1992)
Securities and Exchange Act, B.E. 2535 (1992)
Small Industry Credit Guarantee Corporation Act, B.E. 2534 (1991)
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Special Case Investigation Act, B.E.2547 (2004)
Trade Association Act, B.E. 2509 (1966)
Witness Protection Act, B.E. 2546 (2003)
Working of Aliens Act, B.E. 2521 (1978)

Appendix (B)
List of Data Attachments (on compact disks)

1. FATF 40 + 9 Recommendations

Data attachment 1 (A)	– FATF 40 Recommendations + Glossary + Interpretative Notes
Data attachment 1 (B)	– FATF 9 Special Recommendations
Data attachment 1 (B-1)	– SR II Interpretative Notes
Data attachment 1 (B-2)	– SR III Interpretative Notes
Data attachment 1 (B-3)	– SR VI Interpretative Notes
Data attachment 1 (B-4)	– SR VII Interpretative Notes
Data attachment 1 (B-5)	– SR VIII Interpretative Notes
Data attachment 1 (B-6)	– SR IX Interpretative Notes
Data attachment 1 (C)	– FATF Assessment Methodology (June 2006)

2. FATF and UNODC Best Practices

Data attachment 2 (A)	– FATF Best Practices: SR III (Freezing of terrorist assets), 3 October 2003
Data attachment 2 (B)	– FATF Best Practices: SR VI (Combating the abuse of Alternative Remittance Systems), 20 June 2003
Data attachment 2 (C)	– FATF Best Practices: SR VIII (Combating the abuse of Non-Profit Organizations), 11 October 2002
Data attachment 2 (D)	– FATF Best Practices: SR IX (Detecting and Preventing the Cross-Border Transportation of Cash by Terrorists and Other Criminals, 12 February 2005
Data attachment 2 (E)	– UNODC Report: Mutual Legal Assistance Casework Best Practice, Vienna, (3 – 7) December 2001

3. Basel Committee on Banking Supervisions

Data attachment 3 (A)	– Core Principles
Data attachment 3 (B)	– Customer Due Diligence
Data attachment 3 (C)	– Core Principles Methodology

4. AMLA

Data attachment 4 (A)	– AMLA translated by AMLO
Data attachment 4 (B)	– AMLA translated by the Council of State
Data attachment 4 (C)	– AMLA translations amalgamated by the researcher (04-06-07)
Data attachment 4 (D)	– Amended AMLA

5. AMLO Compendium

Data attachment 5 (A)	– Title page and others
Data attachment 5 (B)	– Anti-Money Laundering Act

Data attachment 5 (C) – Bureaucratic Restructuring Act
Data attachment 5 (D) – Ministerial Regulations issued under the Provisions of the Anti-Money Laundering Act, 1999
5 (D-1) – Ministerial Regulation (1)
5 (D-2) – Ministerial Regulation (2)
5 (D-3) – Ministerial Regulation (3)
5 (D-4) – Ministerial Regulation (4)
5 (D-5) – Ministerial Regulation (5)
5 (D-6) – Ministerial Regulation (6)
5 (D-7) – Ministerial Regulation (7)
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5 (D-10) – Ministerial Regulation (10)
Data attachment 5 (E) – Ministerial Regulation on Organization of Work Units under Anti-Money Laundering Office B.E. 2545 (A.D. 2002)
Data attachment 5 (F) – Prime Minister Office Regulations
Data attachment 5 (G) – Prime Minister Office Notifications
Data attachment 5 (H) – Anti-Money Laundering Board Regulations
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Data attachment 5 (J) – Memorandums of the Council of State
Data attachment 5 (J-1) – Case No. 487/2002
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6. AMLO's Tables

Data attachment 6 (A) – AMLO Table A
Data attachment 6 (B) – AMLO Table B
Data attachment 6 (C) – AMLO Table C

7. AMLO's FTR forms

8. ADB Consultants' Analysis Report on Thailand (9 April 2006)

9. UK Charity Commission's analysis report on Thailand 2006 - 2007

10. UN Model Law and UN Instruments

Data attachment 10 (A) – UN model law
Data attachment 10 (B) – UN pertinent instruments

11. UN Conventions.

Data attachment 11 (A) – UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
Data attachment 11 (B) – UN International Convention for the Suppression of the Financing of Terrorism (1999)
Data attachment 11 (C) – UN Convention against Transnational Organized Crime (2000)

Data attachment 11 (D) – UN Convention against Corruption (2003)

12. IMF's DARs

Data attachment 12 (A) – IMF's Detailed Assessment Report on Thailand, 24 July 2007 (Draft)

Data attachment 12 (B) – IMF's Detailed Assessment Report on Thailand, 2007 (Final)

13. Thailand's New Constitution (2007)

14. Wolfsberg Standards

Data attachment 14 (A) -Global AML guidelines for private banking

Data attachment 14 (B) -Wolfsberg statement – the suppression of the financing of terrorism

Data attachment 14 (C) - Wolfsberg AML principles for correspondent banking

Data attachment 14 (D) -Wolfsberg statement – monitoring, screening and searching

Data attachment 14 (E) -Wolfsberg statement –guidance on a risk-based approach for managing ML risks

Data attachment 14 (F) -Wolfsberg statement – AML guidance for mutual funds and other pooled investment vehicles

Data attachment 14 (G) -Wolfsberg statement against corruption

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Appendix (C)

(ADB's three-year action plan – AML-CFT regime development)

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
1.	Assess the legal, institutional, and procedural requirements for conforming to the accepted international AML-CFT obligations for international cooperation, including the relevant elements of the FATF 40 plus 9 Recommendations.	End February 2006	Delays in preparation of draft Action Plan Thai authorities unable to revise draft law
2.	Discuss draft Action Plan for approval and acceptance by AML Working Group	23 February 2006	Progress will be delayed
3.	Accept draft Action Plan by AML Working Group	4 March 2006	Essential if timetable for reference to AML Board to be met
4.	Formulate regulations and guidelines to facilitate implementation and operation of amended AMLA and other laws relating to international cooperation	March 2006 and ongoing	AML regime will not be effectively implemented and operated efficiently.
5.	Conduct training/workshops to ―train the trainers". This will be done by ADB. This will involve relevant agencies (AMLO, BOT, SEC, DOI, and CPD) in collaboration with the Thai Bankers' Association and other industry associations on how to train staff of FIs.	April 2006	Training of Key staff to undertake training activities necessary for industry training in new areas of financial sector and in DNFBPs
6.	Develop and present financial investigators' course specializing in investigation of ML and ―money trails".	July 2006 ongoing	Lack of capacity to investigate ML and predicate offenses

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	This will be done by AMLO.		
7.	Approve the action plan (by AMLB)	30 August 2006	Implementation of action plan delayed
8.	Conduct workshops/seminars with donor assistance to raise awareness among government officials on the ▪ nature and scope of ML-FT and its potential threat to the political, economic, and social stability of Thailand; ▪ international standards and efforts on AML-CFT; ▪ provisions of AMLA and other related AML legislation; and ▪ interrelationships between these factors	September 2006	This is important in building support within government agencies. Donors have agreed to assist this process.
9.	Conduct training workshops to — train the trainers" (possibly aimed at a core cross-sectoral group) in collaboration with the Thai Bankers' Association and other industry associations.	September 2006	Implementation of AML-CFT regime will be less effective. External criticism is likely if Thailand is seen as providing insufficient response to ML-FT activities.
10.	Conduct workshops/seminars to raise awareness for senior management and staff of DNFBPs. The issues to be covered include: ▪ particular AML-CFT issues surrounding DNFBPs, ▪ increased awareness of ML-FT risks to the broader business and financial sectors, ▪ enhanced KYC and CDD	September 2006	Effective compliance only comes from a sound understanding of the obligations imposed on FIs and effective supervision of their levels of compliance. These training activities are an essential part of achieving effective compliance.

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	requirements, ▪ effective internal controls for AML-CFT, ▪ suspicious transaction reporting ▪ CTR arrangements, ▪ international funds transfer, ▪ information reporting, ▪ compliance procedures, and ▪ other requirements under AMLA.		External critism is likely if Thailand is seen as providing insufficient response to ML-FT activities.
11.	Develop and adopt a compliance program with specific objectives for the end of 2006, 2007, and 2008. Program to cover FIs and DNFBPs	September 2006	Compliance levels unsatisfactory if regular audit and compliance education program not conducted.
12.	Obtain policy approval from Ministers for proposed amendments to enable Thailand to meet international AML-CFT obligations.	December 2006	Essential if drafting to be undertaken on time for submission to Parliament
13.	Develop feedback guidelines for FIU, FIs, and DNFBPs; to be done by AMLO.	December 2006	Inadequate feedback leads to less than optimal reporting
14.	There is a need to enhance use of special investigative techniques in AML-CFT cases as these are often complex and clandestine. This will require external assistance. Conduct review measures to initiate and implement special investigative techniques to support AML-CFT. Donor assistance has been offered for	December 2006	Without greater use of these techniques it is much more difficult to identify and obtain evidence of ML-FT activities. Review should identify what techniques can be used and in what circumstances. Legislative amendments

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	this review.		may be needed to enhance the use of these techniques.
15.	UNSC resolutions are binding on Thailand. A number of these impose obligations to locate and freeze terrorist assets. There is a need to develop an effective mechanism to ensure FIs comply with UNSC resolutions relating to freezing terrorists' assets.	December 2006	Thailand will not be meeting its obligations as a member of the United Nations.
16.	Develop framework for the introduction of online registration of reports from expanded range of financial institutions and DNFBPs. This needs to specify dates for confirmation of IT specs and a series of milestones for purchase, delivery, installation and operation of system.	December 2006	Essential that DNFBPs have simple and efficient reporting system. If not reporting levels will be very low.
17.	Establish registration requirements for informal remittance services.	December 2006	Thailand will not meet FATF obligations.
18.	Draft amendments to ▪ AMLA ▪ Penal Code ▪ Commercial Banking Act ▪ Extradition Act ▪ Mutual Assistance Act ▪ any other necessary legislation to meet Thailand's international AML-CFT obligations	March 2007	This is necessary to obtain policy approval for the legislation.
19.	Refer legislative proposals for preparation of final draft legislation to be submitted to	March 2007	Legislation cannot be submitted to Parliament.

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	Parliament.		
20.	AMLO will acquire new responsibilities in relation to some DNFBPs (presious metals and precious stone dealers). This will expand AMLO's role. AMLO's structure and resources need to match its role and functions.	March 2007	AMLO will not be able to meet its role if resources are inadequate. AMLO's effectiveness as an FIU will be reduced if it does not meet the needs of Thai law enforcement agencies (RTP, ONCB, and SID).
21.	Design draft reporting forms and notices for use by DNFBPs. Design paper and electronic formats to allow for delivery of required reports by DNFBPs to AMLO. Modify electronic formats to allow for delivery of required reports to AMLO from DNFBPs.	March 2007	No effective capture and analysis of data Consultation with DNFBPs will be delayed. DNFBPs can claim that they cannot meet their obligations. System will be seen as not _business friendly'. Reporting system cannot work.
22.	Conduct workshops/seminars to raise awareness for the **staff** of DNFBPs. These issues to be covered include: ▪ particular AML-CFT issues surrounding DNFBPs; ▪ increased awareness of ML-FT risks to the broader business and	March 2007	Effective compliance only comes from a sound understanding of the obligations imposed on financial institutions and effective supervision of their levels of compliance.

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	financial sectors; ▪ enhanced KYC and CDD requirements; ▪ effective internal controls for AML-CFT; ▪ suspicious transaction reporting; ▪ cash transaction reporting arrangements; ▪ international funds transfer; information reporting; ▪ compliance procedures; and ▪ other requirements under AMLA		These training activities are an essential part of achieving effective compliance. New sectors will not comply with amended legislation. External criticism is likely if Thailand is seen as providing insufficient response to ML and TF.
23.	Develop KPIs to enable AMLO to measure progress and provide basis for review of resources.	June 2007	AMLO will not meet its obligations and there will be external criticism of Thailand AML-CFT response.
24.	Ratify and implement Palermo Convention.	June 2007	Failure will inhibit Thailand's responses to money laundering and prevent effective international money laundering investigations.
25.	AMLO and supervisory agencies to develop and implement a program of issuing guidelines and information to reporting entities. This may involve a regular newsletter or information bulletin to be issued monthly. New guidelines to be issued	First edition to be issued by June 2007	Likely low level of compliance by reporting entities Reporting entities will be unaware of new rules and low levels of compliance will occur.

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	within 30 days of any changes to the law		
26.	Development of 3-year training and technical assistance program by an international donor group coordinated by APG (including IMF, the World Bank, ADB and bilateral donors)	July 2007	System will be less effective without training activities undertaken by donors.
27.	Obtain agreement to and implementation of AML-CFT Policy for DNFBPs.	July 2007	Necessary prerequisite to implementation of AML-CFT obligations
28.	Examine feasibility of online reporting by DNFBPs. (If electronic reporting is not feasible, develop simple and efficient paper-based system.)	July 2007	Essential that DNFBPs have simple and efficient reporting system. If not reporting levels will be very low.
29.	Set up central PEPs & terrorists database domestically and internationally.	July 2007	Without access to current PEP database smaller FI's and the DNFBPs will not be able to implement KYC and CDD.
30.	Introduce into Parliament amendments to ▪ AMLA; ▪ Penal Code; ▪ Commercial Banking Act; ▪ Extradition Act; ▪ Mutual Assistance Act; and ▪ other amendments relating to enhanced international cooperation.	July 2007	Parliamentary consideration and eventual implementation will be delayed.
31.	Preparation for Thailand's next Mutual Evaluation. Prepare response to APG questionnaire. (Due 30 days before APG Mutual	July 2007	Evaluation cannot proceed effectively, if at all. Evaluation will be

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	Evaluation Team arrives. Date to be determined in consultation with APG).		conducted under more rigorous IMF/FATF Methodology.
32.	Conduct workshops/seminars, with donor assistance, to raise awareness of members of the Parliament on the ▪ nature and scope of ML-FT and its potential threat to the political, economic and social stability of Thailand; ▪ international standards and efforts on AML-CFT; ▪ provisions of AMLA and other related AML legislation; and ▪ interrelationships between these factors and the need to amend the Commercial Banking Act.	September 2007	This is important in building support within Parliament. Donors have agreed to assist this process.
33.	Conduct review of the structure of AMLO and the numbers, levels, and skills of the staff in the light of expected additional responsibilities. This could be conducted with external assistance.	September 2007	External criticism is likely if Thailand is seen as providing insufficient response to ML and FT.
34.	Review KPI for AMLO in the light of the mutual evaluation report prepared by APG. (Within 60 days of report)	September 2007	Use of inappropriate measures may lead to inadequate resources or unjustified criticism.
35.	Draft regulations and guidelines to facilitate implementation and operation of AMLA.	October 2007	AML regime will not be effectively implemented and operated efficiently.
36.	Conduct study of all wire transfer systems to examine threats, vulnerabilities and risks of use of	December 2007	Greater examination of wire transfers is needed to identify possible ML

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SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	wire transfers for ML & FT with external assistance.		and FT activities.
37.	Parliament to pass amendments to ▪ AMLA; ▪ Penal Code; ▪ Commercial Banking Act; ▪ Extradition Act; ▪ Mutual Assistance Act; and ▪ other amendments relating to international cooperation	December 2007	Delays will prevent Thailand meeting its international AML-CFT obligations.
38.	Implement reporting systems including online systems for DNFBPs.	December 2007	Reporting will not occur.
39.	Implement amendments to ▪ AMLA; ▪ Penal Code; ▪ Commercial Banking Act; ▪ Extradition Act; ▪ Mutual Assistance Act; and ▪ other amendments relating to international cooperation.	June 2008	Delays will prevent Thailand meeting its international AML-CFT obligations.
40.	AMLO to coordinate Thai Government agency and international donor support for implementation of the action plan.	Ongoing	Maximizes donor assistance. Prevents duplication of training and technical assistance.
41.	FATF requirement to expand the range of financial sector entities and non-financial businesses and professions which must meet AML-CFT responsibilities will	Ongoing	Effective compliance only comes from a sound understanding of the obligations imposed on financial institutions

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ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	require extensive training. This will require a number of separate activities targeted at different groups. The first target group will be senior management and staff of financial institutions (including securities, futures, and fund management companies). This group needs workshops/seminars to cover ▪ increased awareness of the ML-FT risks to the financial sector; ▪ enhanced KYC and CDD requirements; ▪ effective internal controls for AML-CFT; ▪ suspicious transaction reporting; ▪ cash transaction reporting arrangements; ▪ international funds transfer; information reporting; ▪ compliance procedures; ▪ other requirements under AMLA; and ▪ AML-CFT issues surrounding DNFBPs.		and effective supervision of their levels of compliance. These training activities are an essential part of achieving effective compliance. External criticism is likely if Thailand is seen as providing insufficient response to ML and FT.
42.	Conduct workshops/seminars to train securities, futures and fund management companies, as well as SEC staff, concerning ▪ STR reporting requirements under AMLA & penalty involved; ▪ techniques to identify and	September 2006	These training activities are an essential part of achieving effective compliance. External criticism is likely if Thailand is seen as providing insufficient response to

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	verify beneficial owners and controlling persons (in CDD process); and ▪ techniques to identify suspicious transactions.		ML and FT.
43.	Communicate the Government's progress in implementing an effective anti-money laundering regime to the wider anti-money laundering community. This Involves: ▪ active membership of APG and Egmont Group ▪ conduct of APG Evaluation ▪ continuing work with IMF and World Bank	Ongoing	Essential if FATF-IMF-WB and bilateral criticism is to be prevented.
44.	Conduct pubic awareness programs among the general public. These need to deal with ▪ the nature of the ML-FT phenomenon; its threat to political, economic and social stability of the country; ▪ international AML-CFT efforts; and AML-CFT measures taken by Thai authorities.	Ongoing	Public understanding and support are essential if AML-CFT systems are to work. Public reporting is vital and awareness of the need for AML-CFT procedures reduces concerns about KYC and CDD processes.
45.	AMLO to develop and run training on changes to the law concerning: ▪ new reporting entities ▪ obligations of those entities, and compliance procedures	Ongoing	Poor understanding of the law Reporting entities will make avoidable errors and develop undesirable compliance and reporting practices and attitudes.
46.	Organize awareness raising	Ongoing	

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	seminars for all stakeholders (financial institutions and DNFBPs) on requirements of international standards and provisions in the AML-CFT framework.		
47.	Develop and implement training module for investigators covering issues such as ▪ what ML is ▪ investigating ML ▪ Current typologies (methodologies) ▪ planning an investigation ▪ managing an investigation ▪ conducting a net worth analysis ▪ forensic accounting issues ▪ interview techniques ▪ intelligence analysis ▪ use of covert methods such as electronic surveillance and undercover operations (subject to availability of such avenues) ▪ asset tracing ▪ preparation of evidence.	Ongoing	Initial program developed by donors and then delivered by Thai officials Poor levels of investigation. Little prospect of effective prosecutions
48.	Develop and implement a training module for compliance officers and those with responsibilities for training bank and other reporting entity staff to address issues such as: ▪ suspicious transaction reporting ▪ cash transaction reporting ▪ international funds transfer information	Ongoing	Initial program developed by donors and then delivered by Thai officials Poor levels of compliance Criticism by FATF-IMF-World Bank

ADB's three-year action plan — AML-CFT regime development

SEQ	ACTIVITY	COMPLETE BY	CONSEQUENCES IF DEADLINE NOT MET
	reporting ▪ KYC and CDD obligations ▪ compliance with directives on ML, and ▪ FT issues.		Inadequate implementation of AMLA
49.	Develop and implement prosecutors' training course. While there are many cases involving forfeiture of assets, there are very few ML prosecutions.	Ongoing	Initial program developed by donors during 2007 and then delivered by Thai officials. A major performance measure as seen by international agencies cannot be met.
50.	Develop procedural manuals for prosecutors conducting cases under AMLA and asset confiscation under AMLA and Penal Code.	2008, but will need external assistance	Poor and inconsistent quality of work leading to failures and development of bad working practices and attitudes
51.	Arrange provision of judicial education for judges involved in money laundering cases.	2008, but will need external assistance	Poor level of judicial understanding Increased likelihood of successful appeals Lack of understanding by judges of nature and extent of ML.

Appendix (D)

(Comments on rating in DAR)

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
1. ML offense	**PC**	• The list of domestic predicate offenses does not cover all serious offenses and it does not fully cover 14 out of the 20 designated categories of offenses. • Thailand's criminal jurisdiction does not, in all instances, extend to all predicate offenses that occurred in another country, which constitutes an offense in that country, and would have constituted a predicate offense had they occurred in Thailand. • The acquisition, possession or use of property is conditioned to specific purposes that go beyond the requirements of the Vienna Convention. The assessment team was not able to satisfy itself that the regime is being effectively implemented: ▪ on average only 3 ML convictions are obtained each year; ▪ the vast majority of prosecutions and convictions relate to drug ML and not other predicate offenses; and ▪ AMLO's poor record for disseminating information to authorities and its focus on pursuing civil processing to seize assets may impede the pursuit of criminal prosecutions for ML.
2. ML offense—	**LC**	

[1] These factors are only required to be set out when the rating is less than Compliant.

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Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
mental element and corporate liability		• No statistics were provided to assess whether the sanctions imposed are effective or dissuasive.
3. Confiscation and provisional measures	**LC**	• The powers to identify and trace property that is or may become subject to confiscation in the context of criminal procedures for offenses not relating to narcotics are not sufficient. • The forfeiture provisions of the Thai Penal Code do not deal with property derived from the proceeds of crime. • There are no provisions permitting the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. • The authorities could not demonstrate that they could take steps to void actions taken to prejudice the ability of the authorities to recover property subject to confiscation. • Thailand has a successful record of making provisional asset seizures using criminal and civil processes. • The assessors remain concerned that not all the measures are effectively implemented because: ▪ They were not provided with a full set of statistics; ▪ Very few assets are seized for offenses other than narcotics; ▪ Assets forfeited are low compared to assets seized and there is a large backlog of AMLO's civil cases presently before the courts; and, ▪ There may be too much focus on the civil based provisional seizures in the AMLA due to the incentives that the AMLO

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		rewards system creates and not enough focus on completing confiscation procedures – civil or criminal.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	• The Recommendation is fully met.
5. Customer due diligence	**NC**	• There are a large number of FIs that carry out financial activities in Thailand as defined in the glossary to the FATF 40+9 that are not subject to AML/CFT requirements under the AMLA (The Small Business Credit Guarantee Corporation, Agricultural Cooperatives, Personal Loan Business Companies, Pawnshops, Hire Purchase Companies, Authorized Money Transfer Agents, The Postal Office, Credit Card Companies, Companies Authorized to issue travelers checks, E-Money companies, Agriculture Futures Brokers and Derivatives Business Operators). • Although in practice some FIs, particularly in the banking sector, have been implementing measures and guidelines issued by the regulators and industry there are only limited CDD requirements under the AMLA which means that there are no effective requirements in place for FIs covered by the AMLA whose financial supervisor has not issued regulations of other enforceable means (e.g. life insurance companies). • The assessors were not satisfied that comprehensive measures have been

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		put in place to prohibit the use of anonymous accounts for accounts opened prior to 2001 and in relation to deposit taking entities not subject to the BOT notification relating to the acceptance of deposits. • There are no requirements in law or regulation relating to undertaking CDD when: ▪ establishing business relations with the exception of the banking and securities sectors; ▪ carrying out occasional transactions above $15,000 or that are wire transfers under SR VII; and, ▪ where the FI has doubts about the veracity or adequacy of previously obtained customer identification data. • The threshold for occasional transactions is in excess of the amount established in the standard. • The only requirements in law or regulation requiring FIs to identify customers (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information relate to: ▪ Transactions reportable to the AMLO; ▪ The opening of deposit accounts by banks (but not by SFIs); and ▪ The securities sector (excluding agricultural futures brokers). • The existing obligations requiring FIs, in relation to legal persons and legal arrangements, to verify that any person purporting to act on behalf of the customer is so authorized, and

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		identify and verify the identity of that person cover only some elements of the Recommendation and do not apply to all FIs. • The requirements in law or regulation requiring FIs to identify beneficial owners apply only to parts of the securities industry. • There is no general requirement in law or regulation requiring FIs to conduct ongoing due diligence of the business relationship. • The securities sector (excluding agricultural futures brokers) is the only one that appears to have any enforceable obligation for FIs to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. • The securities sector (excluding agricultural futures brokers) is the only one with an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship. • The exemptions for certain transactions from the requirements of the AMLA do not appear to be based on a [an] assessment of the risks of ML or TF. • The securities sector (excluding agricultural futures brokers) is the only one that has any enforceable obligations for FIs in relation to the timing of verification. • Some banks are conducting reduced CDD measures on a risk sensitive basis even though this is not authorized and for which no guidance has been issued. • There are no obligations imposed on FIs who cannot complete CDD

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		requirements to not open accounts, commence business relations or perform transactions or consider making a suspicious transaction reports except in limited circumstances for securities companies. • The fragmented nature of the laws, regulations and notifications poses an obstacle to the effective implementation of the regulated sector by making it challenging for the FIs to know with certainly what their obligations are. • The assessors were not satisfied that all the measures that are in place are effectively implemented because many have only recently been introduced, the FIs are still in the process of implementing them and there is a lack of guidance issued by the authorities.
6. Politically exposed persons	**NC**	• The only requirements that apply are in the securities sector (excluding agricultural futures brokers).
7. Correspondent banking	**NC**	• In the absence of any enforceable correspondent obligations for the banking sector it is a concern that banks have operated correspondent relationships with jurisdictions considered to be at risk of ML without any guidance from the authorities.
8. New technologies & non face-to-face business	**NC**	• There is no general enforceable requirement applying to all FIs that addresses risks from new technologies or doing business with

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		non-face to face business relationships. • The securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented.
9. Third parties and introducers	**NC**	• The only requirements regulating the use of third party introducers apply in the securities sector (excluding agricultural futures brokers).
10. Record-keeping	**PC**	• Other than some securities firms FIs are not required by law or regulation to keep transaction records or identification data except in relation to transactions that have been reported to AMLO under the AMLA. • The identification data retention requirements in law or regulation that apply only to banks do not extend to business correspondence and account files. • There are no other identification data retention requirements in law or regulation for other FIs.
11. Unusual transactions	**PC**	• The obligation in the AMLA for FIs to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose does not extend to the FIs that are not subject to the AMLA. • Other than when making STRs, there is no requirement in the AMLA that FIs should set forth their findings in writing nor retain those findings.

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
12. DNFBP–R.5, 6, 8–11	**NC**	• There are no legally enforceable requirements in place in relation to any categories of the DNFBPs that operate legally in Thailand. • Illegal casinos operate throughout Thailand.
13. Suspicious transaction reporting	**PC**	• FIs outside of the definition in the AMLA are not required to report suspicious transactions. • The reporting obligation does not cover all of the predicate offenses for ML under the FATF Recommendations. • There is no requirement to report attempted transactions. • There is no evaluation of ML risk in relation to the transaction that are exempted from the reporting obligation (e.g. .transactions to which the government is a party given the risk of corruption that exists in Thailand). • The assessors are not satisfied that the requirements are effectively implemented even though a very large number of reports are received: ▪ There is negligible reporting of STRs by FIs that are not banks; ▪ There is no guidance issued by the authorities to help FIs identify suspicious transactions; ▪ There may be poor quality reporting as the obligation to report includes for “unusual” transactions and very few reports result in ML or TF investigations or convictions; and, ▪ There may be defensive filing of STRs by banks.

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Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
14. Protection & no tipping-off	**PC**	• The law does not prohibit –tipping off'. • Section 21 of the AMLA which requires FIs to obtain a statement from a customer for whom they are considering making an STR appears to have the effect of tipping off the customer.
15. Internal controls, compliance & audit	**PC**	• The only enforceable requirement for FIs to develop appropriate compliance management arrangements apply to the securities sector (excluding agricultural futures brokers). • Although in practice many FIs carry out extensive AML/CFT training for their staff, there is no requirement for FIs to establish ongoing employee training related to ML and TF. • There is no requirement applying to all FIs to screen potential employees. • The OSEC Notification does not require that the AML/CFT officer be at management level.
16. DNFBP–R.13–15 & 21	**NC**	• There are no obligations to report suspicious transactions by any category of DNFBP nor (or ??) related protections from liability nor prohibitions on tipping off that an STR has been made. • DNFBPs are not required to develop programs against ML and TF. • DNFBPs are not required to give special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF Recommendations as required by R.21.

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Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
17. Sanctions	**PC**	• It is difficult to establish whether the sanctions provided for in the AMLA they are effective or dissuasive as no sanctions have ever been imposed. • The assessors were not satisfied that all of the FIs identified in the FATF definition of financial institution that operate in Thailand had a corresponding competent authority designated to impose sanctions for non-compliance with AML/CFT requirements (e.g. cooperatives, pawnshops and agricultural futures brokers). • The assessors were not satisfied that an effective sanctioning regime existed for the SFIs or, if it does exist, that it is effectively applied. • The assessors were not satisfied that the sanctions available to the authorities were being or were capable of being effectively utilized: ▪ There were no statistics available to the assessors showing how many sanctions had been imposed; ▪ No criminal sanctions for breaching the AMLA have been applied, despite the existence of known serious breaches; ▪ Some of the financial supervisors do not consider it their duty to report serious breaches of the AMLA to appropriate competent authorities; and, ▪ Some criminal charges referred to the competent LEAs by the SEC may not be pursued.
18. Shell banks	**PC**	• There is no requirement prohibiting

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		FIs from having correspondent banking relationships with shell banks. • FIs are not required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**C**	• The Recommendation is fully met.
20. Other NFBP & secure transaction techniques	**PC**	• The authorities do not appear to be taking sufficient measures to reduce the use of cash in Thailand or to encourage more activity to come within the formal sector.
21. Special attention for higher risk countries	**NC**	• The only requirement that FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is in the securities sector (excluding agricultural futures brokers) and these do not require that findings be recorded in writing. • Thailand does not have a mechanism to apply countermeasures against countries that do not apply or insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	**NC**	• There are no requirements in place.
23. Regulation, supervision and monitoring	**PC**	• The assessors are not satisfied that there has been a clear designation of which competent authorities are responsible for ensuring FIs comply with the AMLA. • There are insufficient measures in

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		place to ensure that criminals are prevented from being beneficial owners of FIs. • While insurance companies are subject to the AMLA they are not subject to any effective compliance monitoring for AML/CFT. • Regulation and supervision of remittance activity seems inadequate - the competent authorities do not seem to taking effective steps to suppress remittance activity in the large informal sector. • The 7-Eleven convenience store chain is able to operate as a money remitter without licensing, registration and effective compliance monitoring. • The assessors are not satisfied that all FIs that fall within the definition of financial activity within the FATF Recommendations are subject to supervision or oversight for compliance with requirements (e.g. cooperatives, pawnshops, agricultural futures brokers). • It is premature to conclude that AML/CFT regulation and supervision is effectively carried out as many of the requirements applicable to FIs had only just been established when the assessment took place.
24. DNFBP—regulation, supervision and monitoring	**NC**	• Illegal casinos operate throughout Thailand. • No categories of DNFBP are subject to AML/CFT requirements and therefore no supervision regime exists.
25. Guidelines & Feedback	**PC**	• The guidelines issued by the relevant

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Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		competent authorities need to contain more detailed assistance for complying with AML/CFT requirements including descriptions of ML and TF techniques and methods. • The guidelines that have been issued by competent authorities to FIs which deal with STR and other reporting are not comprehensive. • AMLO provides limited specific and general feedback to FIs. • The only guideline applicable to the DNFBPs is the AMLO policy statement and this document does not contain specific guidance instead it just establishes high level principles. Besides, it refers only to CDD.
Institutional and other measures		
26. The FIU	**PC**	• The FIU does not give adequate guidance to reporting institutions on STR reporting. • The AMLO does not publish periodic reports containing ML/FT typologies and trends. • The AMLO's effectiveness as an FIU is compromised by: ▪ Focusing too much attention on seizing assets using the civil vesting processes; ▪ Disseminating hardly any pro-active STR generated cases for LEAs; ▪ Having insufficient resources or expertise to perform strategic analysis, including in relation to TF; ▪ Its inability to produce consistent and accurate statistics on AML/CFT; and,

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		▪ The existence of a "rewards" system with may encourage some of these outcomes and also harm AMLO's integrity.
27. Law enforcement authorities	**PC**	• There are no comprehensive statistics, and none beyond narcotic cases, on ML and TF investigations to assess the effectiveness of the investigative effort. • Investigations focus predominantly on drug ML not other predicate offenses. • LEAs seem reluctant to enter into complex investigations into ML and more willing to investigate self laundering connected mainly with drug related predicate offenses. • The LEAs prefer to hand cases to the AMLO to handle under the civil vesting procedure instead of properly investigating ML. • The effectiveness of LEA investigation of ML and TF is hampered by them not receiving proactive financial intelligence from the AMLO. • The effectiveness of the investigative effort appears to be compromised by the lack of specialized dedicated resources who have expertise in investigating ML offenses. • The assessors were not satisfied that investigating TF was being utilized as a tool to deal with domestic terrorism.
28. Powers of competent authorities	**LC**	• The only LEA that effectively pursues criminal investigations of ML and TF is the ONCB who only deal with narcotic cases.

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
29. Supervisors	**PC**	• It was not established to the satisfaction of the assessors that there were supervisors with appropriate powers to monitor and ensure compliance for all of the FIs covered in the definition of financial activity in the glossary to the FATF 40+9 (e.g. pawnshops, agricultural futures brokers). • The DOI does not exercising its powers of supervision in relation to AML/CFT for life insurance. • It is premature to determine whether the available powers are effectively utilized as many of the AML/CFT requirements applicable to FIs had only just been established when the assessment took place.
30. Resources, integrity, and training	**PC**	• The AMLO does not allocate sufficient resources to properly analyze STRs. • The AMLO does not appear to be adequately structured or resourced to discharge its obligations to provide guidelines, feedback and public awareness. • The AMLO does not have any resources dedicated to monitoring compliance with the AMLA. • LEAs do not have specialized staff or staff dedicated to carry out ML or TF investigations. • There is limited training provided in relation to the conduct of ML and TF investigations. • Prosecutors and law enforcement outside of Bangkok appear not to have received extensive training in ML and TF issues. • The assessors were concerned that

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		many officials appeared to have a lack of knowledge about ML trends and methods not involving narcotics using cash. • Other than the BOT and the SEC other supervisory agencies do not appear to have allocated sufficient staff resources or training efforts to AML/CFT. • There does not appear to be sufficient resources to monitor the activities of money changers. • There are insufficient resources dedicated to AML/CTF in the customs service.
31. National cooperation	**PC**	• The formal coordination and cooperation mechanism in the AMLB does not operate as effectively as it should. • Financial regulators and the FIU do not share sufficient information regarding compliance in the financial sector. • Regulators and the AMLO have not agreed monitoring and supervisory responsibilities for all FIs. • The existence of inconsistencies in the contents of guidelines and policy statements issued or endorsed by competent authorities may lead to inconsistent implementation of AML/CFT requirements. • The assessors were concerned that the, AMLO, as the central agency with responsibility for implementing the AMLA, did not hold and also had difficulty obtaining key information and statistics about Thailand‘s overall AML/CFT regime. • Effective mechanisms are not in place to coordinate and cooperate

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		policies and action on TF. • There are no effective mechanisms operating for developing and implementing Thailand's overall AML/CFT policy.
32. Statistics	**PC**	• Thailand does not have effective systems in place to review the effectiveness of its system for combating ML and FT. • Other than STR related statistics maintained by the AMLO there is a general lack of comprehensive national statistics on AML/CFT.
33. Legal persons– beneficial owners	**PC**	• Access to beneficial ownership information on juristic persons is not available in an accurate, adequate and timely fashion. • Although no company has issued bearer shares in Thailand there are no mechanisms in place to identify the beneficial owner of bearer shares should companies decide to issue them.
34. Legal arrangements – beneficial owners	**NA**	• R. 34 is not applicable in the Thailand context.
International Cooperation		
35. Conventions	**PC**	• Thailand has not ratified the Palermo Convention. • Thailand has not fully implemented the Vienna Convention and the UN Terrorist Financing Convention.
36. Mutual legal assistance	**PC**	• The narrow range of predicate

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
(MLA)		offenses for ML in Thailand impedes the rendering of MLA. • Effectiveness could not be evaluated due to a lack of statistics about the number of cases, value of seizure and orders executed under the MLAT.
37. Dual criminality	**PC**	• Dual criminality is a requirement of Thai law for all forms of MLA. • Effectiveness could not be evaluated due to a lack of statistics about the number of cases, value of seizure and orders executed under the MLAT.
38. MLA on confiscation and freezing	**PC**	• The narrow range of predicate offenses for ML in Thailand impedes the rendering of MLA. • Thailand can not provide assistance where the request relates to property of corresponding value. • The lack of statistics means that effectiveness could not be assessed.
39. Extradition	**PC**	• The narrow range of predicate offenses for ML in Thailand restricts the circumstances in which Thailand is able to extradite. • Extradition of Thai nationals may be denied and there are no legal requirements in such circumstances to submit the case to the prosecutors without delay or to conduct proceedings in the same manner as in the case of any other offense of a serious nature under the domestic law. • Given the lack of statistics, the assessment team was not able to satisfy itself that the regime is being effectively implemented.

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
40. Other forms of cooperation	**LC**	• Given the lack of statistical data, the evaluation team was not able to determine that the mechanisms for international cooperation are fully effective.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Thailand has not fully implemented the UN Terrorist Financing Convention. • The assessors are not satisfied that Thailand has fully effective mechanisms in place to implement UNSCRs 1267 and 1373.
SR.II Criminalize terrorist financing	**PC**	• TF has not been criminalized consistent with SR.II because the FT offense does not extend to the financing of the acts set forth in the treaties in the Annex of the UN TF Convention. • Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization. • The TF offense does not extend to the unlisted individual terrorist or terrorist organization. • The mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist is not an offense. • The mental element of the TF offense is narrower than the standard as section 135/2 of the Penal Code requires that the provision or

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		collection of property be done for the specific purpose of committing a terrorist act. • The sanctions for legal persons committing TF are not proportionate or dissuasive. • The Recommendation is not effectively implemented - despite a significant domestic terrorism situation, there have been no TF cases taken so far.
SR.III Freeze and confiscate terrorist assets	**PC**	• There is no comprehensive legal mechanism to ensure that terrorist property can be frozen without delay as required under UNSCR 1267 and UNSCR 1373. • There is only a limited mechanism for communicating freezing actions to the FIs. • There are no clear obligations of FIs to take action under the freezing mechanisms. • Little guidance has been given to FIs concerning their obligations in taking action under the freezing mechanisms. • There are no procedures in Thailand for recognizing freezing orders or giving effect to out-of-court freezing orders from other jurisdictions. • There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities. • There is no process for authorizing access to funds seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		charges or for ordinary expenses. • There is no effective monitoring process to monitor compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property.
SR.IV Suspicious transaction reporting	**PC**	• FIs outside of the definition in the AMLA are not required to report suspicious transactions related to TF. • TF in the Penal Code has not been criminalized consistent with SR.II which narrows the scope of the reporting obligation. • Reporting does not extend to attempted transactions. • The assessors are not satisfied that the requirements are effectively implemented: ▪ There are no statistics to assess the effectiveness of this Recommendation; ▪ There is no guidance issued by the authorities to help FIs identify suspicious TF transactions; and, ▪ The existence of a high CTR threshold may influence FIs to not pay sufficient attention to low value transactions typically associated with TF.
SR.V International cooperation	**PC**	• The deficiencies in the TF offense restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite. • The deficiencies in the TF offense restrict the circumstances in which Thailand is able cooperate.
SR.VI AML/CFT	**PC**	

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
requirements for money/value transfer services		• Authorized money transfer agents are not subject to the AMLA but are subject to limited CDD and recording keeping obligations - otherwise they are not currently subject to enforceable CDD, transaction monitoring or internal control requirements. • The legal requirements for operating as an authorized money transfer agent are not as effectively enforced as they could be enabling large numbers of unregulated operators to offer their services in the informal sector.
SR.VII Wire transfer rules	**NC**	• There is no existing law, regulation or other enforceable means regulating wire transfers other than operational rules for the BAHTNET system which do not comprehensively address the requirements of SR. VII. • Customer identification information is only obtained for wires that are cash transactions in excess of 2 million baht ($52,800) and non-cash transactions exceeding 5 million baht ($132,000). • Full originator information is not required to be transmitted with wires. • No obligation placed on receiving institutions to adopt risk-based procedures for handling wire transfers lacking originator information.
SR.VIII Nonprofit organizations	**NC**	• Thailand has not yet undertaken a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism. • No outreach has been undertaken with the NPO sector with a view to

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		protecting the sector from TF abuse. • The authorities could not demonstrate that they have taken effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector. • NPOs are not required to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. • While legal authority may exist to investigate the affairs of NPOs there are no effective mechanisms in place to ensure domestic cooperation, co-ordination or information sharing. • No contact points have been identified for dealing with international requests for information about NPOs. • The authorities did not demonstrate that the measures in place were sufficient to mitigate the potential terrorism risks in Thailand via the NPO sector.
SR.IX Cross-Border Declaration & Disclosure	**NC**	• There are no cross border declaration or disclosure requirements applying to the import or export of foreign currency, bearer instruments or the import of domestic currency. • There is no authority to stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity. • Declarations that are disclosed are not made available to the FIU.

Comments on rating in DAR

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
		• There is no ability to seize, freeze and confiscate proceeds of crime and funds related to TF. • There are no sanctions available for Cross Border Physical Transportation of Currency for Purposes of ML or TF. • There does not appear to be any consideration given to reporting to foreign authorities when unusual cross-border movements of gold, precious metals or precious stones are discovered. • There are no effective systems in place to analyze the cross-border information that they collect from the perspective of a ML or TF perspective. • The assessors are not satisfied that the cross border declaration or disclosure framework is effective to mitigate the known cross border risks that exist.

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Appendix (E)

(Recommended Action Plan to improve the AML-CFT system)

Table 34: Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	**Recommended Action (in order of priority within each section)**
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2)	• *Amend the AMLA to add to the list of predicate offenses all serious offenses or all of the remaining designated categories of offenses provided for under the FATF 40+9.* • *Amend the AMLA to make it absolutely clear that the offense of ML can be committed when any of the predicate offenses take place outside of Thailand.* • *Require the relevant authorities to maintain and update comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on ML investigations, prosecutions and convictions, information on sentences imposed, predicate offenses involved and type of defendant (legal or natural person).* • *Amend the AMLA to remove the specific purposes described in section 5 in connection with the acquisition, possession or use of property derived from an offense.*

Criminalization of Terrorist Financing (SR.II)	• *Amend the Penal Code to:*
	
	  • *extend the TF conduct in section 135/2 to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II;*
	  • *extend the TF offense to the provision or*

	collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered; • *remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offense which is part of a terrorist plan;* • *fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist;* • *increase the sanctions for legal persons committing TF so as to make them proportionate and dissuasive; and,* • *require relevant authorities to maintain and update comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on TF investigations.*
Confiscation, freezing, and seizing of proceeds of crime (R.3)	• *Amend the powers under the Criminal Procedures Code to enable the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence.* • *Expand the forfeiture provisions of the Penal Code to deal also with property derived from the proceeds of crime.* • *Amend the AMLA, or other relevant laws, to give to the appropriate authority power to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.* • *Approve legislation to effectively abolish the AMLO "rewards system" such that staff investigating cases no longer have a direct financial interest in the outcome of the investigations that they participate in.* • *Undertake criminal investigations and prosecutions for ML and TF cases*

	wherever possible in preference to using civil processes to seize assets and secure forfeiture or vesting in the state. • *Require the RTP, the DSI, the AMLO and the ONCB in narcotic cases, to develop closer relationships and a structured consultation process to ensure that proper decisions are being reached as to when cases or asset seizures should be pursued civilly or criminally. This will assist ensuring that cases that meet the criminal test will be pursued and also avoid the AMLO and the ONCB independently pursuing the same case without each others knowledge.* • *More rigorously pursue the obtaining of final forfeiture and vesting orders (which will help ensure that quality seizures are occurring).*
Freezing of funds used for terrorist financing (SR.III)	• *Amend the current legislation and/or procedures or, alternatively, enact new legislation and/or procedures to enable the freezing of terrorist funds or other assets of persons designated under UNSCRs 1267 and 1373 without delay.* • *Clarify the obligations of financial entities to take action under the freezing mechanisms.* • *Establish a specific and effective system for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action.* • *Have the authorities provide clear guidance to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms. In particular, the lists of designated terrorists/terrorist organizations should be forwarded to the financial sector without delay.*

	• *Establish effective and publicly known procedures for considering de-listing requests and unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international standards, or for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism.* • *Establish appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses.* • *Establish appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property.*
The Financial Intelligence Unit and its functions (R.26)	• *Amend [the] AMLA to provide the AMLO with specific authority to, and a duty to, disseminate financial analysis to domestic competent authorities for investigation.* • *Pass as soon as possible legislation to effectively abolish the "rewards system" in the AMLO and other competent authorities, such that staff investigating cases do not have a direct financial interest in the outcome of the investigations.* • *Require the AMLO to issue comprehensive guidelines to reporting entities regarding reporting STRs and other reports.* • *Require the AMLO to develop and implement a communication strategy for publishing ML trends and typologies and annual reports in a more timely manner in order that they can be shared with reporting entities and other AML/CFT partners.*

	• *Ensure that the FIU part of the AMLO focuses on producing more "pro-active" unsolicited STR analytical products for dissemination to other domestic competent authorities for investigation or other action where there are grounds to suspect ML or TF.* • *Require the AMLO to establish a separate unit to deal with any compliance related responsibilities the AMLO takes on or is given rather than having the IAC undertake those.* • *Require the AMLO to review its production of statistics on AML/CFT matters to ensure the integrity of those statistics.* • *Provide additional budgetary resources for the AMLO including for it to develop dedicated capacity to analyze STRs, including those related to TF cases, to carry out compliance monitoring of and outreach with reporting entities.* • *Consider creating an asset forfeiture fund (or similar) to contribute additional resources to the operation of the FIU, through enhanced program budgets, not through individual rewards.* • *Require the AMLO to consider recruiting staff with financial sector specific expertise.*

Law enforcement, prosecution and other competent authorities (R.27, 28)	• *Require each LEA to commit resources to ensure that ML financial investigations are undertaken during ML predicate offense cases, including ensuring that:*
	
	  ◦ *investigators are aware of and committed to seeking evidence to pursue ML charges;*
	
	  ◦ *LEA management support the carrying out of criminal ML investigations; and,*
	
	  ◦ *necessary training is provided on how*

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	to secure evidence to pursue ML charges. • *Require that the RTP establish a dedicated unit for investigating ML offenses other than narcotics.* • *Consider establishing dedicated units within the RTP and the ONCB in each of the major centers or regions outside of Bangkok for investigating ML offenses alongside units investigating the predicate offenses.* • *Require that each LEA establishes ML financial investigation training programs for predicate investigating units across all of Thailand (not just Bangkok).* • *Provide training to prosecutors across the country on ML and financial investigations with a focus on how to prepare cases for criminal proceedings.* • *Require competent authorities including LEAs, prosecutors and other agencies involved in ML or TF investigations to keep up-to-date statistics on charges for ML predicate offenses, seizure of assets and forfeitures* • *Require the NCCC to dedicate resources or create special units to conduct ML and TF investigations.* • *Have its LEAs seek more assistance from, and develop closer relationships with, the AMLO to increase the sharing of financial intelligence in criminal ML and TF investigations.* • *Ensure that its competent authorities, including the DSI, obtain training for investigating TF cases.* • *Have the DSI consider locating some of its TF trained investigators in the south of Thailand to work closer with officials investigating terrorism incidents.*

	• *Require its competent authorities to work together to develop trends and typologies relating to ML and TF cases for distribution to other AML/CFT partners and the general public.*
3. Preventive Measures–Financial Institutions	

Customer due diligence, including enhanced or reduced measures (R.5–8)	• *Amend the AMLA to make all FIs that carry out financial activities in Thailand as defined in the glossary to the FATF 40+9, subject to AML/CFT requirements under the AMLA unless their exclusion can be justified on the basis of a robust risk assessment relating to their activities.*
	
	• *Amend the AMLA to fully incorporate CDD requirements and, in particular:*
	
	  • *Require identification and verification of clients and beneficial owners in the circumstances set forth by a), b), c) and e);*
	
	  • *Lower the threshold triggering the identification requirement in the case of occasional transactions to at least below $15,000;*
	
	  • *Lower the threshold triggering identification requirement in the case of occasional transactions that are wire transfer to at least below $1,000;*
	
	  • *Require FIs to verify customer's identity using reliable, independent source documents, data or information;*
	
	  • *Require FIs, in the case of customers that are legal persons, to verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;*
	
	  • *Require FIs to determine whether the customer is acting on behalf of another customer; and,*

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	• *Require FIs to conduct ongoing due diligence of the business relationship.* • *Introduce enforceable requirements for FIs (other than securities) prescribing enhanced due diligence for higher risk categories of customer, business relationship or transaction.* • *Introduce an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship.* • *Conduct [an] ML/FT risk assessment for the categories of transactions exempted from the requirements set forth in the AMLA.* • *Introduce for FIs other than securities enforceable requirements in relation to the timing of verification.* • *Introduce enforceable obligations for FIs who cannot complete CDD requirements to not open accounts, commence business relations or perform transactions.* • *Introduce enforceable obligations for FIs (other than the securities sector) requiring them to undertake enhanced due diligence for PEPs.* • *Redraft existing guidelines and policy statements concerning PEPs to use common terminology.* • *Introduce enforceable obligations for FIs (other than the securities sector) requiring them to put policies and procedures in place to addresses risks from new technologies or doing business with non-face to face business.*
Third parties and introduced business (R.9)	• *Amend the regulatory framework for FIs to clarify whether the use of third party introducers is permitted or prohibited.* • *Issue enforceable obligations consistent*

	with R.9 for circumstances where the use of third party introducers is permitted. • *Have the SEC amend the OSEC Notification so that it imposes an obligation to immediately obtain information from the third party so that it clearly establishes that the ultimate responsibility for CDD remains with the FI relying on the third party.*
Record keeping and wire transfer rules (R.10 & SR.VII)	• *Amend the AMLA to require all FIs to keep transaction records and identification data beyond the case of transactions subject to mandatory reporting consistent with the requirements of R.10.* • *Introduce a law, regulation or other enforceable means to regulate wire transfers in accordance with the requirements of SR.VII.*
Monitoring of transactions and relationships (R.11 & 21)	• *Introduce an obligation for FIs to set forth their findings in writing with reference to unusual, complex transactions and retain those findings.* • *Extend to the FIs that are not subject to the AMLA, the obligation to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.* • *Introduce an enforceable obligation requiring FIs to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.* • *Introduce a mechanism to be able to apply countermeasures against countries that do not apply or insufficiently apply the FATF Recommendations.*
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	• *Expand reporting requirements to all FIs as defined by the FATF Glossary.*

	• *Introduce an obligation to report attempted transactions.* • *Conduct an evaluation of the ML/FT risk for the transactions which are exempted by the reporting requirements.* • *Provide more guidance to FIs on how to detect suspicious transactions.* • *Prohibit "tipping off" and modify or delete section 21 of the AMLA as it appears to have the effect of tipping off the customer.* • *Require the AMLO to give more feedback to FIs about the STRs that have been reported.*
Cross-Border Declaration or disclosure (SR IX)	• *Expand the declaration/disclosure requirements to all circumstances set forth by SRIX and extend it also to "bearer negotiable instruments" as defined by the international standard.* • *Provide the Customs authorities with the power to stop/restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity.* • *Make available to the AMLO the information obtained through the process of declaration/disclosure.* • *Enhance cooperation and exchange of information between Customs and the AMLO beyond the area of customs-related offenses, when there is a suspicion of ML or FT.* • *Provide Customs authorities with the power to freeze and confiscate proceeds of crime and funds related to TF.* • *Establish sanctions in the case of cross-border physical transportation of currency for purposes of ML or TF.* • *When originating from other countries, consider reporting to authorities of these*

	countries the discovery of unusual cross-border movements of gold, precious metals or precious stones.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• *Ensure that the financial sector supervisory agencies (BOT, DOI, and CPD), in collaboration with the AMLO:* • *introduce enforceable requirements that FIs must develop programs against ML and TF, including the development of internal policies, procedures and controls, and adequate screening procedures to ensure high standards when hiring employees, an ongoing employee training program, and an audit function to test the system;* • *consult with, and raise awareness among, industry about these matters; and,* • *introduce enforceable obligations for FIs requiring them to apply AML/CFT measures to foreign branches and subsidiaries consistent with R.22.*
Shell banks (R.18)	• *Introduce enforceable obligations to prohibit Thai FIs from dealing with shell banks.*
The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.17,23, 25, 29, 30)	• *Impose appropriate sanctions against FIs found to be in breach of the AMLA and other AML/CFT requirements.* • *Arrange for the authorities to conduct a risk assessment of the financial sector to determine what AML/CFT risks exist to help determine whether some FIs could be exempted from AML/CFT requirements and to help with implementing Thailand's risk-based approach to AML/CFT supervision.* • *Amend the AMLA and other laws to ensure that all FIs that carry out financial activities without a proven low risk of ML or TF are effectively regulated for*

	AML/CFT and have a competent authority designated to monitor their compliance with the requirements, including: • *giving the AMLO an explicit power for conducting compliance examinations of FIs that are subject to the AMLA;* • *address the gaps and lack of clarity for those FIs where the MOF has delegated large parts of supervision to BOT but not the corresponding powers to take corrective actions or to set legally binding regulations in all relevant areas, including AML, without Ministerial approval;* • *to permit the AMLO to give regulators full access to copies of STRs filed by FIs that they supervise to enhance their supervision; and,* • *ensuring that the competent authorities are able to effectively impose appropriate sanctions for non-compliance.* • *Strengthen AML/CFT supervision and monitoring through:* • *Clearly delineating the roles of the AMLO and the financial supervisors for monitoring compliance with AML/CFT requirements, requiring them to enter into MOUs relating to coordinating their efforts and information sharing, and requiring them to carry out their responsibilities effectively;* • *Directing the AMLO to share information with each of the supervisory authorities about the quantity and quality of the STRs received from the FIs;* • *Requiring the ONCB (and other LEAs if they maintain them) to share with supervisory agencies its annual statistics relating to assets seized in FIs;* • *Enhance effective implementation by FIs of their obligations by:* • *Requiring the competent authorities in the financial sector in conjunction with the AMLO, to provide guidance to the private sector on patterns of suspicious transactions that require special attention and enhanced due diligence; and,*

	• *Require the competent authorities to revise their existing policy statements and other AML/CFT related guidelines to ensure that they comprehensively cover all requirements and are consistent with one another.* • *Strengthen regulation, supervision and enforcement of remittance activity, including:* • *Promulgate the cross-border currency control regulations that are currently pending in the Office of Secretary of the Cabinet;* • *Enforce the existing licensing and registration requirements for all those known to provide underground banking or informal remittance service;* • *Promulgate the cross-border currency control regulations that are currently pending in the Office of Secretary of the Cabinet;* • *Ensure that remitters such as the 7-Eleven convenience store chain are regulated for AML/CFT; and,* • *Amend laws and regulations and administrative practices to ensure that there are sufficient measures in place to ensure that criminals are prevented from being beneficial owners of FIs.*
Money value transfer services (SR.VI)	• *Make money transfer agents subject to the full range of FATF Recommendations applicable to them, namely CDD, transaction monitoring and internal control requirements.* • *Require the 7-Eleven remittance network to be licensed or be registered and otherwise be subject to the AML/CFT requirements.* • *Take further efforts to suppress illegal remittance activities and to encourage remitters to operate in the formal sector.* • *Investigate the nature and magnitude of*

	the illegal remittance flows to determine what further improvements are needed to the legal and regulatory framework governing remittance businesses.
4.Preventive Measures–Non-financial Businesses and Professions	

Customer due diligence and record-keeping (R.12)	• *Conduct an assessment of the ML and TF risks that apply in each of the DNFBPs.*
	
	• *Determine a policy on how to apply AML/CFT requirements to each of the DNFBPs and then make necessary amendments to the AMLA and other laws, including:*
	
	  • *Determine how to deal with the issue of legal professional secrecy for lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals;*
	
	  • *Determine whether lawyers, notaries, other independent legal professionals and accountants should be permitted to send their STRs to their appropriate self-regulatory organizations rather than to the AMLO; and,*
	
	  • *Determine the mechanics of an effective regulatory and supervisory framework for DNFBPs including whether monitoring should be undertaken by the authorities or industry organization(s).*
	
	• *Consider applying the FATF recommendations to business and professions, other than DNFBPs, that pose a specific ML/FT risk as requested by R.20.*
	
	• *Carry out awareness raising with each of the DNFBPs.*

Suspicious transaction reporting (R.16)	• *Amend the AMLA so that:*

	DNFBPs are required to report STRs; *DNFBPs, their directors, officers, and employees are protected from liability for reporting STRs;* *DNFBPs, their directors, officers, and employees are prohibited from tipping off that an STR has been made;* *DNFBPs are required to develop programs against ML and TF; and,* • *DNFBPs are required to give special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF Recommendations as required by R.21*
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	• *Introduce a regulatory and supervisory framework for DNFBPs.*
Other designated non-financial businesses and professions (R.20)	• *Strengthen Thailand's efforts to encourage more financial activity to within the formal sector.* • *Encourage less use of cash and more use of non-cash payment methods.*
5. Legal Persons and Arrangements & Non-profit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	• *Broaden requirements on beneficial ownership so that information on ownership/control is more readily available in a more adequate and timely manner, for example, by obliging legal persons to record the information on beneficial ownership in a register.* • *Introduce appropriate measures to ensure that bearer shares are not misused for ML. In particular, there should be mechanisms put in place to identify the beneficial owner of bearer shares.*
Non-profit organizations (SR.VIII)	• *Undertake a review of the adequacy of existing laws and regulations that relate to*

	non-profit organizations that can be abused for the financing of terrorism. • *Carry out outreach with the NPO sector with a view to protecting the sector from TF abuse.* • *Take effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector.* • *Enact measures requiring NPOs to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.* • *Establish effective mechanisms to ensure domestic cooperation, co-ordination, or information sharing.* • *Designate an official contact point to deal with international requests for information on NPOs.*
6. National and International Cooperation	
National cooperation and coordination (R.31)	• *Clearly designate which agency has responsibility for developing Thailand's overall AML/CFT policies.* • *Review which agencies are represented at the AMLB and, if necessary, amend the AMLA to ensure that there is appropriate coverage (e.g., no agency from the DNFBP sector is represented, none of the NIA, NSC, NCATTC or NCCC are represented).* • *Encourage the authorities to share more information amongst themselves concerning compliance by FIs of their AML/CFT responsibilities.*

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<table>
<tr><td>The Conventions and UN Special Resolutions (R.35 & SR.I)</td><td>

- *Ratify the Palermo Convention as soon as possible.*
- *To fully comply with the Vienna Convention:*
  - *Amend the Act on Mutual Assistance in Criminal Matters to provide that, where Thailand is a State party to a convention that requires that a specified offense shall not be considered to be a political offense for the purposes of mutual assistance obligations, the requirement contained in section 9(3) of the Act relating to political offenses shall not apply;*
  - *Extend the TF conduct in section 135/2 of the Penal Code to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the Terrorist Financing Convention, consistent with Thailand's obligations under SR.II; and,*
  - *Enact specific laws or procedures to freeze terrorist funds or other assets of persons designated under UNSCRs 1267 or 1373 without delay.*

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<tr><td>Mutual Legal Assistance (R.36, 37, 38, SR.V)</td><td>

- *Expand the predicate offenses for ML to increase the situations where dual criminality can be met.*
- *Amend the law to enable the rendering of assistance where the request relates to property of corresponding value.*
- *Amend the deficiencies in Thailand's TF offense previously identified in this report.*
- *Require the authorities to maintain, and be able to make available, comprehensive statistics on MLAT requests, seizures and types of offenses involved.*

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Extradition (R. 39, 37, SR.V)	• *Amend the AMLA to add to the list of predicate offenses all serious offenses or all of the remaining designated categories of offenses provided for under the FATF 40+9.* • *Amend the Extradition Act to provide that, when extradition of Thai nationals is denied, the case shall be submitted to the prosecution authorities with no delay and the proceedings shall be conducted in the same manner as in the case of any other offense of a serious nature under domestic law.* • *Amend the Penal Code to (a) extend the TF conduct to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II (b) extend the TF offense to the provision or collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered; (c) remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offense which is part of a terrorist plan; and, (d) fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist.*
Other Forms of Cooperation (R. 40, SR.V)	• *Demonstrate through the use of statistics and other evidence that its mechanisms for international cooperation are fully effective.*

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Appendix (F)

(Amended AMLA)

(Translation)

ANTI-MONEY LAUNDERING ACT
B.E. 2542 (1999)

BHUMIBOL ADULYADEJ, REX;
Given on the 10th Day of April B.E. 2542;
Being the 54th 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 anti-money laundering;

Whereas it is aware that 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 35, Section 37, Section 48 and Section 50 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 National Assembly, as follows.

Section 1
This Act is called the "Anti-Money Laundering Act, B.E. 2542 (1999)".

Section 2[2]
This Act shall come into force after one hundred and twenty days as from the date of its publication in the Government Gazette.

Section 3
In this Act: “predicate offense” means any offense

(1) relating to narcotics under the law on narcotics control or the law on measures for the suppression of offenders in offenses relating to narcotics;

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[2] Published in Government Gazette, Vol. 116, Part 29a, page 45, dated 21st April 1999.

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(2) relating to sexuality under the Penal Code only in respect of procuring, seducing or taking away for an indecent act a woman and a child for sexual gratification of others, offense of taking away a child and a minor, offense under the law on measures for the prevention and suppression of women and children trading or offenses under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offense relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;

(3) relating to public fraud under the Penal Code or offenses under the law on loans of a public fraud nature;

(4) relating to misappropriation or fraud or exertion of an act of violence against assets or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions;

(5) of malfeasance in office or malfeasance in judicial office under the Penal Code, offense under the law on offenses of officials in State organizations or agencies or offense of malfeasance in office or dishonesty in office under other laws;

(6) relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the Penal Code;

(7) relating to smuggling under the customs law;

(8)[3] relating to terrorism under the Penal Code;

(9)[4] relating to gambling under the law on gambling, limited to offenses relating to being an organizer of a gambling activity without permission and there are more than one hundred players or gamblers at one time, or the total amount of money involved exceeds ten million Baht.

[3] Section 3 definition of "predicate offense" (8) added in accordance with the provision of the Royal Decree on Amendment to the Anti-Money Laundering Act of B.E. 2542 (1999) B.E. 2546 (2003)

[4] Section 3 definition of "predicate offense" (9) added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

“Transaction” means an activity related to an entry into a juristic act, a contract or the execution of any act with others in financial or commercial matters, or the operation in connection with assets.

“Suspicious transaction” means a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offense, irrespective of whether such transaction is made once or more than once.

“Asset connected with the commission of an offense” means:

(1)[5] money or asset obtained from the commission of an act constituting a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used for the commission or aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense under (8) of the definition of “predicate offense”;

(2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or

(3) fruits of the money or asset under (1) or (2).

Provided that it is immaterial whether the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

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“Financial institution” means:

(1) the Bank of Thailand under the law on Bank of Thailand, a commercial bank under the law on commercial banking and such banks as specifically established by law;

(2) a finance company and credit foncier company under the law on the operation of finance, securities and credit foncier businesses, and a securities company under the law on securities and stock exchange;

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[5] Section 3 definition of “asset connected with the commission of an offense” (1) amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(3) the Industrial Finance Corporation of Thailand under the law on Industrial Finance Corporation of Thailand and a small industrial finance corporation under the law on small industrial finance corporations;

(4) a life insurance company under the law on life insurance and an insurance company under the law on insurance;

(5)[6] cooperatives under the law on cooperatives, limited to a cooperative with operating capital exceeding two million Baht of total share value and having objectives of its operation relating to acceptance of deposits, lending of loans, mortgage, pawning or acquiring of money or asset by any means.;

(6) a juristic person carrying on such other businesses related to finance as prescribed in the Ministerial Regulation.

“Fund”[7] means the Anti-Money Laundering Fund.

“Board” means the Anti-Money Laundering Board.

“Member” means a member of the Anti-Money Laundering Board and shall also include the Chairman of the Anti-Money Laundering Board.

“Competent official” means a person appointed by the Minister to perform an act under this Act.

“Secretary-General” means Secretary-General of the Anti-Money Laundering Board.

“Deputy Secretary-General” means Deputy Secretary-General of the Anti-Money Laundering Board.

“Office” means the Anti-Money Laundering Office.

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

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[6] Section 3 definition of “financial institution” (5) amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[7] Section 3 definition of “fund” added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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

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

CHAPTER I
General Provisions

Section 5
Any person who:

(1) transfers, accepts a transfer of or converts the asset connected with the commission of an offense for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or

(2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offense or the acquisition of rights therein,

shall be said to commit an offense of money laundering.

Section 6
Any person who commits an offense of money laundering shall, even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

(1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;

(2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or

(3) the offender is an alien and the act so committed is an offense under the law of the State in whose jurisdiction the act occurs, provided that

such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition.

For this purpose, Section 10 of the Penal Code shall apply *mutatis mutandis*.

Section 7

In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable:

(1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense,

(2) providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense.

In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

Section 8

Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.

Section 9

Any person who enters into conspiracy to commit an offense of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offense.

If the offense of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offense.

In the case where the offense has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offense to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

Section 10[8]

Any official, member of the House of Representatives, senator, member of a local assembly, local administrator, Government official, official of a local government organization, public official, official of a state organization or agency, director, executive or official of a State enterprise, director, manager or any person authorized to manage the operation of a financial institution, or any member of an organ under the Constitution who commits an offense in this Chapter shall be liable to twice as much penalty as that provided for such offense.

Any member, member of a sub-committee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General or competent official under this Act who commits an offense in this Chapter shall be liable to three times as much penalty as that provided for such offense.[9]

Section 11

Any member, member of a sub-committee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General, competent official, official or Government official who commits an offense of malfeasance in office or malfeasance in judicial office as provided in the Penal Code which is connected with the commission of the offense in this Chapter shall be liable to three times as much penalty as that provided for such offense.

A political official, member of the House of Representatives, member of the House of Senators, member of a local assembly or local administrator who conspires with a person under paragraph one to commit an offense, whether as a principal, instigator or supporter shall receive equivalent punishment as persons in paragraph one.

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[8] Section 10 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[9] Section 11 paragraph two added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

Section 12

In the execution of this Act, a member, member of a sub-committee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General and competent official shall be an official under the Penal Code.

CHAPTER II
Report and Identification

Section 13

When a transaction is made with a financial institution, the financial institution shall report that transaction to the Office when it appears that such transaction is:

(1) a transaction funded by a larger amount of cash than that prescribed in the Ministerial Regulation;

(2) a transaction connected with the asset worth more than the value prescribed in the Ministerial Regulation; or

(3) a suspicious transaction, whether it is the transaction under (1) or (2) or not.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported by the financial institution, that financial institution shall report such fact to the Office without delay.

Section 14

In the case where there subsequently appears a reasonable ground to suspect that any transaction already made without being reported under Section 13 is a transaction required to be reported by a financial institution under Section 13, that financial institution shall report it to the Office without delay.

Section 15

A Land Office of Bangkok Metropolitan, *Changwad* Land Office, Branch Land Office and *Amphoe* Land Office shall report to the Office when it appears that an application is made for registration of a right and juristic act related to an immovable asset to which a financial institution is not a party and which is of any of the following descriptions:

(1) requiring cash payment in a larger amount than that prescribed in the Ministerial Regulation;

(2) involving a greater value of an immovable asset than that prescribed in the Ministerial Regulation, being the assessment value on the basis of which fees for registration of the right and juristic act are levied, except in the case of a transfer by succession to a statutory heir; or

(3) being made in connection with a suspicious transaction.

Section 16

Any person engaging in the business involving the operation of or the consultancy in a transaction related to the investment or mobilization of capital shall report to the Office in the case where there is a reasonable ground to believe that such transaction is associated with the asset connected with the commission of an offense or is a suspicious transaction.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported under paragraph one, that person shall report such fact to the Office without delay.

Section 17

The report under Section 13, Section 14, Section 15 and Section 16 shall be in accordance with the form, period of time, rules and procedure prescribed in the Ministerial Regulation.

Section 18

Exemption, as the Minister thinks fit, of any transaction from being reported under Section 13, Section 15 and Section 16 shall be as prescribed in the Ministerial Regulation.

Section 19

In the case where the report under Section 13, Section 14, Section 15 and Section 16 has been made in good faith by the reporter, if the report causes injury to any person, the reporter shall not be responsible therefor.

Section 20

A financial institution shall cause its customers to identify themselves on every occasion of making a transaction prescribed in the Ministerial Regulation unless the customers have previously made such identification.

The identification under paragraph one shall be in accordance with the procedure prescribed by the Minister.

Section 21

In making a transaction under Section 13, a financial institution shall also cause a customer to record statements of fact with regard to such transaction.

In the case where a customer refuses to prepare a record of statements of fact under paragraph one, the financial institution shall prepare such record on its own motion and notify the Office thereof forthwith.

The record of statements of fact under paragraph one and paragraph two shall be in accordance with the form, contain such particulars and be in accordance with the rules and procedure as prescribed in the Ministerial Regulation.

Section 22[10]

Unless otherwise notified in writing by the competent official, a financial institution shall retain information as follows:

(1) relating to customer identification under Section 20 for a period of 5 years from the date that the account was closed or of the termination of relationship with the customer.

(2) relating to a financial transaction or a record of facts under Section 21 for a period of five years from the date the transaction or the recording of the facts occurred.

Section 23

The provisions of this Chapter shall not apply to the Bank of Thailand under the law on Bank of Thailand.

CHAPTER III
Anti-Money Laundering Board

Section 24[11]

There shall be an Anti-Money Laundering Board, consisting of: the Prime Minister as Chairman, Minister of Justice and Minister of Finance as Vice Chairmen, Permanent

[10] Section 22 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[11] Section 24 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

Secretary of the Ministry of Justice, Attorney General, Commissioner-General of the Royal Thai Police, Secretary-General of the Narcotics Control Board, Director of the Fiscal Policy Office, Director-General of the Department of Lands, Director-General of the Customs Department, Director-General of the Department of Revenue, Director-General of the Department of Treaties and Legal Affairs, Governor of the Bank of Thailand, Secretary-General of the Office of Insurance Commission, Secretary-General of the Securities and Exchange Commission, President of the Thai Bankers‘ Association, and nine qualified experts appointed by the Council of Ministers from those who have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act with the consent of the House of Representatives and the Senate respectively as a member of the Board and the Secretary-General of the Office as member and secretary of the Board.

The Board shall appoint not more than two Government officials of the Office as assistant secretaries.

In the case where the Chairman or an *ex officio* member under paragraph one is unable to attend any particular meeting by reason of necessity, such person may entrust a holder of inferior office who possesses the knowledge and understanding of the Board's performance of duties to attend that meeting.

Section 25[12]

The Board shall have the powers and duties as follows:

(1) to propose to the Council of Ministers measures for anti-money laundering;

(2) to consider and give opinions to the Minister with regard to the issuing of ministerial regulations, rules and notifications for the execution of this Act;

(3) to set rules pertaining to the returning of the assets in accordance with Section 49 and Section 51/1, the retention, sale by public auction, or utilization of the assets, and the evaluation, compensation and depreciation under Section 57 and set rules pertaining to the Fund in accordance with Section 59/1, Section 59/4, Section 59/5 and Section 59/6;

(4) to promote public cooperation in connection with the giving of information for the purpose of anti-money laundering and set rules

[12] Section 25 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

pertaining to the procedure on information or document to be used as evidence in the execution of this Act;

(5) to monitor and evaluate the execution of this Act;

(6) to perform other acts prescribed in this Act or other laws.

Section 26

A qualified member appointed by the Council of Ministers shall hold office for a term of four years as from the date of appointment and shall serve for only one term.

Section 27

In addition to vacating office on the expiration of term under Section 26, a qualified member appointed by the Council of Ministers vacates office upon:

(1) death;

(2) resignation;

(3) being removed by the Council of Ministers with the approval of the House of Representatives and the Senate respectively;

(4) being a bankrupt;

(5) being an incompetent or quasi-incompetent person;

(6) being imprisoned by a final judgment.

In the case where a qualified member is appointed during the term of the qualified members already appointed, notwithstanding that it is an additional or replacing appointment, the appointee shall hold office for the remaining term of the qualified members already appointed.

Section 28

In the case where qualified members vacate office at the expiration of term but new qualified members have not yet been appointed, the qualified members who have vacated office at the expiration of term shall perform duties for the time being until new qualified members have been appointed.

Section 29

At a meeting of the Board, the presence of not less than one-half of the total number of the members is required to constitute a quorum.

The Chairman shall preside over the meeting. In the case where the Chairman is not present at the meeting or is unable to perform the duty, the Vice Chairman shall preside over the meeting. If the Vice Chairman is not present at the meeting or is

unable to perform the duty, the members present shall elect one among themselves to preside over the meeting.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote, except that the decision under Section 49 paragraph three shall be voted for by not less than two-thirds of the total number of the existing members.

Section 30

The Board may appoint a sub-committee for considering and giving opinions on any particular matter or performing any particular act on behalf of the Board, and Section 29 shall apply to a meeting of the sub-committee *mutatis mutandis*.

Section 31

A member of the Board and of a sub-committee shall receive such remuneration as prescribed by the Council of Ministers.

CHAPTER IV
Transaction Committee

Section 32[13]

There shall be a Transaction Committee consisting of five committee members that the Board appoints from persons whose names are designated by the Judiciary Commission, the State Audit Committee, National Human Rights Commission, and Committee of Public Prosecutors. If any of the said committees could not designate a person from the respective committee to be a Transaction Committee member within forty five days from the date notified by the Anti-Money Laundering Office, the Board shall designate an appropriate person to be a Transaction Committee member instead. A Chairman of the Committee shall be elected from among the designated committee members and the Secretary-General of the Office shall be a committee member and the secretary of the Committee.

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[13] Section 32 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

The committee members shall have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act and shall possess qualification and shall not have disqualifying attributes as follows:

(1) Age not over 70 years old.

(2) Be or was a Government official level 10 or equivalent or higher, or be or was an official of a state enterprise or a government agency in the position of vice head of that state enterprise or that government agency or in an equivalent position or be or was a lecturer in the field and has or had the status of an assistant professor or higher.

(3) Not a member of a political party or a committee member or an officer of a political party.

(4) Not a member of the House of Representatives, House of Senates, member of a local assembly, local administrator or a political official or member of a committee of a state enterprise.

(5) Not a member of a committee of a public agency, unless approved by the Board.

(6) Not a member, a manager, a consultant or be in the equivalent capacity or having relative beneficiary in a partnership, a company or a financial institution or having occupation or profession or undertaken any activity in conflict with the execution of this Act.

A member of the Transaction Committee appointed by the Board under paragraph one shall serve a three-year term. A member of the Transaction Committee whose term has expired may be reappointed, but shall not serve more than two consecutive terms, and the provision of Sections 27 and 28 shall apply *mutatis mutandis*, except in the case of the termination from office in accordance with Section 27 (3). The committee member appointed by the Board shall vacate the office upon the removal by the Board.

Section 33

Section 29 shall apply *mutatis mutandis* to a meeting of the Transaction Committee.

Section 34[14]

The Transaction Committee shall have the powers and duties as follows:

(1) to examine a transaction or an asset connected with the commission of an offense;

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[14] Section 34 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(2) to give an order withholding the transaction under Section 35 or Section 36;
(3) to carry out the acts under Section 48;
(4) to submit to the Board and the National Counter Corruption Commission a report on the result of the execution of this Act;
(5) to supervise the independence and neutrality of the Office and the Secretary-General;
(6) to perform other acts as entrusted by the Board.

Section 35[15]

In the case where there is a reasonable ground and sufficient evidence to believe that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offense, the Transaction Committee shall have the power to give a written order withholding such transaction for a fixed period of time which shall not be longer than three working days.

In case of compelling necessity or urgency, the Secretary-General may give an order withholding the transaction under paragraph one for the time being and report it to the Transaction Committee.

Section 36[16]

In the case where there is convincing evidence that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offence, the Transaction Committee shall have the power to give a written order withholding such transaction for the time being for a fixed period of time which shall not be longer than ten working days.

Section 36/1[17]

In the execution of Section 34, Section 35 or Section 36, the Transaction Committee or the Secretary-General shall make written record in the minutes of each Transaction Committee meeting to indicate evidence and the requesting person of the order issued in the execution of the Act.

Section 37[18]

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[15] Section 35 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[16] Section 36 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[17] Section 36/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[18] Section 37 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

When the Transaction Committee or the Secretary-General, as the case may be, has given an order withholding the transaction under Section 35 or Section 36, the Transaction committee shall report it to the Board and the National Counter Corruption Commission.

Section 38

For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:

(1) to address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;

(2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;

(3) to enter any dwelling place, place or vehicle reasonably suspected to have the asset connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the asset or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such asset or evidence to be moved, hidden, destroyed or converted from its original state.

In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorization and the identification.

The identification under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.

All information obtained from the statements, written explanations or any account, document or evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.

Section 38/1[19]

Under the Penal Code, in the execution of this Act, the Secretary-General, Deputy Secretary-General, and competent officials assigned in writing by the Secretary-General shall have the power to arrest a person who committed a predicate offense or money laundering offense and record the person's statement as preliminary evidence and transfer the person to a police investigator without delay but shall not exceed twenty-four hours.

Section 39

A member of the Transaction Committee shall receive such remuneration as prescribed by the Council of Ministers.

Section 39/1[20]

For the purpose of performing duties under this Act, the Transaction Committee and the Secretary-General shall prepare a summary report of the execution of this Chapter to the National Counter Corruption Commission every four months.

The report under paragraph one shall at least state the information as follows:

(1) Persons whose transactions or assets were examined or whose transactions were restrained or whose assets were seized or frozen.

(2) Evidence that was used against the person under (1).

(3) Requesting person, person who asked or directed someone to do such act.

(4) Results of the act.

The details under this Section shall be treated as government secrets.

Section 39/2[21]

The National Counter Corruption Commission may appoint an expert to examine such report to establish the appropriateness of the action under this Act, and report to the National Counter Corruption Commission.

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[19] Section 38/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[20] Section 39/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[21] Section 39/2 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

The provision under Section 38 shall be applied to the examination under paragraph one.

In the case where the examination under paragraph one found out that there is an act that is against this Act and the National Counter Corruption Commission agreed with the examination findings, the report and the comment of the National Counter Corruption Commission shall be sent to the Transaction Committee for further action.

CHAPTER V
Anti-Money Laundering Office

Section 40[22]

There shall be an Anti-Money Laundering Office, called in short ―AML Office", as an office not under the Prime Minister Office, Ministry, or Sub-Ministry, to function independently and neutrally, which shall have the powers and duties as follows:

(1) to carry out acts in the implementation of resolutions of the Board and the Transaction Committee and perform other secretarial tasks;

(2) to receive transaction reports submitted under Chapter 2 and acknowledge receipt thereof;

(3) to gather, monitor, examine, study and analyze reports and information in connection with the making of transactions as well as receiving reports and other information related to financial transactions from other sources;

(4) to gather, monitor, examine, study and analyze reports, information in connection with the making of transactions;

(5) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;

(6) to conduct projects with regard to the dissemination of knowledge, the giving of education and the training in the fields involving the execution of this Act, or to provide assistance or support to both Government and private sectors in organizing such projects; and

(7) to perform other activities under this Act or under other laws.

Section 41[23]

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[22] Section 40 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[23] Section 41 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

There shall be a Secretary-General who, with the duty to independently exercise general supervision of official affairs of the Office, shall be directly answerable to the Minister of Justice and shall be the superior of Government officials of the Office. There shall also be Deputy Secretary-Generals to assist in giving directions and performing official duties.

Section 42

The Secretary-General shall be an ordinary Government official appointed by the King upon the recommendation of the Council of Ministers and with the approval of the House of Representatives and the Senate respectively.

Section 43

The Secretary-General shall possess qualifications and shall not be under prohibitions as follows:

(1) having knowledge and expertise in economics, finance, public finance or law;

(2) serving in the position of Deputy Secretary-General or being an ordinary Government official of the level not lower than Director-General or its equivalent;

(3) not being a director in a State enterprise or other State undertaking;

(4) not being a director, manager, consultant or holding any other position with a similar nature of work, or having an interest in a partnership, company or financial institution or engaging in other occupation or profession or doing any act inconsistent with the performance of duties under this Act.

Section 44[24]

The Secretary-General shall hold office for a term of four years as from the date of appointment by the King and shall serve for only one term. The Secretary-General who has vacated office may not be re-appointed, but that Secretary-General shall be appointed as a consultant within the Office.

The Secretary-General shall be entitled to fringe benefits to ensure independence and neutrality at the rate that, when accumulated with the salary and stipend, is equivalent to the salary and stipend of a Permanent Secretary, until retirement.

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[24] Section 44 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

Section 45[25]

In addition to vacating office at the expiration of term under Section 44, the Secretary-General vacates office upon:

(1) death;

(2) resignation;

(3) being disqualified or being under any prohibition under Section 43;

(4) the Council of Ministers passing a resolution removing him from office upon the recommendation of the Minister or at the proposal of the Minister upon the recommendation of the Transaction Committee due to his serious negligence of duty or lessening of capability or publicly demonstrable act of performing his duty in bad faith or partially or not freely. The aforesaid resolution shall state clearly the reasons for his removal, and the resolution must get the approval of the House of Representatives and the Senate respectively.

Section 45/1[26]

The former Secretary-General shall not be appointed as an executive in any State enterprise or any public agency except as a consultant.

The provision in paragraph one shall not be applied to a Secretary-General who resigned from government service status.

Section 46[27]

In the case where there is sufficient evidence to believe that any account of a financial institution's customer, communication device or equipment or computer is used or may be used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an *ex parte* application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

In the case of paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or

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[25] Section 45 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[26] Section 45/1 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[27] Section 46 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

equipment as it may think fit, provided that the permission on each occasion shall not be for the duration of more than ninety days.

Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall give cooperation for the implementation of this Section.

Section 47

The Office shall prepare an annual report on the result of its work performance for submission to the Council of Ministers. The annual report on the result of work performance shall at least contain the following material particulars:

(1) a report on the result of the performance with regard to assets and other performance under this Act;

(2) problems and obstacles encountered in the work performance;

(3) a report on facts and remarks with regard to the discharge of functions as well as opinions and suggestions.

The Council of Ministers shall submit the annual report on the result of work performance under paragraph one together with its remarks to the House of Representatives and the Senate.

CHAPTER VI

Asset Proceedings

Section 48

In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any asset connected with the commission of an offense may be transferred, distributed, moved, concealed or hidden, the Transaction Committee has the power to order a provisional seizure or attachment of such asset for the duration of not more than ninety days.

In the case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the asset under paragraph one for the time being and then report it to the Transaction Committee.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the asset has been seized or attached or the person interested in the asset may produce evidence that the money or asset in such transaction is not the asset connected with the commission of the offense in order that the seizure or attachment order may be revoked, in accordance with the rules and procedure prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the asset or ordered revocation thereof, the Transaction Committee shall report it to the Board.

Section 49

Subject to Section 48 paragraph one, in the case where there is convincing evidence that any asset is the asset connected with the commission of an offense, the Secretary-General shall refer the case to the public prosecutor for consideration and filing an application with the Court for an order that such asset be vested in the State without delay.

In the case where the public prosecutor considers that the case is not so sufficiently complete as to justify the filing of an application with the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for taking further action. For this purpose, the incomplete items shall also be specified.

The Secretary-General shall take action under paragraph two without delay and refer additional matters to the public prosecutor for reconsideration. If the public prosecutor is still of the opinion that there is no sufficient *prima facie* case for filing an application with the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for referring the matter to the Board for its determination. The Board shall consider and determine the matter within thirty days as from its receipt from the Secretary-General, and upon the Board's determination, the public prosecutor and the Secretary-General shall act in compliance with such determination. If the Board has not made the determination within such time limit, the opinion of the public prosecutor shall be complied with.

When the Board has made the determination disallowing the filing of the application or has not made the determination within the time specified and action has already been taken in compliance with the public prosecutor's opinion under paragraph three, the matter shall become final and no action shall be taken against such person in respect of the same asset unless there is obtained fresh and material evidence likely to prompt the Court to give an order that the asset be vested in the State. In such case, where there is no claimant to the restrained asset within two years from the date the Transaction Committee decided not to file a petition or fails to issue the decision within the prescribed time limit, the Office shall transfer the asset to the Fund and in the case where a claimant filed a petition under another law which has longer than two years of limitation, the Office shall return the asset to the claimant. If the asset is in the condition that cannot be returned, instead, the money shall be paid from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund. Rules and guidelines in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the rules prescribed by the Board.[28]

Upon receipt of the application filed by the public prosecutor, the Court shall order the notice thereof to be posted at that Court and the same shall be published for at least two consecutive days in a newspaper widely distributed in the locality in order that the person who may claim ownership or interest in the asset may file an application before the Court gives an order. The Court shall also order the submission of a copy of the notice to the Secretary-General for posting it at the Office and at the Police Station where the asset is located. If there is evidence that a particular person may claim ownership or interest in the asset, the Secretary-General shall notify it to that person for the exercise of rights therein. The notice shall be given by registered post requiring acknowledgement of its receipt and given to such person's last recorded address.

In the case of paragraph one, if there is a reasonable ground to take such action as to protect the rights of the injured person in a predicate offense, the Secretary-General shall refer the case to the competent official under the law which prescribes such offense in order to proceed in accordance with that law for preliminary protection of the injured person's rights.

Section 50

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[28] Section 49 paragraph four amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

The person claiming ownership in the asset in respect of which the public prosecutor has filed an application for it to be vested in the State under Section 49 may, before the Court gives an order under Section 51, file an application satisfying that:

(1) the applicant is the real owner and the asset is not the asset connected with the commission of the offense, or

(2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity.

The person claiming to be a beneficiary of the asset in respect of which the public prosecutor has filed an application for it to be vested in the State under Section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

Section 51[29]

When the Court has conducted an inquiry into an application filed by the public prosecutor under Section 49, if the Court is satisfied that the asset to which the application relates is the asset connected with the commission of the offense and that the application of the person claiming to be the owner or transferee thereof under Section 50 paragraph one is not tenable, the Court shall give an order that the asset be vested in the State.

The asset under paragraph one, if it is money, the Office shall forward one half to the Fund and another half to the Ministry of Finance. If it is the other type of asset, rules of the Council of Ministers shall be followed.

For the purpose of this Section, if the person claiming to be the owner or transferee of the asset under Section 50 paragraph one is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such asset is the asset connected with the commission of the offense or transferred in bad faith, as the case may be.

Section 51/1[30]

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[29] Section 51 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[30] Section 51/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

If the Court sees that the asset in the petition is not related to the commission of an offense, the Court shall return the said asset. In such case, where there is no claimant to the restrained asset within two years from the date the Court made the return order, the asset shall fall into the Fund.

In the case where a claimant filed a petition under another law which has longer than two years of limitation, the Office shall return the asset to the claimant. If the asset is in the condition that cannot be returned, instead, the money shall be paid from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund. Rules and guidelines in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the rules prescribed by the Board.

Section 52

In the case where the Court has ordered that the asset be vested in the State under Section 51, if the Court conducts an inquiry into the application of the person claiming to be the beneficiary under Section 50 paragraph two and is of the opinion that it is tenable, the Court shall give an order protecting the rights of the beneficiary with or without any conditions.

For the purpose of this Section, if the person claiming to be the beneficiary under Section 50 paragraph two is the person who is or was associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such benefit is the benefit the existence or acquisition of which is in bad faith.

Section 53

In the case where the Court has ordered that the asset be vested in the State under Section 51, if it subsequently appears from an application by the owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of Section 50, the Court shall order a return of such asset or determine conditions for the protection of the rights of the beneficiary. If the return of the asset or the protection of the right thereto is not possible, payment of its price or compensation therefor shall be made, as the case may be.

The application under paragraph one shall be filed within one year as from the Court's order that the asset be vested in the State becoming final and the applicant must prove that the application under Section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause.

Before the Court gives an order under paragraph one, the Court shall notify the Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and present an opposition to the application.

Section 54

In the case where the Court has given an order that the asset connected with the commission of the offense be vested in the State under Section 51, if there appears an additional asset connected with the commission of the offense, the public prosecutor may file an application for a Court's order that such asset be vested in the State, and the provisions of this Chapter shall apply *mutatis mutandis*.

Section 55

After the public prosecutor has filed an application under Section 49, if there is a reasonable ground to believe that the asset connected with the commission of the offense may be transferred, distributed or taken away, the Secretary-General may refer the case to the public prosecutor for filing an *ex parte* application with the Court for its provisional order seizing or attaching such asset prior to an order under Section 51. Upon receipt of such application, the Court shall consider it as a matter of urgency. If there is convincing evidence that the application is justifiable, the Court shall give an order as requested without delay.

Section 56

When the Transaction Committee or the Secretary-General, as the case may be, has given an order seizing or attaching any asset under Section 48, the competent official entrusted shall carry out the seizure or attachment of the asset in accordance with the order and report it together with the valuation of that asset without delay.

The seizure or attachment of the asset and the valuation thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation; provided that the provisions of the Civil Procedure Code shall apply *mutatis mutandis*.

Section 57[31]

The retention and management of the asset seized or attached by an order of the Transaction Committee or the Secretary-General or the Court, under this Chapter, as the case may be, shall be in accordance with the rules prescribed by the Board.

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[31] Section 57 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

In the case where the asset under paragraph one is not suitable for retention or will, if retained, be more burdensome to the Government service than its usability for other purposes, the Secretary-General may order that the interested person take such asset for his or her retention and utilization with a bail or security or that the asset be sold by auction or put into official use and a report thereon be made to the Board accordingly.

The permission of an interested person to take the asset for retention and utilization, the sale of the asset by auction or the putting of the asset into official use under paragraph two shall be in accordance with the rules prescribed by the Board.

If it subsequently appears that the asset sold by auction or put into official use under paragraph two is not the asset connected with the commission of the offense, such asset as well as such amount of compensation and depreciation as prescribed by the Board shall be returned to its owner or possessor. If a return of the asset becomes impossible, compensation therefor shall be made by reference to the price valued on the date of its seizure or attachment or the price obtained from a sale of that asset by auction, as the case may be. For this purpose, the owner or possessor shall be entitled to the interest, at the Government Savings Bank's highest rate for a fixed deposit, of the amount returned or the amount of compensation, as the case may be.

The evaluation of compensation or depreciation under paragraph four shall be in accordance with the rules prescribed by the Board.

Section 58

In the case where the asset connected with the commission of any offense is the asset in respect of which action can be taken under another law but no action has been taken against that asset under that law or the action taken under that law has failed to achieve its purpose or the action under this Act is more beneficial to the Government service, action shall be taken against that asset in accordance with this Act.

Section 59

Lawsuit under this Chapter shall be brought to the Civil Court and the Civil Procedure Code shall apply *mutatis mutandis*.

For this purpose, the public prosecutor shall be exempted from all fees.

CHAPTER VI/I
Anti-Money Laundering Fund[32]

Section 59/1[33]

There shall be an Anti-Money Laundering Fund within the Office for the purpose of anti-money laundering as follows:

(1) Facilitate the execution of investigation, prosecution, search, seizure or restraint, asset management, information sharing, witness protection, or other matters related to anti-money laundering, including assisting other related agencies and the public in the said actions;

(2) Enhance cooperation with other related agencies or persons and the public in awareness raising and information sharing, meetings or training courses, domestic and international cooperation, and operation to support anti- money laundering policy.

(3) Carry out other acts as necessary to achieve the objectives of this Act.

Under Section 59/6 the Board shall have the power to set the rules in using money in the Fund to achieve the objectives in paragraph one.

Section 59/2[34]

The Fund in Section 59/1 consists of assets as follows:

(1) Asset forwarded to the Fund under Section 51

(2) Asset that was not claimed under Section 49 and Section 51/1

(3) Asset that was given

(4) Asset received from Thai or foreign government agencies

(5) Interest derived from asset under (1), (2), (3) and (4)

Section 59/3[35]

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[32] Chapter VI/I Added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[33] Section 59/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[34] Section 59/2 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[35] Section 59/3 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

The Fund under Section 59/2 belongs to the Office without having to be transferred to the Kingdom as income.

Section 59/4[36]
Receiving, spending, and maintenance of the Fund and assets shall be in accordance with the rules set by the Board and endorsed by the Ministry of Finance.

Section 59/5[37]
The power of managing the benefit from the assets and other matters related to the Fund's operation shall be in accordance with the rules set by the Board and endorsed by the Ministry of Finance.

Section 59/6[38]
Expenditure or other remuneration necessarily paid to other agencies, competent officials, public officials or other officials that assist or aid in the efficiency and effectiveness of the execution under this Act shall be spent from the Fund in accordance with the rules set by the Board and endorsed by the Ministry of Finance.

Section 59/7[39]
Within six months from the end of each fiscal year, the Secretary-General shall present an account balance sheet and report on any spending from the Fund of the previous year, which were examined and endorsed by the Office of the Auditor-General.

CHAPTER VII
Penalties

Section 60
Any person who commits an offense of money laundering shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both.

Section 61

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[36] Section 59/4 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[37] Section 59/5 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[38] Section 59/6 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[39] Section 59/7 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

Any juristic person who commits offenses under Section 5, Section 7, Section 8 or Section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.

Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offense shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she has no part in the commission of the offense of such juristic person.

Section 61/1[40]

The Prime Minister, a Minister or a political character who tells or orders the Transaction Committee, Secretary-General, Deputy Secretary-General or a competent official to examine transactions or assets or to restrain transactions, seize or restrain or act under this Act without sufficient evidence for the purpose of persecution or cause damage to any one or for political reason or doing so *mala fide* shall receive three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand Baht or both.

A Transaction Committee member, the Secretary-General, Deputy Secretary-General or competent official who follows the order in paragraph one unlawfully under this Act shall receive three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand Baht or both.

Section 62

Any person who violates or does not comply with Section 13, Section 14, Section 16, Section 20, Section 21, Section 22, Section 35 or Section 36 shall be liable to a fine not exceeding three hundred thousand Baht.

Section 63

Any person who reports or makes a notification under Section 13, Section 14, Section 16 or Section 21 paragraph two by representing false statements of fact or concealing the facts required to be revealed to the competent official shall be liable to

[40] Section 61/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

imprisonment for a term not exceeding two years or to a fine of fifty thousand to five hundred thousand Baht or to both.

Section 64

Any person who fails to give statements or to furnish written explanations, accounts, documents or evidence under Section 38 (1) or (2) or causes obstruction or fails to render assistance to the acts under Section 38 (3) shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

Any person who does any act to enable other persons to have knowledge of the information retained under Section 38 paragraph four shall be liable to the penalty specified in paragraph one, except in the case of doing such act in the performance of official duties or in accordance with the law.

Section 65

Any person who moves, damages, destroys, conceals, takes away, causes loss of or renders useless any document, record, information or asset which is seized or attached by the official or which is known or ought to be known to him as subsequently being vested in the State under this Act shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred thousand Baht or to both.

Section 66

Any person who, having or probably having knowledge of an official secret in connection with the execution of this Act, acts in any manner that enables other persons to have knowledge or probable knowledge of such secret shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand Baht or to both, except in the case of doing such act in the performance of official duties or in accordance with the law.

Countersigned by:
Chuan Leekpai
Prime Minister

Remarks:

At present, criminals who committed offenses under certain laws have been dealing with the money and the assets in many ways – which is money laundering, to use money or assets for other crimes and which is difficult to fight using those laws. The existing law could not sufficiently suppress money laundering or deal with such money or assets. To break the criminal cycle, there shall have to be measures to sufficiently suppress money laundering. Hence this law must be issued.

Duangjai/amended
8 November 44 (01)
A+B (C)

Patchara Suksumek
Orada Chaowarodom
Hataichanok Supyai
27/05/46(01)

The Emergency Decree on amendment of the Anti-Money Laundering Act B.E. 2542 (1999) B.E. 2546 (2003)[41]

Remarks:

There is an amendment of the Penal Code prescribing offenses relating to terrorism. Financing of terrorism is a factor aiding the more violent terrorism, which affects national security and which the United Nations Security Council urges every country and jurisdiction to cooperate with each other in the fight against terrorist acts, as well as against provision of financial support or other means that are intended for use in the terrorist act, so as to end the terrorist problem. Terrorism shall be prescribed as a predicate offense under the Anti-Money Laundering Act B.E. 2542 (1999) so that these two laws can be coordinated in action which will enable greater effectiveness in the execution of this provision in the Penal Code. Overriding need and emergency for safeguarding the security of the Kingdom and the people makes it inevitable to take an urgent measure. Hence this Emergency Decree must be issued.

Pongpilai/Yongyuth
6 October 2003

Orada/examined
3 March 2004

Pathomporn/Watinee/amended
16 August 2006

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[41] The Royal Gazette Volume 120/Part 76 A/Page 4/11 August 2546 (2003)

The Anti-Money Laundering Act (No.2) B.E. 2551 (2008)[42]

Section 28

The Secretary-General under the Anti-Money Laundering Act B.E. 2542 (1999), who has been in the position before this Act came into force, shall become the Secretary-General under this Act and perform the duties until the new Secretary-General is appointed.

Remarks:

Some of the provisions of the Anti-Money Laundering Act B.E. 2542 (1999) (AMLA) are not efficiently and appropriately enforced for eliminating or reducing the cycle of crimes and as the law targets crimes listed in the eight predicate offenses under the Act, the law's intention of reducing or eliminating of crimes cannot be achieved. This is because criminals committing other criminal offenses are still able to use the money or assets derived from such crimes to facilitate the commission of these eight predicate offenses. Furthermore, some of the procedures in enforcing the AMLA are not used at the desired speed. In order to break the criminal cycle effectively as the law's objectives, while the procedure in enforcement of the Anti-Money Laundering Act is relatively swift, efficient and effective, it is still necessary to prescribe other criminal offenses that obstruct peace and morals of society, security and economic stability of the State as predicate offenses. Hence this law must be issued.

สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

[42] The Royal Gazette Volume 125/Part 40 A/Page 14/1 March 2551 (2008)

Biography

Police Col. Seehanat Prayoonrat was born in Bangkok on 12 August 1957. He graduated with B.A. in Public Administration from Police Cadet Academy, 1978, LL.B. from Ramkhamhaeng University, 1979; M.A. in Political Science from Long Island University, USA, 1981; LL.M. from Chulalongkorn University, 1991; M.Sc. in Information Technology from Rangsit University, 2005. Currently he is a Ph.D. candidate in Juridical Science, Chulalongkorn University.

He is an awardee of numerous certificates : Hostage Negotiation Seminars for Commanders, FBI Academy, USA, 1985); Development Program of Official Inquiry, Bangkok Metropolitan Police Bureau, 1991; Conspiracy, Asset Forfeiture and Financial Investigations, Drug Enforcement Administration, US Department of Justice, 1992;, Anti-Drug Profiteering International Observer Attachment Program, Royal Canadian Mounted Police, 1992; ASEAN Proceeds of Crime Seminar, Royal Canadian Mounted Police, 1992;, Financial Investigation and Forfeiture of Assets ,ONCB, Thailand, ASEAN Narcotics Law Enforcement Training Center, 1992; Counter Terrorism Legislation Seminar, U.S. Department of State and U.S. Department of Justice, 2002; Outstanding Police Enquiry Official, Royal Thai Police, 1991; Best Police Official, Prosecution and Financial Investigation Division, Police Narcotics Suppression Bureau, 1992.

He has represented Thai Government at various international conferences on narcotic drugs, money laundering and anti-corruption.

He has delivered lectures at various seminars and training courses on money laundering, anti-corruption and information technology relating to law enforcement and investigation held at numerous government agencies.

He was appointed as a member of Drafting Committee on Anti-Money Laundering Law, and has served in various capacities with Parliamentary and Governmental bodies. Consequently, he wrote a monograph entitled “An Overview of the Legal Framework of Thailand’s AML-CFT Activities”, December 2006 published by the Asian Development Bank (ADB). He also presented numerous papers in English at international seminars including a paper on Extradition and Mutual Assistance in Corruption Matters in 25 Asian Pacific Countries at the seminar sponsored by ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, March 2006, Kuala Lumpur, Malaysia. He was appointed by Asia/Pacific Group as Honorary Advisor for Thailand.

He served as Director, AMLO Financial Intelligence Unit (FIU), and Senior Specialist, AMLO, Thailand.

Currently, he is Deputy Secretary-General and concurrently Chief Information Officer (CIO) of AMLO, Thailand. He is Vice-Chairman of AML-CFT Working Group, Thailand.