

## **Cross Border Statute and Measures to Curb Money Laundering**

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### **Summary**

Over the past few years, the Thai authorities have made significant efforts to enhance their anti-money laundering and combating the financing of terrorism (AML/CFT) system, including its legislative, institutional and supervisory components. Being aware of the ever changing nature of money laundering, and determined to meet the latest international standards, the authorities are engaged in further reform in these matters. The Anti-Money Laundering Office (AMLO) operated under the direction of the Anti-Money Laundering Board leads Thailand's development of sophisticated information technology to trace transactions and identify money laundering activities. With the provisions of the Anti-Money Laundering Act B.E. 2542 (1999), AMLO is empowered to authorize the search of places and vehicles, the restraint and seizure of assets, and the seeking of court approval to conduct electronic surveillance to obtain evidence of money laundering. It also pursues the forfeiture of illegally obtained assets through civil proceedings, and has the responsibility for the custody, management, and disposal of seized and forfeited property.

### **International Legal Framework**

In response to the increasing concern about money laundering and the threat of terrorism, world community has called for greater cross border cooperation and coordination to effectively combat the criminals and terrorists. The United Nations was the leading organization to undertake the task in fighting money laundering on a global level. Its strength lies in the ability to adopt international treaties and conventions that have the effect of law in country once that country has signed, ratified and implemented the convention.

As a member of the United Nations, Thailand has become a party to important and relevant United Nations conventions as listed below.

1. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988). The Vienna Convention deals primarily with provisions to fight the illicit drug trade and related law enforcement issues. Although it does not use the term "money laundering", the Convention defines the concept and calls upon countries to criminalize the activity. The Convention was adopted on 19 December 1988, at which time 71 countries ratified the Convention, and came into force on 11 November 1990. Thailand became a party to the Vienna Convention on 1 August 2002.

2. United Nations Convention Against Transnational Organized Crime 2000 (Palermo Convention). The Palermo Convention obligates each ratifying country to criminalize money laundering and include all serious crimes as predicate offenses of money laundering, whether committed in or outside of the country, to establish regulatory regimes to deter and detect all forms of money laundering, and to authorize the cooperation and exchange of information. Thailand signed the Palermo Convention on 13 December 2000.

3. International Convention for the Suppression of the Financing of Terrorism 1999. This Convention obligates each ratifying country to criminalize terrorism, terrorist organizations and terrorist acts. It also stipulates that it is unlawful for any person to provide or collect funds with the intent that the funds be used for, or knowledge that the funds be used to, carry out any of the acts of terrorism. Thailand is currently a party to this Convention. The government decided in November 2001 to accede to all the international conventions and protocols related to terrorism and to assign its ministries to review the legislation in light of the requirements of these instruments.

4. The Financial Action Task Force (FATF). The FATF is an inter-governmental body founded by the heads of state of the Group of Seven Industrialized Nations at the Economic Summit in Paris in 1989. The main goal of the Task Force is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. It first issued the 40 Recommendations on AML in 1990 and revised these in 1996 and then again in June 2003.

At present, there are 33 countries, territories and organizations that make up the membership of the FATF which has the focuses on the following major tasks:

- Spreading the AML message to all continents and regions of the globe.
- Monitoring the implementation of the 40 Recommendations in FATF members through self-assessment exercise and mutual evaluation procedure. Both exercises are helpful in highlighting weaknesses in countries' legal frameworks and in generating support for needed improvement.
- Reviewing money laundering trends and countermeasures ('typologies' exercise). The FATF has taken on new missions and initiatives in the area of terrorist financing (8 Special Recommendations) and the identification on non-cooperative countries and territories (NCCTs).

The FATF 40 Recommendations comprise four general themes:

- The overall context: criminalizing money laundering on the basis of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) (in force November 1990) and the 2000 UN Convention on Transnational Organized Crime (the Palermo Convention) (in force September 2003).
- The legal framework,
- The role of the financial system,
- The strengthening of international cooperation.

Following the 9/11 tragic in 2001, the Financial Action Task Force (FATF) quickly responded to this new terrorist threat by issuing special 8 recommendations for combating financing of terrorism on 31 October 2001 as follows:

**Recommendation 1: Ratify and Implement UN Instruments.**

Each country should take immediate steps to ratify the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism as well as relevant UN resolutions, particularly Resolution 1373.

**Recommendation 2: Criminalize the Financing of Terrorism and Associated Money Laundering.**

Each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations. Countries should ensure that such offenses are designated as money laundering predicate offenses

**Recommendation 3: Freeze and Confiscate Terrorist Assets.**

Each country should freeze without delay the funds of terrorists, those who finance terrorism and terrorist organizations. Furthermore, each country should adopt measures to seize and confiscate property that is the proceeds of, or is used in, or intended to be used in the financing of terrorism, terrorist acts, or terrorist organizations.

**Recommendation 4: Report Suspicious Transactions Related to Terrorism.**

If financial institutions, or other business or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities [such as the FIU – financial intelligence unit in that country].

**Recommendation 5: International Cooperation.**

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

**Recommendation 6: Alternative Remittance.**

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 of the FATF Recommendations that apply to bank 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.

**Recommendation 7: Wire Transfers.**

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information [name, address, and account number] on funds transfers and related messages that are

sent, and the information should remain with the transfer or related message through the payment chain. Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information [name, address, and account information.]

### **Recommendation 8: Non – Profit Organizations**

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non – profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused by terrorist organizations, to exploit legitimate entities as conduits for terrorist financing. - - This last recommendation is particularly important because unlike most criminal groups, terrorists raise funds themselves through the use of charities and front companies that conduct social purposes such as running orphanages and schools.

In addition to the eight recommendation, FATF had issued the ninth recommendation regarding cash courier in July 2004. It is now calling for all member countries to calculate their ability to comply with these recommendations. In fact, FATF is encouraging all countries in the world, regardless of whether they are a member of FATF to re-examine their own laws and strengthen them where necessary.

### **Thailand’s Anti-Money Laundering Law**

The Royal Thai Government has shown a strong commitment to combat money laundering by promulgating the Anti-Money Laundering Act of 1999 (AMLA 1999). The Anti-Money Laundering Office – AMLO, a new law enforcement agency, is established under the AMLA 1999 and is the national focal point of Thailand Financial Intelligence Unit or FIU. The AMLA 1999 contains mechanisms that serve as proactive prevention measures comprising 66 sections with 7 Chapters as follows:

- Chapter 1: General Provisions in sections 5-12
- Chapter 2: Duties to Report the Required Information in sections 13-23
- Chapter 3: Anti-Money Laundering Board in sections 24-31
- Chapter 4: Transaction Committee in sections 32-39
- Chapter 5: Anti-Money Laundering Office (AMLO) in sections 40-47
- Chapter 6: Actions on Assets in sections 48-59
- Chapter 7: Penalties in sections 60-66

Definition terms are prescribed in section 3 of the Act. Currently, there are eight predicate offenses as listed below:

- (1) Offenses relating to narcotics under the Narcotics Control Act or the Act on Measures for the Suppression of Offenders in an Offense relating to Narcotics.
- (2) Offenses relating to sexuality under the Penal Code, in particular to sexual offenses pertaining to procuring, seducing, or taking or enticing for indecent act on women or children in order to gratify the sexual desire of another person, and offenses relating to the trafficking in children or minors, or offenses under the Measures to Prevent and Suppress Trading of Women and Children Act, or

- offenses under the Prevention and Suppression of Prostitution Act, in particular related to offenses of procuring, seducing, enticing or kidnapping a person for the purpose of prostitution trade, or offenses relating to being an owner of a prostitution business, or an operator, or a manager of place of prostitution business, or supervising persons who commit prostitution for trade in a prostitution business,
- (3) Offenses relating to cheating and fraud to the public under the Penal Code or offenses pursuant to the Fraudulent Loans and Swindles Act,
  - (4) Offenses relating to embezzlement or cheating and fraud involving assets, or acts of dishonesty or deception as described in the law governing commercial banks, or Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, or Act governing Securities and Stock Exchange, which is committed by director, a manager or any person who is in charge of or having any vested interest relating to the management of a financial institution,
  - (5) Offenses relating to malfeasance in office, or malfeasance in judicial office under the Penal Code, offenses pertaining to the law governing public officials of a state enterprise or government office, or offenses pertaining to malfeasance or dishonesty in carrying out official duties under other related laws,
  - (6) Offenses relating to the commission of extortion or blackmail by a member of an unlawful secret society or organized criminal association as defined in the Penal Code,
  - (7) Offenses relating to customs evasion under the Customs Act,
  - (8) Offences relating to terrorism under the Penal Code

At present AMLO has proposed that predicate offenses be expanded to augment the scope of enforcement of measures for anti-money Laundering. The eight additional predicate offenses proposed are as follows:

1. Offenses relating to the use, holding, or being in possession of natural resources or the illegal exploitation of natural resources committed unlawfully under the law governing minerals, the law governing forestry, the law governing national reserved forests, the law governing petroleum, the law governing national parks, or the law governing preservation and protection of wild life.
2. Offenses relating to foreign exchange control under the law governing foreign exchange control
3. Offenses relating to unfair acts concerning securities transactions under the law governing securities and security exchanges
4. Offenses relating to gambling under the law governing gambling
5. Offenses relating to arms trading under the law governing fire arms, ammunition, explosives, fireworks, and toy guns.
6. Offenses relating to collusion in submitting tenders to government agencies and offenses relating to obstruction of fair price competition under the law governing tenders offered to government agencies.
7. Offenses relating to labor cheating under the Penal Code
8. Offense relating to liquor under the law governing liquor , offenses relating to tobacco under the law governing tobacco, and offenses concerning excise duties under the law governing excise duties

The first preventive measure contained in the AMLA 1999 is the creation of a Transaction Committee authorized to examine and enjoin transactions involving the fruits of a predicate offense and derivative assets, regardless of the number of times such assets have

changed form. The threshold for the Transaction Committee's power to examine such transactions is reasonable suspicion that money laundering is involved.

Section 38 of AMLA empowers the Transaction Committee, AMLO Secretary-General and an assigned competent officer to make written inquiries to an entity suspected of laundering money. They may request that the entity explain the transaction orally or in writing, and that it submit evidence about the transaction for examination by the Transaction Committee. AMLA also authorizes AMLO officials to search business premises in order to obtain evidence for use in further examinations.

The second measure in AMLA is the requirement that financial institutions report on transactions involving 2,000,000 Baht or more in cash, and those involving 5,000,000 Baht or more in non-cash assets. Financial institutions must also file Suspicious Transactions Report (STR) for transactions suspected to involve money laundering, regardless of the amount. Since 27 October 2000, the Thai FIU has received 50,000 compliance reports per month. Property transaction reports account for 54 percent, followed by cash transaction 41 percent, and suspicious reports 5 percent. AMLA also establishes a Financial Transaction Task Force on Money Laundering with guidelines on the filing of STRs. Failure to file an STR is an offense under AMLA.

In addition, the said law also stipulates the use of a special forfeiture measure known as the Civil Forfeiture Measure. AMLA's grant of civil forfeiture to AMLO is its chief counter-measure against money laundering and other organized crimes. Under Section 48 of AMLA, the Transaction Committee and the AMLO Secretary-General may petition a civil court for forfeiture of laundered assets and in urgent circumstances may unilaterally restrain such properties for up to ninety days to allow time for such a petition.

The penalties imposed on those who are convicted of violating the AMLA are prescribed in sections 60-66 as summarized below:

- (1) Whoever is found guilty of the crime of money laundering shall receive a jail term of 1-10 years and/or a fine from Bt 20,000 to Bt 200,000 (540 – 5,400 USD) in case of an individual; from Bt 200,000 to Bt 1 million (5,400 – 27,000 USD) in case of a juristic person;
- (2) Whoever is found guilty of failing to comply with a transaction reporting obligation, he/she shall receive a jail term not to exceed 2 years and/or a fine from Bt 50,000 - Bt 500,000 (13,500 USD);
- (3) Whoever discloses any official secret concerning the proceedings according to the AMLA without authorized legal power shall receive a jail term not to exceed 5 years and/or a fine of not more than Bt 100,000 (2,700 USD).

Penalties will be doubled for public officials, politicians at any level, and employees of any state enterprise, members of a board, managers, any individual who is responsible in the management of financial institutions, or members of any organizations under the Constitution.

Penalties will be tripled for any member of the AMLO Board, member of Sub-Committee Board, member of the Transaction Committee, AMLO Secretary-General, Deputy Secretary-General, and competent public and judicial officials empowered to act in accordance with this Act, who commits any malfeasance in office.

Thus, it can be said that the mechanism of the Thai anti-money laundering law responds well to government policy on prevention and correction of the problem of transnational crime. As from October 2000 – August 2005, AMLO had issued seizure orders of 420 cases with a value of seized asset about Baht 4,000 million (US\$ 100 million). The volumes of assets forfeited to the state worth Baht 500 million (US\$ 12 million). About 90 percent of the proceeds of crime are drug-related.

### **Cross Border Statute**

The prevention and suppression of organized crime syndicates or transnational crimes can be achieved efficiently, only when there is a specific legal mechanism together with laws on extradition and on mutual assistance in criminal matters. Being fully aware of the need to have such laws, Thailand has promulgated a substantial law on mutual assistance in criminal matters since 1992, namely the *Act on Mutual Assistance in Criminal Matters B.E. 2535*.

The *Act on Mutual Assistance in Criminal Matters* is a legal instrument setting a formal comprehensive framework for cooperation relating to criminal justice and covering the various aspects of criminal justice outlined categorically below:

1. Investigation, inquiry, and testimony.
2. Compiling and providing documents or information.
3. Delivery of documentary evidence.
4. Search and seizure.
5. Transferring or accepting a person in custody for taking testimony.
6. Tracing of subjects or individuals.
7. Initiating criminal proceeding upon request.
8. Confiscation or seizure of assets.

In addition, the *Act on Mutual Assistance in Criminal Matters, Section 7 (6)* also grants power and authority to the Attorney General to function as the Central Authority for other actions to achieve the objectives set forth in the Act. Establishing such a Central Authority is consistent with the *Palermo Convention, article 18 paragraph 13* requiring all State-Parties to establish an official central authority to receive formal requests for legal assistance by going through normal protocol as well as to execute or transmit the request to the competent authority for further action.

The *Act on Mutual Assistance in Criminal Matters* is a legal instrument allowing any country to request assistance in criminal matters from Thailand through diplomatic channel, even in the absence of a bilateral treaty. It only requires the Requesting State to offer some clear gesture that it would render the same assistance in return upon receipt of a similar request from Thailand, as stipulated in Section 9 (1).

Section 9 sets forth general criteria for rendering assistance to a foreign country as described below:

(1) Any justified ground for assistance must relate to a crime which is also an offense according to Thai law, based on the principle of Double Criminality, except in cases where Thailand and the requesting party adhere to the Mutual Legal Assistance Treaty, and the content of this treaty stipulates otherwise.

(2) Thailand may turn down the request for any assistance, if such a request poses a threat or impacts on national sovereignty, national security or any vital public interest of Thailand, or is related to any political offense.

(3) Rendering mutual assistance shall not be related to, or linked with, any military offense.

This law is supplemented by Treaties of Mutual Assistance in Criminal Matters that Thailand has with 8 countries: namely, the United States, Canada, the United Kingdom, France, Norway, China, Korea and Poland.

### **International Cooperation in Combating Money Laundering**

In addition to enacting internal measures as described earlier, Thailand has been pursuing increased international cooperation. In the past years, AMLO has coordinated with foreign counterparts in such matters as intelligence gathering, improvement of legislation, prosecution of criminal cases, and so on. The Financial Intelligence Unit (FIU) was set up within AMLO with the following important functions.

- (1) To receive and to keep electronic transaction reports submitted by financial institutions and other sources;
- (2) To preliminarily examine and analyze transaction reports, particularly suspicious transaction reports, and information concerned;
- (3) To act as the point of contact of Thailand in exchanging of financial information, including signing Memorandum of Understanding (MOU) on financial information exchange with other foreign FIUs;
- (4) To set up and to maintain the AMLO database, computer and communication systems.

The Thai FIU is authorized to share financial intelligence information with other countries, and pursuant to certain enumerated foreign predicate offences, AMLO can pursue the laundering of the proceeds of foreign crimes by criminals who conceal their illegal wealth in Thailand.

The sharing of information is usually made under the provisions of the “Memorandum of Understanding Concerning Cooperation in the Exchange of Financial Intelligence Related to Money Laundering”. This MOU is based on the Egmont Group model and approved by the Cabinet on 12 February 2002. The Cabinet also authorized AMLO Secretary-General to sign the MOU with foreign FIU on behalf of the government.

As of July 2005, AMLO has signed the MOU with 23 countries, namely Belgium, Brazil, Lebanon, Indonesia, Romania, United Kingdom, Finland, Republic of Korea, Australia, Portugal, Andorra, Estonia, Philippines, Poland, Mauritius, Netherlands, Georgia, Monaco, Malaysia, Bulgaria, St. Vincent and the Grenadines, Ukraine and Myanmar. As for non-MOU countries, AMLO considers exchanging of information on a reciprocal basis.

Thailand also became a member of the **Asia/Pacific Group on Money Laundering** (APG) in April 2001. The membership enables all member states to enhance information exchange and expertise in the implementation of money laundering and terrorist financing counter-measures. In addition to that Thailand has officially joined the **Egmont Group of Financial Intelligence Unit** in October 2001. The Group was first formed up by a number of FIUs at the Seventh Industrial Countries (G7) meeting in 1995 at the Egmont-Arenberg Palace in Brussels. The Group provides a forum for member states to discuss issues common to FIUs and to foster cooperation as well as to advise FIUs under development.

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