

## CHAPTER V

### AML-CFT MECHANISM AND ITS TOOLS

#### 1 Essential factors

Countries are encouraged to institute the necessary AML-CFT legislative framework through international legal instruments designed to harmonize standards or through initiatives that seek to compel recalcitrant countries to adopt them. Three major factors of the framework are:

1. Preventing the financial system from being used for purposes of money laundering;
2. Detection of money laundering operation through legislative provisions; and
3. Suppression of money laundering activities and associated crimes.

##### 1.1 Regulatory, supervisory, and enforcement agencies

There are generally three types of agency that are crucial when building an effective and efficient AML-CFT regime. They are regulatory, supervisory and enforcement agencies. These agencies are working together, via the FIU of the country in response to the risks posed by ML and FT to the reputation and integrity of financial systems, to develop robust AML-CFT programs and internal control systems in countries.

An FIU can be formed based on one of the four basic models – administrative model, law enforcement model, judiciary model, and hybrid model. FIUs of countries play the roles of facilitator to obtain effective inter-agency coordination and cooperation that are the most important factors in building a successful effective AML-CFT regime. Authorities from the three types of agency and staff of FIU are provided with necessary training that may include case studies, examples of supervisory actions against financial institutions so that participants are able to understand the problems they may face in implementing an effective AML-CFT regime. There may be a need for technical assistance program to be developed.

Regulatory and/or supervisory agencies have the onus for developing and implementing comprehensive legislation against ML and FT that complies with international standards in order to prevent the financial systems from being used for purposes of money laundering. Regulators must keep up to date with ever-changing criminal activities and invented methods of performing crimes. Accordingly, AML-CFT laws and regulations need to be frequently updated to comply with international standards. Law makers have to create innovative, effective and efficient rules and regulations building on the point as to how criminal and terrorist organizations use legitimate financial institutions to transfer funds and disguise the origin of the assets.

Supervisory authorities should supportively supervise the process of the implementation in accordance with the national anti-money laundering and counter-terrorist financing Act so as to prevent the financial institutions from being used by money launderers and terrorist groups.

First of all, supervisors have a thorough understanding of what money laundering and

terrorist financing are since they are responsible for verifying the implementation of the law and ensuring full implementation of international standards. Secondly, supervisory authorities are the ones that educate the public about the risks money laundering and terrorist financing can have on the country's economy and make the public aware of the government actions. A consultation mechanism between the authorities and the private sectors will lead to a better understanding between the public sectors and private sectors. Thirdly, supervisory authorities also provide guidance on KYC and STR reporting that can be an effective tool during the implementation process. Training programs are necessary to be conducted for both public and private sectors. In addition on-site and off-site inspections are part of the responsibilities of supervisory agencies.

According to the findings from the AML-CFT assessments<sup>1</sup> by the IMF and the WB, the report states:

*Even among assessed high- and middle-income countries, the supervisory framework did not yet cover all aspects of the relevant Recommendations. In addition, sanctioning powers needed to be either strengthened or streamlined. Assessors expressed a general concern that the supervisors did not have sufficient means to perform their supervisory duty effectively and such capacity issues were particularly acute in the assessed low-income countries.*

Enforcement agencies are responsible for suppressing the money laundering and terrorist financing related crimes as well as for confiscation measures that are complements to enforcement and preventive measures such as freezing and seizing assets. They must also develop techniques to track illicit funds as well as the best practices for indictment. Furthermore, the enforcement agencies must have necessary skills and institutional capacity to investigate. In other words, they have to detect money-laundering operations through legislative provisions allowing for the centralization of information by authorities charged with combating such operations and implementation of specialized investigative measures. They must develop the enforcement of AML-CFT laws in order to successfully prosecute ML and FT cases.

Many assessors of the AML-CFT assessments<sup>2</sup> done by the IMF and the WB noted that even where legal provisions and law enforcement powers were in place, ML-FT investigations and prosecutions were limited. Due to the assessments of the 12 assessed countries, with regard to FIUs, the report says:

*With respect to FIUs (Recommendation 26), 6 percent were rated compliant, 39 percent largely compliant, 6 percent partially compliant, and 50 percent non-compliant. This indicates some major shortcomings in an area that is critical to AML-CFT efforts. The observed weaknesses in the high- and middle-income countries concerned lack of resources, failure to provide adequate feedback to the reporting institutions, and insufficient analysis of the suspicious transaction reports. No assessed low-income country had an operational FIU-related functions.*

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<sup>1</sup> IMF and WB, Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward, Supplementary Information, 31 August 2005, <<http://www.imf.org/external/np/pp/eng/2005/083105.pdf>> [Read November 2006]

<sup>2</sup> *ibid.*

## 1.2 Thailand institutional framework for combating ML and FT

Having enacted the AMLA successfully, Thailand – armed with the required tools to tackle money laundering and terrorist financing offenses – is ready to deal with any predicate offenses defined in the AMLA. In order to develop a robust AML-CFT regime with an effective internal control system, there should be perfect distribution of duty and responsibility – concerning regulation, supervision, investigation, prosecution, etc. – among well-organized governmental agencies and private agencies that are to implement the AMLA, in compliance with international standards. The Thailand institutional framework has functioned quite well and the policies and regulations have been reviewed and modified in order to withstand the test of time.

In Thailand, there are forty nine agencies taking part in combating money laundering and financing of terrorism. These agencies and departments – both government and private – are categorized in the institutional framework for combating ML and FT according to the area of responsibility based on their respective nature of operational functions, as follows<sup>3</sup>:

1. Ministries, committees, or other bodies to coordinate AML-CFT action
2. Criminal justice and operational agencies
3. Financial sector bodies
4. Designated Non-Financial Businesses and Professions and other matters

The following Table shows the agencies and their respective areas of responsibilities.

**Table 9 : Agencies and their respective areas of operations**

No.	Ministries, Committees or other bodies to coordinate AML/CFT action	Criminal justice and operational agencies	Financial sector bodies	Designated Non-Financial Businesses and Professions and other matters
1	Anti-Money Laundering Office	Office of the Attorney General	Bank of Thailand	Department of Provincial Administration, Ministry of Interior
2	Department of Treaties and Legal Affairs, MFA	Office of the National Counter Corruption Commission	The Office of the Securities and Exchange Commission	Department of Employment (Secretary of the Entry of Foreign Private Organization to Operate in Thailand)
3	Office of the Permanent Secretary, Ministry of Finance	Customs Department, Ministry of Finance	Department of Insurance	Ministry of Social Development and Human Security
4	Department of International Economic Affairs, MFA	Excise Department	Cooperative Auditing Department, Ministry of Agriculture and Cooperatives	Office of the National Culture Commission, Ministry of National Culture
5		Revenue Department	Cooperative Promotion Department, Ministry of Agriculture and Cooperatives	Federation of Accounting Professions

<sup>3</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): pp. 35 - 41

**Table 9 : Agencies and their respective areas of operations**

No.	Ministries, Committees or other bodies to coordinate AML/CFT action	Criminal justice and operational agencies	Financial sector bodies	Designated Non-Financial Businesses and Professions and other matters
6		Office of the Narcotics Control Board	Land Department, Ministry of Interior	The Lawyers Council of Thailand
7		National Intelligence Agency	Government Savings Bank	Gold Traders Association of Thailand
8		Office of the National Security Council	The Government Housing Bank	Thai Jewelry Traders Association
9		Royal Thai Police	Export - Import Bank of Thailand, Ministry of Finance	Jewelry Association
10		Department of Special Investigation, Ministry of Justice	Bank for Agriculture and Agricultural Cooperatives, Ministry of Finance	Thai Jewelry Producers Association
11		National Coordinating Agency for Terrorist and Transnational Crimes	Islamic Bank of Thailand	Thai Hire- Purchase Businesses Association
12		The Fiscal Policy Office, Ministry of Finance	Small and Medium Enterprise Development Bank of Thailand	Real Estate and Marketing Association
13			Secondary Mortgage Corporation, Ministry of Finance	
14			The Thai Banks' Association	
15			The Foreign Bankers' Association	
16			The Agricultural Futures Trading Commission	
17			Association of Investment Management Companies	
18			Association of Securities Companies	
19			The General Insurance Association	
20			The Thai Life Assurance Association	
21			The Cooperative League of Thailand	

### 1.3 Public and private sectors

Stakeholders of the AMLA can be divided into two broad sectors, public sector and private sector, that work together to fight ML and FT effectively and efficiently. Strengthening the collaborative process to comply with the revised FATF 40+9 Recommendations (2004) between public sectors and private sectors is a critical factor in building an effective AML-CFT regime. In other words, supervisors and financial institutions play an important role and they are obliged to work cohesively to meet and maintain the international standards. Public sectors have to make fruitful plans with the objectives of making perfect decisions and private sectors have to implement the plans and decisions effectively and successfully.

In this regard, Thailand has exerted profound influence on the cooperation between

public sector<sup>4</sup> and private sector<sup>5</sup> during the implementation process. There are 49 public and private agencies and departments (as at 5 October 2006) that are responsible for regulation, supervision and enforcement of the AML-CFT regime under the AMLA in Thailand.

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1. Anti-Money Laundering Office (AMLO)
  2. Office of the Attorney General (OAG)
  3. Bank of Thailand (BOT)
  4. The Office of the Securities and Exchange Commission (SEC)
  5. Department of Insurance, Ministry of Commerce (DOI)
  6. The Office of the National Counter Corruption Commission (NCCC)
  7. The Office of the Narcotics Control Board (ONCB)
  8. National Intelligence Agency (NIA)
  9. Office of the National Security Council (NSC)
  10. National Coordinating Agency for Terrorist and Transnational Crimes (NCATTC)
  11. Royal Thai Police (RTP)
  12. Department of Special Investigation, Ministry of Justice (DSI)
  13. Department of Treaties and Legal Affairs, MFA (DTLA-MFA)
  14. Department of International Economic Affairs, MFA (DIEA-MFA)
  15. Office of the Permanent Secretary, Ministry of Finance (OPS-MOF)
  16. The Customs Department, MOF (CD-MOF)
  17. The Excise Department, MOF (ED-MOF)
  18. The Revenue Department, MOF (RD-MOF)
  19. Department of Lands, Ministry of Interior (DOL – MOI)
  20. The Fiscal Policy Office, MOF (FPO-MOF)
  21. Government Savings Bank, MOF (GSB-MOF)
  22. The Government Housing Bank, MOF (GHB-MOF)
  23. Export - Import Bank of Thailand, MOF (EIBT-MOF)
  24. Bank for Agriculture and Agricultural Cooperatives, MOF (BAAC-MOF)
  25. Islamic Bank of Thailand, MOF (IBT-MOF)
  26. Small and Medium Enterprise Development Bank of Thailand, MOF (SMEDBT-MOF)
  27. Secondary Mortgage Corporation, MOF (SMC-MOF)
  28. Cooperative Auditing Department, Ministry of Agriculture and Cooperatives (CAD-MAC)
  29. Cooperative Promotion Department, Ministry of Agriculture and Cooperatives (CPD-MAC)
  30. Department of Provincial Administration, MOI (DOP – MOI)
  
  31. Department of Employment, Ministry of Social Development and Human Security (DOE-MSDHS)
  32. Ministry of Social Development and Human Security (MSDHS)
  33. Office of the National Culture Commission, Ministry of National Culture (ONCC-MNC)
  34. The Agricultural Futures Trading Commission (AFTC)
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1. The Thai Bankers' Association (TBA)
  2. The Foreign Banks' Association (FBA)
  3. Association of Securities Companies (ASC)
  4. Association of Investment Management Companies (AIMC)
  5. The General Insurance Association (GIA)
  6. The Thai Life Assurance Association (TLAA)
  7. Thai Hire- Purchase Businesses Association (THPA)
  8. Gold Traders Association of Thailand (GTAT)
  9. Thai Gem and Jewelry Traders Association
  10. Jewelry Association (JA)
  11. Thai Gem and Jewelry Manufacturers' Association
  12. Real Estate and Marketing Association (REMA)
  13. Federation of Accounting Professions (FAP)
  14. The Lawyers Council of Thailand
  15. The Cooperative League of Thailand

## 2 Implementation of AMLA

Since the implementation of the AMLA encompasses the four main areas: (i) Regulation/Compliance, (ii) Supervision, (iii) Enforcement and (iv) Cooperation and Coordination, the aforementioned agencies can roughly be categorized into groups responsible for each area as shown in the following Table.

**Table 10 (A): Agencies and their responsible areas (A)**

Sector for Which Agencies are Responsible	Regulatory Agencies	Supervisory Agencies	Enforcement Agencies	
Both financial and non-financial sectors	Anti-Money Laundering Office			
			Office of the National Security Council	
			Office of the National Counter Corruption Commission	
			Office of the Narcotics Control Board	
			National Intelligence Agency	
			Customs Department	
			Excise Department	
			Revenue Department	
			Fiscal Policy Office	
			Office of the Permanent Secretary (Ministry of Finance)	
			Department of International Economic Affairs (Ministry of Foreign Affairs)	
				Office of the Attorney General
				Royal Thai Police
			Department of Special Investigation	
			National Coordinating Agency for Terrorist and Transnational Crimes	
Financial sector	Bank of Thailand			
	Office of the Securities and Exchange Commission			
	Department of Insurance			
	Cooperative Auditing Department			
	Cooperative Promotion Department			
	Agricultural Futures Trading Commission			
	Thai Bankers' Association			
	Foreign Banks' Association			
	Association of Investment Management Companies			
	Association of Securities Companies			
	General Insurance Association			
	Thai Life Assurance Association			
	Cooperative League of Thailand			
Non-financial sector  (DNFBPs and other matters)	Federation of Accounting Professions			
	Lawyers Council of Thailand			
	Department of Provincial Administration			
	Department of Employment			
	Ministry of Social Development and Human Security			
Office of the National Culture Commission				

**Table 10 (B): Agencies and their responsible areas (B)**

<b>Coordinating Agencies</b>	
International	Department of Treaties and Legal Affairs (Ministry of Foreign Affairs)
Local financial sector	Department of Lands
	Government Savings Bank
	Government Housing Bank
	Export-Import Bank of Thailand
	Bank for Agriculture and Agricultural Cooperatives
	Islamic Bank of Thailand
	Small and Medium Enterprise Development Bank of Thailand
	Secondary Mortgage Corporation
Local non-financial sector	Gold Traders Association of Thailand
	Thai Gem and Jewelry Traders Association
	Jewelry Association
	Thai Gem and Jewelry Manufacturers' Association
	Thai Hire-Purchase Businesses Association
	Real Estate Sales and Marketing Association

## 2.1 Compliance

In the area of *regulation/compliance*, it will be subdivided into *legislative compliance* and *preventative compliance*. Ratification of international conventions, adoption of required national laws or amendment of existing laws, acceptance and implementation of UN resolutions and international standards and recommendations will come under legislative compliance. Such issues as “Know Your Customer” (KYC), “Customer Due Diligence” (CDD), record-keeping, “suspicious transaction reporting” (STR), “cash transaction reporting” (CTR), internal control and audit, on-site and off-site inspections, awareness campaign etc. will fall under preventative compliance.

### 2.1.1 Legislative compliance

Since criminals are constantly looking for new avenues and methods for exploitation of their crimes, especially money laundering and terrorist financing, the legislative framework needs to be flexible enough to provide for generic and sector-specific detailed obligations that can be updated quickly to reflect changes in the AML-CFT regime. In addition, the requirement for the obligations must be enforceable and AML-CFT legislation must be consistent with the national interests and legal norms.

Legal aspects of drafting AML-CFT laws are important in a manner which comports with recognized international standards. As part of compliance required under the international conventions and UN resolutions relating to ML and FT, Thailand has – as stated earlier – carried out the following measures:

- (i) Enactment of AMLA on 21 April 1999.
- (ii) Ratification of the 1988 Vienna Convention on 1 August 2002.
- (iii) Ratification of the 1999 Convention against FOT on 29 September 2004.
- (iv) Signing of the 2000 Palermo Convention on 13 December 2000.
- (v) Making of ministerial regulations in response to UN resolutions between September 2000 and July 2003.
- (vi) Amendment of AMLA and the Penal Code in response to UN resolutions on 11 August 2003.
- (vii) Signing of the ASEAN regional treaty for mutual legal assistance in criminal matters on 17 January 2006.
- (viii) Formation of committees and subcommittees representing public and private

sectors to deal with compliance issues since November 2003.

- (ix) Signing of memoranda of understanding on exchange of financial intelligence by AMLO with 31 foreign counterparts up to July 2007.

According to the anti-money laundering law, there are 8 predicate offenses. (Please see Chapter 4, heading 3.2.1 – Predicate offenses.)

- (1) ***Offense relating to narcotics:*** After the government's declaration of the war on drugs under the leadership of the former Prime Minister, Pol. Lt. Col. Thaksin Shinawatra on 1<sup>st</sup> February 2003, a roadmap was set out for overcoming drugs and called on all relevant agencies/organizations to join forces continuously and seriously. The results of the activities have shown that the situation and the trend of narcotics problem have substantially decreased in severity.
- (2) ***Offense relating to trafficking of women and children:*** Even though Thailand has several issues of law enforcement upon sexual trafficking such as the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) and the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997), the problem of sexual trafficking is a social problem which becomes more and more serious in society every day. There are 3 factors holding why the sexual trafficking does not decrease; on the other hand, it increases more and more even though the government sector, private sector and laws have extremely attempted to suppress any activity on sexual trafficking and any tourist place where there has an activity concerning sexual trafficking: - (i) Economic factor, i.e. unemployment and migration of agricultural labor; (ii) Social factor, i.e. the point of view of the customary Thai society is that male is more influential than female that shows inequality of gender, and then female is likely to be a sort of sexual material; (iii) Law and political factor, i.e. law has no sufficient tight and severe enforcement the same as an official having no attention on government functions.
- (3) ***Offense relating to public fraud:*** It is an economic crime which has enormous severe impact on national economy. There were 256 offenders and 87,404 damaged persons found in the statistics since 1984 – 2003; the total value of damages was 13,691,631 million baht.
- (4) ***Offense relating to embezzlement in financial institutions:*** At present, these offenses have obviously changed in terms of stepping forward because of technology development. It means that the technology to be used by the government for suspicious transaction investigation will be more effective accordingly.
- (5) ***Offense relating to corruption:*** Corruption situation in Thailand has tended to be increasingly severe in terms of changing forms and methods of corruption. Because of the complexity of corruption, the amount of damages has hugely increased, including avoidance and escape from any offenses according to law.
- (6) ***Offense relating to extortion or blackmail:*** As observed from collected data relating to the number of cases, values and offenders in this type of offense,



there is a very small number of cases notified to the police. It does not mean that there is no wrongdoing in this type of offense. But by means of technology development, the forms and patterns of crime have gone far beyond anticipation. Therefore the suppression of this type of offense has not been able to catch up with the technology development under the present circumstances.

- (7) ***Offense relating to Customs evasion***: It is a predicate offense which has tended not to be decreasing; on the contrary, it is continuously increasing. Furthermore, the value of damages may be doubled because at present and in the future the smuggling of goods will be of great value and will be easier in hiding or delivery i.e. any goods that are smuggled will breach/infringe on copyright.
- (8) ***Offense relating to terrorist financing***: The circumstantial unrest in Thailand has tended to be increasingly severe especially in the three southern border provinces: - Yala, Patanee and Narathiwat.

Besides the eight predicate offenses, additional eight predicate offenses have been approved by the Cabinet and the proposed amendment of the AMLA has to be approved by the Parliament. (Please see Chapter 4, heading 3.2.1 – Predicate offenses.)

### **2.1.2 Preventative compliance**

Seeing that the world around us – inclusive of Thailand – is being confronted by the growing ML- FT activities, which in turn inevitably impact on Thai society economically and socially, Thailand has come to realize that some specific urgent measures need to be taken to counter the threat. Money laundering, in particular, has the effect of shaking loose the moral uprightness of people engaged both in the public and private sectors. Incentives in the form of lucrative bribe tend to corrupt people, the people thus corrupted become more and more greedy, the greed knows no bounds leading to more corrupt practices, and the wheel of corruption keeps spinning in an endless cycle of social and moral degradation. The end result is that society is no longer a decent, pleasant place to live in. Such a worst scenario is unacceptable to Thailand, or to any other country in the world for that matter. To save oneself from such social and moral decay, one must do something that is beneficial to society as a whole.

Precisely with that view in mind, the government has designated the year 2002 as the year of good corporate governance. The Cabinet, on 5 February 2002, formed a national committee, i.e. *The National Corporate Governance Committee (NCGC)*<sup>6</sup> with the objective of upgrading the level of corporate governance in Thai business. The committee consists of 18 members<sup>7</sup> representing the public and private sectors.

<sup>6</sup> [http://www.cgthailand.org/setCG/about/ncgc\\_en.html](http://www.cgthailand.org/setCG/about/ncgc_en.html)

<sup>7</sup> 1. Prime Minister or designated Deputy Prime Minister : Chairman  
 2. Minister of Finance  
 3. Minister of Commerce  
 4. Permanent Secretary, Ministry of Finance  
 5. Permanent Secretary, Ministry of Commerce

The responsibilities of the committee are as follows:

- To establish policies, measures and schemes to upgrade the level of corporate governance among institutions, associations, corporations and government agencies in the capital market.
- To order the related agencies and persons, both in the private and government sectors to testify any information to the NCGC.
- To suggest [to] related agencies to improve their policy schemes and operating processes including legal reforms, ministerial regulations, rules, and enactments to achieve good corporate governance.
- To promote the guidelines of good corporate governance to the public and related parties to raise confidence from international investors.
- To appoint subcommittees and working groups to study and assist any operations by using their authority. These group members [will be composed] of representatives from various private and public agencies. The subcommittees have to report their operating results to the NCGC within the specified period.
- To monitor the progress and evaluate the performance of [the] subcommittees.

The Corporate Governance Subcommittee chaired by the BOT Governor and set up under the Cabinet's Corporate Governance Committee has formed, among others, the *Working Group of Report on Observance of Standards and Codes on Anti-Money Laundering and Combating the Financing of Terrorism*,<sup>8</sup> also known as the "**AML-CFT Working Group**." As restructured on 16 May 2006, the Working Group has 26 members<sup>9</sup>.

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6. Governor, Bank of Thailand (BOT)
  7. Secretary-General, Office of the Securities and Exchange Commission (SEC)
  8. President, Stock Exchange of Thailand (SET)
  9. President, Thai Chamber of Commerce (TCC)
  10. President, Federation of Thai Industries (FTI)
  11. President, Thai Bankers' Association (TBA)
  12. President, Institute of Certified Accountants and Auditors of Thailand
  13. President, Listed Companies Association
  14. President, Association of Securities Companies
  15. President, Association of Investment Management Companies (AIMC)
  16. President, Thai Investors' Association
  17. President, Thai Institute of Directors' Association
  18. Assistant Secretary-General, SEC : Secretary

<sup>8</sup> Corporate Governance Subcommittee on Commercial Banks, Financial Companies and Insurance Companies' Order No. 1/2549, dated 16 May 2006

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1. Secretary-General, Anti-Money Laundering Office	Chairman
2. Office of the National Counter Corruption Commission	Vice-Chairman
3. Management Assistance Group, Bank of Thailand	Member
4. Supervision Group, Bank of Thailand	Member
5. Financial Market Office, Bank of Thailand	Member

The responsibilities of the Working Group are as defined below:

1. To study the scope and requirements of involvement in the Report on Observance of Standards and Codes (ROSCs) on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT);
2. To formulate action plan, scope and schedule of ROSCs on AML-CFT and monitor the outcome of the evaluation;
3. To designate sub-working group members or experts to be consultants as necessary in preparing submission of ROSCs;
4. To advise, recommend and develop procedure to comply with the program's standard;
5. To explain facts and details in process of AML-CFT and other necessary action;
6. To report results of the study related to policy transparency matters to the Working Group on Monetary and Financial Policy Transparency; and
7. To invite experts and persons concerned to give information that might benefit the work of the Working Group.

In addition to the subcommittee's working group, i.e. the AML-CFT Working Group, there have been established 3 subgroups or task forces under the working group as follows:

1. ***CDD task force***: responsible for drafting laws and regulations about CDD for

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6. Ministry of Finance	Member
7. Department of Special Investigation, Ministry of Justice	Member
8. Office of the Attorney General	Member
9. Department of Insurance, Ministry of Commerce	Member
10. Department of Treaties and Legal Affairs, Ministry of Foreign Affairs	Member
11. Office of the National Security Council	Member
12. Department of Provincial Administration, Ministry of Interior	Member
13. Ministry of Interior	Member
14. Revenue Department, Ministry of Finance	Member
15. Thai Bankers' Association	Member
16. Foreign Banks' Association	Member
17. Thai Hire-Purchase Businesses Association	Member
18. The Office of the Securities and Exchange Commission	Member
19. Association of Securities Companies	Member
20. Association of Investment and Management Companies	Member
21. The Thai Life Assurance Association	Member
22. Department of Lands, Ministry of Interior	Member
23. Thai Chamber of Commerce	Member
24. Anti-Money Laundering Office	Secretary
25. Director of Legal Proceedings Office, Bank of Thailand	Assistant Secretary
26. Anti-Money Laundering Office	Assistant Secretary

the financial sector; members composed of representatives from AMLO, MOF, BOT, SEC, DOI, Bankers and Securities Dealers.

2. **DNFBPs task force:** responsible for dealing with DNFBPs; members consisting of representatives from AMLO, MOJ, Department of Business Development, Thai Chamber of Commerce, Lawyers, Accountants, Real Estate, Pawnshops, Precious Metal and Stone Dealers Associations.
3. **IT task force:** responsible for making modifications to AML-CFT IT systems in the financial sector; members made up of representatives from MOF, Thai Bankers' Association, Foreign Banks' Association and from all commercial banks.

The subcommittee and the working group and the task forces have since been working earnestly to accomplish their respective assigned tasks. Most notably among them are the Thai Bankers' Association's AML-CFT policy paper endorsed by the World Bank, which focuses on banks' AML-CFT policy, covering: duties and responsibilities; KYC/CDD programs; customer acceptance policy; monitoring of high-risk accounts and transactions; investigation and reporting of suspicious transactions; records retention; and training. Based on this policy paper, the AMLO was then in the process of finalizing new regulations for CDD for financial institutions. In this regard the IMF technical team commented as follows:

*The new regulations will be supplemented by additional requirements and guidance from the relevant supervisory bodies. Compliance with these requirements will be monitored by the relevant financial sector regulators.<sup>10</sup>*

Besides, the BOT has developed on-site and off-site supervision of AML-CFT compliance by financial institutions.

The level of compliance with the established international standards by a jurisdiction is usually assessed in two ways: mutual evaluation (ME) and Financial Sector Assessment Program (FSAP). In the case of Thailand the mutual evaluation is done by APG on a regular basis and a report is submitted to the APG's annual meetings. Assessment under FSAP is carried out by the IMF and a report called ROSC (Report on Observance of Standards and Codes) is submitted to the IMF Board. AML-CFT is one of the standards and codes, compliance of which is in accordance with the FATF 40+9 Recommendations.

As far as the ROSC program is concerned, the mandate of the Working Group can be defined as making preparations for hosting assessment programs and compiling answers on AML-CFT issues to the assessors. In this regard, as part of the ROSC process the IMF mission first sent to Thailand a set of DAQ (Detailed Assessment Questionnaires) in September 2006, which Thailand filled up with appropriate answers and returned to the IMF by the deadline in December 2006. By February / March 2007, the IMF mission came to Thailand on an on-site examination visit and at the conclusion of the visit the IMF mission produced a draft DAR (Detailed Assessment

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<sup>10</sup> IMF, "Technical Assistance Report on Thailand", April 2006, p. 6

Report)—which set out findings on Thailand’s existing AML-CFT system and recommendations for improvement of legal and administrative frameworks.

Assessments on Thailand are rated according to the level of compliance such as (i) compliant, (ii) largely compliant, (iii) partially compliant, (iv) non-compliant, and (v) not applicable, as prescribed in the FATF AML-CFT assessment methodology. In the subsequent chapters, discussion about the assessments and ratings will be made, as necessary.

The Working Group has been active in holding a number of seminars and training courses on KYC/CDD, assets management, public awareness, etc. Under the supervision of the Subcommittee for Corporate Governance, the Working Group has helped draw up an AML-CFT policy in Thai banking system by the Thai Bankers’ Association, which was already vetted by the World Bank. One part of the policy focuses on *KYC/CDD standards and programs*. KYC/CDD standards are thoroughly explained, highlighting on seven topics. They are:

1. Definition of KYC/CDD;
2. Importance of KYC/CDD standards;
3. Key elements of KYC/CDD standards;
4. Customer acceptance policy;
5. Customer identification and verification;
6. Specific identification issues; and
7. Investigation and reporting of suspicious transactions.

Customers’ risk level and frequency of KYC/CDD review process, and documents required for account opening are found annexed to the AML-CFT policy.

It is also stated in the policy that all bank staffs should be trained in AML-CFT policies and procedures and understand all compliance obligations, and the consequences and penalties for failure to comply with internal and external rules. In addition, detailed training guidelines, principles and requirements are stated in the policy.

The Subcommittee on Improvement of Corporate Governance of Commercial Banks, Finance Companies and Insurance Companies has been active in holding a number of seminars and training courses on KYC/CDD, asset management, public awareness, etc. Besides, Thailand has sent its trainees from both public and private sectors to participate in regional and AML-CFT-related international seminars and training courses in order to improve their skills, enhance their awareness and broaden their professional knowledge. Similarly, Thailand has sent its specialists and trainers to such seminars and training courses as part of regional and international cooperation programs.

For improvement of its AML-CFT mechanism Thailand seeks technical assistance not only from individual countries but also from the World Bank, IMF, ADB, and so forth.

## **2.2 Supervision**

All the competent authorities need to upgrade skills and techniques in the field of

supervising the financial institutions and they need to share and disseminate knowledge and best practice as well. Since the AMLO, as an FIU, is responsible for all the aforementioned four areas, it has to supervise the whole regime for the effective and successful implementation of the Anti-Money Laundering Act in Thailand. It has disseminated information to both public and private sectors on policies, approaches and results so as to build a good understanding and promote cooperation in the prevention and suppression of ML-FT. Public awareness has been raised through various media such as newspaper, television, radio and website, and through press releases. Besides, the AMLO has set up annual training programs supported by specialists not only for government agencies but also for private agencies and the general public.

Training Program	2001		2002		2003		2004		2005		Total	
	F <sup>11</sup>	P <sup>12</sup>	F	P	F	P	F	P	F	P	F	P
Information Dissemination Training for the Public	4	950	10	2,562	19	4,118	26	5,963	11	2,317	70	15,910
Information Dissemination Training for related agencies	12	1,800	17	2,120	23	4,178	21	5,001	2	600	75	13,699
Information Dissemination Training for financial institutions	3	200	8	420	12	720	10	650	5	763	38	2,753
Information Dissemination Training for officials	9	1,150	5	700	6	525	3	258	2	334	25	2,967
Total	28	4,100	40	5,820	60	9,541	60	11,872	20	4,014	208	35,329

As mentioned in Chapter II, a fundamental challenge to the dissemination of relevant information is “establishing a framework for the sharing of information that is acceptable to all parties and meets reasonable AML-CFT objectives”. The Table shows that 35,329 participants attended the 208 courses on Information Dissemination Training for the public, related agencies, financial institutions and officials within 5 years (from 2001 to 2005).

The front line of defense against ML-FT contains financial institutions in banking sector and in non-banking sector including private banking, correspondent banking, banking relationships and shell banks (perceived as high risk). In order to meet the international obligations, an effective supervisory system is essential in Thailand. Different types of financial institutions are supervised by different authorities.

In general, the AMLO, the BOT and the SEC are empowered to supervise and examine financial institutions for compliance with AML-CFT regulations. The Minister of Finance has assigned the BOT to supervise the money changers that are licensed by the Minister of Finance. Any juristic person who wants to conduct the business of money changers and remittance must apply for authorization by the Minister of Finance through the BOT.

<sup>11</sup> F = Frequency

<sup>12</sup> P = No. of participants

Although regulatory responsibility for banks is shared between the AMLO and the BOT, other financial institutions are supervised by specific regulators. For instance, the SEC supervises securities companies; the DOI deals with supervising life and non-life insurance; and the Cooperative Promotion Department takes care of supervisory matters in relation to thrift and credit cooperatives in accordance with the guidance issued by the AMLO. On the other hand all savings cooperatives are under the Cooperatives Promotion Department and the Department of Cooperative Auditing both of which are within the Ministry of Agriculture and Cooperatives.

There are two types of supervision, on-site supervision and off-site supervision, for the purpose of examining the risks an institution faces and how those risks are managed. On-site supervision focuses on the operational risk owing to inadequate or failed internal processes, i.e. staff and system of the bank or external events. Off-site supervision deals with analysis of documents – financial statements, market analysis, reports on the operation of subsidiary entities and responses to questionnaires issued by the supervising agency – and data supplied by the institution or from other sources.

Supervising transactions in this paper are basically divided into three types:

- (1) transactions of financial institutions;
- (2) transactions of non-financial institutions; and
- (3) cross-border transactions.

## **2.2.1 Transactions of financial institutions**

### **2.2.1.1 Banks**

Implementing procedures for supervising banks with appropriate regulatory obligations in accordance with international standards is one initial step to supervise all financial institutions. The process of supervision includes a review of customer files and the sampling of some accounts in addition to policies and procedures<sup>13</sup>. The role of internal audit is important in the evaluation of adherence to KYC standards on a consolidated basis and supervisors should ensure that they have effective access to any relevant reports carried out by internal audit. Information regarding individual accounts is used only for lawful supervisory purposes, and must be protected by the recipient in a satisfactory manner when sharing information between two supervisors<sup>14</sup>.

The BOT is in charge of the AML-CFT issues in regard to banks and financial institutions in the banking sector. The BOT, as the main bank regulator, provides regulations or guidelines on AML-CFT for banks and as a representative of the Ministry of Finance for the financial institutions it regulates, does on-site and off-site supervision. The BOT carries out operational risk assessment within its risk-based supervision procedures in relation to the AML-CFT matters and off-site monitoring via its normal supervisory procedures. Despite the fact that the BOT has the major role in supervision of banking industry in Thailand, the supervision of suspicious

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<sup>13</sup> Basel Committee on Banking Supervision, “Customer Due Diligence for Banks”, para. 61

<sup>14</sup> *ibid.*: para. 68

transaction reporting under Section 13 of the AMLA is performed by the AMLO that also has to ensure banks to comply with the obligations imposed on them in the AMLA. It shows that the borderline, regarding responsibility, between the BOT and the AMLO is not clear cut. However, it was agreed that the BOT would conduct on-site supervision and the AMLO would conduct off-site supervision of general compliance issues in future.

A financial sector master plan proposed by the Ministry of Finance and the BOT was approved by the Cabinet in January 2004. The main purpose of the plan is to reconstruct, develop and strengthen the Thailand's financial sector where the Ministry of Finance and the BOT will be responsible for regulations. The plan includes four main points.

- Developing a framework for consolidated supervision.
- Memorandum of Understanding on information exchanges and coordination of tasks between the regulatory bodies.
- Promoting good governance in financial institutions.
- Developing risk management capability.

There have been meetings focusing on how to use advanced technology in new CDD requirements. At the meetings, the IT task force of the AML-CFT working group and the chief information officers of banks discussed the question of developing software which deals with new CDD requirements. As the banking industry is faced with challenges of curbing the menace of money laundering, banks need to: (i) know their customers thoroughly and (ii) comply with requirements of both domestic and international regulations in fighting money laundering and financing of terrorism. The purposes of the risk management software are:

- to detect fraud and money laundering instances by monitoring transactions online;
- to design their know your customer (KYC) program which includes algorithms to search and match identity/details of a customer against lists based on people's names, organization names, addresses, identity numbers, dates and other identification data; and
- to comply with local and international regulations.

The software – the result of the cooperation between the authorities and the financial industry – has been developed and could be operational before long. Since the AMLO has issued regulations for relevant entities, the BOT has imposed requirements for KYC and is in the process of amending the requirement and the Manual for on-site examination in accordance with the AMLO regulations on CDD.

The Governor of the BOT, which is responsible for 7 areas of ROSCs including AML-CFT, has been appointed as the Chairman of the Subcommittee on Improvement of Corporate Governance of Commercial Banks, Finance Companies and Insurance Companies. An AML-CFT working group for ROSCs assessment program was formed where the Secretary-General of the AMLO is the chairman, and the BOT and the Thai Bankers' Association (TBA) are members of the working group. The BOT and the TBA have worked together in two areas, the AML-CFT compliance and supervision relating to financial institutions. The TBA is responsible for both



regulation and supervision regarding all the banks in Thailand including private banks. The TBA has established its own internal joint-working group (TBA JWG) that comprises its own member banks to assist the AML-CFT working group.

Although the foreign financial institutions have well-established policies and procedures, domestic institutions in Thailand still need to develop their internal AML-CFT policies and procedures. The TBA JWG created an adjustable AML-CFT policy to help all banks to write up their own policies and procedures for management control and risk prevention depending on various types of customers they serve.

The AML/CFT policy<sup>15</sup>, in Thai banking system, consists of four parts:

1. Duties and responsibilities;
2. KYC/CDD standards and programs;
3. Record retention; and
4. Training

Based on this policy – the result of cooperation between the AMLO, the BOT and banks, finalized and endorsed by the World Bank – financial institutions, professions, and designated businesses have to develop their respective policies. The TBA’s AML-CFT policy was revised in December 2006. The TBA’s “Guidelines on Know Your Customer (KYC) and Customer Due Diligence (CDD) to meet international standards related to financial transactions” was issued pursuant to 2 AMLO Policy Statements in 2007.

The guidelines consist of:

1. Requirements for new account opening
2. Know Your Customer for different types of customers
3. General exemptions for Know Your Customers
4. The KYC/CDD rectification process for existing customers
5. Sanction and Warning List, Politically Exposed Persons (PEPs)

As using a risk-based approach to enforcing regulations is a powerful solution, the risk-based approach is the standard practice for all FIs and the risk levels are divided into: (a) risk rating level 1 (low), (b) risk rating level 2 (medium), and (c) risk rating level 3 (customers requiring special attention ) or commonly known as “high”.

According to the TBA guidelines<sup>16</sup>, the customers’ risk levels are categorized as follows:

**Table 12(A) : Customer’s Risk Level, Frequency of KYC/CDD Review Process**

Risk Identification	KYC/CDD
Risk rating level 1 (Low)	
Ordinary Persons	<ul style="list-style-type: none"> <li>▪ Verification of the original of the customer’s National ID</li> </ul>

<sup>15</sup> TBA, “Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) Policy”, December 2006

<sup>16</sup> TBA, “Guidelines on Know Your Customer (KYC) and Customer Due Diligence (CDD) to meet international standards related to financial transactions” – Annex (1) to the TBA’s AML-CFT policy, 2007

**Table 12(A) : Customer's Risk Level, Frequency of KYC/CDD Review Process**

<b>Risk Identification</b>	<b>KYC/CDD</b>
<ol style="list-style-type: none"> <li>1. Customer with deposits outstanding at the end of each month of less than threshold agreed and having aggregate balance of cash deposits or withdrawals of less than four times the threshold within a 12-month cycle.</li> <li>2. Customer with total credit facilities of less than the set threshold.</li> </ol> <p><u>Note:</u> It is the discretion of each member bank to set its own threshold between THB 2-5 million.</p>	<p>Card, passport or other photo ID cards with the customer's National ID number issued by a government agency.</p> <ul style="list-style-type: none"> <li>▪ Verification of name, date of birth and nationality.</li> <li>▪ Verification of current address (as it appears on the National ID Card).</li> <li>▪ In addition, P.O. Box address can be used for convenience in contacting customers, but it cannot be used as an address for KYC purposes, since the address for KYC has to be the one that appears on the National ID card only.</li> <li>▪ Verification of the occupation, the type of business and the position of the customer in the business.</li> <li>▪ Verification of the purpose of account opening.</li> </ul>
<p><b>Juristic Persons</b></p> <ol style="list-style-type: none"> <li>1. Credit customer who does not fall under the level 3 risk rating and who is subject to the Bank's annual credit review.</li> <li>2. Customer and affiliated companies which are listed companies.</li> <li>3. Customer and affiliated companies which are managed by professional managers.</li> <li>4. Government agency and state enterprise.</li> <li>5. International charitable organization or non-profit organization which has been established for more than 10 years and which has revenue of more than USD 10 million or the equivalent.</li> <li>6. Financial institution where the headquarters are not located in a high-risk country and implement AML-CFT measures in line with FATF standard.</li> </ol>	<ul style="list-style-type: none"> <li>▪ Verification of the Certificate of Registration, the registered address and the address of business operation of such partnership, and/or limited company.</li> <li>▪ Verification of the original National ID Cards of all individuals authorized to sign on behalf of the juristic person opening and operating an account.</li> <li>▪ Conduct KYC on, and maintain identification documents of, individuals holding 20 % or more of the shares, and of the least two directors. The documents are to be certified by the individual authorized to sign on behalf of the juristic person opening the account.</li> <li>▪ Verification of the type of business the customer is engaged in .</li> <li>▪ Verification of the account opening process.</li> </ul>
<b>Risk rating level 2 (Medium)</b>	
<p><b>Ordinary Persons</b></p> <p>Foreign customer who is not assigned level 3 risk rating. Customer not assigned level 1 or level 3 risk rating.</p>	<p>In addition to CDD in level 1 customer, banks shall:</p> <ul style="list-style-type: none"> <li>▪ understand the purpose(s) of the account ;</li> <li>▪ know the source of funds;</li> <li>▪ indicate the amount of money and the items expected to occur in the account; and</li> <li>▪ understand the relationship between the individual authorized to operate the account and the actual owner of the account or business.</li> </ul>
<p><b>Juristic Persons</b></p> <ol style="list-style-type: none"> <li>1. Customer and affiliated companies which are not listed companies and majority of revenue are cash.</li> <li>2. Financial institution and affiliated companies where the headquarters are located in a high-risk country but implement AML-CFT measures in line with FATF standard.</li> <li>3. Customer not assigned level 1 or level 3 risk rating.</li> </ol>	<p>In addition to CDD in level 1 customer banks shall:</p> <ul style="list-style-type: none"> <li>▪ understand the purpose(s) of the account.</li> <li>▪ know the source of funds;</li> <li>▪ indicate the amount of money and the items expected to occur in the account; and</li> <li>▪ understand the relationship between the individual authorized to operate the account and the actual owner of the account or business.</li> </ul>
<b>Risk rating level 3 (Customers requiring special attention)</b>	
<p><b>Ordinary Persons</b></p> <ol style="list-style-type: none"> <li>1. Customer who is a politically exposed person (PEP) or related to him.</li> <li>2. Customer whose domicile or source of funds is a high-risk country.</li> <li>3. Customer in high-risk occupation/business.</li> <li>4. Customer reported in suspicious activity report (form AMLO 1-03).</li> <li>5. Customer whose name is in the Sanction List but due to certain reasons, the bank needs to give him/her services.</li> <li>6. Customer with level 2 risk rating but unreachable through at least 3 contact channels for more than 90 days.</li> </ol>	<p>In addition to CDD in levels 1 + 2:</p> <ul style="list-style-type: none"> <li>▪ Banks should know the source of funds and assets of, and should assess the net worth of customers.</li> <li>▪ Banks must indicate the source of high value transactions or transactions that are unusual or are not in line with the normal business of the customer.</li> <li>▪ The opening of a level 3 account shall require approval by a top executive or an authorized individual whose position, roles and responsibilities have been agreed by Compliance/AML Compliance.</li> <li>▪ In case where there is necessity or urgency, banks may go ahead and open an account for the customer. However, the customer must be informed, and must agree that no transactions relating to that account can be conducted until approval is granted by a top executive, or by an authorized individual. The approval of the account shall be given within two (2) days after all required documents for</li> </ul>

**Table 12(A) : Customer’s Risk Level, Frequency of KYC/CDD Review Process**

Risk Identification	KYC/CDD
	account opening have been submitted.
<p><b>Juristic Persons</b></p> <ol style="list-style-type: none"> <li>1. Customer with political relationships.</li> <li>2. Customer who conducts business or has a source of revenue from a high-risk country.</li> <li>3. Customer in high-risk occupation / business.</li> </ol>	<p>In addition to CDD in levels 1 + 2:</p> <ul style="list-style-type: none"> <li>▪ Banks should have the knowledge of the structure and relationships of the organization.</li> <li>▪ Banks should know the source of funds and assets of, and should assess the net worth of customers.</li> <li>▪ Banks must indicate the source of high value transactions or transactions that are unusual or are not in line with the normal business of the customer.</li> <li>▪ The opening of a level 3 account shall require approval by a top executive or an authorized individual whose position, roles and responsibilities have been agreed by Compliance/AML Compliance.</li> <li>▪ In case where there is necessity or urgency, banks may go ahead and open an account for the customer. However, the customer must be informed, and must agree that no transactions relating to that account can be conducted until approval is granted by a top executive, or by an authorized individual. The approval of the account shall be given within two (2) days after all required documents for account opening have been submitted.</li> </ul>

In addition, customers from high risk jurisdictions and countries on the following lists also require special attention.

1. NCCT list<sup>17</sup>
2. Office of Foreign Assets Control (OFAC) countries list<sup>18</sup>
3. Transparency International Index, only countries with the CPI score of 2.3 and lower<sup>19</sup>
4. Countries/Jurisdictions subject to monitoring on money laundering or drugs trafficking (if any)

**Table 12 (B): High risk jurisdictions and countries**

<b>Transparency International (TI) Index, Office of Foreign Assets Control (OFAC), and Non-Cooperative Countries and Territories (NCCT)</b>		
Sr. No.	Countries/Territories	TI index/OFAC/NCCT
1	Angola	TI index
2	Balkans	OFAC
3	Belarus	OFAC
4	Bangladesh	TI index
5	Cambodia	TI index
6	Cameroon	TI index
7	Chad	TI index
8	(Democratic Republic of )Congo	TI index
9	(Republic of ) Congo	TI index
10	Cote d’Ivoire	TI index, OFAC
11	Ecuador	TI index
12	Equatorial Guinea	TI index
13	Guinea	TI index
14	Haiti	TI index
15	Iran	OFAC
16	Iraq	TI index, OFAC
17	Kenya	TI index
18	Kyrgyzstan	TI index

<sup>17</sup> “Non-Cooperative Countries and Territories” <[http://www.fatf-gafi.org/document/4/0,2340,en\\_32250379\\_32236992\\_33916420\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html)>

<sup>18</sup> <[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_research/surveys_indices/cpi/2005)>

<sup>19</sup> United States – Department of the Treasury (Office of Foreign Assets Control) <http://www.treasury.gov/offices/enforcement/ofac/programs>

**Table 12 (B): High risk jurisdictions and countries**

<b>Transparency International (TI) Index, Office of Foreign Assets Control (OFAC), and Non-Cooperative Countries and Territories (NCCT)</b>		
19	Libya	OFAC
20	Myanmar	TI index, OFAC
21	Niger	TI index
22	Nigeria	TI index
23	North Korea	OFAC
24	Pakistan	TI index
25	Sierra Leone	TI index
26	Sudan	TI index, OFAC
27	Syria	OFAC
28	Tajikistan	TI index
29	Turkmenistan	TI index
30	Uzbekistan	TI index
31	Venezuela	TI index
32	Zimbabwe	OFAC

Supervisory authorities must take action to build and maintain domestic confidence in the AML-CFT regime and prove its effectiveness to the external evaluators. As the AMLA does not prohibit anonymous accounts, the ADB suggested that Thailand should enact specific legislation to prevent the use of anonymous and false name accounts.

### 2.2.1.2 Securities market

The SEC that is responsible for supervision of the securities market in Thailand has adopted a risk-based approach to supervision and encourages securities companies to adopt international standards. Guidelines on CDD for securities companies and compliance procedures were implemented in 2006. The IMF has offered the SEC assistance to finalize the AML-CFT regulatory framework for the securities sector. The AML-CFT criteria have been applied since the new CDD rules were put in place. Accordingly the SEC has conducted on-site and off-site risk-based supervision of 40 securities firms and 18 asset management companies since 2006. In addition, the SEC has audited the reporting of STRs to the AMLO as part of its on-site inspections since 2005 and requested the AMLO to provide more feedback on the outcome of the STR reporting. Despite the lack of a formal MOU between the AMLO and the SEC on the AML regulation, the SEC has dealt and will continue to deal with the AML-CFT issues.

The securities markets are less vulnerable because of the following factors<sup>20</sup>.

1. *All transactions must be paid for by checks or direct transfers from accounts. No cash payments are allowed.*
2. *The SEC has been developing stronger policies on KYC and CDD. It has recognized the need to update the policy framework and this work is being done. In particular there is a strong emphasis on ensuring brokers understand and apply CDD.*
3. *The SEC has stronger legislative framework than other financial regulators such as the Bank of Thailand and the Insurance Department. This is due to the fact that the framework is newer and reflects similar models in other jurisdictions.*

<sup>20</sup> ADB, "Analysis of Thailand's Legal Obligations Concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism", 9 April 2006: p.72

With regard to brokers, the SEC verifies and supervises patterns of customer activity. The scope of the procedures designed to identify marked malpractices includes identifying unusual transactions and transactions being audited by the SEC to report to the AMLO. These AML-CFT supervision and compliance procedures will be applicable as well when derivatives market is established and comes into operation. They will be subject to reporting in accordance with rules and regulations.

The IMF<sup>21</sup> comments in its assessment report as follows:

Regarding FATF Recommendation 5,

1. The securities sector (excluding agricultural futures brokers) is the only one that has any enforceable obligation for FIs to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.
2. The securities sector (excluding agricultural futures brokers) is the only one with an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship.
3. The securities sector (excluding agricultural futures brokers) is the only one that has any enforceable obligations for FIs in relation to the timing of verification.

For Recommendation 6, the IMF report states that “the only requirements that apply are in the securities sector (excluding agricultural futures brokers)” and for Recommendation 8, “the securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented”.

Agricultural futures brokers are not regulated by the SEC but by the Agricultural Futures Trading Commission (AFTC). The AFTC has not issued any requirements containing AML-CFT elements for the agricultural futures brokers, so they are not regulated at all for AML-CFT<sup>22</sup>.

### **2.2.1.3 Insurance companies**

Although the AMLO has issued anti-money laundering related obligation the DOI has yet to include requirements for anti-money laundering and terrorist financing in its supervision program. The DOI has begun to address the issue as to how to apply AML-CFT requirements to the life insurance sector that is comparatively smaller in size than banking and securities. In fact, the majority of premiums for life insurance products fall below the threshold in the FATF 40+9 Recommendations. The DOI has yet to adopt a risk-based approach to supervision which has been under consideration. The IMF has offered assistance to the Ministry of Commerce in performing a risk assessment of the insurance sector so as to develop a policy for applying AML-CFT requirements to the insurance sector.

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<sup>21</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): pp.152 - 153

<sup>22</sup> *ibid.*: p.124, para. 551

The IMF<sup>23</sup> comments:

*There is no effective monitoring by the AMLO or the DOI of compliance by life insurance companies to the limited CDD requirements applicable to insurance companies under the AMLA. The TLAA has been proactive in producing comprehensive industry guidelines that detail the key CDD related requirements. Moreover, discussions with industry suggested that many insurance firms already have in place procedures to enable them to follow the non-binding AML-CFT guidelines issued by the DOI and the TLAA. It would appear that the practical compliance with the CDD requirements in the standard is largely driven by the incentives facing insurance companies to mitigate their business risk when writing life insurance business. However, the lack of any effective monitoring by the authorities means that the assessors are not satisfied that CDD requirements are adopted across all of the industry.*

## **2.2.2 Transactions of non-financial institutions**

As the formal banking system is being scrutinized by authorities, money launderers preferably use institutions and companies beyond the banking system for it leaves no paper trail as well as it lacks formalities with regard to verification and record-keeping. Designated non-financial businesses and professions, and alternative remittance systems that play a significant role in money movement in Asia are examples of informal payment systems. Consequently, supervision of non-financial institutions has to be included in the Thailand's AML-CFT supervisory system.

### **2.2.2.1 DNFBPs**

According to FATF Recommendation 12, there are five categories – (1) casinos, (2) real estate agents, (3) dealers in precious metals and dealers in precious stones, (4) gatekeepers such as lawyers, notaries, other independent legal professionals and accountants, and (5) trust and company service providers. They, except casinos, and trust and company service providers, operate officially in Thailand. There are about 10, 000 dealers in precious metals and stones operating in Thailand. Approximately 50,000 lawyers (but not notaries) regulated by the Lawyers Act B.E.2528, operate in Thailand, creating the Lawyers' Council of Thailand, the lawyers' Self-Regulatory Organization (SRO). About 14,000 accountants and auditors governed by the Thai Accounting Act, B.E. 2543 and the Accounting Professions Act, B.E.2547 are registered nationwide and belong to the Federation of Accounting Professions (FAP) which is an SRO. Despite the fact that the real estate activity is widespread in Thailand the real estate agents are neither strongly organized nor properly supervised.

There are no requirements in place in relation to any categories of the DNFBPs and no representatives from the DNFBP sector on the Anti-Money Laundering Board.

The IMF Detailed Analysis Report<sup>24</sup> states:

*The authorities seemed to have difficulty clearly articulating which*

<sup>23</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.150, para. 698

<sup>24</sup> *ibid.*: p.250, para. 1199

*part of government was responsible for initiating policy matters on AML/CFT and for monitoring overall effectiveness of the system. Moreover, some agencies that play a key role in AML/CFT are not represented at the AMLB (e.g., no agency from the DNFBP sector is represented; none of the NIA, NSC, NCATTC, or NCCC are represented).*

Although the present law does not impose CDD or record-keeping obligations in respect of the designated non-financial activities set out in Recommendation 12, the process for developing the DNFBP policy was discussed with the industry associations in the DNFBPs task force of the AML-CFT working group. Partly as a result thereof, certain amendments to the AMLA were approved by the Cabinet on 27 February 2007.

In Thailand, casinos are not permitted to open and Thailand is not an offshore financial center nor does it host offshore banks, shell companies or trusts. The following is a brief explanation on each of the aforesaid categories in Thailand.

### 1. Casinos

At present, Thailand gives no permission as yet to make a casino legal. On the other hand there are some casino clubs at the Thai-Cambodia border such as – Koh Kong International & Resort Club, Casino Golden Crown Club, Casino Star Vegas (Resort) near Sa Kaew Province, Casino Grand Diamond City near Sa Kaew Province, Casino Orsmed Resort near Surin Province, at the Thai-Laos border such as – Casino Paradise Nam Ngum Resort near Nong Khai province and at the Thai-Myanmar border such as – Casino Golden Triangle & Paradise Resort near Chiang Rai province, Casino Regina Entertainment and Casino Koh Son Andaman Club, Ranong Province. Lately, gambling has become one of the predicate offenses under which casinos will be subject to the AMLA.

### 2. Real Estate Agents

An agent is a person whose job is to point out or arrange another person the way to make an agreement. In this regard, Section 845 of the Civil and Commercial Code states: “A person who agrees to pay remuneration to a broker for indicating the opportunity for the conclusion of a contract or for procuring a contract, is liable to pay the remuneration only if the contract is concluded in consequence of the indication or of the procurement by the broker.” For suspicious transaction reports, a financial institution is required under Section 15 of the AMLA to make a report whenever a suspicious transaction appears.

### 3. Dealers in Precious Metals and Stones

The Thai Chamber of Commerce and the Association of Precious Metals and Stones realized that trading in precious metals and stones in Thailand made cash transactions in the past without the law being applicable to them imposing KYC/CDD. Also reporting of suspicious transaction was not applicable either. Dealers in precious metals and stones have now been brought under the reporting regime in accordance with the AMLA pursuant to the AMLO’s KYC/CDD policy statement.

#### 4. Lawyers, Notaries, Other Independent Legal Professionals, and Accountants

##### *Lawyers, Notaries, Other Independent Legal Professionals*

As regards the Lawyer Act B.E.2528, a lawyer means anyone who is officially registered with the Lawyers' Council and qualified to be a licensed lawyer. At present, there are altogether 48,130 lawyers in Thailand; 25,081 in Bangkok and 23,049 in the provinces (data as at 13th December 2006). According to Section 7 of the Lawyers Act B.E.2528, lawyers are under the supervision of the Lawyer's Council of Thailand.

##### *Accountants*

Accountants are professionals in accounting, audit, accounting administration, accounting system, tax account, educational and technology account, and any other accounting services described in the Ministerial Regulation issued under Section 4 of the Accounting Professions Act B.E. 2547. The Federation of Accounting Professions is a self-regulatory organization.

#### 5. Trust and Company Service Providers

In some foreign countries, there are some trusts and company service providers used as a tool of money laundering or for hiding the source of supplementary money for terrorists.

At present, Thailand gives no permission to open a legal trust as yet. There are some practitioners performing asset management governed by a specific law but it cannot be called 'trust' as it is in a foreign country.

#### **2.2.2.2 Non-designated businesses**

Apart from DNFBPs, there are other non-designated businesses related to financial transactions that may be used by criminals. Thailand has started but not completed a review of the adequacy of existing laws and regulations that relate to non-profit organizations. The review should be completed and appropriate steps taken to mitigate any potential terrorism risks that the review identifies.

##### *Non-profit organizations (NPO)*

Thailand is a country where Non-Profit Organizations (NPOs) or Non-Governmental Organizations (NGOs) – both local and foreign – abound and operate. NPOs/NGOs comprise associations and foundations and are subject to registration and the status of both organizations confers legal personality.

A non-profit organization consists of juristic persons carrying out the work without intending to gain personal benefit. They are foundations, associations, religious organizations, and private organizations.

##### 1. Foundation



A foundation consists of property set up with public benefit purposes that includes charity, religion, art, science, literature, education or any other public interest with no aim of benefit sharing. And it is registered under the provisions of the Civil and Commercial Code.

## 2. Association

An association, a group of juristic persons, is established to conduct non-profit activities, sharing the same interest. The association must have regulations and be registered according to the provisions of the Civil and Commercial Code.

## 3. Religious organization

A *religious organization* refers to the administrative organization for the existence of a religion within Thailand, and it is necessary for such religion, whereas *an organization for religion* refers to a religious unit established by the religion's followers with a particular purpose to support the activities of such religion, or an organization that carries on the work of religious publicizing and ritual, together with taking care of places where the religion's followers go to worship such as a church, a mosque, a temple, a shrine including doctrine and any other sects as well.

## 4. Private organization

There is a variety of using the name of private organization, for example, a volunteer private organization, a non-profit volunteer organization, a public organization, a private development organization, etc. But in brief, they share similarities in composition which are: (1) an organization that does not belong to the government service, (2) a non-profit organization, (3) an organization carrying out the work for public usefulness such as giving service to society, carrying out public interest, helping to solve social problems or social development, and (4) an organization that may or may not be a juristic person.

## 5. Trading association

A trading association is that kind of a juristic institution incorporated by professional enterprises for a particular purpose of promoting the work of enterprise other than that of sharing profits or income.

## 6. Chamber of commerce

A chamber of commerce is that kind of an institution incorporated by a group of people who work for promoting trade, industry, agriculture, finance or economy, that is not for sharing profit or income. There are four types of chambers of commerce as follows: (1) the Provincial Chamber of Commerce, (2) the Thai Chamber of Commerce, (3) the Foreign Chamber of Commerce and (4) the Chamber of Commercial Council of Thailand. They have legal status as juristic persons according to the Chamber of Commerce Act B.E.2509 (1966).

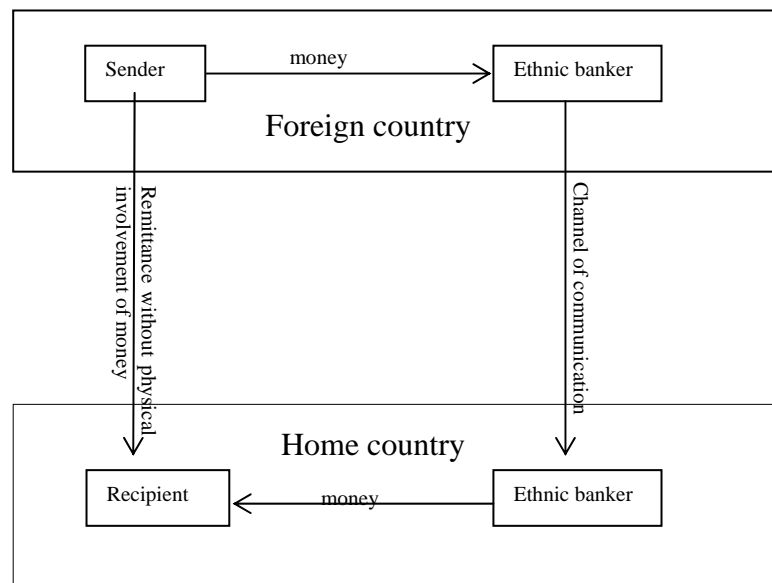
## 7. Other non-profit organizations

Any other non-profit organizations that are not incorporated for sharing benefits or income are as follows:

1. A labor union;
2. A labor union of the government enterprise;
3. A political party; and
4. An international organization.

### 2.2.2.3 Alternative remittance systems

The prominent characteristic common to the alternative remittance systems (ARSs) is strong cultural sense of trust to send money without crossing a border physically and entering the conventional banking system. Due to a powerful sense of community and familial identity – one of the pillars of each transaction – which underlines many of the Asian cultures, communication between a client and a banker or two is seldom recorded by a written contract. The following diagram shows the communication structure of the alternative remittance system.



**Figure 7:** Showing communication structure of alternative remittance systems

Thailand is a place where people use different types of alternative remittance system: Thailand-America, Thailand-Europe, Thailand-China, Thailand-Cambodia, Thailand-India, Thailand-Laos, Thailand-Myanmar, Thailand-Philippines, etc. It is hard to say that this method is used by only money launderers. These systems have provided legitimate remittance and banking services for the peoples of Asia for centuries some people have been used to it and just use the method for their convenience or others use the method without realizing that their money is used for money laundering. Alternative remittance systems function in an entirely legal capacity when they remit the legitimate earnings of foreign workers in Thailand. On the other hand the systems remain legal and are used in money laundering services for the criminal economy.

Some cases of informal remittances came to light some years ago (2001) involving huge amounts of remittances totaling billions of baht and some business firms. They became high profile cases. The main facts can be described briefly as follows:

- Companies involved
  - ❖ Ratanakosin International Ltd.
  - ❖ Tanasap Tawi Ltd.
  - ❖ Eastern Petro Power Ltd.
  
- Amounts remitted
  - ❖ Ratanakosin International Ltd. (\$37.81 million)
  - ❖ Tanasap Tawi Ltd. plus Eastern Petro Power Ltd. (THB 7,496.26million - \$198 million)
  
- Number of remittances (109 times)
- Number of people involved (20)
- Jurisdictions remitted (Hong Kong, USA and Singapore)

There are two popular methods of alternative remittance systems, Hawala and Hundi, in the countries of the Indian sub-continent. Hawala is a more international system and associated with criminal activities than Hundi that is a more regional system used to safeguard funds during cross-border travels. However, distinctions between the Hawala and Hundi systems are disparate and do not pervade the region. Immigrants and workers in Thailand use the alternative remittance system known as “poey kuan” – said to have extended the remittance process to include intermediaries. It may have adopted one or both of the aforementioned systems and adapted the banking methods to incorporate their traditions and expertise.

The point is that authorities in Thailand know both money launderers and laymen use this untraceable method but it may be difficult to get the evidence. Even though the system is registered, money launderers will be preferable to use the unregistered system and uneducated villagers may use unregistered system innocently. It would be better if authorities can create a system that separates the money launderers from the laymen using the alternative remittance system.

Regarding the alternative remittance system FATF Special Recommendation VI states:

*Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.*

Accordingly Thailand should take measures to ensure that the alternative remittance systems are registered in accordance with the FATF 40+9 Recommendations. There are no money laundering offenses using alternative remittance systems in the AMLO cases and the DSI cases, and a few research papers on the alternative remittance systems in Thailand. More researches should be conducted by the AMLO as an FIU.

#### 2.2.2.4 Cross-border transactions

In relation to cross-border transactions there are no appropriate measures consistent with the requirements of FATF Special Recommendation VII. Authorized money transfer agents should be made subject to the full range of AML-CFT obligations and the competent authorities should increase their efforts to suppress illegal money changing and remittance activity in the large informal sector in Thailand. There are neither existing laws, regulations nor other enforceable means regulating wire transfers nor cross-border instruments for the import of domestic currency. Those that are in place are not sufficient enough to effectively mitigate the known cross-border risks. The following is an example of a cross-border transaction-related case reported in the newspaper<sup>25</sup>.

*Justice Minister Charnchai Likhitjitta said the five Chinese entered Thailand at Suvarnabhumi airport on Nov 20. The first group, from Guangzhou, arrived about 5 pm and declared HK\$6.3 million in cash. Another group came from Hong Kong, arriving about 8 pm with a similarly large amount of cash. The total value was equivalent to about 60 million baht, he said. Authorities' suspicions were immediately aroused, with the arrival of the money coming hot on the heels of deposed prime minister Thaksin Shinawatra's call in an interview in Hong Kong last week for a government of national unity after the Dec 23 election. AMLO staff at the airport said the five Chinese could not explain what they planned to do with the money. They said they intended to invest in Thailand, but had not decided in what way. AMLO ran a background check and found they had no businesses in China, Hong Kong or Thailand. All five entered Thailand as tourists. AMLO could not seize the money, although it is empowered by the recently enacted Money Exchange Act to do so. The act prohibits foreigners from bringing in excessive amounts of cash, but does not specify the maximum amount.*

The most responsible agencies are the Customs Department, the Excise Department and the Revenue Department. The Customs Department<sup>26</sup> that operates as custodian of the entry and exit of goods to and from Thailand exchanges information on customs-related offenses – dealing with international trade of illicit commodities: tax evasion, commercial fraud, etc – with other agencies at both regional and international levels. In tax and duty evasion cases, the Revenue Department and Excise Department have the authority to carry out an administrative and preliminary investigation.

The Thai Customs Department has undertaken the use of the World Customs Organization's Harmonized Code for item identification and has recently introduced a computerized Electronic Data Interchange (EDI) system. The government has also undertaken measures to combat corruption in the port area, making moves against the paying of bribes to expedite the shipment of goods and in the reduction of 'red tape' in clearing goods for export, speeding up their movement.

<sup>25</sup> Thanida Tansubhapol. "B 60 m cash brought in through airport still here, says AMLO" (News Report), *the Bangkok Post*, (13 December 2007): p. 2.

<sup>26</sup> Laws and Regulations [http://www.thailand.com/exports/html/law\\_general\\_09.htm](http://www.thailand.com/exports/html/law_general_09.htm) [Read June 2007]

Regarding money laundering using the trade-based method, physical inspection programs for imports and exports have been carried out before the release of cargo. In order to identify high-risk goods the trade-related profiling system has been developed. Due to the increase of the trade volume, the Customs Department has reduced physical examination by using advanced technology, such as improving the customs profiling system, upgrading the responding units, allocating more resource persons to make the post-clearance audit and risk management. In order to be more effective, the customs procedures have been improved by introducing post-clearance audit instead of pre-clearance audit. The investigation of customs-related offenses, especially importing narcotics, illegal international trafficking of arms, ammunition and currency, has been carried out.

There are no declaration or disclosure requirements<sup>27</sup> for import/export of foreign currency as there are no restrictions in Thailand to import or export foreign currency (or bearer negotiable instruments). Regarding export of domestic currency (Thai baht), if the amount exceeds 50,000 baht when traveling to foreign countries or 500,000 baht when traveling to Cambodia, Laos, Malaysia, Myanmar and Vietnam, they must have permission from the officers according to item 2 of the Ministry of Finance Notification relating to Money Exchange Control.

If the Customs Department finds out that a large amount of cash has been brought into Thailand, it will report the aforesaid information to the AMLO, the Office of Narcotics Control Board, and the Office of National Intelligence Agency according to the Notification No. NR 0805/18010 dated 1 April 2548 (2005) issued by the Office of the National Security Council relating to control over the money exchange when a large amount is brought into the country.

## **2.3 Enforcement**

### **2.3.1 Administrative/Executive enforcement**

In order to strengthen the enforcement of combating money laundering and terrorist financing, first of all, regulatory agencies must compile and keep up-to-date lists of suspicious persons and organizations to develop comprehensive legislation. Secondly they must focus on how to ensure that they meet international standards. In addition, implementation of international standards needs full support from policy makers who need to thoroughly understand the purpose of AML-CFT regulations.

The Anti-Money Laundering Act was issued in 1999 and under which the Anti-Money Laundering Board (AMLB) consisting of 25 members was established for supervision and administrative enforcement (Please see Chapter IV, heading 3.2.7 – Anti-Money Laundering Board and its regulations). Monitoring and evaluating the effectiveness of the enforcement of the AMLA is one of the AMLB's responsibilities. The Anti-Money Laundering Office – headed by the Secretary-General of the AMLB – was also established and empowered (Please see Chapter IV, heading 3.2.9 – Anti-Money Laundering Office (AMLO) and its regulations) under the AMLA in order to perform

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<sup>27</sup> Under the Ministry of Finance's Notification, dated 6 December 2007 becoming effective in early 2008, a threshold of US \$20,000/- has been prescribed for import or export of foreign currency- either in bank note or coin – into or out of Thailand.

administrative functions in accordance with the resolutions of the AMLB and the Transaction Committee established under Section 32 of the AMLA (Please see Chapter IV, heading 3.2.8 – Transaction Committee).

## **2.3.2 Legal enforcement**

### **2.3.2.1 Legislation**

Law enforcement cooperation standards are articulated in the FATF 40 Recommendations, the three conventions mentioned above – the Vienna Convention, the Palermo Convention, and the Convention against FOT – and in the UN Resolutions which require States not only to take appropriate steps to cooperate with each other particularly under bilateral and multilateral agreements and arrangements to prevent and suppress terrorist acts but also to protect their nationals and other persons against the terrorist attacks and bring the perpetrators of such acts to justice and to prevent and suppress in their territories through all lawful means the preparation and financing of any act of terrorism.

Although Thailand adopted the Anti-Money Laundering Act B.E. 2542 (AMLA) containing measures against ML to be applied to eight predicate offenses, ratified the Vienna Convention (1988) on 1 August 2002 and proposed amendments for the enactment of eight additional predicate offenses, the predicate offenses are still deficient under international standards. On 29 September 2004, Thailand ratified the UN Convention against FOT and issued two Emergency Decrees (Please see Chapter IV, heading 3.2.1 – Predicate offenses) to enact measures related to terrorist financing on 11 August 2003, in accordance with the Thailand's 1997 Constitution. However, Thailand needs to ratify the six conventions of the Annex of the Convention against FOT. As mentioned above, Thailand has considered ratifying the Palermo Convention, amending the current legal provisions so as to be comprehensive enough to criminalize organized crimes effectively and efficiently. Ministerial regulations were made in response to the UN resolutions. Bilateral and multilateral instruments on AML-CFT related matters were also made so as to enhance international cooperation. Moreover, regarding the FATF 40+9 Recommendations, Thailand needs to refer to the IMF's Detailed Assessment Report in order to fix and adjust the implementation of the AML-CFT requirements in accordance with the international standards.

Regarding money laundering offenses, Sections 35, 36 and 38 of the AMLA (Please see Chapter IV, heading 3.2.8 – Transaction Committee) empower the Transaction Committee and the Secretary-General of the AMLO (1) to restrain the suspicious transactions related to ML offenses; (2) to issue a written inquiry or summon anyone to testify; and (3) to have access into a residence, place, or any transporting conveyance in order to search for the purpose of tracing, monitoring, seizing or attaching any asset or any evidence. Section 46 of the AMLA also empowers the Secretary-General (SG) of the AMLO or the competent official, designated in writing by the SG, to submit a petition to the Civil Court to issue a warrant to have access to and obtain information from the account, communication data, or computer files. Sections 48 – 59 deal with asset management, and Sections 60 – 66 deal with Penal Provisions.

The Special Investigation Act and the Narcotics Suppression Act provide competent

authorities with the authority to delay arrest and exercise discretion as to whether to commence a legal proceeding which allows them to waive arrest of suspected persons or seizure of money for the purpose of identifying persons involved in ML-FT activities for evidence gathering.

### 2.3.2.2 Investigations and prosecutions

The AML-CFT laws, in accordance with the recognized international standards, have a great impact on the ability of law enforcement to investigate and prosecute cases, the ability to share information with foreign authorities, and the ability of inter-agency officials to cooperate in their work in preventing and deterring ML-FT. The main agencies in Thailand, among others, in the law enforcement portion of the AML-CFT regime are the AMLO, the RTP, the ONCB, the DSI, the NCCC and public prosecutors.

With the adoption of the anti-money laundering measures, special investigative measures become necessary to be modified to be more effective, efficient and successful in the prevention and suppression of organized crimes as the Thailand Criminal Procedural Code 1934 is not subject to any specific provision on special investigation for serious crimes committed by organized crime syndicates. Accordingly, since 1999, law enforcement officials in Thailand have been empowered to apply the following special investigative measures<sup>28</sup>.

#### (a) *Access to information through communication and Electronic Technology:*

Although the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Section 37 provides legal protection to the right and freedom of communication there are three exceptions where officials are permitted to access information by employing communication and electronic technology for the purpose of obtaining necessary and vital evidence for criminal action. They are:

1. Keeping public peace and order;
2. Maintaining good public morals; and
3. Maintaining the security of the state.

#### ***Constitution Section 37***

*A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.*

Section 46 of the Anti-Money Laundering Act (1999) reinforces the Constitution.

#### ***AML Act Section 46***

*In the case where there is a reasonable ground to believe that any*

<sup>28</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. 20

*account of a financial institution's customer, communication device or equipment or computer is used or probably used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.*

*In the case of paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as it may think fit, provided that the permission on each occasion shall not be for the duration of more than ninety days.*

*Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall give cooperation for the implementation of this section.*

Section 25 of the Special Case Investigation Act, 2004 (SCIA), which has wider scope of enforcement than any other law, also states:

**SCIA Section 25**

*In case where there is a reasonable ground to believe that any other document or information sent by post, telegram, telephone, facsimile, computer, communication device or equipment or any information technology media has been or may be used to commit a Special Case offense, the Special Case Inquiry Official approved by the Director-General in writing may submit an ex parte application to the Chief Judge of the Criminal Court asking for his/her order to permit the Special Case Inquiry Official to obtain such information.*

*When granting permission under paragraph one, the Chief Judge of the Criminal Court shall consider the effect on individual rights or any other right in conjunction with the following reasons and necessities:*

- (1) There is a reasonable ground to believe that an offense of a Special Case is or will be committed;*
- (2) There is a reasonable ground to believe that an access to the information will result in getting the information of a Special Case offense; and*
- (3) There are no more appropriate or efficient methods.*

The Office of the Attorney General (OAG) is the principal agency responsible for handling criminal prosecution, providing legal advice to state agencies, representing state agencies in the matter of civil litigation in court and conducting international cooperation in criminal matters. The Attorney General (AG) has occasionally established special offices to handle economic crime cases. For instance, the AG set up the Department of Economic Crimes Litigation, the Department of Intellectual Property and International Trade Litigation, the Office of Money Laundering Control Litigation and the Department of Tax Litigation. Although the AG set up special offices to handle economic crime cases, the Thai public prosecutors still have no power in the investigation process. They have to wait for the cases from the police before taking further action.

The ONCB has obtained the AMLO's cooperation and coordination by receiving



disseminated financial intelligence that has been beneficial to the investigations. It has also performed joint investigations with the AMLO providing assistance to the AMLO especially in drug-related predicate offenses. Statistics for cases<sup>29</sup> examined by the ONCB are as follows:

**Table 13: Number of drug-related cases opened by the ONCB**

Year	Number of cases
2003	1838 cases
2004	1059 cases
2005	1238 cases
2006	1639 cases

The Table shows that 5774 drug-related cases were opened by the ONCB during four years (2003 -2006).

The Penal Code provides judicial authority for the RTP to conduct ML investigations as outlined in the following<sup>30</sup>

- (a) The RTP process for conducting ML investigation includes a preliminary investigation to determine if there are grounds to believe that the predicate offense is related to ML. If the evidence is enough to proceed with an ML case, the RTP would consider the matter for further investigation and then report the result to the AMLO (and the ONCB if the case is drug related).
- (b) The officer has the authority under a search warrant to search persons or places and to seize and freeze any evidence pertaining to the assets of the accused criminal. The officer must inform the AMLO immediately according to article 11 of the RTP Regulation on the Crime Operation Procedure Practice on Prevention and Suppression of Money Laundering B.E. 2544 (2001) dated 27 April 2001.
- (c) Furthermore, police officers who in the course of other investigations come across assets reasonably suspected to be related to ML must report to the AMLO immediately in accordance with the AMLA. In the case where the transaction is reasonably suspicious, the officer has to report it to the AMLO according to article 10 of the same RTP Regulation.

Statistics for cases<sup>31</sup> RTP submitted to the AMLO are as follows:

**Table 14: Number of cases RTP submitted to the AMLO**

Year	Number of cases
2003	640 cases
2004	464 cases
2005	441 cases
2006	335 cases

<sup>29</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.103

<sup>30</sup> *ibid.*: p.104, para 429

<sup>31</sup> *ibid.*: p.104

The above Table shows that 1880 cases were submitted by the RTP to the AMLO within four years (2003 – 2006).

According to the Special Case Investigation Act B.E. 2547 (2004), the DSI is responsible for crime prevention and suppression and for investigation of specific crimes, such as Financial and Banking Crimes, Intellectual Property Rights Crimes, Taxation crimes, Consumer Protection Environmental Crimes, Technology and Cyber or Computer Crimes, Corruption in Government Procurement, and other serious crimes that have a seriously negative effect on public peace and order, morale of the people, national security, international relations, and the economic or financial system.

The DSI has access to a wide range of special powers<sup>32</sup> under the Special Case Investigation Act to:

- obtain information from all communication (including wiretapping) with permission from the court;
- search without warrant (after the search, report to the court);
- utilize undercover techniques including back stopping, reverse sting, or other approaches in an undercover capacity to penetrate organizations involved in crime;
- have special funding for investigations;
- appoint any government officials or order other agencies to supply resources to assist or work for DSI during these investigations; and
- allow the public prosecutor to participate in investigations from the beginning of special cases to advise on investigations or assist with court orders.

And it is required to establish that a case meets criteria in the Special Case Investigation Act. The DSI launches an investigation with the purpose to meet the criteria of the Special Case Investigation Act. If these criteria are met, the DSI must seek approval from the Board of Special Case (BSC) before it can utilize the investigation powers of that Act. The BSC is chaired by the Prime Minister or a competent authority designated by the Prime Minister and comprised of numerous officials from various Ministries, the Royal Thai Police, the Bank of Thailand, the Office of the Attorney General, and the President of Law Society and other persons who have expertise and knowledge in each field of economics, banking and finance and information technology or law. Most ML-related cases take 6 months to complete.

The government and the parliament intend to entrust the DSI with the power to investigate serious, complicated and sophisticated crimes and particularly economic crimes or white collar crimes, transnational and organized crimes; while the police have the power to maintain peace and social order and have the power to investigate street crimes. Since the DSI defines money laundering offense as a special case in Section 21, the DSI can conduct investigations relating to special criminal cases under the 27 pieces of legislation<sup>33</sup> which cover all the eight ML predicate offenses.

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<sup>32</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.107, para. 449

<sup>33</sup> Acts :

1. Law on Loan Amounting to Public Cheating and Fraud
2. Competition Act
3. Commercial Banking Act

The DSI works jointly with other law enforcement agencies including the RTP, the ONCB, the NCCC and the AMLO. The DSI is often requested by these agencies to undertake joint investigations so that the provisions of the Special Case Investigation Act can be used in these cases. The DSI, under the authority of the Act, can also request any government agency to participate in their ongoing investigations and the agency must provide assistance.

According to the following Table, from 2004 to 2007, 302 special cases have been investigated under the Special Case Investigation Act. The number of cases completed is 171, and 131 cases are still under investigation.

**Table 15: Number of cases investigated under the Special Case Investigation Act**

Year	Special Cases	Cases completed	Cases under investigation
2004	31	29	2
2005	89	70	19
2006	170	71	99
2007	12	1	11
Total	302	171	131

The NCCC is designated to conduct corruption investigations including ML offenses relating to corruption offenses. The IMF's Detailed Assessment Report on Thailand states<sup>34</sup> that the NCCC receives about 2,000 cases per year through referrals from other law enforcement agencies (LEAs). They investigate 1,200 cases of the received cases on average and approximately 10% of which end in prosecution. No ML-

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4. Law on the Finance Business Securities Business, and Credit Foncier Business
  5. Chain Loan Control Act
  6. Exchange Control Act
  7. Law on Government Procurement Fraud
  8. Act for the Protection of Layout-Designs of Integrated Circuits
  9. Consumer Protection Act
  10. Trademark Act
  11. Currency Act
  12. Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act
  13. Interest on Loan by the Financial Institution Act
  14. Bank of Thailand Act
  15. Public Company Act
  16. Anti-Money Laundering Act
  17. The Industrial Product Standard Act
  18. Copyright Act
  19. Board of Investment Commission Act
  20. Enhancement and Conservation of National Environmental Quality Act
  21. Patent Act
  22. Security and Exchange Commission Act

Ministerial Regulations:

23. Revenue Code
24. Customs Act
25. Excise Tax Act
26. Liquor Act
27. Tobacco Act

<sup>34</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.102 – 103, paras. 417 – 421

related investigations or asset seizures have been pursued by the NCCC and no cases have been referred to the AMLO for pursuing under the civil provision of the AMLA.

The SEC is empowered to examine unfair securities trading practices such as trading securities by using inside information related to the facts of securities to the public, etc. Such cases are referred to the police at the ECID (Economic Crime Investigation Division) and the Office of the AG respectively. In real practice, most securities matters are referred to the SEC directly from other countries and the SEC asks for assistance by contacting directly foreign regulators rather than via the central authority

It is necessary to have effective and efficient cooperation between the BOT and the AMLO. The BOT examiners are appointed to be competent officials under the AMLA so that they are effectively able to exercise the relevant supervisory powers of the BOT and the investigative powers of the AMLO. According to the IMF's Detailed Assessment Report<sup>35</sup>, not only increased communication between the BOT and law enforcement agencies is needed but also early coordination of cases among the AMLO, other law enforcement agencies, and the prosecutors' office should be encouraged and enhanced. The AMLO is encouraged to improve its case management system and the tracking of evidence.

***Law enforcement issues***

- *Investigation and prosecution efforts must be enhanced among LEAs, the AMLO and the OAG so as to increase the number of ML prosecutions and convictions.*
- *Thailand should develop an effective seized asset management system to track seized property and assets from seizure to forfeiture.*
- *Thailand should take measures to detect or monitor the physical cross-border transportation of cash in currencies other than Thailand's baht and the transportation of bearer negotiable instruments.*
- *There is a need for increased communication between the BOT and LEAs.*
- *Early coordination of cases among the AMLO, other LEAs, and the prosecutors' office should be encouraged and enhanced.*
- *The AMLO is encouraged to improve its case management system and the tracking of evidence.*

Domestic cooperation between regulatory, supervisory and law enforcement authorities must be at the heart of an effective AML-CFT regime, and international cooperation in the form of information exchange, asset freezing, taking testimony and obtaining documents is essential to a successful defense against money laundering and terrorist financing.

**2.3.2.3 Predicate offence-based sanctions**

A test case involving asset forfeiture in an ML-related case was once brought before the Constitution Court to rule if asset seizure procedures under the AMLA violate the provisions of the Constitution protecting the rights and liberties of persons against retroactive application of criminal law and criminal punishment. This test case, in the context of sanctions under the AMLA, can be regarded as a case of predicate offence-based sanction (PO-based sanction). The following is the reproduced text of the test case.

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<sup>35</sup> *ibid.*: p.42, para. 107

***Conclusion of Consideration No. 40-41/2546 Given on the 16<sup>th</sup> Date of October 2546***

***Subject: The Civil Court has submitted two cases to the Constitutional Court pursuant to section 264 of the Constitution for determination whether the assets seizure procedure under Chapter 6 of Anti-Money Laundering Act of 2542 is violative of sections 29, 32, 48 and 235 of the Constitution.***

**Summary of the Facts**

*In accordance with section 264 of the Constitution, the Civil Court has submitted for consideration on appeal the case of Mr. Michael Charles Mescal and associates forming a group of eight in Civil Case black number ML.3/2544 and the case of Mrs. Tayoy (alias Joe or Joy) and associates forming a group of five in Civil Case black number ML.5/2544 to determine whether the assets seizure procedure under Chapter 6 of Anti-Money Laundering Act of 2542 is violative of sections 29, 32, 48 and 235 of the Constitution.*

**Issues to Consider and Conclusion**

*Because of the similarity of the legal challenges presented in both cases, the Constitutional Court consolidated these two appeals to address the following issues:*

***Issue 1: Do the procedures set forth in sections 48 through 59 under Chapter 6 of Anti-Money Laundering Act 2542 violate section 32 of the Constitution?***

*The Constitution Court concludes that section 32 of the Constitution provides for the general principle protecting the rights and liberties of persons against retroactive application of criminal law and criminal punishment unless he or she has committed an act which constituted an offense at the time it was committed. Additionally, the penalty imposed shall not exceed the penalty provided by the law in force at the time the offense was committed. The underlying rationale of the Anti-Money Laundering Act as stated in its accompanying principle is to combat crime and provide measures to deter the economic motive for committing financial crimes. In furtherance of this objective, the law provides for two separate enforcement schemes. One is the creation of the criminal offense of money laundering for which an offender can be criminally prosecuted. The other remedy is to bring a civil proceeding for forfeiture against the asset involved in the offense of money laundering. A civil action of forfeiture provides for a shifting burden of proof and contains different assumptions than those contained in the criminal measure and does not amount to a criminal prosecution of an offender. A civil forfeiture action is against property and is not a criminal prosecution against a person. Therefore, a civil forfeiture action does not violate or conflict with section 32 of the Constitution at all.*

***Issue 2: Do the procedures set forth in sections 48 through 59 under Chapter 6 of Anti-Money Laundering Act 2542 violate sections 29 and 48 of the Constitution?***

*The Constitution Court concludes that section 29 of the Constitution protects the rights and liberties from infringement except by virtue of the provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent necessary. Section 48 of the Constitution protects the right of ownership of property from restriction except as provided by law. The deprivation of*

*property rights resulting from the application of Chapter 6 of Anti-Money Laundering Act, sections 48 through 59, are lawful measures implemented by the Government necessary to protect the security of the public. Therefore, the procedures set forth in sections 48 through section 59 of the Anti-Money Laundering Act do not violate sections 29 and section 48 of the Constitution.*

**Issue 3:** *Does section 59 of Anti-Money Laundering Act 2542 violate section 235 of the Constitution ?*

*The Constitution Court concludes that the Anti-Money Laundering Act confers jurisdiction upon the Civil Court to adjudicate civil forfeiture proceedings and further provides that the Civil Procedure Code shall control in such proceedings. The Civil Court, which is established in accordance with section 19 of the Establishment of the Court of Justice Act 2543, is vested with jurisdiction over all civil cases and cases not specified to be under any other Court of Justice. The specific measures against assets involved in an offense set forth in Chapter 6 are not criminal measures against an individual. Therefore, the court proceedings conducted by the Civil Court under the Anti-Money Laundering Act are consistent with the Establishment of the Court of Justice Act and do not violate or conflict with section 235 of the Constitution at all.*

*For the reasons set forth above, the Judges of the Constitution Court unanimously decide that the provisions under Chapter 6, sections 48 through 59, of Anti-Money Laundering Act 2542 do not violate or conflict with sections 29, 32, 48 and section 235 of the Constitution.*

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Office of Constitution Court  
16 October 2546 (2003)

#### **2.3.2.4 Regulatory sanctions**

Effective implementation for all preventive measures partly depends on an effective application of sanctions. An effective application of sanctions requires governments to ensure that their financial sectors remain transparent, accountable, and well protected. This can be achieved only through vigilance, acuity and cooperation. Furthermore individuals in both public entities and private entities have to carry out their duties according to the AML-CFT legislation and keep the confidential information without letting other people know. Sections 62 and 63 of the AMLA deal with regulatory sanctions for legal entities; Sections 64 and 65 deal with regulatory sanctions for both legal and natural persons; and Section 66 for any individual in both public entities and private entities.

#### **2.3.2.5 Asset seizure**

Forfeiture provisions in the Thai Penal Code are applicable to any offense including money laundering offenses.

##### **Section 32**

*Any property as provided by the law that any person makes or possesses to be an offense shall be forfeited wholly, whether it belongs to the offender and has the person inflicted with the punishment according to the judgment or not.*

**Section 33**

*For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:*

- (1) a property used or possessed for use in the commission of an offense by a person; or*
- (2) a property acquired by a person through the commission of an offense, unless such property belongs to the other person who does not connive at the commission of the offense.*

Regarding corruption, Section 34 of the Penal Code deals with the forfeiture of property.

**Section 34**

*All properties:*

- (1) which have been given under Section 143, Section 144, Section 149, Section 150, Section 167, Section 201 or Section 202; or*
- (2) which have been given in order to induce a person to commit an offense, or as a reward to a person for committing an offense,*

*shall be forfeited wholly, unless those properties belong to the other person who does not connive at the commission of the offense.*

**Section 143**

*Whoever demands, accepts or agrees to accept a property or any other benefit for himself or the other person as a return for inducing or having induced, by dishonest or unlawful means, or by using his influence, any official, member of the State Legislative Assembly, member of the Changvad Assembly or member of the Municipal Assembly to exercise or not to exercise any of his functions, which is advantageous to any person, shall be punished with imprisonment not exceeding five years or fine not exceeding ten thousand baht, or both.*

**Section 144**

*Whoever gives, offers or agrees to give a property or any other benefit to any official, member of the State Legislative Assembly in order to induce such person to do or not to do any act, or to delay the doing of any act, which is contrary to his functions, shall be punished with imprisonment not exceeding five years or fine not exceeding ten thousand baht, or both.*

**Section 149**

*Whoever, being an official, member of the State Legislative Assembly, member of the Changvad Assembly or a member of the Municipal Assembly, wrongfully demands, accepts or agrees to accept for himself or the other person a property or any other benefit for exercising or not exercising any of his functions, whether such exercise or not exercise of his functions is wrongful or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht, or death.*

**Section 150**

*Whoever, being an official, exercises or does not exercise any of his functions in consideration of a property or any other benefit which he has demanded, accepted or agreed to accept before being appointed as official in such post, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht.*

**Section 167**

*Whoever gives, offers or agrees to give a property or any other benefit to an official in a judicial post, Public Prosecutor, official conducting cases or inquiry official in order to induce him wrongfully to do, or not to do an act or to delay the doing of any act, shall be punished with imprisonment not exceeding seven years and fine not exceeding fourteen thousand baht.*

**Section 201**

*Whoever, being an official in a judicial post, a Public Prosecutor, an official conducting cases or an inquiry official, wrongfully demands, accepts or agrees to accept a property or any other benefit for himself or the other person in order to exercise or not to exercise any of his functions, whether such exercise or non-exercise is wrongful to his duty or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand baht, or death,.*

**Section 202**

*Whoever, being an official in a judicial post, a Public Prosecutor, an official conducting cases or an inquiry official, exercises or does not exercise any of his functions in consideration of a property or any other benefit which he has demanded, accepted or agreed to accept before his appointment to such post, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand baht, or death.*

The AMLO, the ONCB, the DSI and the RTP, among others, have the authority to identify, freeze, and/or forfeit ML-FT related assets.

The following Table shows the ONCB statistics relating to criminal ML cases – relating to narcotics only – and asset seizure conducted by the ONCB<sup>36</sup>. 95 % of the cases undertaken are referrals or invitations to participate in ongoing drug investigations being conducted by the RTP. The ONCB has an investigative unit that focuses entirely on seizing and forfeiture of assets relating to narcotic investigations and the RTP has a number of drug units who investigate the narcotics cases but also are responsible to identify and seize assets that are believed to be proceeds of crime associated with these offences.

According to the Table, from 1992 till 2007 January, there were 9,141 examined cases relating to criminal money laundering cases and the value of asset seizure is THB 7,316.2 million that is equivalent to US\$ 193.1. There are four types of assets: cash, bank deposit, property and real estate. The increase of not only the number of examined cases but also the value of asset seizure during those years can be seen in the Table.

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<sup>36</sup> ONCB's answers to DAQ for IMF's Detailed Assessment Report on Thailand, 2007.



**Table 16 : Statistics relating to criminal ML cases and asset seizure**

Year	Examined (Case)	Seized (million in baht)	Seized (million in dollar)	Type of Assets (million in baht)			
				Cash	Deposit Bank	Property	Real Estate
1992	4	11.4	0.3	1.8	3.7	1.1	4.8
1993	38	84.2	2.2	40.1	26.9	6	11.2
1994	44	115.9	3.1	2.6	57.6	14.2	41.5
1995	57	139.3	3.7	36.2	47.4	17.6	38.1
1996	92	107.0	2.8	23	41.2	17.6	25.2
1997	188	236.0	6.2	35.8	48.2	134	18
1998	284	174.3	4.6	70.7	60.1	22.2	21.3
1999	257	178.1	4.7	39.7	86.2	31.8	20.4
2000	449	247.0	6.5	44.3	100.3	52.1	50.3
2001	811	487.2	12.9	106.2	134.3	145.9	100.8
2002	1,042	709.6	18.7	123.6	157.4	213.9	214.7
2003	1,838	2,316.9	61.2	265.3	357.5	863	831.1
2004	1,059	683.3	18.0	128.5	114.1	264.7	176.0
2005	1,238	857.9	22.6	102.2	152.1	346.9	256.7
2006	1,639	943.1	24.9	97.1	209.0	304.4	332.6
2007 (Jan)	101	25.0	0.7	5.7	5.0	13.0	1.3
Total	9,141	7,316.2	193.1	1,122.8	1,601.0	2,448.4	2,144.0

According to the data given by the AMLO and the ONCB in the DAQ, the following Table shows the total **seizures** by the AMLO and the ONCB over the past six years. The value of the total seizure is THB 10, 246 million equivalent to US\$ 268 million where the value of the AMLO' seizure is THB 4,181million and that of the ONCB is THB 6,245 million.

**Table 17 : Seizures by AMLO and ONCB**

Year	AMLO		ONCB		Total	
	million in baht	million in dollar	million in baht	million in dollar	million in baht	million in dollar
2000	23		247		270	7
2001	752		487		1239	33
2002	682		710		1392	37
2003	944		2317		3260	86
2004	1410		683		2094	55
2005	370		858		1228	32
2006	?????		943		943	25
Total	4181	110	6245	158	10246	268

The AMLO's answer to the DAQ contains the following Table that shows the assets seized and forfeited under the AMLA since 2000.

**Table 18 : Assets seized and forfeited by AMLO**

Year	No. of STRs	Value of STRs Baht million	Value of STRs \$ million	Assets Seized Baht million	Assets Seized \$ million	Prosecuted ML Cases	ML Convictions	Property Forfeited Baht million	Property Forfeited \$ million
2000	290			271	7				
2001	16,489			1,239	33	9	7	9.3	0.3
2002	46,221	171,251	4,521	1,391	37	4	2	31.3	0.8
2003	32,338	120,013	3,168	3,260	86	10	7	112.1	2.9
2004	38,935	135,251	3,571	2,094	55	10	3	327.7	8.7
2005	39,175	156,908	4,152	1,228	32	12	0	505.8	13.4
2006	39,395	?	?	943	25	3	0	163.8*	4.3
TOTAL	212,843	583,423	18,218	10,246	268	48	19	1,150	30.4

In the context of the above-mentioned Table, the AMLO examined transactions associated with the commission of offenses and reported to the TC for its order to seize or freeze assets involved in the commission of offenses or to revoke its earlier orders under Section 48 of the AMLA. These can be grouped according to the eight predicate offenses.

The following Table shows statistics for the 5-year period – 1 January 2002 to 31 December 2006. The AMLO, under the AMLA, investigated 1108 cases from which it seized an estimated total value of assets of 6,416,439,230 baht (\$ 169 million). The following Table shows the AMLO's statistics on assets seizure (AMLO Table A), forfeitures and ongoing cases from 1 January 2002 to 31 December 2006.

Table 19 : AMLO's statistics on assets seizure

Sr. No.	Type and Status of Case and Main Predicate Offenses Within Each Category*	2002		2003		2004		2005		2006		Total 2002-2006	
		No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)	No. of cases	Est Value (Baht m)
<b>1</b>	<b>Civil Court ordered forfeiture</b>	<b>15</b>	<b>31.1</b>	<b>49</b>	<b>109.1</b>	<b>101</b>	<b>326.9</b>	<b>94</b>	<b>505.6</b>	<b>59</b>	<b>306.9</b>	<b>318</b>	<b>1,279.8</b>
	Narcotic	15	31.1	48	108.1	100	319.7	87	447.2	58	279.2		
<b>2</b>	<b>Case dismissed</b>			<b>1</b>	<b>1.6</b>	<b>4</b>	<b>29.3</b>	<b>3</b>	<b>5.6</b>	<b>6</b>	<b>307.0</b>	<b>14</b>	<b>343.5</b>
	Narcotic					3	3.6	2	2.2	5	301.2		
	Customs			1	1.6	1	25.6			1	5.8		
<b>3</b>	<b>Under Court proceedings</b>	<b>71</b>	<b>834.5</b>	<b>129</b>	<b>1,843.9</b>	<b>134</b>	<b>2,118.0</b>	<b>146</b>	<b>1,892.6</b>	<b>184</b>	<b>1,649.6</b>	<b>664</b>	<b>8,338.7</b>
	Narcotic	66	825.7	120	1,755.6	118	1,738.9	125	1,439.7	145	1,000.9		
	Malfeasance			1	9.6	3	25.1	4	36.2	10	205.5		
	Customs	3	6.6	4	37.8	4	261.0	3	264.1	2	258.2		
<b>4</b>	<b>With prosecutor</b>					<b>7</b>	<b>7.0</b>	<b>8</b>	<b>64.2</b>	<b>7</b>	<b>5.4</b>	<b>22</b>	<b>76.5</b>
<b>5</b>	<b>Under investigation and evidence gathering</b>					<b>13</b>	<b>38.4</b>	<b>18</b>	<b>52.3</b>	<b>9</b>	<b>145.7</b>	<b>40</b>	<b>236.4</b>
	Narcotic					12	8.4	15	18.6	8	20.9		
	Malfeasance					0		2	30.8	1	105.0		
<b>6</b>	<b>Forwarded by TC - AG did not forward to court</b>	<b>4</b>	<b>10.8</b>			<b>1</b>	<b>0.3</b>	<b>0</b>		<b>0</b>		<b>5</b>	<b>11.2</b>
	Narcotic	4	10.8	0	0.00	1	0.3						
<b>7</b>	<b>Not prosecuted</b>	<b>10</b>	<b>48.4</b>	<b>7</b>	<b>9.1</b>	<b>10</b>	<b>7.2</b>	<b>3</b>	<b>0.4</b>	<b>2</b>	<b>0.1</b>	<b>32</b>	<b>65.2</b>
	Narcotic	9	20.4	5	1.2	9	6.3	3	0.4	2	0.1		
	Malfeasance	1	28.1	0		1	0.9	0		0	0		
<b>8</b>	<b>Passed to other agencies</b>	<b>2</b>	<b>17.0</b>	<b>1</b>	<b>0.9</b>	<b>4</b>	<b>397.9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>415.9</b>
	Fraud	0	0.00	1	0.9	4	397.9	0	0	0	0		
<b>9</b>	<b>Sent for rights protection process</b>	<b>0</b>		<b>2</b>	<b>11.9</b>	<b>3</b>	<b>26.8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0.1</b>	<b>6</b>	<b>38.8</b>
	<b>Grand total</b>	<b>102</b>	<b>941.9</b>	<b>189</b>	<b>1,976.5</b>	<b>277</b>	<b>2,951.9</b>	<b>272</b>	<b>2,520.7</b>	<b>268</b>	<b>2,414.9</b>	<b>1108</b>	<b>10,806.0</b>

\* The predicate offenses listed under each category reflect the main one(s) contributing to the total for each category. Note that the total for each category is greater than what is disclosed by the selected predicate offenses.

The IMF's Detailed Assessment Report suggests that Thailand should develop an effective seized asset management system to track seized property and assets from seizure to forfeiture.

Regarding ML predicate offenses it states as follows:

*Other serious predicate offenses such as corruption, fraud or other economic crimes have been neglected from an ML investigation perspective. Despite having the legal authorities to launch ML investigations relating to other predicate offenses, authorities admitted that they are reluctant to do so and rely on the AMLO to undertake the financial aspect of these investigations when the case is not drug related. Since the AMLO cannot pursue cases criminally, this means the seven other predicate offenses are very seldom pursued criminally by the predicate investigating agency. This is supported by the lack of or limited number of ML cases that have been provided by those agencies<sup>37</sup>.*

The AMLO, the DSI and the Royal Thai Police have the authority to identify, freeze, and/or forfeit ML-FT related assets.

## **2.4 National and international cooperation**

National cooperation and coordination are the foundation of international cooperation. Coordination and cooperation between national authorities and financial institutions are essential to apply the AML-CFT requirements to banks, insurance companies, securities firms, lawyers and other non-financial businesses and professions covered by the FATF 40+9 Recommendations. Mechanisms for national cooperation and coordination must be in place so as to enable policy makers, the FIU, law enforcement and supervisors, and other competent authorities to cooperate and coordinate domestically with each other concerning the development in implementation of policies and activities to combat ML and FT. Consequently, cooperation among domestic AML-CFT stakeholders and with their international counterparts can be promoted.

### **2.4.1 National coordination and cooperation**

The AMLB was set up and Section 25 (Please see Chapter IV, heading 3.2.7 – Anti-Money Laundering Board and its regulations) of the AMLA empowers the AMLB (1) to propose to the Cabinet measures for the control of money laundering; (2) to promote public cooperation in connection with the giving of information for the combat against ML and;(3) to monitor and evaluate the execution of the AMLA.

In order to improve the effectiveness of supervision, the Financial Institutions Policy Board was established mainly to formulate and oversee the implementation of the FIs and SFIs supervisory policies. The members of the Board consist of the Governor of the BOT as chairman and the representatives from agencies concerned.<sup>38</sup>

<sup>37</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.111, para. 480

<sup>38</sup> ibid.: p.251, para. 1201

The National Coordination Center for Combating Terrorism and Transnational Crime (NCC-CTTC) was set up under the announcement of the Office of the Prime Minister No. 39/2547 dated 27 February 2004 with the following authority:

1. To coordinate and designate priority in information gathering concerned with international terrorism and transnational crime within the country and abroad.
2. To coordinate and set up a network for preventing and solving the problems of terrorism and transnational crime.
3. To coordinate and reconsider, make assessment of adequacy of measures and action plans of related agencies.
4. To coordinate in supplementary support for skill development and material support among the government agencies concerning foreign affairs.
5. To supervise actions in resolving the problems of international terrorism and transnational crime.
6. To invite government agencies concerned to consider necessary future operational plans.

The Committee on the Prevention and Solution of Transnational Crime, set up since February 2003 by the National Security Council (NSC), issued the Notification No.1/2547, dated 14 July 2004, establishing the Board of Subcommittee on the Prevention and Solution of Transnational Crime to implement the NCC-CTTC's obligations. As of 20 August 2006, the Board is composed of 27 members representing a wide range of security-related agencies.

On the other hand the IMF's Detailed Assessment Report states<sup>39</sup>:

*During interviews conducted with the LEAs or agencies who have representation on the AMLB, it was evident that, despite these organizations being involved in the AMLB, many of the agencies had made minimal commitment to actually investigate ML or TF offenses even though these responsibilities clearly fell within their mandate. This raises concerns as to the effectiveness of the AMLB as an instrumental body determining "national priorities" for AML-CFT. Only the ONCB for drug cases and the AMLO have dedicated units to investigate ML or TF-related cases which is confirmed by the lack of ML prosecutions and convictions for non drug-related cases.*

The AMLO has coordinated with other related agencies, such as, the ONCB, the RTP in the fight against drugs and the NCCC in investigation of government corruption cases. It has signed memoranda of understanding with the following agencies.

- A memorandum of understanding with the National Counter Corruption Commission to support the operations of NCCC was signed on 22 September 2004.
- An operational and integrated budget plan on the prevention and solution of the drug problem was drawn up with ONCB.

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<sup>39</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.250, para. 1200

- An operational and integrated budget plan on the prevention and solution of the human trafficking problem was drawn up with the Ministry of Social Development and Human Security.

In order to reinforce the cooperation with the public, the AMLO has initiated 2 major projects.

- The AMLO Informant Project began operation in 2003 with the objective of communicating and networking with the public in combating money laundering and gathering information and clues from AMLO informants for investigation and data analysis, leading to further investigation and prosecution especially in crime involving drugs, corruption and influential persons, in line with the government policy. By 31 December 2004, 70,968 people had joined the project.
- Project to establish a national public working committee to promote and support the prevention and suppression of money laundering. This project was approved by the Minister of Justice to begin operation in the 2005 Financial Year. The project complies with the 1997 Constitution of the Kingdom of Thailand and 1999 Regulations of the Office of the Prime Minister on Good Governance. These call for efficient government services to respond to the needs of the people by emphasizing the benefit to the public, streamlining procedures and increasing the public access to information.

The objectives of the project are:

1. To support and promote public participation in AMLO's work by giving advice and recommendations on policy-making for the prevention and suppression of money laundering.
2. To follow up on the work of AMLO for the national level public working committee.
3. To establish or improve the efficiency of work systems in accordance with the advice and recommendations on policy-making of the national level public working committee to respond, to the maximum extent possible, to the needs of the people.

The BOT and other regulatory agencies work in close cooperation to exchange supervisory information and the BOT regularly exchanges knowledge, experience and material information with relevant foreign supervisory authorities as well. The AMLO uses Information Technology (IT) for receiving reports and encourages reporting entities to file reports electronically.

#### **2.4.2 International cooperation**

Central Authorities for international cooperation are:

- (1) Ministry of Foreign Affairs under the Extradition Act, 1929
- (2) Office of the Attorney General under the Act on Mutual Assistance in

- Criminal Matters, 1992
- (3) Office of the Attorney General under the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional AMLA treaty)

Note: AMLO is the direct contact point under its Memoranda of Understanding with foreign FIUs.

The Cabinet passed a resolution on 12 February 2002 approving a Model Memorandum of Understanding Concerning Cooperation in the Exchange of Financial Intelligence Related to Money Laundering and authorized the Secretary-General of the Anti-Money Laundering Office to sign memoranda with Financial Intelligence Units of the Egmont Group member countries.

Exchange of money laundering information with other countries is mostly conducted through the AMLO since it is responsible for collecting and disseminating financial intelligence with foreign FIUs. As part of international cooperation Thailand's AMLO received 347 cases from foreign counterparts and requested 351 cases to foreign counterparts from 2003 to 2006 according to AMLO Table C (Please see data attachment 9 (C) provided to the IMF for DAQ. The numbers of cases responded by both sides are not indicated in the Table C. The following Table shows the exchange of information with foreign counterpart FIUs from 2003 to 2006.

**Table 20 : Exchange of Information**

<b>Fiscal year</b>	<b>Received cases from foreign counterparts</b>	<b>Requested cases to foreign counterparts</b>
2003	43	49
2004	114	117
2005	95	96
2006	95	89
Total	347	351

The above table shows that Thailand requested 351 cases to foreign counterparts for assistance and received 347 cases from foreign counterparts within four years.

Under the ASEM Anti-Money Laundering Project funded by the UK and the European Commission, a research study was assigned to the AMLO as part of a project to build capacity to combat money laundering in Asian countries which are members of the forum of Asian and European countries. In 2004, the ASEM project arranged a training course in financial investigations, in which 30 trainees participated. This research project is known as "Research Project Two", under which an exchange database called "JAEME" (Joint Asia-Europe Money Laundering Data Exchange Project) was set up in mid-2005 and has since been in operation. This center's function is to process confidentially exchange of financial intelligence information among member FIUs with a view to sharing case studies and identifying linkages between suspected criminals in Asia and Europe stemming from the analysis of case studies.

The AMLO has become a member of the APG since April 2001 and it joined the Egmont Group in June 2001 and has become a member since. Thailand is a member of the ASEM, the APEC and the ASEAN. As Thailand is a member of the international community, it has legal obligations to honor any legal commitment it

makes in relation to international conventions, UN resolutions, bilateral and multilateral treaties, international standards and guidelines of international organizations. While treaty obligations and UN Security Council resolutions are of mandatory nature, international standards and guidelines may not impose legal obligations to comply with. And yet, once any commitment is made, it becomes a duty to honor it.

Thailand's international obligations in relation to ML and FT derive from its being a State party to the relevant international conventions and in the case of the FATF Recommendations, it has voluntarily undertaken to meet the standards set out therein. Now that the UNSC by its Resolution No. 1617, dated 29 July 2005, has strongly urged all member States to implement the FATF 40+9 Recommendations on ML and FT, Thailand's international obligations have become more pronounced.

Thailand's mechanism of international cooperation is composed of the following components.

(a) Legal instruments

- (i) The Extradition Act, 1929
- (ii) Bilateral treaties on extradition process
- (iii) Act on Mutual Assistance in Criminal Matters, 1992
- (iv) Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional MLA treaty)
- (v) Bilateral treaties on mutual assistance in criminal matters
- (vi) Memoranda of Understanding on exchange of financial intelligence relating to money laundering
- (vii) United Nations conventions
- (viii) United Nations Security Council resolutions
- (ix) Recommendations and guidelines of international organizations

(b) Central Authority

- (i) Ministry of Foreign Affairs under the Extradition Act, 1929
- (ii) Office of the Attorney General under the Act on Mutual Assistance in Criminal Matters, 1992
- (iii) Office of the Attorney General under the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 (ASEAN regional MLA treaty)

Note: AMLO is the direct contact point under its Memoranda of Understanding with foreign FIUs.

(c) Enforcement

- (i) Assistance in locating, identifying, freezing, seizing and confiscating the proceeds and instrumentalities of crime
- (ii) Extradition of offenders
- (iii) Exchange of information on criminal matters
- (iv) Establishment of joint investigation
- (v) Exchange of intelligence information on money laundering

#### **2.4.2.1 Cooperation in mutual legal assistance**

In general, Thailand provides mutual legal assistance in criminal matters on the basis



of the Act on Mutual Assistance in Criminal Matters 1992 and bilateral or multilateral treaties on mutual assistance in criminal matters.

According to the Act on Mutual Assistance in Criminal Matters 1992, the Attorney General or the person designated by him is the Central Authority of Thailand (Section 6). One main function of the Central Authority is to consider and determine whether to provide assistance to a requesting State; and, whether to seek assistance from a foreign government. The processing unit of all the requests for the Central Authority is the International Affairs Department, Office of the Attorney General.

The aim of the Act is to cooperate with and to assist other countries in fighting international and transnational crimes. Thailand has tried to assist the world community to the best of the country's ability within the limit of the law.

The following are the important aspects of the Act for facilitating and expediting the process of considering a request for assistance:

1. Thailand may provide assistance to a country that has no mutual assistance treaty with Thailand, but the requesting State has to state clearly in the request for assistance that it commits to assist Thailand in a similar manner when requested (Section 9-1).
2. The act which is the cause of the request must be an offense punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty which otherwise specifies (Section 9-2).
3. The State which has a mutual assistance treaty with Thailand shall address its request for assistance to the Central Authority. The State with no mutual assistance treaty with Thailand shall submit the request through diplomatic channels (Section 10).
4. If the Central Authority considers the request eligible for assistance and has gone through the correct procedure, the request then will be transmitted to the Competent Authority, i.e., the Commissioner of the Royal Thai Police, the Director-General of the Criminal Litigation, the Office of the Attorney General, the Director-General of the Corrections Department, depending on the nature of the request (Section 12).
5. If the request is not made in Thai or English language, it shall be accompanied by the authenticated Thai or English translation (Article 5 of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1994).
6. If a foreign State requests Thailand to forfeit property in Thailand, the property may be forfeited by the judgment of the Court if it has been forfeited by the final judgment of a foreign Court and it is forfeitable under Thai laws (Section 33). The forfeited property shall become the property of Thailand, or the Court may pass the judgment for it to be rendered useless or to be destroyed (Section 35).

7. Assistance may be refused if its execution would affect national sovereignty or security, or other crucial public interests, related to a political offense or related to a military offense (Section 9).
8. Moreover, the assistance may be postponed if its execution would interfere with the inquiry, investigation, prosecution or other criminal proceedings pending the handling in Thailand (Section 11).

Under the Act on Mutual Assistance in Criminal Matters 1992, the assistance includes:

1. taking the testimony and statement of persons;
2. providing documents, records and evidence;
3. serving documents;
4. searching and seizing
5. transferring persons in custody for the testimonial purpose;
6. locating persons; and
7. forfeiting assets.

As for mutual legal assistance in criminal matters, Thailand has entered into bilateral treaties with 14 countries. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

Thailand signed the regional treaty for mutual legal assistance in criminal matters on 17 January 2006 and the AMLO signed the memoranda of understanding on exchange of financial intelligence with 31 foreign counterparts up to 17-07-2007. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

The RTP is the competent authority designated to handle mutual legal assistance from a policing perspective. The AG administrates the execution of the requests received and seeks the RTP's assistance to collect the evidence or conduct investigations. The following is the Table of MLAT requests received from and responded to foreign FIU counterparts<sup>40</sup>.

**Table 21: MLAT requests**

<b>MLAT Requests Received from and Responded to Foreign Jurisdictions</b>		
<b>Year</b>	<b>No. of Cases</b>	
	<b>Received</b>	<b>Replied</b>
2001 – 2002	7	5
2002– 2003	54	31
2003 – 2004	51	31
2004 – 2005	124	123
2005 – 2006	41	41
Total	277	231

The above Table shows that Thailand responded to 83% of the received cases for mutual legal assistance.

<sup>40</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.271, para. 1329

#### 2.4.2.2. Cooperation in extradition

The international effort against money laundering and the financing of terrorism has taken on heightened importance in the wake of the events of 11 September 2001. Extradition is one crucial factor in combating money laundering and financing of terrorism. Thailand has concluded extradition treaties that have special provisions on simplified procedure for extradition and it has concluded extradition treaties with 11 countries to enhance the extradition process promptly and effectively. (Please see Chapter IV, heading 4.1.3 – Thailand and Palermo Convention.)

However, the simplified procedure for extradition is not put into practice because of the fact that the Extradition Act 1929 has no specific provision on simplified procedure for extradition. In general, Thailand considers extradition requests on the basis of the Extradition Act 1929 and bilateral extradition treaties. The Act will govern extradition in Thailand insofar as it is not inconsistent with any extradition treaty to which Thailand is a party (Section 3).

The following are the important aspects of the Extradition Act 1929:

1. In the absence of an extradition treaty, extradition shall be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai laws (Section 4) and it shall not be a political offense (Section 12).
2. Reciprocity is generally required but not a legal requirement. This allows Thailand to extradite fugitives even if reciprocity is not fully obtained, i.e., in case the requesting State cannot commit reciprocity because the offense to which extradition relates carries death penalty under Thai laws.
3. Extradition will not be granted if the accused has already been tried and discharged or punished in any country for the crime requested (Section 5).
4. Under the current law, Thai nationality is not an absolute bar for extradition.
5. An extradition request shall be sent through diplomatic channels (Section 6) and shall contain the conviction and the warrant of arrest for the requested person, together with related evidence (Section 7).
6. In case of a request for provisional arrest, the nature of the offense and the arrest warrant of the requesting Court shall be submitted. The public prosecutor will apply to the Court for the issue of a provisional arrest warrant. The extradition request shall be submitted to the Court within two months from the date of the order for detention (Section 10).

The following Table shows the statistics on execution of extradition requests in the period 2002 -2006, which was provided for the answers to the DAQ. It shows that frequency of requests from foreign counterparts to Thailand is higher than that of requests from Thailand to foreign counterparts.

**Table 22 : Extradition**

Year	Requests from Thailand	Requests from Foreign Counterparts
2002	5	15
2003	5	13
2004	8	11
2005	4	9
2006	4	13
Total	26	61

As the principle of simplified procedures for extradition prescribed in the *UN Model Treaty on Extradition* is recognized as an effective measures for extradition such a principle has been stipulated in the new Draft Extradition Bill, which sets forth the procedures in detail. At the moment the Draft is pending scrutiny by the Drafting Committee of the Council of State. Once the new law is finally promulgated, it will constitute clearly defined simplified procedures for extradition.

#### **2.4.2.3 Law enforcement cooperation**

Agents from the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), posted by the United States of America at the US Embassy in Thailand share vital information closely with the agencies concerned in Thailand. Consequently, a number of transnational crime groups have been apprehended. The US law enforcement agencies have also posted agents: (1) the Narcotics Affairs Section, (2) the US Customs (now under the Department of Homeland Security), (3) the Immigration and Naturalization Service (now under the Department of Homeland Security), (4) the US Secret Service, etc. at the US Embassy in Thailand.

A team of US District Attorneys – established by the Overseas Prosecutorial Development, Assistance and Training (OPDAT) program of the US Justice Department – at the US Embassy as well as the Office of the Attorney General in Thailand provide necessary technical assistance to Thai public prosecutors and other law enforcement officers, conducting seminars and training.

#### **2.4.2.4 Technical assistance**

Apart from law enforcement cooperation, the US government agencies concerned provided Thailand with technical assistance of considerable importance during the period from 2001 – 2006. It also subsidized Thailand's participation at the Egmont Group's first meeting in 2001.

According to Thailand Jurisdiction Reports<sup>41</sup>, the following are the technical assistance that Thailand received within June 2003 – July 2006.

*TA received from June 2003 to 2004*

- The IMF team met the AMLO two times in November 2003 and February 2004 with a view to seeking TA for Thailand AML-CFT program for donor community.

<sup>41</sup> Thailand Jurisdiction Reports to APG Annual Meetings 2004, 2005 and 2006

- Eighteen AMLO officers participated in nine training courses/ seminars/ workshops abroad.
- Officers from other agencies were trained in areas regarding AML-CFT.

*TA received from June 2004 to June 2005*

- Two IMF experts visited Thailand in September 2004 for a review of the TA program on AML-CFT for Thailand.
- One ADB expert visited Thailand in March 2005, negotiated TA for Thailand and reached an agreement for a 3-year action plan.
- Several training courses funded by major donors have been organized in Thailand. Among the donors are the World Bank, the ASEM Anti-Money Laundering Project, the US government (International Law Enforcement Academy, BKK).
- Several training and study visits abroad for Thai officials were funded by donors – the US Department of Justice, AUSTRAC, Japan-ASEAN Exchange Project, etc.

*TA received from July 2005 to July 2006*

*IMF*

- Funding for Thai officials to attend IMF Workshop on AML Measures for Criminal Justice Officials from 18 to 22 July 2005 in Singapore.
- Joining in the Seminar Workshop on AML-CFT organized by the AMLO as from 22 to 24 September 2005 in Pattaya, Thailand where one IMF expert (Mr. Andrew Gors) presented FATF Recommendations on DNFBPs.
- Joint IMF/WB TA Needs for Thailand from 20 to 26 April 2006.

*ADB*

- The first component of the TA would assist the Government in (i) assessing the legal, institutional, and procedural requirements for conforming to the accepted international obligations on international cooperation, including the relevant elements of the FATF 40 plus 9 Recommendations; and (ii) formulating an action plan on AML-CFT through consultation with all stakeholders. The completed Report was presented to Thai authorities on 9 April 2006.
- The second component would support the Government of Thailand in holding a high-level policy seminar directed at key decision makers in the Mekong region. The seminar will assist establishing the legal and institutional framework for an AML-CFT regime in the region. The seminar was organized as from 27 to 28 April 2006 in Bangkok, Thailand.

*World Bank*

- Joining in the Seminar Workshop on AML-CFT organized by the AMLO as from 22 to 24 September 2005 in Pattaya, Thailand where 2 WB experts in Law Enforcement and Financial Sector presented FATF Recommendations.
- Review of AML-CFT policy document which was drafted by Thai Bankers' Association. The review was completed in September 2005.
- Review of Supervisory Manual which was drafted by the Bank of Thailand. The review was conducted in January 2006.
- Joint IMF/WB TA Mission to provide advice on Detailed Assessment Questionnaires and identification of TA Needs for Thailand from 20 to 26 April 2006.

*UK Charity Commission*

- Funding for Thai officials to attend the Seminar Workshop on Practical Techniques for Maintaining a Healthy NGO Sector from 5 to 8 February 2006 in the Philippines.
- In collaboration with the AMLO, the Commission conducted a Seminar on Regulating Non-Profit Organizations and Non-Governmental Organizations in Bangkok, Thailand from 20 to 21 March 2006.
- The Commission dispatched a mission to Thailand from 17 to 21 July 2006. The mission aimed to review the adequacy of Thai laws and regulations in supervising NPO/NGO and make recommendations.

*AUSTRAC*

From July 2005 to July 2006 the AUSTRAC funded Thai participants in the following training workshop.

- Intelligence Analysis and Intelligence Reports from 26 to 30 September 2005 in Indonesia.
- Terrorism Typologies Workshop from 14 to 17 November 2005 in Malaysia.
- Alternative Remittance Systems Training Workshop from 21 to 24 March 2006 in Fremantle, Australia.

**2.4.2.5 Other forms of cooperation**

As an active combatant of ML-FT and related crimes, Thailand has cooperated and coordinated with regional and international organizations, including the UN, in promoting public awareness and enhancing capabilities and has hosted a number of seminars, training courses and conferences in Thailand over the past few years. Notably among them are two international meetings, one on money laundering and the

other on crime prevention.

Earlier in 2003, Thailand held an international conference known as “*The Pacific Rim International Conference on Money Laundering and Financial Crimes*” at Bangkok from 24 to 26 March 2003, where 492 participants from across the globe attended.

Besides, a UN conference – *The United Nations Congress on Crime Prevention and Criminal Justice* – was hosted by Thailand in Bangkok from 18 to 25 April 2005.

The term “international cooperation” is meant to engulf bilateral, regional and international cooperation. The efforts of Thailand in this area will be confined to ML and FT and related matters. The International Law Enforcement Academy (ILEA) was established as a training center for the law enforcement officers from Southeast Asian countries including the People’s Republic of China, Hong Kong and Macao in Thailand as a result of the agreement between the US government and the Thai government.

The ASEAN leaders called on member States to strengthen their cooperation with the international agencies in the prevention and suppression of narcotics smuggling and they ratified the ASEAN Declaration on Transnational Organized Crime on 20 December 1997 with the common determination to deal with transnational organized crime seriously.

Australian Police officers and Customs officers are assigned to the Embassy of Australia in Thailand to coordinate efforts with the Royal Thai Police on criminal and narcotics cases. Australia also provides Thailand with technical support and expertise in the field of anti-money laundering and combating the financing of terrorism. The AUSTRAC assisted in the setting up of “Computer-Based Training Center” at the AMLO.

The United Kingdom and Thailand have solved the problems of international narcotics smuggling and other transnational organized crimes with concerted efforts. The UK Charity Commission – the independent regulator of charities in England and Wales – conducted a seminar on Regulating Non-Profit Organizations and Non-Government Organizations, in collaboration with the AMLO, in Bangkok, Thailand from 20 to 21 March 2006.

### **3 Anti-Money Laundering Office (AMLO)**

#### **3.1 Structure of AMLO**

The twenty-five-member Anti-Money Laundering Board is co-chaired by two ministers – Minister of Justice and Minister of Finance – and the Secretary-General of the AMLO is Secretary (Please see Chapter IV heading 3.2.7 Anti-Money Laundering Board and its regulations). The five-member Transaction Committee is chaired by the Secretary-General of the AMLO and four other qualified experts are members.

The AMLO is under the direct supervision of the Minister of Justice and it is organized into – (1) Office of the Secretary-General, (2) Internal Audit Unit, (3)

Administrative Development Group, and (4) Policy and Planning Expert – that are all under the direct supervision of the Secretary-General. The Secretary-General of the Anti-Money Laundering Board has to oversee the performance of the AMLO assisted by two Deputy Secretary-Generals – Deputy Secretary-General for Administration and Deputy Secretary-General for Compliance. There are 4 divisions and 1 bureau under the supervision of 2 Deputy Secretaries-General.

Administration is divided into 3 major sections – General Affairs Divisions, Law Enforcement Policy Division, and Asset Management Division- whereas Implementation/compliance is branched into two sections – Examination and Litigation Bureau and Information and Analysis Center. Units directly under the Secretary-General are Internal Audit Unit and Administrative Development Group.

As regards the strength in terms of human resources is concerned, the breakdown is as shown below<sup>42</sup>:

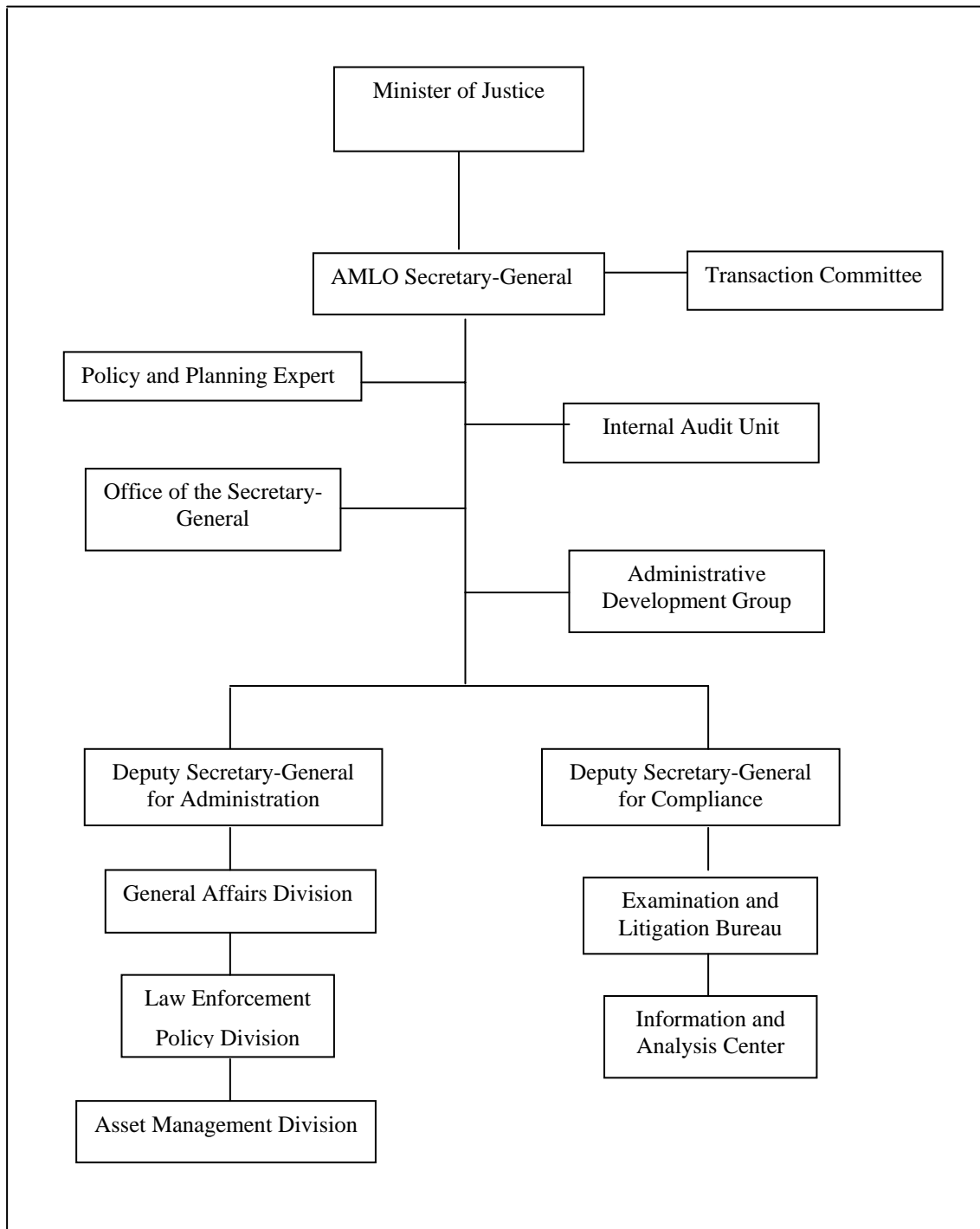
- General Affairs Division – 21 officials + 8 support staff
- Law Enforcement Policy Division – 18 officials + 6 support staff
- Asset Management Division – 19 officials + 1 staff employee
- Information & Analysis Center – 20 officials + 7 support staff
- Examination & Litigation Bureau – 133 officials + 3 support staff
- Management Development Group – 3 officials + 0 support staff
- Internal Audit – 2 officials
- Executives – 4 officials (Secretary-General & 2 deputies, and 1 senior expert)

The following figure shows the structure of the AMLO organization.

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<sup>42</sup> IMF – Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.90, para. 336





**Figure 8: Showing AMLO organization**

### **3.2 Operational procedures for examination and analysis of reports or information relating to transactions**

1. To collect reports or information involved in transactions of individuals or juristic persons that lead to the process of investigation and analysis by the competent authorities. These reports and information are briefly described

below:

- (i) The reports or information that are related to transactions reported according to the Anti-Money Laundering Act B.E.2542
  - (ii) The reports or information involved in making transactions that are received from other sources
2. To examine and analyze, the reports or information have to be examined if they have any one of the following characteristics:
  - (i) Relation with other transactions in the network which have higher value of transactions
  - (ii) Any institution or institutions that report a great number of suspicious transactions of any individual or juristic person
  - (iii) Anything that is related to any individual or juristic person who has made extremely suspicious transactions
  - (iv) Any suspicious transactions that are related to any larger-sized association or network
  - (v) Any individual or juristic person who usually makes suspicious transactions for a period of time
  - (vi) Anything that is related to other patterns that have been found as a result of electronic methods or Artificial Intelligence System
3. To conduct examination and verification of the accuracy of the reports or information involved in making transactions which are identified by the Information Technology Method
4. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between the suspicious transactions and such individuals or juristic persons
5. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between such individuals or juristic persons and the person who commits either predicate offenses or money laundering
6. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between all available data relevant to such an individual or a juristic person in the database system
7. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages between other transactions or information related to the account of the institution's customer, the communication data or other computerized data
8. To conduct examination and analysis of the reports or information involved in making transactions so as to establish linkages with other data
9. To conclude the results of the examination and analysis in the form of a report incorporating suggestions and recommendations to the Secretary-General of the Anti-Money Laundering Board. The Secretary-General of the Anti-Money Laundering Board will consider if it is a suspicious case that displays any

activities or behaviors involving assets related to predicate offenses or money laundering offenses. Exercising the AMLO's authority, the Secretary-General of the Anti-Money Laundering Board may then direct the competent authority concerned or the authorized official to investigate the reports and the information involved.

10. If the Secretary-General of the Anti-Money Laundering Board considers that the reports or information accessed do not measure up to the required elements or do not display any activity or behavior involving assets related to predicate offenses, the Secretary-General of the Anti-Money Laundering Board may order further collection of all relevant information of the case into the database or, in the event of the information being considered useful for legal proceeding in the other litigation, may send the information to other agencies concerned.
11. In case there is a need for condition in examination of reports or information with other agencies concerned, the inquiry must be in writing and signed by the Secretary-General of the AMLO. The AMLO may follow up the result of work according to such written inquiry if it has not been notified within 15 days approximately (as per Section 38 of the Royal Decree concerning good management).

### **3.3 Financial intelligence unit**

The AMLO functions as the national FIU of Thailand and performs its duty entrusted under the AMLA, practically representing the AMLB and the Transaction Committee for the Secretary-General of the AMLO is the Secretary of the AMLB and at the same time the Chairman of the Transaction Committee.

The AMLO, being directly under the Minister of Justice and having sufficient operational independence and autonomy to ensure that it is free from undue influence or interference, is an independent State agency. It, therefore, is a kind of an administrative-type FIU. It can exchange information directly with foreign counterparts using international criminal information exchange networks according to the Ministerial Regulation on "Organization of Work Units under Anti-Money Laundering Office, B.E. 2543 (2002)" issued by the Minister of Justice on 9 October 2002. Sections 35, 36 and 48 of the AMLA empower the AMLO to issue orders for seizure or forfeiture of assets. This makes the AMLO a prosecutorial-type FIU. Under Section 38 of the AMLA, the AMLO has the law enforcement powers. Consequently, on the basis of practical performance, AMLO can be regarded as a type of mixed or hybrid FIU, concurrently exercising those functions of other types of FIUs – administrative type FIU, prosecutorial-type FIU and law-enforcement-type FIU.

### **3.4 Powers and functions**

As regards the definition of an FIU, the 2004 Egmont Group's revised definition of an FIU runs along the following lines:

*A central, national agency responsible for receiving (and as permitted, requesting), analyzing and disseminating to competent authorities,*

*disclosures of financial information:*

- i. *concerning suspected proceeds of crime and potential financing of terrorism, or*
- ii. *required by national legislation or regulation, in order to combat money laundering and terrorist financing<sup>43</sup>*

The AMLO has been given this power under Section 40 (4) of the AMLA (where there are legal provisions) and under Section 40 (6) of the AMLA (where there is another law stipulating that the AMLO shall pass on such information). See Chapter IV. Under the Ministerial Regulation, dated 9 October, 2002, issued by the Minister of Justice, the AMLO is organized into 5 units, namely (1) General Affairs Division, (2) Law Enforcement Policy Division, (3) Asset Management Division, (4) Information and Analysis Center, and (5) Examination and Litigation Bureau. Each unit is assigned its respective duties and responsibilities.

#### General affairs division

It is responsible for the AMLO's administrative, financial and secretarial functions.

#### Law enforcement division

It handles the AMLO's formulation of operational plan, proposing of measures for prevention and suppression of money laundering activities, launching of public relations, undertaking of academic works, mutual assistance and cooperation with foreign counterparts and international organizations, setting up of personnel development, and performing of secretarial functions for the Anti-Money Laundering Board.

#### Assets management division

It is charged with maintenance of assets in custody, accounting system and asset management.

#### Examination and litigation bureau

It is tasked with inspection and analysis of data and transaction reports and properties associated with predicate offenses, coordination in investigation and suppression of offenses, proceeding with juristic acts, agreements and court cases, analyzing and collecting of evidence, and performing of secretarial functions for the Transaction Committee.

#### Information and analysis center

It is apparently unique in that it serves as Thailand's FIU and its functions deserve much attention and scrutiny. This unit is responsible to:

- (a) establish database system and develop information technology system for the prevention and suppression of money laundering activities and the

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<sup>43</sup> Statement of Purpose of the Egmont Group of Financial Intelligence Units, Guernsey, 23<sup>rd</sup> June 2004. p.2 [http://www.egmontgroup.org/statement\\_of\\_purpose.pdf](http://www.egmontgroup.org/statement_of_purpose.pdf) . [Read October 2007]

administration of the AMLO, as well as to act as the center for exchange of information on the country's anti-money laundering activities,

- (b) act as the center for receiving and collecting reports on the making of transactions as well as processing and exchanging information through computers,
- (c) put in place technical equipment, communications equipment, and modern technology systems in order to support investigation and intelligence functions on anti-money laundering, and to act as communications center for the AMLO,
- (d) follow up and evaluate the performance of the work units relating to the enforcement of anti-money laundering law, as well as to expedite, follow up, evaluate and report operation results of the work units under the AMLO, and
- (e) perform in collaboration with or in support of the operations of other relevant work units or others as assigned.

The AMLO's four basic strategies<sup>44</sup> are:

1. Prevention and suppression of money laundering
  - Public relations and dissemination of results to create understanding within and outside the country
  - Examination and analysis of information from all sources.
  - Investigation and collection of evidence related to predicate offenses
  - Creation of database shared among relevant agencies.
  - Establishment of asset management systems
2. Promotion and coordination of cooperation in the prevention and suppression of money laundering and financing of terrorism
  - Development and promotion of coordination systems with both the government and non-government sectors
  - Coordination with agencies both within and outside the country
  - Serving as a center for international cooperation
3. Application of information technology in the prevention and suppression of money laundering and financing of terrorism
  - Integration of internal data systems
  - Use of up-to-date technology to improve operational efficiency
  - Development of information systems for the reporting and analysis of financial transactions
  - Creation of central database to support other agencies
4. Human resource development
  - Development of human resources inside the AMLO to increase capability in legal, technological and foreign language, management, including integrity and morality
  - Development of related competent officials

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<sup>44</sup> AMLO, "Anti-Money Laundering Office 2004 Annual Report": p. 32

- Creation of a network among law enforcement agencies
- Development of knowledgeable resource persons
- Creation of a system to allocate qualified personnel

### 3.5 Results by AMLO's mission

Over the years Thailand's AMLO has gradually transformed itself from a mere operating agency domestically to a leading agency in Southeast Asia. Thailand is a member of such specialized international and regional bodies as APG, Egmont Group of FIUs and ASEM in matters dealing with money laundering and terrorist financing issues. It has assisted, as much as possible, national FIUs of Thailand's neighbors and has been cooperating with its counterparts abroad on a scale much recognized and appreciated by all those involved in the countering campaigns.

While the AMLO is active both domestically and internationally, it has never ceased to improve and enhance its skills and capabilities. Its professional zeal to improve is particularly evident by its willingness to have its AML-CFT regime assessed or analyzed by independent assessors from time to time. Within a short span of time, there have already taken place a series of assessment or analysis of Thailand's national capability by APG, ASEM, IMF ADB, World Bank and UK Charity Commission between 2002 and early 2007. Their assessments as a whole reflect, to some great extent, the level of Thailand's compliance with the relevant international conventions and standards.

The outcomes of the AMLO's performance between 2000 and 2005 are categorized into three groups: (1) transaction reporting and analysis; (2) seizure and confiscation of assets; and (3) asset management.

#### 3.5.1 Transaction reporting and analysis

In accordance with Section 13 of the AMLA, financial institutions have to report three types of transactions – cash transactions with a value of two million baht (about \$52,000) or more, asset transactions of a value of five million baht (about \$130,000) or more, and suspicious transactions regardless of the amount of transaction– to the AMLO. Reports are required to be submitted electronically and 95% of the received reports are reported electronically and 5% of the reports are received via fax or mail which are manually inputted into the database for analysis.

The following Table shows the number of transactions reported to the AMLO.

**Table 23 : Number of transactions reported to AMLO**

Year	2000	2001	2002	2003	2004	2005	2006	Total
Cash transaction	23,574	214,852	224,223	255,799	282,905	371,723	539,699	1,912,775
Asset transaction	62,813	297,934	297,777	352,772	344,504	347,400	487,356	2,190,556
Total no. of transactions	86,677	529,275	568,221	640,909	666,344	758,298	1,066,450	4,316,174

**Table 23 : Number of transactions reported to AMLO**

Year	2000	2001	2002	2003	2004	2005	2006	Total
Suspicious transaction	290	16,489	46,221	32,338	38,935	39,175	39,395	212,843
STR as % of total transactions	0.3	3.1	8.1	5.0	5.8	5.2	3.7	4.9

All incoming reports are received electronically and are loaded directly into the mainframe computer for access where the electronic reports have mandatory fields – which results that the data cannot be inputted into the database until the information is completed. The Information and Analysis Center (IAC) of the AMLO analyzes the reports and produces intelligence reports for competent authorities. The IAC has to conduct further analysis when the Examination and Litigation Bureau or law enforcement agencies request to assist in an ongoing investigation.

Analysts use Smart Search and Visual Links 2L to facilitate production of analytical reports. These are link analysis software tools used for charting of relationships between the financial transactions and the targets by manual inputting information gathered from the information sources the analysts have access to.

Present systems that analysts work with are:

1. AMLO Electronic Reporting System (AERS) that collects financial transactions reports or suspicious transaction reports;
2. AMLO Financial Institute Information System (AMFIS) that makes a request for banking information from financial institutions for specific customer information. Highly secured system which tracks all queries;
3. AMLO Central Integration System (AMCIS) which is the web-based application that supports the transferring of information from government database, including competent authorities and informant databases;
4. AMLO Central Data Warehouse System (AMCES) which warehouses data received from government agencies;
5. Smart Search & Decision Support System (DSS) that is used for deep search by comparing with reports received by law (i.e. STR's, Cash Reports and Assets Declarations) and other internal data (government information). It is also designed to assist the analysts make decisions as to what transaction or information is relevant. Analysts also use Smart Search for analyzing data of suspects from various sources of data received regarding the predicate offense they are being investigated for;
6. AMLO Case Management System (AMCAM) that is designed for managing the case and cataloguing the information collected during investigations conducted by AMLO's asset seizure unit. Analysts can access this system to draw information for conducting analysis of financial transactions; and

7. VisuaLinks 2L that is an Artificial Intelligence System is the advance search system that was developed for the purpose of searching and analyzing of complex data from all sources that analysts have access to. This software allows the analysts to display and interpret the information plus produce charts showing these links.

The AMLO has incorporated the appropriate policies and security measures for securing of information they have collected.

### 3.5.2 Assets management

#### 3.5.2.1 Seizure and confiscation of assets

The AMLO's operations that deal with seizing of assets are overseen by the Transaction Committee. Property in Thailand can be confiscated under three separate laws: the Penal Code, the Act on Measures for the Suppression of Offenders in an Offense Relating to Drugs 1991, and the AMLA. Provisional measures for seizing and attaching property are found under several laws in Thailand. In investigation and prosecution related to the prevention and suppression of ML, the results are divided into eight types. The following Table shows the statistics related to ML predicate offenses according to the AMLO data.

**Table 24 : Statistics on predicate offenses**

	No. of Cases in						Total
	2000	2001	2002	2003	2004	2005	
Drugs	3	65	63	129	73	115	448
Trafficking women and children	-	1	-	4	2	3	10
Public fraud	-	7	-	3	1	4	15
Embezzlement / fraud	-	-	-	2	6	1	9
Corruption	-	-	1	1	5	3	10
Extortion / blackmail	-	-	-	-	1	2	3
Smuggling	-	3	5	2	4	1	15
Terrorism	-	-	-	-	-	-	-
Total number of cases	3	76	69	141	92	129	510
Total value of assets million baht	23.87	988.50	383.14	915.12	1016.93	300.35	<b>3627.91</b>

According to the AMLO's answer to the DAQ Section 2, the assets forfeited under the AMLA since 2000 are as follows:

**Table 25 : Value of assets forfeited**

Item	Value (million in baht)	Value (million in dollar)
Cash	416	11
Deposit in FI	525	14
Vehicle	24	1
Treasure/jewelry	165	4
Real estate	1,340	35
Others	513	14
Auction account	92	2

#### 3.5.2.2 Forfeiture

As of December 2005, the total number of cases related to the assets is 474 cases: 227 cases were judged as convicts by the Civil Court with an asset value of 626,227,951.86 baht forfeited to the State; 9 cases were dismissed; 148 cases were



under Court proceedings; 20 cases were under Prosecutors' consideration; 11 cases were under investigation; and 59 cases were decided not to go to the Court or transferred to other agencies.

The following Table<sup>45</sup> shows the statistics of the AMLO's asset forfeiture.

**Table 26 :Asset forfeiture cases (as of Dec 2005)**

Judged by the Civil Court,	227 cases	BHT	626,227,951.86
Dismissed cases	9 cases	BHT	61,235,067.51
Under Court proceedings	148 cases	BHT	2,556,452,082.38
Under Prosecutors' consideration	20 cases	BHT	61,106,238.80
Being investigated and evidence gathering	11 cases	BHT	53,784,989.88
Decided not to go to the Court / Transferred to other agencies	59 cases	BHT	770,167,387.77
Total	474 cases	BHT	4,128,973,718.20

### 3.5.2.3 Disposal of assets

Assets seized or restrained under the law relating to the prevention and suppression of money laundering are managed for the maximum benefit to the state. Assets in an unsuitable condition for retention, or assets whose retention would be a burden to the state, such as houses, vehicles, animals, etc., have been disposed of as follows:

1. 37 auctions with a total sale value of 205,031,300 baht.
2. Utilization of the asset for official purposes, such as vehicles, computers, etc.
3. Custody and utilization by those who have a vested interest.
4. Rental of assets, such as, condominiums, houses with land, clothing stalls, tyre repair shops, etc.

## 4 Assessments

Up till now there have been 8 independent assessments on Thailand's national capabilities. The first one is done by APG in its Mutual Evaluation Report of June 2002. The second assessment is by the ASEM's AML Project consultants on technical needs of Thailand, the report of which was formally released in December 2003. The third assessment is made by the IMF legal team and the finalized report was issued in September 2005. The fourth assessment is in the form of an analysis report on Thailand's legal obligations concerning international cooperation in relation to AML-CFT, done by ADB's consultants in April 2006. The fifth assessment is made by the IMF technical team – which paid a follow-up visit to Thailand in April 2006 and drafted a report on its findings. The sixth assessment is done by the World Bank (WB) mission in the form of an aide-memoire of April 2006. The seventh assessment is done by the UK Charity Commission in (2006 – 2007) and the eighth assessment is the Detailed Assessment Report done by the IMF in July 2007.

<sup>45</sup> AMLO, "Thailand Jurisdiction Report to APG", July 2005 – July 2006 (APG Annual Meeting 2006)

#### **4.1 APG’s Mutual Evaluation Report<sup>46</sup> (2002)**

APG’s report focuses on three main areas – legal, financial and law enforcement. While most of its findings may no longer be applicable under the current situation, there still remain some that are sound and valid enough deserving proper attention.

On legal issues, the report recommended broadening of predicate offenses in the AMLA.

On financial issues, the report pointed out, among others, that the lack of free and full access by the financial regulator, i.e. BOT, to private individuals’ banks accounts would seriously undermine the effectiveness of BOT’s on-site examinations, that remittance agents are not subject to adequate supervision, and that an area of concern would be the unknown extent of underground banking.

On law enforcement issues, the report emphatically pinpointed the need for measures to detect or monitor physical cross-border transportation of currency and negotiable instruments.

#### **4.2 ASEM AML Project Consultants’ Report<sup>47</sup> (2003)**

The consultants’ report contains a number of recommendations for training and technical assistance in such areas as: investigative training; compliance training; awareness campaigns; financial system awareness; prosecutors training; judicial training; expert placement; and terrorist financing.

As the report contains quite a number of points deemed to be inaccurate on some crucial issues, the AMLO had to make an explanatory note to correct the report where erroneous, which, it seems, the ASEM AML Project Coordination Office opted to distribute as part of the consultants’ report. Thus, the explanatory note has become an integral part of the report.

#### **4.3 IMF Legal Team’s Report<sup>48</sup> (2005)**

The legal team’s report identified discrete issues in the current AML-CFT regime and made specific recommendations on Thailand’s AML-CFT regime with particular focus on the legislative, institutional, and supervisory frameworks for AML-CFT as well as their implementation.

The discrete issues the report emphasized are as follows:

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<sup>46</sup> APG, “Mutual Evaluation Report on Thailand”, adopted by APG 5<sup>th</sup> Annual Meeting, 4-7 June 2002

<sup>47</sup> ASEM AML Project Consultants, “Training and Technical Assistance Needs Analysis on Thailand”, February 2003.

<sup>48</sup> IMF Legal Team, “Anti-Money Laundering and Combating the Financing of Terrorism in Thailand”, September 2005

- The AML-CFT legal and institutional framework needs further consolidation and the agencies involved in the AML-CFT system need to strengthen cooperation.
- International conventions and other AML-CFT standards are not yet fully reflected in the AML-CFT legislation.
- The supervisory oversight for AML-CFT compliance by financial institutions needs to be enhanced. The relevant agencies – such as the BOT, SEC, DOI, CPD, and AMLO – should determine, as a matter of priority, the modalities and procedures for supervisory oversight of AML-CFT compliance. Policies, procedures, particularly for off-site monitoring and compliance need to be developed and implemented.
- Government agencies and private sector associations are advised to continue raising awareness of ML- and FT-related risks and requirements.

In line with its above findings, the legal team opined that to address the issues identified in its report the following technical assistance would be essential:

- (1) Workshops/seminars for public agencies concerned and private financial industry and general public to raise awareness on ML-FT nature and scope and to provide training on AMLA obligations and requirements.
- (2) Assistance in the development of specific national institutions, particularly, the enhancement of the operations of FIU, AMLO.
- (3) Reviewing the AML-CFT legislative framework and assisting in drafting or upgrading of the legislation and related regulations and guidelines.
- (4) Assistance in developing supervisory policies, procedures, and manuals, including for off-site monitoring and on-site examination, for AML-CFT compliance in each financial sector, training the supervisors in their application and use, and in implementing them.

#### **4.4 ADB Consultants' Analysis Report<sup>49</sup> (2006)**

In response to Thailand's request for technical assistance (TA) from the Asian Development Bank (ADB) to strengthen its regime for AML-CFT, a team of consultants was assigned by the Bank to conduct an analysis of Thailand's AML-CFT regime. The team first visited Thailand in October 2005 and held discussions with relevant governmental authorities as well as those from the private sector. Again, in February 2006, the team made a second visit to Thailand and started drafting a 3-year action plan and an analysis report with the assistance of the domestic consultant.

The team identified the relevant international standards and analyzed the obligations which those standards impose on Thailand.

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<sup>49</sup> ADB, "Analysis of Thailand's Legal Obligations Concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism", 9 April 2006.

#### 4.4.1 ADB's Three-Year Action Plan

The action plan reflects the need to combine legislative, administrative, training and donor activity. It will span a 3-year period from mid-2006 to mid-2009.

The analysis report reflects the findings and conclusions and contains a number of recommendations to amend existing laws or to enact new laws.

Based on the analysis of the report, the 3-year plan is meant to provide a sequenced framework for Thailand to change its legislation and administrative practices to fill the gaps between the current law and practices and the obligations imposed by the relevant international instruments and standards.

The proposed TA has two components – Component “A” and Component “B”. The first component has already passed the stage whereby (i) assessment of the legal, institutional and procedural requirements for conforming to the accepted international obligations on international cooperation has been made, and (ii) formulation of an action plan has been drafted.

The second component is meant to support the Thai Government in holding training sessions for relevant officials in the Mekong region. The Government, with the AMLO as the focal point, would organize the training sessions on the necessary elements of an effective AML-CFT regime and the necessary measures for establishing the legal and institutional frameworks for an AML-CFT regime, including cross-border issues. To this effect, the 3-year action plan has set out a schedule of technical assistance including training programs.

Under the TA program of the ADB, the suggested Action Plan approved by the Cabinet on 27 February 2007 is as in the Matrix<sup>50</sup> given in Appendix (C).

#### 4.5 IMF Technical Team's Report<sup>51</sup> (2006)

A technical assistance mission from the IMF paid a visit to Thailand approximately the same time as the World Bank mission, conducted an assessment as a follow-up to the IMF legal team's earlier analysis and drafted a report containing positive and reassuring observations and recommendations on Thailand's AML-CFT activities. In its executive summary the following summarized comments were made.

- (1) The mission team recognizes the progress that the Thailand authorities have made towards strengthening Thailand's regime for anti-money laundering and combating the financing of terrorism (AML-CFT).
- (2) The authorities appear to have made progress to determine who will have responsibility for the supervision of AML compliance by financial institutions.
- (3) The mission team reviewed the authorities' efforts to complete a self-assessment of Thailand's compliance with the FATF standard through a review

<sup>50</sup> ADB, “Analysis of Thailand's Legal Obligations Concerning International Cooperation in Relation to Anti-Money Laundering and Combating the Financing of Terrorism”, 9 April 2006

<sup>51</sup> IMF Technical Team, “The Kingdom of Thailand – Technical Assistance Mission in Relation to the AML-CFT framework”, April 2006.

- of an initial draft detailed assessment questionnaire (DAQ).
- (4) The authorities should carefully manage the timeline between now and the evaluation visit of the APG in light of the legislative program that it must complete and the implementation challenges it faces.
  - (5) The Fund and other international organizations continue to have interest in assisting Thailand's efforts to improve its regime.

#### 4.6 World Bank Mission's Aide-Memoire (2006)

In response to the BOT's request for technical assistance, a World Bank mission visited Thailand from April 21-27, 2006 and made a brief assessment in the form of an aide-memoire<sup>52</sup>. The mission was joined by a 2-representative team from the IMF who attended the meetings as well.

As a matter of fact, the mission's visit was to wrap up the ongoing assessment on Thailand's technical assistance needs in specific areas, i.e. banking, securities, insurance, and designated non-financial businesses and professions (DNFBPs). Currently the World Bank is allegedly providing technical assistance to Thailand in respect of the following areas:

- (1) developing of regulations and supervisory manuals; and
- (2) training of BOT's supervisory staff.

The mission's findings briefly are as follows;

- (1) **ROSC** (Report on Observance of Standards and Codes): Financial Sector Assessment Program (FSAP) for Thailand is scheduled for early 2007 though APG's mutual evaluation of Thailand will not become due until mid-2008, meaning the mutual evaluation will be missed out from FSAP's ROSC. So Thailand needs to consider as to what options are available to facilitate an AML-CFT assessment to be conducted in order to permit it to form part of ROSC.
- (2) **CDD**: The current CDD requirements for all institutions covered by the AMLA and as set out in Ministerial Regulation No.6 are very general and they do not provide the institutions with guidance. There is an apparent need for the regulators of the specific sectors to issue guidelines on some aspects of CDD.
- (3) **Banking supervision**: The supervisory responsibility of the BOT and the AMLO would be further clarified if a formal Memorandum of Understanding between the two agencies could be established as soon as possible.
- (4) **Life insurance**: Despite its intention the DOI has not yet issued any regulations/guidelines relating to AML-CFT.
- (5) **DNFBPs**: Lawyers, accountants, precious stone and metal dealers, and trust and company service providers are not subject to AML-CFT regulations.

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<sup>52</sup> World Bank Group (Mark Butler, FSEFI), Aide-Memoire, "Anti-Money Laundering and Combating the Financing of Terrorism, on the Kingdom of Thailand", April 21-27, 2006.

#### 4.7 UK Charity Commission's Analysis Report (2006 – 2007)

A team of the UK Charity Commission's International Program visited Thailand in July 2006, met with officials concerned from the public and private sectors and made a report in October 2006 on its observations about NGOs (non-governmental organizations) operating in Thailand. The second draft report was made in January 2007<sup>53</sup>.

In its introduction, the report observes: "Recent times have seen a new breed of domestic NGO emerging in Thailand with roots in international NGOs. These organizations are bringing an increased vibrancy and professionalism to the sector, partly as a result of their roots and ethos, partly as a result of pressure from funders (government and otherwise)". It also added that more recently the political environment for NGOs has become less supportive mainly because of a few politically active NGOs – which the government regards as a nuisance – and that regulatory moves are seen as controlling, rather than supportive. Security and money laundering are locally perceived to be the two main risks to NGOs.

In its executive summary, it is further observed that "the legal and regulatory basis for effective regulation of NGOs in Thailand exists .... However, the law is not always implemented effectively and there is much duplication of regulatory activity. Legislation in places lacks strategic oversight ..."

In making recommendations, the report divided into 16 areas and detailed its appropriate recommendations in each area. The 16 areas are as listed below:

1. Legal definitions
2. Registration threshold
3. Unregistered NGOs
4. Scrutiny of registration applications
5. Location for registration
6. Re-registration
7. Governance procedures
8. Monitoring process
9. Scrutiny of information
10. Identifying abuse
11. Investigating abuse
12. Dealing with abuse
13. Taxation
14. Investments
15. Fund-raising
16. Foreign NGOs

The recommendations made in the report, indeed, touch on the core issues of NGO regulatory framework and are comprehensive enough to cover a wide range of issues related to all NGOs – domestic and foreign – currently operating in Thailand.

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<sup>53</sup> NGO, "Regulation in Thailand: Analysis and Recommendations", Second Draft Report by the Charity Commission's International Program, January 2007.

## **4.8 IMF Mission’s Detailed Assessment Report (2007)**

The Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand (24 July 2007) provides a summary of the AML-CFT measures in place in Thailand at the time of the mission or shortly thereafter. Prior to the mission, Thailand handed in the Detailed Assessment Questionnaires filled with answers to the IMF team. The questionnaires are divided into 7 parts as follows:

1. General information on Thailand and its economy
2. Legal system and related institutional measures
3. Preventive measures – financial institutions
4. Preventive measures – designated non-financial businesses and professions
5. Legal persons and arrangements – non-profit organizations
6. National and international cooperation
7. Other issues

The assessment team analyzed Thailand’s AML-CFT activities based on the FATF 40 Recommendations (2003) and FATF 9 Special Recommendations (2001) and assessed the AML-CFT measures using the AML-CFT Assessment Methodology 2004 as updated in June 2006. The assessors not only reviewed the institutional framework, the relevant AML-CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering and the financing of terrorism through financial institutions and designated non-financial businesses and professions but also examined the capacity, implementation, and effectiveness of all these systems.

The IMF team obtained the information and met with officials and representatives of all relevant government agencies and private agencies during its mission from 26 February till 13 March 2007. In addition, other verifiable information was subsequently provided by the authorities.

### **4.8.1 IMF mission’s comments on compliance ratings**

The Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand (24 July 2007) provides Thailand’s level of compliance with the FATF 40 + 9 Recommendations with comments on compliance ratings (Please see Appendix (D)). It also provides recommendations on how certain aspects of the system could be strengthened (Please see Appendix (E)).

## **5 Chapter-wise comments**

Two sectors of the AMLA stakeholders – public sector and private sector – consisting of 49 agencies have worked together to implement the plans and decisions for combating ML and FT. And yet Thailand should clarify the AML-CFT supervisory roles and give appropriate powers for conducting compliance examinations.

There may be certain problems that can be found during the implementation period. For example, Thailand has to impose obligations on real estate agents to obtain and verify certain pieces of information in relation to specific transactions. More

researches should therefore be conducted to analyze strengths and weaknesses of the Thailand AML-CFT framework and provide recommendations in line with the international standards.

Thailand should be more active in creating financial and commercial transparency and allowing law enforcement authorities optimum access to the necessary information. In order to pursue and prevent economic crimes, Thailand should create more advanced channels for the sharing of information between the regulated institutions and the competent authorities, and among the competent authorities, and between the competent authorities and their foreign counterparts. Thailand should also extend the AML-CFT obligations to non-financial businesses and professions.

The AMLO as the FIU of Thailand needs to place more emphasis not only on providing guidance, feedback and public awareness about ML and FT but also on reviewing its production of statistics on AML-CFT matters to ensure the integrity of those statistics. The key law enforcement agencies should obtain more training for FT cases and the RTP and NCCC should establish a dedicated special unit for investigating ML-FT offences other than narcotics.

The cooperation and exchange of information between the Customs Department and the AMLO, and between the Insurance Department and the AMLO should be enhanced when there is a suspicion of ML-FT. The law enforcement agencies should provide more training on ML-FT investigations to dedicated specialized staff, especially outside of Bangkok.

The statistics provided by the competent authorities to the IMF mission does not include the statistical information regarding money laundering typologies used by the criminals. Authorities should conduct researches on money laundering typologies in Thailand. It is also observed that there are hardly any investigations relating to financing of terrorism and no FT cases have been prosecuted so far according to the IMF mission's report<sup>54</sup> despite the fact that financing of terrorism seems to be much in use in the deep South.

The core agencies, the AMLO, the BOT, and the SEC have enthusiastically and diligently been taking steps aimed at dealing with the requirements for the Thailand AML-CFT regime. On the other hand, while implementing measures consistent with the updated FATF Recommendations, the implementation has been hampered by inadequate and antiquated laws. As compliance evaluations have been launched for the effective implementation of AML-CFT measures the authorities of Thailand have accordingly promulgated many measures to bring Thailand into better compliance with the FATF Recommendations.

It may be mentioned that specific details about the need for compliance with international standards and the need for improvement of Thailand's AML laws by amendment, new enactment, and modification of existing regulations, guidelines, etc. can be seen in the concluding Chapter X.

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<sup>54</sup> IMF – Legal Department, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism on Thailand, 24 July 2007(Draft): p.11, para. 10