

## 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<sup>1</sup> – 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<sup>2</sup> 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 6<sup>th</sup> largest exporter of jewelry and the 9<sup>th</sup> largest importer of precious metals and pearls<sup>3</sup>. 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 neighboring countries are main economic activities.

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<sup>1</sup> CIA, *The World Fact Book*, 2007, <https://www.cia.gov/cia/publications/factbook/geos/th.html> [Read 15 March 2007]

<sup>2</sup> *ibid.*: <https://www.cia.gov/cia/publications/factbook/geos/th.html> [Read 15 March 2007]

<sup>3</sup> 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<sup>4</sup>. 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<sup>5</sup>. Up to mid-December, the baht appreciated very quickly against the US dollar and reached 35.23 baht per US 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

<sup>4</sup> 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

<sup>5</sup> BOT, Bank of Thailand News, [http://www.bot.or.th/BOThomepage/DataBank/Econcond/pressrel/monthly/release2006/pressrelease/presseng\\_december06.asp](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.

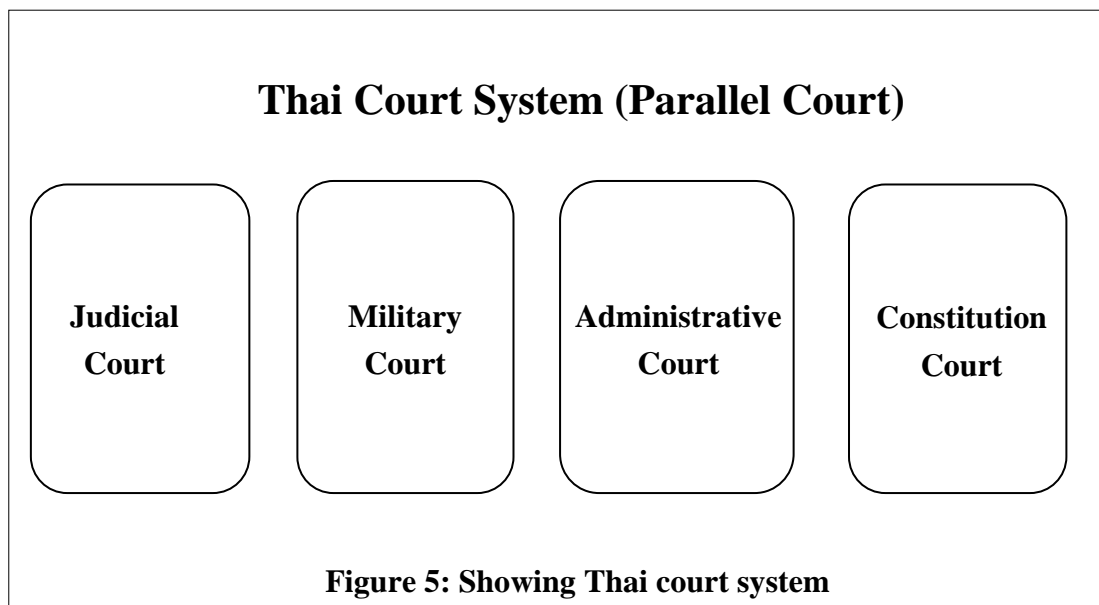
Thailand has a rich history of military coups. The most infamous one among the major coups was the 1973 democracy movement where the university students were gunned down by the military. The clash only ended when the King intervened. The latest coup, which had royal and public support, was different 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<sup>6</sup>. 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.

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<sup>6</sup> 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<sup>7</sup>.



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

<sup>7</sup> Adapted from “Review on ‘State Constitution (1997)’ prescribed in Thai Barrister” course curriculum” [www.thaibar.thaigov.net/sheet/manit/1.ppt](http://www.thaibar.thaigov.net/sheet/manit/1.ppt) Manit Jumpa, Law Faculty of Chulalongkorn University.

- 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 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<sup>8</sup> 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)<sup>9</sup> – 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.*

<sup>8</sup> Editorial, “Tackling human trade forcefully”, *The Bangkok Post*, (31 March 2007), p. 8.

<sup>9</sup> 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

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, 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<sup>10</sup> 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

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<sup>10</sup> 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

southern Thailand, northern Malaysia and Sumatra<sup>11</sup>.

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, 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,.

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<sup>11</sup> Wassana Nanuam, "Sonthi: Separatist movements part of int'l terror network" (News Report), the Bangkok Post, 21 November 2007: p. 4.



- (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

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<sup>12</sup>, 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 to 10 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, 200 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.

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<sup>12</sup> Phasook Pongpaichit and Rangsit Piriyanangsan, (Faculty of Economics of Chulalongkorn University), "Lottery Ticket, Brothel, Gambling House, Amphetamine, Illegal Economy and Public Policy in Thailand" (Translation ), 1996: page 116

- (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.

**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)<sup>13</sup> – 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

<sup>13</sup> 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

The IMF mission's detailed assessment report states<sup>14</sup>:

*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<sup>15</sup> 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.

<sup>14</sup> 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

<sup>15</sup> APG and FATF, "Joint FATF/APG Typologies Meeting Jurisdiction Reports", 28 – 30 November 2007

*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.*

*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 religious 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 were 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 Convention against Financing of Terrorism
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<sup>16</sup> 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.

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<sup>16</sup> Annop Likitchitta (Legal Expert), “Frequently asked questions regarding AML” (Translation), 1 April 1999.

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 efforts and thorough discussion during 23 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 4<sup>th</sup> 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 1999 and 19 March 1999 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 Prembooti, 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 8 <sup>th</sup> predicate offense.	No addition yet
Section 16	Any person	A trader
Section 20	The phrase “on behalf of a customer” is included.	No such phrase in the text
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 8<sup>th</sup> predicate offense by means of two Emergency Decrees<sup>17</sup> 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:*

- (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*

<sup>17</sup> AMLO, A Compendium of Anti-Money Laundering Laws and Regulations by Anti-Money Laundering Office: p. 26, and Amendments of Penal Code and Anti-Money Laundering Act : pp 26 - 27

*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. The Amendments to the Anti-Money Laundering Act (2542/1999)  
Section 3**

**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<sup>18</sup>. 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

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<sup>18</sup> Proposed Amendment to AMLA Considered by the Council of State – No. 415/2550 (2007)

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***

*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 institutions to the Office" in Clause 1 of Ministerial Regulation<sup>19</sup> 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:

<sup>19</sup> 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)

**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<sup>20</sup> 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.*
- (6) *Seal of the juristic person (if any).*
- (7) *Taxpayer ID card.*
- (8) *Signature of the authorized signatory on behalf of the juristic person.*

<sup>20</sup> 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): (p. 69 – Prime Minister Office Notification, Re: Self Identification Procedure of Customer of Financial Institution)



The following is the AMLO's policy statement on KYC/CDD<sup>21</sup> 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.*

<sup>21</sup> [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) [http://www.amlo.go.th/amlo\\_new/img/upload/PDF/measures\\_en\\_annex2.pdf](http://www.amlo.go.th/amlo_new/img/upload/PDF/measures_en_annex2.pdf) [Read 22 June 2007]

8. *Offenses relating to terrorism under the Penal Code.*

*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 a 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 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 Chapters VII and VIII.

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<sup>22</sup> 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).

Clause 2 mentions that regarding Section 13 (1) and 13 (2), suspicious transaction reports 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 15<sup>th</sup> 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.

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<sup>22</sup> Abbreviation in Thai alphabets for Anti-Money Laundering

### 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.I.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<sup>23</sup>.

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<sup>23</sup> Section 23 of the AMLA



### 3.2.7 Anti-Money Laundering Board and its regulations

The Anti-Money Laundering Board consisting of 25 members<sup>24</sup> 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<sup>25</sup>, 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.

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*

<sup>24</sup> 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.

<sup>25</sup> Anucha Charoenpo, "Money Laundering New Powers : Govt amends Amlo structure", (News report), The Bangkok Post, (28 February 2007)

- 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 the 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<sup>26</sup>. 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

<sup>26</sup> AMLO, *Organizational Structure*, [http://www.amlo.go.th/amlo\\_new/template.php?lang=EN&id=51&nvar\\_123=true](http://www.amlo.go.th/amlo_new/template.php?lang=EN&id=51&nvar_123=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 texts 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<sup>27</sup>.

1. Regulation on the Expenses in Compliance with the Law Governing Anti-Money Laundering (2002)<sup>28</sup>

<sup>27</sup> AMLO, A Compendium of Anti-Money Laundering Laws and Regulations, pp 100 – 121

<sup>28</sup> 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

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)<sup>29</sup>
3. Regulation on Good Public Administration of the Anti-Money Laundering Office<sup>30</sup>

### 3.2.10 Competent official

Regarding the definition of “**Competent official**” Section 3 of the AMLA defines:

*“Competent official” 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.*

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<sup>29</sup> Chapter 1: Rules of Receiving Report and Information on Indication of Facts on an 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

<sup>30</sup> 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



### 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 the power to issue a written order to temporarily restrain the transaction not exceeding ten business days if there is concrete evidence that any transaction is connected or possibly connected with the commission of an 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 a 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 a 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 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**

**Clause1:** *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.*

**Clause3:** *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 widely 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 of the rights of *bona fide* third parties 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 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	-----		200,000 ₪ to 1,000,000 ₪		-----
(paragraph– 2)	A Director, Manager or any person responsible for the operation of the juristic person under para (1)	One to ten years	or	20,000 ₪ to 200,000 ₪	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)	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)	Not exceeding one year	or	Not exceeding 20,000 ₪	or	Both
(paragraph – 2)	Any individual acting by any means to leak restricted information to others under Section 38, para (4)					
Section 65	Any individual who diverts, damages, destroys, conceals, takes away, loses 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 United Nations Convention against Corruption (UNCAC) 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, 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 I 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<sup>31</sup> 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 the 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

<sup>31</sup> 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

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 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 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)

On the other hand, the Detailed Assessment Report on Thailand by the IMF assessment team recommended as follows<sup>32</sup>:

*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<sup>33</sup>, 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;

<sup>32</sup> 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

<sup>33</sup> 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

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 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 or members of an organization who 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<sup>34</sup> and is dedicatedly cooperative in the process of international AML-CFT matters. Thailand, however, has yet to ratify

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<sup>34</sup> 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

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<sup>35</sup>, 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 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<sup>36</sup> 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 crime 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.*

<sup>35</sup> 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

<sup>36</sup> 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

*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 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<sup>37</sup>. 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<sup>38</sup>, entered into bilateral treaties on mutual legal assistance with 14 countries<sup>39</sup> and the AMLO, as the national FIU, has signed Memoranda of Understanding with 31 foreign FIUs<sup>40</sup>. Having known that international cooperation is 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

<sup>37</sup> The Act on Mutual Assistance in Criminal Matters B.E. 2535, Section 6

<sup>38</sup> (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).

<sup>39</sup> (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).

<sup>40</sup> (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), (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)

person sought could not be prosecuted for money laundering in Thailand either.

The ADB Consultants' Analysis Report<sup>41</sup> 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.*
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*

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<sup>41</sup> ADB, "ADB Consultants' analysis report on Thailand", April 2006: pp. 105-106

*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<sup>42</sup> 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.

Above all else, public procurement schemes turn out to be an area that poses the greatest problem of corruption. Thailand's laws, regulations, and policy guidelines on public procurement are published in the Royal Gazette in order to reduce the risk of corruption. Thailand signed the Convention on 9 December 2003 although it has yet to ratify the Convention. On 19 December 2007, the National Legislative Assembly endorsed the UN Convention against Corruption and agreed to ratify it upon completion of the legal process amending the pertinent domestic laws in order to ensure that it conforms to the Convention's mandatory commitments, i.e. (i) Draft Amendment of the Penal Code, (2) Draft Asset Recovery Act, and (3) Draft Mutual Legal Assistance in Criminal Matters Amendment Act.

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.

In Thailand, according to the Penal Code BE 2499 (1956), six basic corruption offenses are as follows:

1. Bribery of public servants

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<sup>42</sup> 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

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<sup>43</sup>]*

*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 billion baht that Mr. Thaksin's family netted from the Shin Corp sale.)

<sup>43</sup> Ampa Santimatanedol, "Thaksin faces up to 26 years in jail" (News report), The Bangkok Post, (27 November 2007) :p.1

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<sup>44</sup>]*

*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<sup>45</sup> 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 the 11<sup>th</sup> place to the 14<sup>th</sup> in the Asia-Pacific index

<sup>44</sup> Corruption Police Investigation: "DSI officers suspended over expenses claims" (News report), The Bangkok Post, (7 December 2007) :p. 6

<sup>45</sup> 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

and from the 63<sup>rd</sup> to the 84<sup>th</sup> in the overall 180-nation world index<sup>46</sup>.

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 liabilities: (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<sup>47</sup>:

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<sup>48</sup> 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*

<sup>46</sup> "Thailand slips down the list, now seen as more corrupt" (News report):, The Bangkok Post, (27 September 2007), p. 2.

<sup>47</sup> The Office of the National Counter Corruption Commission , <http://www.nccc.thai.gov.net/nccc/en/org.php>

<sup>48</sup> 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.

*related fields for 3 years or being a civil servant in a related field for over 10 years.*

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 UNSC Resolution 1373 due to the amendments to the Penal Code Section 135 and by ratifying the Convention against FOT.

The DAR, however, states<sup>49</sup>:

*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.*

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<sup>49</sup> 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.

It also states<sup>50</sup>:

*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 Code, in

<sup>50</sup> IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.79, paras. 295-296.



**Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses**

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	AMLA
		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	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	-----

**Table 6 : FATF 20 predicate offenses vs. Thailand 16 predicate offenses**

No.	Designated Predicate Offenses	
	FATF 40+9 Recommendations	AMLA
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 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)<sup>51</sup> 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.

The DAR also states<sup>52</sup>:

*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 Recommendation	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 : Correspondent banking	
4		R-40: Other forms	R-13: Suspicious	R-8 : New	

<sup>51</sup> 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

<sup>52</sup> *ibid.*: p. 47, para. 122

**Table 7: Ratings of compliance with FATF 40 + 9 Recommendations**

Sr. No.	Compliant (C)	Largely compliant (LC) of cooperation	Partially compliant (PC) Transaction Reporting	Non-compliant (NC) technologies	Not applicable (NA)
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 monitoring	R-24: DNFBP regulation, 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**

	<b>Financial Institution</b>	<b>Regulator/Supervisor</b>	<b>Regulating Law</b>
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**

	<b>Financial Institution</b>	<b>Regulator/Supervisor</b>	<b>Regulating Law</b>
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<sup>53</sup>.

Credit card operators in Thailand can be classified into 2 groups: 1) non-bank

<sup>53</sup> 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.

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<sup>54</sup> 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 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

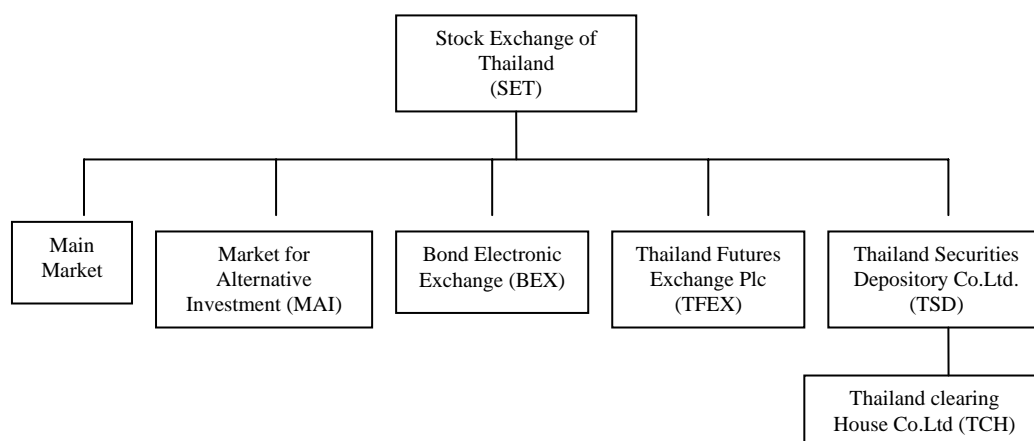
<sup>54</sup> IMF – Legal Department, Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007.: p.131, para. 587.

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 January 1991, 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<sup>55</sup> for combating ML and FT.

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- <sup>55</sup>
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
  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

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, B.E. 2535 (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)<sup>56</sup> 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 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

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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

<sup>56</sup> 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](http://www.Oic.or.th/type-doi/act_2550.pdf) [Read December 2007]

AMLO and the DOI needs to be strengthened. The IMF<sup>57</sup> 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<sup>58</sup> 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 (1967) – as amended 1992 – 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 failure to comply with AML-CFT requirements even though under

<sup>57</sup> IMF, “IMF legal team’s report on Thailand”, September 2005: pp. 23 -24, para. 28

<sup>58</sup> 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

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<sup>59</sup>:

*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.

##### Aviation

- Convention on Offences 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)

<sup>59</sup> 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, the 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<sup>60</sup> 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,

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<sup>60</sup> 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

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 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 any act destroying or damaging air navigation facilities or interfering 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) any act 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 years 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 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 the 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 8<sup>th</sup> predicate offense by means of two Emergency Decrees<sup>61</sup> 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.*

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<sup>61</sup> AMLO, A Compendium of Anti-Money Laundering Laws and Regulations : p. 26 & – Amendments of Penal Code and Anti-Money Laundering Act: pp. 26 – 27

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:

*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 the 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<sup>62</sup>.

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

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<sup>62</sup> Hon. Suchart Traiprasit ( former Attorney General of Thailand), [The Role of Thai Prosecutors in the Fight against the Transnational Crime](http://www.acpf.org/Activities/public%20lecture1999/prctrnsnatcrime(E).html), [Read December 2006, September 2007]

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).

*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 the 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<sup>63</sup>.

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<sup>63</sup> ADB, “ADB consultants’ analysis report on Thailand”, April 2006: pp.34 – 35

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.*
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<sup>64</sup>. 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;
- 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.*

**Section 10**

*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

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<sup>64</sup> UN, “United Nations Convention against Transnational Organized Crime” – Palermo Convention – (2000), Article 17, No. 3

concerning mutual assistance<sup>65</sup>.

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 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

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<sup>65</sup> ADB, "ADB Consultants' analysis report on Thailand", April 2006: pp.32 – 34

*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<sup>66</sup> 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 19<sup>th</sup> August 1999. Later, by virtue of the Act, Ministerial Regulations, Rules, and other Notifications were issued and became effective on 27<sup>th</sup>*

<sup>66</sup> [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)  
[http://www.amlo.go.th/amlo\\_new/img/upload/PDF/measures\\_en\\_annex2.pdf](http://www.amlo.go.th/amlo_new/img/upload/PDF/measures_en_annex2.pdf) [Read: June 2007]

*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 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.