

**Thailand: Detailed Assessment Report on Anti-Money Laundering  
and Combating the Financing of Terrorism**

This Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism for Thailand was prepared by a staff team of the International Monetary Fund using the assessment methodology endorsed by the Financial Action Task Force in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Thailand or the Executive Board of the IMF.

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THAILAND

DETAILED ASSESSMENT  
REPORT ON ANTI-MONEY  
LAUNDERING AND  
COMBATING THE FINANCING  
OF TERRORISM

JULY 24, 2007

INTERNATIONAL MONETARY FUND  
LEGAL DEPARTMENT



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## ACRONYMS

|                |   |  |
|----------------|---|--|
| <b>AFET</b>    | - | Agricultural Futures Exchange of Thailand                      |
| <b>AFTC</b>    | - | Agricultural Futures Trading Commission                        |
| <b>AG</b>      | - | Attorney General   |
| <b>AIMC</b>    | - | Association of Investment Management Companies                 |
| <b>AML/CFT</b> | - | Anti-Money Laundering and Combating the Financing of Terrorism |
| <b>AMLA</b>    | - | Anti-Money Laundering Act (1999) <sup>1</sup>                  |
| <b>AMLB</b>    | - | Anti-Money Laundering Board                                    |
| <b>AMLO</b>    | - | Anti-Money Laundering Office                                   |
| <b>APG</b>     | - | Asia/Pacific Group on money laundering                         |
| <b>ASCO</b>    | - | Association of Securities Companies                            |
| <b>ASEM</b>    | - | Asia-Europe Meeting  |
| <b>ASEAN</b>   | - | Association of South-East Asian Nations                        |
| <b>BAAC</b>    | - | Bank for Agriculture and Agricultural Cooperatives             |
| <b>BCP</b>     | - | Basel Core Principles  |
| <b>BOT</b>     | - | Bank of Thailand   |
| <b>CBA</b>     | - | Commercial Banking Act   |
| <b>CCC</b>     | - | Civil and Commercial Code                                      |
| <b>CDD</b>     | - | Customer Due Diligence   |
| <b>CPC</b>     | - | Criminal Procedure Code  |
| <b>CSP</b>     | - | Company Service Provider                                       |
| <b>CTR</b>     | - | Cash Transaction Reporting                                     |
| <b>DA</b>      | - | Derivatives Act  |
| <b>DNFBP</b>   | - | Designated Non-Financial Businesses and Professions            |
| <b>DOI</b>     | - | Department of Insurance  |
| <b>DSI</b>     | - | Department of Special Investigation                            |
| <b>ECA</b>     | - | Exchange Control Act (1942)                                    |
| <b>EXIM</b>    | - | Export-Import Bank of Thailand                                 |
| <b>FATF</b>    | - | Financial Action Task Force                                    |
| <b>FBA</b>     | - | Foreign Bankers' Association                                   |
| <b>FI</b>      | - | Financial institution  |
| <b>FIU</b>     | - | Financial Intelligence Unit                                    |
| <b>FPO</b>     | - | Fiscal Policy Office   |
| <b>FSAP</b>    | - | Financial Sector Assessment Program                            |
| <b>FSRB</b>    | - | FATF-style Regional Body                                       |
| <b>FT</b>      | - | Financing of terrorism   |
| <b>GDP</b>     | - | Gross Domestic Product   |
| <b>GHB</b>     | - | Government Housing Bank  |
| <b>GSB</b>     | - | Government Savings Bank  |
| <b>IAIS</b>    | - | International Association of Insurance Supervisors             |
| <b>ISBT</b>    | - | Islamic Bank of Thailand                                       |
| <b>IMF</b>     | - | International Monetary Fund                                    |
| <b>KYC</b>     | - | Know your customer/client                                      |
| <b>LEG</b>     | - | Legal Department of the IMF                                    |

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<sup>1</sup> This is referred to as the Money Laundering Control Act in the official translation. However, it is more commonly known as the AMLA, mainly because that is its name in an unofficial translation contained within a document commonly known as the "brown book." This assessment has been conducted using the text of the official translation.

|                 |   |   |
|-----------------|---|---|
| <b>MEF</b>      | - | Ministry of Economy and Finance                       |
| <b>MFA</b>      | - | Ministry of Foreign Affairs                           |
| <b>ML</b>       | - | Money laundering                                      |
| <b>MLA</b>      | - | Mutual legal assistance                               |
| <b>MOAC</b>     | - | Ministry of Agriculture and Cooperatives              |
| <b>MOC</b>      | - | Ministry of Commerce                                  |
| <b>MOF</b>      | - | Ministry of Finance                                   |
| <b>MOU</b>      | - | Memorandum of Understanding                           |
| <b>NAV</b>      | - | Net Asset Value                                       |
| <b>NCCTs</b>    | - | Non-Cooperative Countries and Territories             |
| <b>NGOs</b>     | - | Non-Government Organizations                          |
| <b>NPO</b>      | - | Nonprofit organization                                |
| <b>NSWPC</b>    | - | National Social Welfare Promotion Commission          |
| <b>OECD</b>     | - | Organization for Economic Cooperation and Development |
| <b>ONCB</b>     | - | Office of the Narcotics Control Board                 |
| <b>ORFT</b>     | - | Online Retail Funds Transfer                          |
| <b>OSEC</b>     | - | Office of the Securities and Exchange Commission      |
| <b>PC</b>       | - | Penal Code  |
| <b>PEC</b>      | - | Property Examination Committee of the ONCB            |
| <b>PEP</b>      | - | Politically-exposed person                            |
| <b>ROSC</b>     | - | Report on Observance of Standards and Codes           |
| <b>RTGS</b>     | - | Real Time Gross Settlement                            |
| <b>RTP</b>      | - | Royal Thai Police                                     |
| <b>S-G</b>      | - | The Secretary-General of the AMLO                     |
| <b>SAQ</b>      | - | Self Assessment Questionnaire                         |
| <b>SEA</b>      | - | Securities Exchange Act                               |
| <b>SEC</b>      | - | Securities and Exchange Commission                    |
| <b>SEPO</b>     | - | State Enterprise Policy Office                        |
| <b>SET</b>      | - | Stock Exchange of Thailand                            |
| <b>SFIs</b>     | - | Specialized Financial Institutions                    |
| <b>SMART</b>    | - | System for Management Automated Retail Funds Transfer |
| <b>SOE</b>      | - | State-Owned Enterprise                                |
| <b>SRO</b>      | - | Self-regulatory organization                          |
| <b>STR</b>      | - | Suspicious Transaction Report                         |
| <b>TA</b>       | - | Technical assistance                                  |
| <b>TBA</b>      | - | Thai Bankers' Association                             |
| <b>TC</b>       | - | Transaction Committee under the AMLA                  |
| <b>Thailand</b> | - | Kingdom of Thailand                                   |
| <b>TLAA</b>     | - | Thai Life Assurance Association                       |
| <b>UN</b>       | - | United Nations Organization                           |
| <b>UNSCR</b>    | - | United Nations Security Council Resolution            |
| <b>USA</b>      | - | United States of America                              |
| <b>WB</b>       | - | World Bank  |

## PREFACE

This assessment of the anti-money laundering and combating the financing of terrorism (AML/CFT) regime of the Kingdom of Thailand (Thailand) is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 (FATF 40+9 Recommendations) of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in June 2006. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from February 26 to March 13, 2007,<sup>2</sup> and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF), the World Bank (WB) and two expert(s) acting under the supervision of the IMF. The evaluation team consisted of: Stephen Dawe (Legal Department of the IMF (LEG), team leader); Giuseppe Lombardo (LEG); Pierre-Laurent Chatain (World Bank) and Mariano Federici and Tom Hansen (experts under LEG supervision, in the fields of legal issues and law enforcement respectively). Mr. Hansen also participated as an observer from the Asia-Pacific Group on Money Laundering (APG) during the assessment visit by prior agreement with the authorities. The assessors 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 (ML) and the financing of terrorism (FT) through financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Thailand at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Thailand's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF as part of the Financial Sector Assessment Program (FSAP) of Thailand. It was also presented to the APG and endorsed by this organization at its plenary meeting on July 24, 2007.

The assessors would like to express their gratitude to the Thai authorities for their exceptional cooperation and the hospitality that they extended to the team prior to and throughout the assessment mission.

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<sup>2</sup> The mission was based mainly in Bangkok but also visited the Golden Triangle region of Thailand (Chaing Rai, Chiang Saen and Mae Sai).

## EXECUTIVE SUMMARY

### Key Findings

1. Thailand has introduced a number of measures in recent years to strengthen its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) framework, particularly for CFT. The regime has resulted in a very large number of suspicious transaction reports (STRs), a large amount of assets being seized and contributed to the Thai government's objective of tackling drug crime. These achievements occurred despite outmoded legislation and other shortcomings identified in this assessment against the Financial Action Task Force (FATF) 40+ 9 Recommendations.
2. Thailand is susceptible to money laundering (ML) and terrorist financing (TF) because illicit proceeds are generated from drug trafficking, illegal gambling, theft, prostitution, human trafficking, illegal logging, corruption and from crime in bordering countries and because of a terrorist problem in its southern region. The illegal economy in Thailand has been estimated up to 13 percent of gross domestic product (GDP) and with ML predicate offenses estimated to generate illicit proceeds of up to 5 percent of GDP. In addition, the widespread use of cash and a large informal sector, estimated at up to 53 percent of GDP, provide many avenues for illicit proceeds to be laundered in Thailand.
3. This report identifies the strengths and weaknesses of the Thai AML/CFT framework and makes recommendations to bring it in line with the requirements of the FATF 40+9 Recommendations and to ensure that effective mechanisms are in place to implement and monitor Thailand's overall AML/CFT regime.
4. Thailand has a legal framework in the Anti-Money Laundering Act 1999 (AMLA) around which the core elements of its AML/CFT regime are established. The AMLA criminalizes ML by reference to eight predicate offenses, establishes the Anti-Money Laundering Office (AMLO) as Thailand's financial intelligence unit (FIU), imposes some customer due diligence (CDD) obligations on a wide range of financial institutions (FIs), requires these FIs to report transactions to the AMLO, and creates a civil process for the AMLO to seize criminal assets and have them vested in the state.
5. However, the AML/CFT regime is not fully in line with international standards and codes – there are weaknesses in the legal framework, the pursuit of ML cases, the coverage of institutions and in enforcement. The recommendations to improve the regime include the need to:
  - amend the AMLA in order to: (i) properly criminalize ML so that it covers all serious domestic predicate offenses; (ii) impose the core AML/CFT obligations to all FIs that contain ML and TF risks; and (iii) clarify AML/CFT supervisory roles and give appropriate powers for conducting compliance examinations;
  - strengthen enforcement when the AMLO and the financial regulators discover breaches of AML/CFT obligations;
  - extend AML/CFT obligations to non-financial businesses and professions;
  - properly pursue criminal investigations and prosecutions of ML and TF; and
  - fully implement the UN Security Council Resolutions and properly criminalize FT.

6. The authorities are committed to bringing Thailand's AML/CFT regime up to international standards and they are supported in this endeavor by the management of the major FIs.

### *Legal Systems and Related Institutional Measures*

7. Money laundering in Thailand is criminalized under the AMLA but not fully in accordance with the FATF Recommendations. The predicate offenses in the AMLA need to be extended to cover all serious offenses and, at a minimum, the 14 out of the 20 designated categories of offenses in the FATF 40+9 Recommendations not currently covered.

8. The AMLO is also established under the AMLA to carry out the financial intelligence unit (FIU), and other functions. Critically, the AMLO disseminates few reports to Thailand's law enforcement agencies (LEAs) for completion of criminal investigations and prosecution of ML offenses due to the operational tendency of the AMLO to focus on civil seizure cases. Moreover, the AMLO does not allocate sufficient resources to properly analyze the STRs it receives. The AMLO's structure includes an investigative unit that focuses on seizing assets under a civil process for vesting property in the State. The unit is not an LEA but it does work with LEAs to help pursue its civil process and to assist LEAs pursue their criminal cases. Insufficient effort has been put into providing guidelines, feedback and public awareness about ML and TF.

9. While the use of civil processes has resulted in a large amount of criminal assets being seized the authorities need to place more emphasis on pursuing criminal investigations and prosecutions for ML and TF. Total asset seizures in Thailand since 1999 exceed \$250 million. The AMLO has seized approximately \$30 million of assets each year and secured permanent vesting of approximately \$14 million per year under its civil processes. The AMLO and LEAs have preferred to pursue criminal assets using civil processes because the standard of proof is lower than in criminal prosecutions, and because they have been encouraged by the existence of rewards for staff based on the amount of assets seized. The AMLO rewards system is in the process of being abolished partly because it acts as a disincentive for the AMLO to focus on its core FIU role and partly for integrity reasons. On average, Thailand prosecutes just eight ML cases each year obtaining convictions for three of those. The prosecuted cases typically relate to self laundering connected with drug offenses and not other predicate offenses.

10. Most LEAs need to provide more training on, and dedicate specialized staff to carry out, ML or TF investigations, especially outside of Bangkok. The exception would be the Office of the Narcotics Control Board (ONCB) Asset Forfeiture Group who have, over the last several years, successfully prosecuted cases and forfeited assets associated with drug trafficking. Investigators attached to this unit have been trained and have provided proceeds of crime training to other police agencies involved in narcotics investigations throughout the country. Further, the AMLO has trained over 800 Royal Thai Police (RTP) officers across Thailand on financial investigations. Even though that training focused on civil processes to seize property, the officers were provided specialized training in investigative techniques that they can apply to criminal investigations.

11. FT is criminalized under the Penal Code (PC) and is a predicate offense for ML under the AMLA but not fully in accordance with international standards. The PC TF offense needs amendment to: extend to financing of the acts set forth in the treaties in the annex of the UN TF Convention; fully cover the individual terrorist or terrorist organization; cover the mere provision or collection of property to a terrorist or terrorist organization; and, to increase the sanctions for the TF offense. Moreover, the authorities do not appear to place sufficient reliance on investigating TF to deal with Thailand's significant domestic terrorism issues and no TF cases have been prosecuted to date.

### **Preventive Measures – Financial Institutions**

12. The Thai legal framework for preventive measures for financial institutions (FIs) consists of the AMLA, ministerial regulations and other secondary legislation and guidelines issued by supervisory authorities. In the Thai system, the secondary legislation and guidelines issued by supervisory authorities are referred to as “Notifications” (sometimes circular letters) or “Policy Statements.” Notifications can be considered as regulations or other enforceable means depending on the method of issue and their content. In some instances, notifications may have the status of unenforceable guidelines.

13. Imposing preventive measures in the financial sector is hampered by outdated legislation, a diverse range of institutions, and a lack of clarity about which agencies are responsible for regulating and supervising the institutions that are subject to AML/CFT obligations.

14. There is a limited range of preventive measures applying to the FIs contained in the AMLA, and regulations made pursuant to it, which apply to the most important types of FI in Thailand. FIs must have their customers identify themselves when they conduct certain transactions. Under the AMLA, FIs are required to report to the AMLO: a) cash transactions over two million baht (\$52,800); b) transactions connected with property worth more than five million baht (\$132,000); and, c) suspicious transactions, regardless of the amount of the transaction. The reporting system results in approximately 40,000 STRs each year, almost all from banks. However, there are issues that need to be addressed to improve the AMLA :a) Customer identification does not extend to beneficial ownership, applies only to transactions that must be reported, and there is no obligation to conduct ongoing due diligence of the business relationship, including monitoring transactions; b) The threshold for occasional transactions of two million baht (\$53,000) exceeds the \$15,000 amount permitted by the standard and cannot be justified compared to the average Thai income level of \$3,000; and, c) There is no requirement to report attempted transactions, and only limited guidance has been issued by the authorities to help FIs identify suspicious transactions. The AMLA also does not require enhanced scrutiny of transactions involving countries which do not, or insufficiently, apply the FATF Recommendations, and Thailand has no mechanism to apply counter-measures against such countries. Finally, the AMLA does not apply to all FIs that operate in Thailand – a notable omission being authorized money transfer agents. Consideration should be given to amending the AMLA to impose the core AML/CFT obligations to all FIs in this central legislation. All FIs that carry out financial activities in Thailand, as defined in the FATF 40+9 Recommendations glossary, should be subjected to AML/CFT requirements under the AMLA covering all of the core obligations, unless their exclusion can be justified on the basis of a robust risk assessment relating to their activities. The authorities should consider conducting such an assessment – which would also help in developing and implementing a risk-based approach to supervision of FIs for AML/CFT.

15. The authorities are aware of the latest FATF 40+9 Recommendations and the limitations of the AMLA. The core agencies, (the AMLO, the Bank of Thailand (BOT) and the Securities and Exchange Commission (SEC)) have been enthusiastically and diligently taking steps aimed at bringing Thailand’s practice into better compliance with the FATF 40+9 Recommendations by supplementing the AMLA with other measures. However, inadequate and outdated laws hamper their efforts. Often they have had to rely on their good relations with and the goodwill of industry to implement measures that may not be in laws or regulations or are not otherwise enforceable. For example, , in March 2007, the AMLO issued a Policy Statement on Compliance with the Know Your Customer (KYC) and CDD for FIs and DNFBPs (the AMLO Policy Statement) containing unenforceable preventive measures . The BOT has issued a number of guidelines that are based on moral suasion and cooperation from FIs, such as the BOT Policy Statement issued on January 19, 2007 which spells out the KYC and CDD practices for all FIs under BOT supervision. The Office of

the SEC (OSEC) issued an enforceable AML/CFT Notification in March 2007 that imposed mostly CDD measures for the securities sector (excluding agricultural futures brokers).

16. The result is that many of the AML/CFT preventive measures that exist are not enforceable for the purposes of the FATF 40+9 Recommendations, including most of those that apply to banks, which dominate the financial sector. The securities sector has the highest level of compliance with the formal requirements of the FATF 40+9 Recommendations. The management of the main banks, securities firms and insurance companies met showed a good awareness of ML and TF risks and a willingness to implement measures to mitigate such risks even in the absence of legal obligations. However, the newness of many of the measures coupled with the need for the authorities to issue detailed guidance meant that, at the time of the mission, most institutions were still in the process of implementing the latest requirements.

17. The BOT regulates money services businesses, however, substantive measures are still needed to mitigate their ML and TF risks. 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. There is no existing law, regulation or other enforceable means regulating wire transfers and appropriate measures consistent with the requirements of FATF Recommendation SR VII need to be introduced. There are no declaration or disclosure requirements applying to cross-border transportation of foreign currency, bearer instruments, or the import of domestic currency and, the few controls that are in place are insufficient to effectively mitigate the known risks that exist.

18. The AMLO and the financial regulators have increased their supervision and monitoring of AML/CFT requirements in recent years but there is still room for improvement. There has not been a clear designation of which competent authorities are responsible for ensuring that FIs comply with the AMLA, and some institutions are not subject to any supervision for their AML/CFT obligations. The BOT and the SEC (but not the Department of Insurance (DOI)) carry out effective AML/CFT monitoring of the FIs that they supervise. Both the BOT and SEC, however, operate under legislation that makes it complicated to impose sanctions for non-compliance. Moreover, greater consideration should be given to imposing criminal sanctions for significant breaches of the AMLA by FIs.

19. The amendments to the AMLA should also clearly delineate the roles of the AMLO and the financial supervisors for monitoring compliance with AML/CFT requirements, and give appropriate powers for conducting compliance examinations. The AMLO and the financial regulators should also establish effective MOUs for coordinating their efforts and sharing information. The authorities should also raise awareness about ML and TF among FIs and improve the provision of guidance, especially aimed at the detection of suspicious transactions.

### **Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)**

20. There are no AML/CFT requirements in place in relation to any categories of the DNFBPs. Moreover, while it is illegal for casinos to operate in Thailand, many illegal casinos do exist. Thailand needs to determine how to apply AML/CFT requirements to each of the DNFBPs before the necessary amendments are made to the AMLA and other laws.

### **Legal Persons and Arrangements & Non-Profit Organizations**

21. The corporate registry system in Thailand contains information, updated annually, about legal, but not beneficial, ownership of juristic persons. Consideration should be given to improving

the provision of beneficial ownership information – including mechanisms to identify beneficial owners of bearer shares, which, even though permitted, no companies have issued them.

22. Thailand has begun a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for FT. That review should be completed and appropriate steps taken to mitigate any potential terrorism risks that the review identifies.

### **National and International Co-operation**

23. The AMLA establishes the Anti-Money Laundering Board (AMLB), which has a role in overseeing the AMLO's operations and coordinating AML/CFT issues in Thailand, with representation from a wide range of government agencies. However, improvements are needed to ensure that the AMLB operates effectively to develop, implement, and monitor Thailand's overall AML/CFT regime. The AMLO, as the central agency with responsibility for implementing the AMLA, did not maintain, and also had difficulty obtaining, some key information and statistics about ML/FT in Thailand. Moreover, many officials, particularly those outside of law enforcement, appeared to have a narrow view that ML relates mainly to narcotics using cash.

24. Thailand has signed, but not ratified, the Palermo Convention and has not fully implemented the Vienna Convention nor the UN Terrorist Financing Convention. These deficiencies should be remedied as soon as possible. Thailand should also implement specific measures to ensure that terrorist property can be frozen without delay as required under United Nations Security Council Resolutions (UNSCR) 1267 and 1373.

25. The AMLO has been a member of the Egmont Group of FIUs since 2001 and has a track record of exchanging information with other foreign FIUs. Thailand authorities have also enjoyed success in apprehending international criminals – notably arresting the terrorist known as Hanbali. It should be noted, however, that the narrow range of predicate offenses for ML and deficiencies in the TF offense in Thailand also seriously impede the ability of Thailand to cooperate internationally on ML and TF matters.

### **Other Issues**

26. The authorities should give higher priority to reduce cash use and encourage more activity to come within the formal sector to help reduce ML and TF risks.

27. The AMLO compiles a lot of statistical information about the AML/CFT regime and publishes some related information in its annual report, but there is room for improvement. Steps should be taken to improve data collection and statistics on ML investigations, prosecutions, and convictions, foreign assistance requests, and results relating to ML or TF investigations and terrorist and TF activities.

28. The good intentions and efforts of the authorities to bring Thailand into compliance with the FATF 40+9 Recommendations can only be achieved once the legislation that they are using to operate Thailand's AML/CFT regime is amended to address the deficiencies identified in this report.



## DETAILED ASSESSMENT REPORT

### 1 GENERAL

#### 1.1 General Information on the Kingdom of Thailand

29. The Kingdom of Thailand (Thailand) was established in the mid-14th century and it was known as Siam until 1939. Thailand, consisting of 76 provinces – that covers an area of 513,115 square kilometers – is situated in the heart of Southeast Asia, approximately equidistant between India and China. Thailand borders the Lao People’s Democratic Republic and the Union of Myanmar to the North, the Kingdom of Cambodia and the Gulf of Thailand to the East, the Union of Myanmar and the Indian Ocean to the West, and Malaysia to the South. The length of Thailand’s borders with its neighbors are: Lao PDR (1,754 kilometers), Myanmar (1,800 kilometers), Cambodia (803 kilometers) and Malaysia (506 kilometers). The coastline is 3,219 kilometers long.

30. The population is approximately 63 million. Of these, roughly eight million live in Bangkok, the capital and main financial center. The primary ethnic groups are: Thai (75 percent), Chinese (14 percent) and other (11 percent). Thai is the official language. Buddhism is the predominant religion.

31. A bloodless revolution in 1932 led to a constitutional monarchy. His Majesty, King Bhumibol Adulyadej, the hereditary monarch, is the chief of the State. The head of the government is the prime minister who is chosen by the members of the House of Representatives. Following the national election for the House of Representatives, the leader of the Party that can organize a majority coalition is appointed prime minister by the King. Thailand has a history of military coups. The latest coup occurred when Gen. Sondhi Boonyaratkalin, the Army Chief, led a bloodless coup to overthrow the Prime Minister’s administration on 19 September, 2006. The military government has suspended the 1997 Constitution, introduced an interim constitution on 1 October 2006, installed an interim national assembly and Prime Minister and announced that general elections under a new constitution, which must be approved by a general referendum to take place in 2007.

32. The interim administration has indicated that it has four priority objectives:<sup>3</sup>

- political reform to be undertaken by drafting a new constitution and conducting a free and fair election;
- the return of national unity to overcome political separation and impartial conduct in society, especially in relation to the three Southern border provinces that have experienced much injustice;
- economic reform to reduce the gap of income distribution; and
- restoring fairness and justice in the legal system to deal with issues of corruption and unfairness within the police force and all government agencies.

33. Under the suspended constitution Thailand has had a bicameral legislature consisting of a 200-member Senate, whose members are elected from constituencies on a nonpartisan basis for six-year terms and a 500-seat House of Representatives, whose members are popularly elected for four-year terms. Voting is compulsory for Thais over 18 years of age. The military government appointed an interim National Assembly with 250 members to act as the Senate and the House of Representatives.

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<sup>3</sup> Speech Notes from Prime Minister to Media dated 13 December 2006 posted on the Royal Thailand Government website at <http://www.thaigov.go.th/en/government/news.aspx?newsid=R49000000391>

34. Thailand's legal system is based on the civil law system with influences from the common law system. According to the Law Governing Court Organization of 1934, three levels of courts were established: the Courts of First Instance, the Courts of Appeal and the Supreme Court, as well as the Constitutional Court. There are about 135 Courts of First Instance throughout the Kingdom. The Courts of Appeals consist of one Bangkok-based Court of Appeal and three Regional Courts of Appeal. The Supreme Court is the highest and most important court, with jurisdiction to review and adjudicate on all cases, and the Court's judgments are final. However, in criminal cases the inmate, after serving time in prison for certain number of years, may petition His Majesty the King for clemency. The judges of the Supreme Court are appointed by the Monarch. Thailand also has an Intellectual Property and International Trade Court, established under the Act for the Establishment of and Procedure for Intellectual Property and International Trade Court 1996, the Supreme Administrative Court and Military Courts established under the 1997 Constitution, and the Central Bankruptcy Court, established under the Bankruptcy Act 1949 (as amended 2000). In addition there also are the Central Labour Court, established under the Act for the Establishment of and Procedure for Labour Court 1979, and the Central Juvenile and Family Court established under the Act for Establishment of and Procedure for Juvenile and Family Court 1991.

35. The economy operates using "free market" principles. In 1997, the economy suffered a major economic crisis. Since then Thailand has carried out an extensive process of reform. The economy grew in real terms by 6.3 percent in 2004, 4.4 percent in 2005 and the estimate for 2006 is 5 percent. Official unemployment is estimated to be 1.6 percent. The currency is the Baht. One baht equals \$0.0264 at December 31, 2006<sup>4</sup>. The highest denomination note is 1,000 baht (\$26.40). Thailand operates a managed floating exchange rate regime.

36. Total currency in circulation at 31 December 2006 was 806 billion baht (\$21.3 billion). This amounts to 12,919 baht per person (\$341) and is equivalent to 10.3 percent of GDP. According to the authorities the use of cash is high relative to the other countries.

37. The manufacturing of automobiles and their parts and tourism are the main economic activities. Approximately 11.5 million tourists visited Thailand in 2005. Around 40 percent of the labor force is employed in agriculture. The economy is very dependent on international trade and investment. Exports amount to approximately 60 percent of GDP as do imports. Japan, China and the USA are the major trading partners. Note that Thailand is the world's sixth largest exporter of jewelry and the world's ninth largest importer of precious metals and pearls.<sup>5</sup>

38. The World Bank Country Income Classification for Thailand is Lower Middle Income. Average income in 2006 was 117,362 Baht (\$3,098). Income disparity is an issue in Thailand. 2002 figures indicated that the richest 10 percent of the population controlled approximately 32 percent of Thailand's resources while the poorest 10 percent controlled approximately 2.8 percent. Average income is significantly higher in the large cities than the rural areas. Casual labor in remote areas earns approximately 150 baht per day (\$4). The Prime Minister stated on 5 March 2007 that "Thailand today has one of the most unequal income distributions of any country in the world, for our size and per capita income. The poorest 20 percent of our citizens account for only 4.5 percent of our nation's wealth while the richest 20 percent account for 55 percent."<sup>6</sup>

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<sup>4</sup> This rate has been used for all currency conversions in this report.

<sup>5</sup> International Trade Centre UNCTAD/WTO.

<sup>6</sup> "Think for Thailand" Telling us in which direction the country is going. An Address by His Excellency General Surayud Chulanont (Ret.) Prime Minister of the Kingdom of Thailand to the Thai Journalists Association, Dusit Thani Hotel, Bangkok, March 5, 2007 posted on the official Royal Thai Government website at [http://www.thaigov.go.th/en/government/news.aspx?newsid=R50000000421&M\\_CODE=](http://www.thaigov.go.th/en/government/news.aspx?newsid=R50000000421&M_CODE=)

39. Thailand was estimated to have an informal economy of 52.6 percent of official GDP in 1999/2000 compared to an average for 26 Asian countries of 26 percent of their official GDP.<sup>7</sup> The assessors were told that many Thais prefer to conduct a lot of their economic activity in cash outside of the formal economy.

40. The World Bank World Wide Governance Indicators Country Snapshot discloses the following governance indices for Thailand for 2005:

**Statistical Table 1. Thailand Governance Indicators**

| Indicator                       | Percentile Rank (0-100) |
|---------------------------------|-------------------------|
| Voice and Accountability        | 49.3                    |
| Political Stability/No Violence | 29.2                    |
| Government Effectiveness        | 66.0                    |
| Regulatory Quality              | 63.9                    |
| Rule of Law                     | 56.5                    |
| Control of Corruption           | 51.2                    |
| Average                         | 52.7                    |

41. In addition, Thailand received an index score of 4.5 out of 7 for Civil and Political liberties in a Freedom House, Freedom of the World report for 2000-2001. The average index score was 3.3. In the 2004-2005 World Economic Forum Global Competitiveness Report Thailand received a Public Institution Index of 4.71 against an average index score of 4.6.

42. Thailand is assessed as having a Corruption Perception Index of 3.6 out of a maximum score of 10 in 2006.<sup>8</sup> An index score of less than 3 is indicative that corruption is considered to be rampant. Thailand was ranked as the 63rd least corrupt country out of 163 countries for which an index was prepared. Note that in 1997 Thailand established the National Counter-Corruption Commission (NCCC) to enforce standards for integrity and transparency in investigating the Government. Thailand's previous Prime Minister is on record as stating that "corruption in Thailand won't go away, it's in the system."<sup>9</sup> The interim government has indicated that one of its priorities is the control of corruption and the strengthening of the anti-corruption agencies.

43. The Asian Corporate Governance Association (ACGA) assessed Thailand as having a corporate governance standard and practice index of 50 out of a possible 100 in 2005,<sup>10</sup> down from 53 in 2004. This compared to an average of 58 for the ten Asian nations that were assessed. The methodology identified Thailand as having particularly weak enforcement by regulators and the market (index of 40) and a low corporate governance culture (index of 35).

<sup>7</sup> Size and Measurement of the Informal Economy in 110 Countries Around the World, Friedrich Schneider, July 2002.

<sup>8</sup> Transparency International 2006.

<sup>9</sup> Time Magazine February 1, 2007 posted at <http://www.time.com/time/magazine/article/0,9171,1584101,00.html>

<sup>10</sup> In CG Watch 2005. The ACGA is an independent non-profit organization based in Hong Kong and working on behalf of investors and other interested parties to improve corporate governance practices in Asia.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

44. Thailand's National Security Policy (B.E 2546-2549) adopted in 2002 identifies the following factors that influence the environment for criminal activity in Thailand:

- “the difference in level of development in neighboring countries...[results]... in problems which affect Thailand's border areas, which have several weak points and a tendency of absorbing problems from neighboring countries, resulting in various local security issues”.
- “the majority of [internal] problems arise from unbalanced development...The outcome is a widening gap between rich and the poor... This, in turn, has become a major factor contributing to problems such as narcotics, dark influence and crime syndicates, corruption, and social conflict.”

45. Statistics issued by the United Nations<sup>11</sup> indicate that Thailand's major criminal issue is drug related crime. Thailand has less reported crime than the average in other surveyed countries from throughout the world. It also has more police than the average in other countries and is also relatively successful at prosecuting crime. Thailand has proportionally more prisoners than the average in other surveyed countries:

**Statistical Table 2. Selected Crime Statistics**

| Crime Related Statistic                            | Average of countries surveyed | Thailand |
|--|-------------------------------|----------|
| Total Crimes per 1,000 population                  | 33.7                          | 8.8      |
| Drug offences per 100,000 population               | 191.1                         | 428.9    |
| Murders per 1,000 population                       | 0.10                          | 0.08     |
| Assaults per 1,000 population                      | 2.5                           | 0.3      |
| Burglaries per 1,000 population                    | 5.1                           | 0.2      |
| Embezzlements and frauds per 1,000 population      | 1.3                           | 0.3      |
| Police per 1,000 population                        | 3.0                           | 3.4      |
| Adults prosecuted per 1,000 population             | 10.5                          | 8.9      |
| Conviction success rate (convictions/prosecutions) | 60%                           | 82%      |
| Prisoners per 100,000 population                   | 148                           | 340      |

46. Statistics supplied by the authorities support this analysis. They indicated that for the 12 months ending September 2005 Thailand had some 371,222 reported crimes (5.95 per 1,000 population) and that the three highest reported crimes were related to: drugs (95,293 or 1.5 per 1,000 population); gambling (77,858 or 1.3 per 1,000 population) and theft (60,390 or 0.98 per 1,000 population).

47. Thailand is classified as a country of primary concern for ML by the USA Government.<sup>12</sup>

<sup>11</sup> Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 1998-2000. Note: Crime statistics are often better indicators of prevalence of law enforcement and willingness to report crime, than actual prevalence of criminal activity.

<sup>12</sup> International Narcotics Control Strategy Report (INCSR), 2006. Released by the Bureau for International Narcotics and Law Enforcement Affairs, US Department of State, March 2006.

48. Statistical Table 3, taken from a study published in 1998, shows that the estimated size of the illegal economy in Thailand during the period 1993-95 was 8-13 percent of GDP<sup>13</sup>. The dominating criminal activities contributing to the size of the criminal economy were illegal gambling and prostitution.

**Statistical Table 3. Size of Thailand's Illegal Economy**

| Type of Illegal Activity                       | THB Billion |       | \$ Billion |       | % GNP |       |
|--|-------------|-------|------------|-------|-------|-------|
|  | Range       |       | Range      |       | Range |       |
| Drug trafficking                               | 28          | 33    | 0.8        | 0.9   | 0.8%  | 0.9%  |
| Trading in contraband and arms                 | 6           | 31    | 0.2        | 0.9   | 0.2%  | 0.9%  |
| Diesel oil smuggling                           | 9           | 9     | 0.3        | 0.3   | 0.3%  | 0.3%  |
| Prostitution in Thailand                       | 100         | 100   | 2.8        | 2.8   | 2.8%  | 2.8%  |
| Trafficking in people                          | 5           | 7     | 0.1        | 0.2   | 0.1%  | 0.2%  |
| Illegal gambling                               | 138         | 277   | 3.9        | 7.7   | 3.8%  | 7.7%  |
| made up of:                                    |             |       |            |       |       |       |
| underground lottery                            | 81          | 98    | 2.3        | 2.7   | 2.3%  | 2.7%  |
| football gambling                              | 12          | 16    | 0.3        | 0.4   | 0.3%  | 0.4%  |
| casinos  | 45          | 163   | 1.3        | 4.5   | 1.3%  | 4.5%  |
| Grand Total                                    | 286         | 457   | 8.0        | 12.8  | 7.9%  | 12.7% |
| Average Gross National Product (GNP) 1993-1995 |             | 3,600 |            | 100.0 |       |       |

***Estimated Laundering Activity – Predicate Offences***

49. The authorities estimate that seven of the eight predicate offences for ML generated proceeds of between 262 - 332 billion baht (\$6.9 billion to \$8.8 billion) in 2004. That was equivalent to 4.0 - 5.1 percent of Gross Domestic Product (GDP) for 2004. The details are set out in the following table:

**Statistical Table 4. Estimated Laundering Activity – Predicate Offences**

| Type of Predicate Offence             | Estimate of Proceeds Generated |       |             |      | Percent of GDP |       |
|---------------------------------------|--------------------------------|-------|-------------|------|----------------|-------|
|                                       | Baht Billions                  |       | \$ Billions |      | Low            | High  |
|                                       | Low                            | High  | Low         | High |                |       |
| Narcotics                             | 12                             | 24    | 0.3         | 0.6  | 0.2%           | 0.4%  |
| Trafficking of women and children     | 172                            | 172   | 4.5         | 4.5  | 2.7%           | 2.7%  |
| Public fraud                          | 0.7                            | 0.7   | 0.02        | 0.02 | 0.01%          | 0.01% |
| Embezzlement                          | 58.8                           | 58.8  | 1.6         | 1.6  | 0.9%           | 0.9%  |
| Corruption                            | 14.0                           | 58.0  | 0.4         | 1.5  | 0.2%           | 0.9%  |
| Extortion and blackmail <sup>14</sup> | N/A                            | N/A   | N/A         | N/A  | N/A            | N/A   |
| Customs duty evasion                  | 4.0                            | 14.0  | 0.1         | 0.4  | 0.1%           | 0.2%  |
| Terrorist financing                   | 0.5                            | 4.0   | 0.01        | 0.1  | 0.01%          | 0.1%  |
| Total                                 | 262.0                          | 331.5 | 6.9         | 8.8  | 4.0%           | 5.1%  |

50. **Narcotics:** The authorities consider that narcotics remains a major source of illegal proceeds in Thailand despite efforts taken to reduce this problem. Thailand was known as a major cultivator of opium in its northern border region with Myanmar and Laos known as the Golden Triangle. There were

<sup>13</sup> Guns, Girls, Gambling, Ganja – Thailand's Illegal Economy and Public Policy, Pasuk, Sungsidh and Nualnoi (1998).

<sup>14</sup> No estimates available.

approximately 200,000 narcotics related arrests annually in 2000-2002. The government declared a war on drugs on 1 February 2003. In September 2004 Thailand was taken off the U.S. State Department's list of major narcotics source or transit countries. The ONCB considers that the narcotics problem is improving, citing statistics that show that narcotics related arrests have fallen from 67,222 cases in January-May 2003 to 25,009 cases in the same period of 2004. However, the authorities consider that Thailand's major narcotics problem now is the production and trafficking of large quantities of methamphetamine. They estimate that in 2004, there was 1.2- 2.4 billion baht (\$32 to \$64 million) of cash in circulation related to trading in amphetamines. They also consider that Thailand remains an illicit transit point for heroin en route to the international drug market from Myanmar and Laos, and a drug money-laundering center for transnational organized crime groups in Thailand.

51. **Trafficking of women and children:** Thailand has taken steps to tackle this problem such as passing the Preventing and Suppression on Sexual Trafficking Act B.E.2539. However, the authorities consider that the problem remains due to economic and social factors and difficulties in enforcing the relevant laws.

52. **Public fraud:** The authorities consider that defrauding the public has a severe negative impact on the national economy. They indicated that in the period 1984-2003, 256 offenders were apprehended involving funds of 13,691 billion baht (\$361 billion).

53. **Embezzlement in financial institutions:** The authorities consider that the use of technology is providing increased opportunities for embezzling funds in FIs.

54. **Corruption:** The authorities consider that the complexity of methods used to effect corruption provide opportunities for large scale corruption to occur that is often beyond the reach of the law.

55. **Extortion or blackmail:** The authorities do not consider that this crime is as prevalent as other offences.

56. **Customs evasion:** The authorities consider that this crime is on the increase in Thailand. Furthermore, they consider that some forms are difficult to detect (e.g. goods that infringe copyright).

57. **Terrorist financing:** The authorities report that terrorist incidents do occur and that they are mainly confined to the three Southern Border Provinces: Yala, Patanee and Narathiwat. The authorities consider that the terrorist incidents are carried out by indigenous elements. The authorities report that there were 873 terrorist incidents in the South in 2004. While terrorist incidents are confined mainly to the South, it should be noted that, on December 31 2006 (New Year's Eve), eight professionally assembled bombs either exploded or were detected across Bangkok. In addition, the Memorial Institute for the Prevention of Terrorism (MIPT) Terrorism Knowledge Base records that Thailand was 5<sup>th</sup> highest country in the world in terms of terrorist incidents in the period 2000-2006. The authorities estimate that annually 5-10 million baht (\$132,000 – \$264,000) is provided to terrorists in the Southern Border Provinces. They also estimate that terrorists are paid approximately 50,000-100,000 baht (\$1,320 - \$2,640) in recompense for a high-risk mission; 10,000-50,000 baht (\$264 - \$1,320) for a mid-level mission; and less than 10,000 baht (\$264) for a low level mission. In several known cases terrorists have received as little as 1,000 baht (\$26) for a mission. The authorities also estimate that terrorists operating in the South are typically provided 500-5,000 baht (\$13 - \$130) to cover the cost of carrying out the terrorist act (e.g. to make bombs, obtain ammunition etc).

58. In addition, Thailand authorities have arrested foreign terrorists (including the Islamic terrorist known as Hanbali) who have used Thailand as a transit point for their activities in other countries (including arms smuggling) or as a safe haven – often using false identify documents.

***Illegal Proceeds from crimes that are not predicate offenses for ML***

59. The authorities also consider that proceeds are generated from the following illegal activities which are not currently predicate offences for ML:

60. **Environmental crime:** Known proceeds generating illegal activities include illegal logging and illegal distribution of petroleum products. The Prime Minister is also on record as stating that illegal trade in wildlife in Thailand is third only to narcotics and gun running.<sup>15</sup>

61. **Currency exchange transactions:** Known methods include operating without a license (including underground banking) and defrauding customers.

62. **Securities and Stock Fraud:** The SEC has settled or initiated 62 cases since 1992 involving \$1,025 million that have included stock price manipulation through techniques such as spreading rumors or acting in collusion with other investors; use of inside information; buying and selling stocks in breach of disclosure requirements; speculating on stocks outside of the stock market and operating illegal “boiler room” sales frauds on foreigners.

63. **Gambling:** Gambling in Thailand is illegal under the Gambling Act BE 2478 (1935).<sup>16</sup> However, the authorities are aware that illegal gambling thrives in Thailand and that it is a major problem, mainly in the form of underground lotteries and underground casinos. Arrests of illegal gamblers in the whole country are estimated at more than 100,000 people every year. According to a research conducted by the Faculty of Economics of Chulalongkorn University in 1996:

- a. There were 188 to 300 illegal gambling houses in Bangkok;
- b. The 5 largest gambling houses in Bangkok have a weekly turnover of 850 to 1,050 million baht (\$22-28 million); and
- c. The annual turnover for illegal gambling houses in Bangkok is 136 to 637 billion baht (\$4 to \$17 billion) and for those outside Bangkok 82 to 142 billion baht (\$2 to \$4 billion).

64. There are also 37 casinos operating in neighboring countries within very close proximity of the Thai border servicing Thai gamblers, located as follows:

- a. Thailand-Cambodia border - 13
- b. Thailand-Laos border - 1
- c. Thailand-Myanmar border - 12
- d. Thailand-Malaysia border - 1

65. The authorities estimate that one of the large casinos on the Thailand-Cambodia border attracts 100-200 mostly Thai citizens during weekdays, who collectively spend approximately 10 million baht per

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<sup>15</sup> Government press release 21 February 2007 quoted at [http://www.thaigov.go.th/en/government/news.aspx?newsid=R50000000419&M\\_CODE=](http://www.thaigov.go.th/en/government/news.aspx?newsid=R50000000419&M_CODE=)

<sup>16</sup> The Thai calendar is 543 years ahead of the Roman calendar. The practice in this document is to use the Thai calendar year where it relates to legal documents followed by the Roman calendar year in brackets.

day (\$264,000), and on weekends and public holidays there are usually about 400 people spending collectively about 40 million baht per day (\$1 million). This casino is operated by a Thai businessman.

66. While gambling at the casinos close to the border by Thai citizens is legal, the authorities consider that the existence of the casinos increases risks associated with currency smuggling by gamblers and by other criminals. The authorities also consider that the casinos may also more generally attract criminal elements into the region and the increased border crossing activity associated with the casinos may help disguise other smuggling including human trafficking. Thailand's main measure for dealing with these risks is to monitor border crossings in an attempt to detect currency smuggling.

67. In December 2003, the authorities estimated that:

- a. over \$750 million per annum is smuggled out of Thailand via plane by coordinated cash courier networks. This activity is often associated with casino junket visits by Thais to casinos in other jurisdictions. The junket patrons avoid having to move or declare their own money and thereby avoid detection by the AML/CFT measures in those destination jurisdictions.
- b. approximately \$20 million of suspect transactions related to hawala<sup>17</sup> had been reported to the AMLO.
- c. trade-based ML was being used to facilitate the smuggling of diamonds into Thailand – with one case involving false invoicing of \$175 million to remit money from Thailand to Hong Kong.

68. The authorities have also stated that cross border cash smuggling can be carried out by land via Thailand's neighboring countries, in addition to smuggling by air through Thailand's six international airports, as follows:

- a. **Northern border:** Cash is smuggled out to neighboring countries for the payment of drug trafficking. The foreigners may open bank accounts in Thailand for a transfer of drug money or using reliable Thais to open accounts as a nominee. The authorities indicated that this phenomenon can be observed by a very unusual high volume of cash circulation at border towns. They also indicated that STRs are comparatively high in the northern border areas. Officials were also quoted in the Bangkok Post as indicating that some of the illicit activity in border towns could be linked to human trafficking.
- b. **Southern border:** In this part of the region, cash is smuggled out to the neighboring country for both drug money and TF.
- c. **Eastern border:** In this part of the region, cash is carried out by gamblers heading to various casinos in the neighboring country. The gamblers also smuggle their winnings back into Thailand for depositing with Thai banks. The authorities also consider that some cash smuggling occurs related to drug trafficking from Cambodia.
- d. **Northeastern border:** Cash is smuggled out to the neighboring country as payment for drug money. In addition, USA currency is smuggled into Thailand and changed into Thai baht for deposit in banks in the border provinces. This activity may be related to smuggling drugs into Thailand from Laos PDR.

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<sup>17</sup> Underground banking network



- e. The assessors were also told that many Thai gamblers that cross the border use underground banking systems to transfer their funds to and from the casinos that they visit rather than carry cash across the border illegally.

69. The authorities indicated that pirated compact disks and DVDs generated good profits for organized crime groups associated with the drug trade from Myanmar. In addition, the USA government claims that Thailand is a production and distribution center for counterfeit consumer goods, and increasingly a center for the production and sale of fraudulent travel documents.<sup>18</sup> Moreover, the Business Software Association of Australia estimated in 2004 that 80 percent of computer software put into use in Thailand was pirated.

70. The authorities consider that laundering occurs in a wide range of FIs. They are of the view that the main methods used to launder funds in Thailand involve:

- a. investing illegal money in legal business;
- b. operating an illegal business through a company, a foundation or an association;
- c. investing in real estate, land and building, or any other valuable assets; and
- d. operating import-export businesses.

71. The authorities consider that there are four main methods used to raise funds for terrorism:

- a. Using a legal business as a front for illegal or unlicensed business activities that are not accounted for.
- b. Issuing shares in cooperatives or companies.
- c. Collecting money and fund-raising via religious activities (including from abroad).
- d. From crimes such as narcotics, gambling, sexual trafficking, gasoline trafficking, illegal labor-trading and arms trading.

72. The authorities indicated that the main countries for transferring illicit proceeds into or out of Thailand were its ASEAN neighbors.

73. In addition, the Mutual Evaluation of Nepal in 2005 by the Asia-Pacific Group on Money Laundering (APG) indicated that "... *there are links to organised crime groups in... Thailand with proceeds of crime from Nepal being traced to Thailand ... (sent via underground banking channels - 'Hundi').*"

### ***Organized Crime***

74. The authorities presenting differing views about the extent to which organized crime groups operate within Thailand. Some officials indicated that no organized crime operated at all. Instead, in their view crime was carried out by unsophisticated criminals with no organization or overseas links. Other officials were of the view that organized crime groups did operate in Thailand. Examples of such groups given included that:

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<sup>18</sup> INSCR report.

- a. Mafia-styled groups, some with links to Russian criminals, operated in the Pattaya tourism area in Chon Buri province. Some of this activity was related to the sex industry;
- b. Japanese organized crime was involved in organizing sex industry workers to travel to and work in Japan;
- c. Criminal gangs from China used Thailand as a transit point for their operations; and
- d. Organized criminal groups from Germany and the UK were known to operate in Thailand often pretending to be visiting as tourists.

75. Murder for payment does occur. However, the authorities indicated that in most cases the killing is a localized revenge killing not linked to organized crime. The hired killer is usually very poor and paid very little, perhaps \$2,000.

76. The preceding analysis points to a number of factors that make Thailand particularly susceptible to the risk of ML and TF activity being carried out: the use of cash is high and there is a large informal sector; many tourists visit each year; there is a large jewelry and precious metals sector operating; corruption is considered to be widespread; Thailand may have a weaker than average corporate governance culture and weak enforcement by regulators; there are known crime problems with some bordering countries; the widening gap between rich and poor may contribute to crime problems, corruption and social conflict including potential domestic terrorism; Thailand has known crime problems that generate proceeds associated with drugs, illegal gambling, theft, prostitution, human trafficking and illegal logging; the illegal economy has been estimated up to 13 percent of GDP and the eight existing predicate offenses for ML are estimated to generate illicit proceeds of up to 5 percent of GDP; Thailand has been subjected to a large number of terrorist incidents mainly in its southern region which must be financed from domestic or foreign sources; foreign terrorists have used Thailand as a transit point or as a safe haven; illegal profits have been generated through securities and stock fraud; illegal casinos operate throughout Thailand and many Thais gamble in neighboring countries; large sums of cash are estimated to be smuggled in and out of Thailand; Thailand is a known destination for trading in counterfeit consumer goods and pirated DVDs and software; fraudulent travel documents can be obtained in Thailand; organized crime with links to Russia, Japan, China, Germany and the UK are known to operate in Thailand; and murder for payment is known to occur.

77. The authorities provided the information in the following table that gives a selection of statistics concerning the AML/CFT regime that operates in Thailand:

**Statistical Table 5. Selected Statistics on Thailand AML/CFT Regime**

| <b>Year</b>  | <b>No. of STRs</b> | <b>Value of STRs<br/>Baht million</b> | <b>Value of STRs<br/>\$ million</b> | <b>Assets Seized<br/>Baht million</b> | <b>Assets Seized<br/>\$ million</b> | <b>Prosecuted<br/>ML Cases</b> | <b>ML<br/>Convictions</b> | <b>Property Forfeited<br/>Baht million</b> | <b>Property Forfeited<br/>\$ million</b> |
|--------------|--------------------|---------------------------------------|-------------------------------------|---------------------------------------|-------------------------------------|--------------------------------|---------------------------|--|--|
| 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                                      |
| <b>TOTAL</b> | <b>212,843</b>     | <b>583,423</b>                        | <b>18,218</b>                       | <b>10,246</b>                         | <b>268</b>                          | <b>48</b>                      | <b>19</b>                 | <b>1,150</b>                               | <b>30.4</b>                              |

\* Up to 9/29/2006 only.

### 1.3 Overview of the Financial Sector

78. The financial system is bank-centered, with banks and government owned specialized financial institutions (SFIs) dominating the landscape. The banking sector is highly concentrated, with the top five commercial banks accounting for 70 percent of banking assets and deposits at end-2005. The insurance, provident fund and mutual fund industry are growing, although from a small base. The stock and bond markets are relatively large, with market capitalization at 73 percent of GDP and 50 percent, respectively.

79. Cash transactions are the most important payment instrument for small retail transactions and for transfers of value between individuals, which account for 10 percent of GDP. For small business activities, check payments are widely used, which in value term accounts for 20 percent of the total paper based payment transactions. The use of card payments has been increasing in recent years. In 2006, the number of issued ATM cards is 30 million, which is 55 percent of total saving accounts. However, the value of transactions is still modest, about 2 percent of the total electronic payments.

#### ***Banking and deposit taking:***

80. The structure of the banking sector has changed markedly since the 1997 financial crisis. The number of deposit-taking FIs has declined sharply from 135 at end-1996 to 43 at end-September 2006 with most of the consolidation taking place among finance companies. The government's role in financial intermediation has increased sharply over the past decade, largely because of intervention during the financial crisis. Banks with significant government ownership accounted for over one-fifth of total banking assets. Foreign banks account for less than 10 percent of the banking assets.

81. The following types of banking institution operate in Thailand:

- a. **Commercial banks:** These fall into the following categories, with some being in more than one category:
  - i. **Retail banks:** These are full service banks usually operating a branch network through out Thailand that are permitted to offer services to retail customers. The dominant ones are Thai owned.
  - ii. **Commercial (only) banks:** These banks are full service banks but they are not permitted to offer services directly to retail customers. Instead they offer

wholesale services to commercial customers and to other banks. Many of these banks are foreign owned branches.

iii. **Foreign bank branches:** There are 17 foreign banks that are permitted to operate a foreign branch in Thailand. These all operate one branch in Bangkok only.

b. **SFIs that are banks:** The Government has established and owns eight Specialized Financial Institutions (SFIs) operating in Thailand. Six of these are banks (Government Housing Bank (GHB), Government Savings Bank (GSB), Bank for Agriculture and Agricultural Cooperatives (BAAC), SMEs Development Bank (SMEDB), Export – Import Bank of Thailand (EXIM) and the Islamic Bank of Thailand (ISBIT). Over time they have expanded their activities into general banking operations in addition to their original function to provide specialized financial services for defined purposes. They have an average asset size of \$8.6 billion which is greater than the average assets size of the retail and commercial banks and command a market share of deposits which is approximately one fifth of that of the commercial banks . GSB, largest SFI bank, has total assets of \$19 billion.

82. The assessors have given more weight to the measures in place for these institutions than for the rest of the financial sector when assessing overall effectiveness and ratings.

***Non-bank financial institutions:***

83. In addition, non-bank FIs that provide financial services include the following types that are unique to Thailand:

- a. **Credit Foncier Businesses:** There are entities that carry on business similar to and are in the process of being converted into finance companies.
- b. **SFIs that are non-banks:** There are two of these and they are relatively small compared to the other SFIs and also to most other FIs - the Secondary Mortgage Corporation (SMC) and the Small Business Credit Guarantee Corporation (SBCGC).
- c. **Agricultural Cooperatives:** These are juristic persons formed by groups of farmers under the Cooperative Act B.E. 1999. They help farmers operate cooperatively through providing services such as loans, savings and deposits, sale of consumer and farm supplies, goods, joint marketing, and agricultural extension and services. The BAAC, an SFI, specializes in supporting agricultural cooperatives. As of 31 March 2006 there were 3,315 Agricultural cooperatives in Thailand with an average membership of 1,644 with each member having a holding equivalent of \$427.

***Securities Industry:***

84. There are 3 distinct parts of the securities market: the equity market; the bond market; and the futures market. All are regulated and supervised by the SEC under the SEA and the Derivatives Act (DA).

85. **Equity Market:** Thailand's only authorized secondary securities market is the Stock Exchange of Thailand (SET), which is regulated by the SEC. Trading on the SET has been fully computerized since April 1991. The trading system operated at the SET is the Automatic Order Matching system, which performs order-matching process according to price then time priority, without human intervention. All trading transactions on the SET are cleared and settled within the third consecutive business day following the trading day (T+3). The clearing and settlement process is managed by Thailand Securities

Depository Co., Ltd. (TSD<sup>19</sup>), a wholly-owned subsidiary of the SET. The annual turnover value on the SET for 2006 was recorded at \$109 billion with an average daily turnover of \$445 million. As of 31 December 2006, there were 476 companies listed on the SET and 44 companies listed on a smaller trading platform (the Market for Alternative Investment) with a total market capitalization of \$141 billion, which was about 73 percent of the GDP. For the year 2006, retail investors accounted for 54.5 percent of the market turnover on the SET, foreign investors for 34 percent and local institutional investors for the remaining 11.6 percent.

86. **Bond Market:** The trading platform for bonds is also operated by the SET. Settlement of government securities was migrated from the BOT to Thailand Securities Depository (TSD) in May 2006, making the TSD the single provider of securities settlement in addition to being a share depository centre and clearinghouse. The total turnover value of the bond market at 2006 year-end was recorded at \$192 billion while daily average turnover value was \$784 million. Mutual funds were the major players on the customers' side, while active dealers were mainly the commercial banks. The SET also operates a Bond Electronic Exchange (BEX) aimed at retail bond investors. The total turnover value of the BEX was \$8.2 million for the year 2005.

87. **Firms providing securities-related services** to the general public must be licensed by the SEC. The types of license granted to operate securities businesses are: brokerage (41 firms), dealing (59 firms), underwriting (60 firms), advisory service (45 firms), securities lending and borrowing (11 firms) mutual fund management (22 firms), private fund management (33 firms) and derivatives fund management (10 firms). Each firm can operate more than one type of business subject to licensing. However, brokerage business has accounted for 80 percent of securities firm revenue for a decade.

88. **Futures Market:** The Thailand Futures Exchange Plc (TFEX), is a subsidiary of the SET. Trading is conducted electronically. Investors place orders through brokers, who are TFEX members. Only member firms are allowed to access the Exchange trading system. To become a member of the TFEX, brokerage firms must first acquire a license from the SEC and then apply for TFEX membership. By law, the permitted underlying products for the TFEX include equities and other securities indices, debt instrument and interest rates, non-agricultural commodities and other financial indices. As of December 29, 2006, the total trading in the TFEX amounted to 198,737 contracts or 1,204 contracts a day, with an average value of 97.9 billion baht (\$2.7 billion).

### *Insurance Industry*

89. The insurance industry provides a full range of life, non-life and investment related insurance products throughout Thailand. There are approximately 100 insurance companies, all but 6 of them Thai owned. The industry uses a network of just over 30,000 brokers and just over 300,000 agents to help sell products and to service clients. More than 90 percent of life insurance business is conducted through agents. One quarter of the companies are life insurance companies but they account for more than 80 percent of the sector assets and their premium income is twice that of non-life insurance. The average life insurance premium in 2005 was \$362. This may imply that a significant proportion of the life insurance business in Thailand is conducted below the annual premium level of USD/EUR 1,000 identified in the FATF Recommendations meaning that simplified or reduced measures could be appropriate. The authorities consider that the risk of ML occurring in the life insurance sector is low due to the incentives that insurance companies have to know that they are dealing with the correct insured person, because

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<sup>19</sup> TSD is likely defined as an FI under the FATF Recommendations as, in the course of its business it likely lends and it is involved in transferring value. It is not obvious that FATF intended that clearing and settlement services for FI clients were meant to be caught by the definition of FI and very few assessment reports address the issue. The Thai authorities are advised to assess the ML risks associated with TSD and then determine the extent to which TSD should be subject to the AMLA.

most premiums are paid by check and the level of cancelled policies is very low. They acknowledge that single premium policies are able to be purchased and that some premiums are paid in cash – although these are usually for very small amounts.

### Structure of financial sector, 31 December 2006

90. The following table sets out the types of FIs that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9:

**Table 6. FATF Financial Activities**

| Type of financial activity<br>(See the Glossary of the 40 Recommendations)  | Type of financial institution that performs this activity <sup>20</sup>  |
|---|--|
| 1. Acceptance of deposits and other repayable funds from the public (including private banking)   | 1. Commercial Banks<br>2. Finance Companies<br>3. Credit Foncier Companies<br>4. SFIs <sup>21</sup><br>5. Savings or Credit Cooperatives<br>6. Social Security Fund  |
| 2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))   | 1. Commercial Banks<br>2. Finance Companies<br>3. Credit Foncier Companies<br>4. SFIs <sup>22</sup><br>5. Savings or Credit Cooperatives<br>7. Agricultural Cooperatives <sup>23</sup><br>8. Personal Loan business companies<br>9. Pawnshops<br>10. Hire Purchase Companies |
| 3. Financial leasing (other than financial leasing arrangements in relation to consumer products)   | 1. Commercial Banks<br>2. Finance Companies<br>3. SFIs (SMEDB, GHB, ISBT)<br>12. Leasing companies   |
| 4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds) | 1. Commercial Banks<br>4. SFIs (GSB, ISBT, GHB, , BAAC)<br>13. Authorized Money Transfer Agents<br>14. Postal Office   |
| 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, electronic money)   | 1. Commercial Banks<br>4. SFIs (GSB, GHB, ISBT)<br>15. Credit cards companies<br>14. Postal Office<br>16. Companies Authorized to issue travelers cheques<br>17. E Money Companies   |
| 6. Financial guarantees and commitments   | 1. Commercial Banks<br>2. Finance Companies  |

<sup>20</sup> The numbers given to each type of financial institution are used in subsequent tables to help with cross-identification between the tables.

<sup>21</sup> The SFIs that accept deposits are: GSB, BAAC, GHB and ISBT

<sup>22</sup> The SFIs that lend are: GSB, BAAC, SMEDB, EXIM, GHB, ISBT

<sup>23</sup> It is arguable that Agricultural cooperatives are also an FI for the purposes of part one of the FATF definition because, in addition to lending, they accept deposits but only from their members – not the public.

|   |  |
|---|--|
|   | 4. SFIs  |
| 7. Trading in:<br>(a) money market instruments (cheques, bills, CDs, derivatives etc.);<br>(b) foreign exchange;<br>(c) exchange, interest rate and index instruments;<br>(d) transferable securities;<br>(e) commodity futures trading | 1. Commercial Banks<br>2. Finance Companies<br>4. SFIs (GSB, ISBT)<br>18. Agricultural Futures Brokers<br>19. Derivatives Broker/Dealers<br>20. Securities Companies                     |
| 8. Participation in securities issues and the provision of financial services related to such issues  | 4. SFI (SMC)<br>20. Securities companies   |
| 9. Individual and collective portfolio management   | 4. SFIs (GSB, SBCG)<br>20. Securities companies licensed to operate mutual funds or private funds, including provident funds.  |
| 10. Safekeeping and administration of cash or liquid securities on behalf of other persons  | 1. Commercial Banks including when registered as mutual funds supervisors or custodians<br>21. Companies that handle cash (such as private security firms that provide payroll services) |
| 11. Otherwise investing, administering or managing funds or money on behalf of other persons  | 1. Commercial Banks<br>20. Securities Companies licensed to operate mutual or private funds including provident funds.<br>22. Asset Management Companies                                 |
| 12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))   | 4. SFIs (GSB, ISBT)<br>23. Life insurance companies<br>24. Life insurance agents and brokers   |
| 13. Money and currency changing   | 1. Commercial Banks<br>4. SFIs (GSB, ISBT)<br>25. Authorized money changers  |

91. The following table sets out for each type of financial institution some statistics on their size.

**Table 7. Thailand Financial Institution Statistics**

| Type of Financial Institution   | Number                   | % <sup>1</sup> | Branches         | Total Assets <sup>2</sup><br>(THB million) | Total Assets<br>(\$ million) | %            | Average Assets<br>(\$ million) |
|---|--------------------------|----------------|------------------|--|------------------------------|--------------|--------------------------------|
| 1. Commercial Banks   | 36                       | 0.5            | 4,775            | 8,686,396                                  | 229,321                      | 56.0         | 6,370                          |
| 2. Finance Companies  | 5                        | 0.1            | 5                | 55,051                                     | 1,453                        | 0.4          | 291                            |
| 3. Credit Foncier Companies   | 3                        | 0.0            | 3                | 3,240                                      | 86                           | 0.0          | 29                             |
| 4a. SFIs that are banks   | 6                        | 0.1            | 1,391            | 1,956,558                                  | 51,653                       | 12.6         | 8,609                          |
| 4b. SFIs that are non-banks   | 2                        | 0.0            | 10               | 11,061                                     | 292                          | 0.1          | 146                            |
| 5. Savings or Credit Cooperatives   | 2,823                    | 39.1           | ?                | 521,066                                    | 13,756                       | 3.4          | 5                              |
| 6. Agricultural Cooperatives  | 3,315                    | 45.9           | ?                | 88,146                                     | 2,327                        | 0.6          | 1                              |
| 7. Social Security Fund   | 1                        | 0.0            | ?                | 364,973                                    | 9,635                        | 2.4          | 9,635                          |
| 8. Personal Loan Business Companies   | 33                       | 0.5            | ?                | 459,195                                    | 12,123                       | 3.0          | 367                            |
| 9. Pawnshops  | 218                      | 3.0            | ?                | 4,669                                      | 123                          | 0.0          | 1                              |
| 10/12. Hire Purchase or Leasing Companies   | 41                       | 0.6            | ?                | 3,525                                      | 93                           | 0.0          | 2                              |
| 13. Authorized Money Transfer Agents  | 2                        | 0.0            | 1,205            | NA   | NA                           | NA           | NA                             |
| 14. Postal Office   | 1                        | 0.0            | ?                | NA   | NA                           | NA           | NA                             |
| 15. Credit Card Companies   | 12                       | 0.2            | 495              | 205,346                                    | 5,421                        | 1.3          | 452                            |
| 16. Companies Authorized to issue travelers cheques   | 1                        | 0.0            | ?                | ?  | ?                            | ?            | ?                              |
| 17. E Money Companies   | 6                        | 0.1            | 6                | 8,206                                      | 217                          | 0.1          | 36                             |
| 18. Agricultural Futures Brokers  | 13                       | 0.2            | ?                | 801  | 21                           | 0.0          | 2                              |
| 19. Derivatives business operator   | 49 <sup>3</sup>          | 0.7            | 257 <sup>4</sup> | 71,013 <sup>5</sup>                        | 1,875                        | 0.5          | 38                             |
| 20. Securities Companies  | 62 <sup>6</sup>          | 0.9            | 427              | 1,867,501 <sup>7</sup>                     | 49,302                       | 12.0         | 795                            |
| 21. Companies that handle cash (such as private security firms that provide payroll services) | ?                        | ?              | ?                | NA   | ?                            | ?            | ?                              |
| 22. Asset Management Companies  | 16                       | 0.2            | 29               | 540,688                                    | 14,274                       | 3.5          | 892                            |
| 23. Life insurance companies  | 24                       | 0.3            | 1,800            | 671,136                                    | 17,718                       | 4.3          | 738                            |
| 24. Life insurance agents and brokers   | 305,982                  | NA             | NA               | NA   | NA                           | NA           | NA                             |
| 25. Authorized Money Changers   | 558                      | 7.7            | ?                | ?  | ?                            | ?            | ?                              |
| <b>Total</b>  | <b>7,227<sup>1</sup></b> | <b>100</b>     | <b>?</b>         | <b>15,518,571</b>                          | <b>409,690</b>               | <b>100.0</b> | <b>NA</b>                      |

Note: NA means Not Applicable.

<sup>1</sup> Insurance brokers/agents are excluded from the total for calculating the percentages.

<sup>2</sup> At 31 December 2006. The figure includes assets under management (AUM) for securities companies and asset management companies

<sup>3</sup> Comprises 25 securities companies, 2 subsidiaries of securities companies, 9 fund management companies, 12 banks and 1 bank subsidiary.

<sup>4</sup> 247 brokers/dealers, 10 derivatives fund management operators.

<sup>5</sup> Figures excluding derivatives fund management.

<sup>6</sup> Includes 42 securities companies and 20 fund management companies but excluding 22 banks and 3 insurance companies that are licensed to operate securities business



<sup>7</sup> Figures represent total assets of all securities companies including asset under management (AUM) of securities companies licensed to manage mutual funds and private funds (including provident funds).

92. The table reinforces the assessors' view that the application of measures to the banks and bank SFIs will have more relative weight for determining ratings compared to other sectors. The securities sector also controls significant financial sector assets and the measures applicable to it will also be given due weight. The size of the life insurance sector and the size of its premium business means that it is not so significant. However, it and the other smaller sized components of the financial sector together comprise a material amount of financial activity that occurs. Accordingly, some weight will be given to how these component parts collectively adhere to the standard.

93. The following table summarizes the regulatory framework that applies to each type of FI that operates in Thailand that is relevant for AML/CFT:

**Table 8. AML/CFT Regulatory Arrangements for Financial Institutions in Thailand**

| Type of Financial Institution | Governing Law(s)   | Covered in AMLA definition of financial institution                 | Market Entry Regulator | General Regulator or supervisor | Issuer(s) of Regulations relevant to AML | AML/CFT Supervisor     |
|-------------------------------|--|---|------------------------|---------------------------------|--|------------------------|
| BOT                           | BOT Act B.E. 2485  | Yes, in (1) <sup>24</sup> , but excluded from reporting obligations | NA                     | NA                              | NA                                       | NA                     |
| 1. Commercial Banks           | Commercial Banking Act B.E. 2505   | Yes, in (1)   | BOT                    | BOT                             | BOT                                      | AMLO, BOT              |
| 2. Finance Companies          | The Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522. | Yes, in (2)   | BOT                    | BOT                             | BOT                                      | AMLO, BOT              |
| 3. Credit Foncier Companies   | The Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522. | Yes, in (2)   | BOT                    | BOT                             | BOT                                      | AMLO, BOT              |
| 4a. SFIs that are banks       | Establishment act relevant to each SFI   | Yes, in (1)   | MOF via FPO            | MOF                             | MOF<br>AMLO                              | AMLO, BOT as MOF agent |
| 4b. SFIs that are non-banks   | Establishment act relevant to each SFI   | Yes (SMC) in Ministerial Regulation (2000) (1)<br>No (SBCG)         | MOF via FPO            | MOF                             | MOF<br>AMLO                              | AMLO, BOT as MOF agent |
| 5. Savings Cooperatives       | Cooperative Act, B.E.422542  | Yes, in (5)   | MOAC                   | MOAC                            | -  | AMLO, MOAC             |
| 6. Agricultural Cooperatives  | Cooperative Act, B.E.422542  | No  | MOAC                   | MOAC                            | -  | -                      |
| 7. Social Security Fund       | Social Security Act, B.E. 2533   | No  | NA                     | NA                              | NA                                       | AMLO and Ministry of   |

<sup>24</sup> Numbers within brackets refer to the specific provisions within the definition of FI in the AMLA.

| Type of Financial Institution   | Governing Law(s)   | Covered in AMLA definition of financial institution | Market Entry Regulator     | General Regulator or supervisor | Issuer(s) of Regulations relevant to AML | AML/CFT Supervisor        |
|---|--|---|----------------------------|---------------------------------|--|---------------------------|
|   |  |   |                            |                                 |  | Labour and Social Welfare |
| 8. Personal Loan Business Companies   | Section 5 of the Announcement of the National Executive Council No. 58. (Re: Personal Loan under Supervision) dated 9 June 2005. | No  | MOF                        | MOF                             | -  | -                         |
| 9. Pawnshops  | Pawnshop Act, B.E. 2505  | No  | Ministry of Interior (MOI) | MOI                             | -  | AMLO, MOI                 |
| 10. Hire Purchase Companies   |  | No  | MOF                        | MOF                             | -  | -                         |
| 12. Leasing Companies   |  | No  | -                          | -                               | -  | AMLO                      |
| 13. Authorized Money Transfer Agents  | Exchange Control Act, B.E.2485   | No  | MOF                        | MOF                             | -  | AMLO, BOT                 |
| 14. Postal Office   |  | No  | -                          | -                               | -  | AMLO                      |
| 15. Credit Card Companies   |  | No  | MOF                        | MOF                             | -  | AMLO, BOT                 |
| 16. Companies Authorized to issue travelers cheques   |  | No  | MOF                        | MOF                             | -  | AMLO, BOT                 |
| 17. E Money Companies   |  | No  | MOF                        | MOF                             | -  | AMLO, BOT                 |
| 18. Agricultural Futures Brokers  | Agricultural Futures Trading Act, B.E. 2542  | No  | AFTC                       | AFTC                            | -  | -                         |
| 19. Derivatives Broker/Dealers  | Derivatives Act B.E. 2546 (2003),  | No  | MOF                        | SEC                             | SEC                                      | AMLO, SEC                 |
| 20. Securities Companies  | The Securities and Exchange Act, B.E.2535  | Yes, in (2)   | MOF                        | SEC                             | SEC                                      | AMLO, SEC                 |
| 21. Companies that handle cash (such as private security firms that provide payroll services) |  | No  | -                          | -                               | -  | -                         |
| 22. Asset Management Companies  | Emergency Decree on the Asset Management Company B.E. 2541   | Yes, in Ministerial Regulation (2000) (3) and (4)   | BOT                        | BOT, as MOF agent               | -  | BOT, as MOF agent         |
| 23. Life insurance companies  | Life Insurance Act, B.E.2510   | Yes, in (4)   | DOI                        | DOI                             | Nil                                      | AMLO                      |
| 24. Life insurance agents and brokers   | Life Insurance Act, B.E.2510   | No  | DOI                        | DOI                             | Nil                                      | AMLO                      |
| 25. Authorized Money Changers   | Exchange Control Act, B.E.2485   | Yes, in Ministerial Regulation                      | MOF                        | MOF                             | MOF                                      | BOT, as MOF agent         |

| Type of Financial Institution | Governing Law(s) | Covered in AMLA definition of financial institution | Market Entry Regulator | General Regulator or supervisor | Issuer(s) of Regulations relevant to AML | AML/CFT Supervisor |
|-------------------------------|------------------|---|------------------------|---------------------------------|--|--------------------|
|                               |                  | (2000) (2)  |                        |                                 |  |                    |

#### 1.4 Overview of the DNFBP Sector

94. Five of FATF’s DNFBPs operate officially in Thailand: (i) dealers in precious metals, (ii) dealers in precious stones, (iii) real estate agents, (iv) accountants and (v) lawyers. Around 10,000 dealers in precious metals and stones are operating in the country. There are 51,203 lawyers and 13,996 accountants and auditors registered nationwide. However, there are a high number of unlicensed “lawyers” that provide legal advice, including in real estate transactions. On the other hand, three of FATF’s DNFBPs do not operate in Thailand, i.e. notaries, trust and company service providers (CSP) and casinos. Casinos are strictly forbidden, although many casinos operate illegally throughout the country (see section 1 above). Thai laws do not permit the formation or registration of trusts (domestic or foreign) and TCSPs do not perform any of the functions in the FATF definition (elaborated in part 5 of this report). Moreover, there was also no evidence that trust creation or administration services are offered in Thailand.

95. In terms of regulation and supervision, real estate agents are not strongly organized nor properly supervised, although real estate activity is quite important and widespread. Accountants, auditors and bookmakers are governed by the Accounting Act BE 2543 (2000) and the Accounting Profession Act BE 2547 (2004). They belong to the Federation of Accounting Professions (FAP) which is a self-regulatory organization (SRO). Lawyers, like accountants, are the most regulated profession. Lawyers are regulated by the Lawyer Act of B.E. 2528 creating the Lawyers’ Council of Thailand, the lawyers’ SRO.

96. The legal AML/CFT framework for the DNFBP sector is almost non-existent as the AMLA and its Regulations do not address explicitly DNFBPs. None of the professions under the DNFBPs category are required to have in place CDD procedures. Section 16 of the AMLA may suggest STR reporting for some DNFBP in certain circumstances but the provision is very vague and conflicts the professional secrecy that apply to lawyers and accountants. As a result, the DNFBP sector is very weak in AML/CFT.

**Table 9. Overview of the DNFBPs in Thailand**

| Category of DNFBP                                     | Registered     | Unregistered             | Regulatory requirements   |
|---|----------------|--------------------------|---|
| Lawyers   | 51,203         | ?                        | Lawyers Act B.E. 2528   |
| Accountants and Auditors (including juristic persons) | 13,996         | ?                        | Accounting Act BE 2543 (2000) and Accounting profession Act BE 2547 (2004)                                      |
| Dealers in precious metal and stones                  | 200            | 9,800                    | No specific regulation  |
| Real Estate Agents <sup>25</sup>                      | ?              | ?                        | ?   |
| Casinos   | N/A Prohibited | “illegal casinos operate |   |
| Trust and Company Service Providers                   | ?              |                          | No specific regulation and N/A for AML/CFT purposes- they do not carry out any functions in the FATF definition |

<sup>25</sup> The assessors were unable to obtain information or data about the real estate industry as representatives of the Real Estate profession did not show any interest in meeting with the mission despite an invitation.

## 1.5 Overview of commercial laws and mechanisms governing legal persons and arrangements

97. The main type of juristic persons<sup>26</sup> used for doing business are partnerships, limited companies and public limited companies. There are two types of partnerships; ordinary registered partnerships and limited partnerships. There are 4,737 ordinary registered partnerships, 233,071 limited partnerships, 293,005 limited companies and 834 public limited companies registered.

98. **Partnerships:** Ordinary partnerships may register with the Ministry of Commerce. Upon registration, they become juristic persons called ordinary registered partnerships. A limited partnership must also register with the Ministry of Commerce, upon which it becomes a juristic person. The main difference between an ordinary registered partnership and a limited partnership is that the latter one has two separate groups of partners: (i) one or more partners whose liability for partnership's obligations is limited to capital contributed, and (ii) one or more partnerships who are jointly and without limit liable for all of the partnership's obligations.

99. **Limited Companies:** A private limited company is a juristic person distinct from its shareholders. The capital of private limited companies is divided into equal shares of a designated nominal amount (par value). Shares may be common or preferred and the nature and extent of preferred rights must be established at a statutory meeting. Share certificates are issued to each shareholder for the shares it holds. Upon formation of the company capital shares must be totally subscribed and at least 25 percent of the registered capital must be paid in. Private limited companies may not offer their shares to the public. Shares are freely transferable unless a restraint has been placed on their transfer and entered into the name certificate pursuant to the companies regulations. Bearer shares may be issued and they are transferable by the mere delivery of the certificate.

100. **Public Limited Companies:** A public limited company is designed for a wide public shareholding. It is established for purposes of issuing shares for sale to the public with liability limited to the amount paid on shares. Offering shares for sale to the public requires the prior permission of the SEC. A public limited company becomes a juristic person once the registrar accepts its registration. The shares in a public limited company are equal in value and indivisible. All shares issued must be paid up. The transfer of shares is effected by the delivery of the certificate endorsed by the signatures of the transferor and transferee with the name of the transferee stated therein. Such transfer binds the company upon receipt of requests for registration thereof and it binds third parties once registration has been effected.

101. **Registration System and access:** Thailand has a central registration system for juristic persons where a national registry records the required ownership and control details for all companies and other juristic persons registered in that country. Every legal person has to apply for registration with the Company and Partnership Registration Office of the Commercial Development Department at the Ministry of Commerce. Competent authorities can have access in a timely fashion to adequate, accurate, and current information on the direct ownership and control of legal persons. However, the law does not require legal persons to disclose beneficial ownership information.

102. **Bearer Shares:** Bearer shares may be issued by private limited companies provided that the company's regulations allow it, but the authorities have informed the assessment team that no Thailand companies have issued bearer shares so far. Nevertheless, while no company has issued bearer shares, there are no measures in place to ensure that bearer shares are not used for ML. In particular, there are no mechanisms to identify the beneficial owner of bearer shares.

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<sup>26</sup> The FATF Recommendations use the term "legal persons." However, in Thailand these are legally referred to as juristic persons and these term has been used extensively throughout this report.

103. **Companies established abroad:** Companies established abroad can operate in Thailand in accordance with the existing commercial laws. The types of business organizations are: (1) regional office, (2) branch office, and (3) representative office. Regional offices and representative offices cannot earn any income because the objectives of their operations are limited and specific. Branch offices, on the other hand, are entitled to earn income from business in Thailand. A formal registration process under the Foreign Business Act has to be followed for registration of such entities. Companies registered under that Act do not need to register under the Civil and Commercial Code (CCC).

## 1.6 Overview of strategy to prevent money laundering and terrorist financing

### a. AML/CFT Strategies and Priorities

104. The assessors were unable to find any single document that articulated the Royal Thai Government's overall policies and objectives for combating ML and TF. The authorities pointed to the AMLO policy statement but that is predominantly a statement of policy intent regarding the introduction of new KYC/CDD requirements for FIs and DNFBPs. The assessors conclude, therefore, that there is no overall published government policy on AML/CFT matters. The nearest articulation of national policies and objectives would appear to be references to statements contained in the AMLO's annual reports. However, these tend to be focused on the AMLO and they are not consistently referenced each year.

### b. The institutional framework for combating money laundering and terrorist financing

105. The prime body for advancing AML/CFT is the (AMLB) created under the AMLA. The AMLB comprises representatives of the other key agencies involved in combating ML and TF. Thailand also involves private sector representatives in its structures for organizing AML/CFT activities. The authorities indicated that, as of October 2006, there were 49 agencies and bodies involved in AML/CFT activities. The agencies and bodies and their roles are as follows:

- Group 1 Ministries, Committees or other bodies to co-ordinate AML/CFT action

#### 1. Anti-Money Laundering Office (AMLO)

The AMLO was set up under AMLA and under the direct supervision of the Minister of Justice. It operates Thailand's FIU as well as coordinates policy and operational matters, including supervision and monitoring, relating to AML/CFT. The AMLO is represented on the AMLB.

#### 2. Department of Treaties and Legal Affairs, MFA (DTLA – MFA)

The Department is concerned with procedural work related to international legal instruments on terrorism and TF and acts as a 'Central Authority' under some designated treaties in mutual legal assistance matters with foreign countries. The DTLA is represented on the AMLB.

#### 3. Office of the Permanent Secretary, Ministry of Finance (OPS – MOF)

The main objective of the Office is to enforce the relevant provisions of terrorist-related international convention and its protocol as well as to issue law and regulation for financial regulators. The OPS is represented on the AMLB via the Minister who is the Deputy Chair.

#### 4. Department of International Economic Affairs, MFA (DIEA–MFA)

The Department coordinates international conferences and meetings related to AML/CFT.

- Group 2 Criminal justice and operational agencies:

5. Office of the (OAG)

The OAG acts as a “Central Authority” under the Mutual Legal Assistance Act and the Extradition Act, is responsible for judicial processes related to the Vienna Convention (Narcotics), the Palermo Convention (Transnational Organized Crime) and the Convention against Terrorist Financing and its Protocols, as well as mutual legal assistance treaties, and processes amendments of laws and regulations. In addition, the OAG is to act as a prosecutorial body for AML/CFT law enforcement. The OAG is represented on the AMLB.

6. The Office of the National Counter Corruption Commission (NCCC)

The main objectives of the NCCC include – (i) corruption as a predicate offence of money laundering, (ii) good governance/corporate governance, and (iii) best practice, transparency, morality and codes of conduct for AML/CFT officers.

7. The Customs Department, MOF (CD – MOF)

The Customs Department is the main customs agency of the country, under the Ministry of Finance. Its main roles are to collect duty relating to imports and exports and to ensure security in international trade and to protect the society from contraband goods. It may also investigate and suppress wrongdoings relating to customs service and other relevant laws. The CD is represented on the AMLB.

8. The Excise Department, MOF (ED – MOF)

The Department is a LEA responsible for ML predicate offences relating to excise duties that would be expanded soon.

9. The Revenue Department, MOF (RD – MOF)

The Department is a LEA responsible for cooperation in ML-FT-related issues of tax claims on legitimate unidentified income. The RD is represented on the AMLB.

10. The Office of the Narcotics Control Board (ONCB)

The ONCB is a LEA responsible for drug-related offences under the Vienna Convention and other international obligations. The ONCB is represented on the AMLB.

11. National Intelligence Agency (NIA)

The Agency is a LEA responsible for intelligence in any crime against national security and coordination in the Terrorist Financing Convention and other related international obligations.

12. Office of the National Security Council (NSC)

The NSC is a LEA responsible for issuance of statements relating to security aspects of ML-related predicate offences and transnational organized crimes in accordance with the Terrorist Financing Convention, the Palermo Convention and other related international obligations.

## 13. Royal Thai Police (RTP)

It is a LEA and coordinating body in ML predicate offences relating to the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention and other related international obligations. The RTP is represented on the AMLB.

## 14. Department of Special Investigation, Ministry of Justice (DSI)

It is a LEA and coordinating body in ML predicate offences relating to ML-FT conventions and other related international obligations.

## 15. National Coordinating Agency for Terrorist and Transnational Crimes (NCATTC)

It is a coordinating agency in facilitation and coordination of AML/CFT intelligence exchange with local and foreign agencies.

## 16. The Fiscal Policy Office, MOF (FPO – MOF)

The FPO is a LEA and designated supervisory agency especially over specialized financial institutions (SFIs) and predicate offences such as public fraud, illegal remittances, etc. The FPO is represented on the AMLB.

- Group 3 Financial sector bodies:

## 17. Bank of Thailand (BOT)

The BOT is a regulatory and supervisory body over all banking and some non-banking FIs. The BOT is represented on the AMLB.

## 18. The Office of the Securities and Exchange Commission (OSEC)

The SEC is a regulatory and supervisory body over FIs and juristic persons conducting securities business and the stock market. The SEC is represented on the AMLB.

## 19. Department of Insurance (DOI - MOC).

The DOI is a department within the Ministry of Commerce. It has 457 staff, 276 in head office and 181 in provincial insurance offices. It acts as a regulatory and supervisory body over FIs and juristic persons conducting insurance business. Its missions are to: develop a progressive and competitive insurance industry; support the sustainable growth of insurance industry which contributes to and strengthens the economy, society and good quality of life for the people; and strengthen and protect the interests of policy holders. The DOI is represented on the AMLB.

## 20. Cooperative Auditing Department, Ministry of Agriculture and Cooperatives (CAD – MAC)

The Department is a regulatory and supervisory agency responsible for auditing accounts of cooperatives and farmers' groups, and regulating savings cooperatives.

## 21. Cooperative Promotion Department, Ministry of Agriculture and Cooperatives (CPD – MAC)

It is a regulatory and supervisory body over cooperatives which are FIs under AMLA.

22. Land Department, (MOI)

The Department of Land oversees the registration of land transactions. Under the AMLA land offices have to report to the AMLO land transactions where the amount of cash payment is greater than 2 million baht (\$52,800); the value of the property is greater than 5 million baht (\$132,000) or the transaction registering the transaction is suspicious. All required copies of registration applications are sent to the AMLO each month within 5 days of the month end and suspicious transactions within 5 days of the transaction. The MOI is represented on the AMLB.

23. Government Savings Bank, MOF (GSB – MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.

24. The Government Housing Bank, MOF (GHB – MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.

25. Export - Import Bank of Thailand, MOF (EIBT – MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.

26. Bank for Agriculture and Agricultural Cooperatives, MOF (BAAC –MOF)

BACC was established in 1966 with the objective of providing financial facilities to support the promotion of agricultural vocation for farmers, farmer's groups or cooperatives in order for them to develop farming activities as a gainful livelihood. The activities of the bank cover the following: extending loans to farmers, farmer's groups or cooperatives; acting as a guarantor for farmers, farmer's groups or cooperatives for loans or farm credits from other sources; providing deposit services; issuing, buying or selling bills of exchange or other transferable instruments; buying government bonds, etc.

27. Islamic Bank of Thailand, MOF (IBT – MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.

28. Small and Medium Enterprise Development Bank of Thailand, MOF (SMEDBT – MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.

29. Secondary Mortgage Corporation, (MOF)

It is a FI under AMLA so it is required to comply with KYC/CDD guidelines and make reports on transactions to the AMLO.



## 30. The Thai Bankers' Association (TBA)

It is a self-regulatory and coordinating body of member banks and provides policy and guidelines in relation to AMLA and AML/CFT international standards and best practices. The TBA is represented on the AMLB.

## 31. The Foreign Banks' Association (FBA)

It is a self-coordinating body of member banks and cooperates with the BOT and the TBA for members' compliance with AMLA and AML/CFT international standards and best practices.

## 32. The Agricultural Futures Trading Commission

It is a regulatory and supervisory body responsible for regulating and developing futures trading as well as for compliance with the AMLA once amendments are made.

## 33. Association of Investment Management Companies (AIMC)

It is a self-regulatory and coordinating body responsible for promoting international standards compliance to ensure good coordination and best practices among FIs in its industry.

## 34. Association of Securities Companies (ASC)

It is a self-regulatory and coordinating body responsible for promoting international standards compliance to ensure good coordination and best practices among FIs in its industry.

## 35. The General Insurance Association (GIA)

It is a self-regulatory and coordinating body responsible for promoting international standards compliance among member companies to ensure efficiency in AML/CFT and best practices among FIs in its industry.

## 36. The Thai Life Assurance Association (TLAA)

It is a self-regulatory and coordinating body responsible for promoting international standards compliance among member companies to ensure efficiency in AML/CFT and best practice with FIs in its industry.

## 37. The cooperative League of Thailand

It is a self-regulatory and coordinating body responsible for promoting cooperatives' activities and protecting member cooperatives' interest, facilitating coordination with government and the public. It should also promote international standards compliance among member cooperatives to ensure efficiency in AML/CFT and best practices in its industry.

- Group 4 DNFBP and other matters

## 38. Department of Provincial Administration, MOI (DOP – MOI)

It is a regulatory body overseeing non-profit organizations (NPO).

39. Department of Employment (Secretary of the Entry of Foreign Private Organization to Operate in Thailand)

It is a regulatory body overseeing foreign workers and responsible for granting permission to foreign private organizations (FPO) that act as NPOs operating in Thailand.

40. Ministry of Social Development and Human Security (MSDHS)

The Ministry is responsible for regulating and overseeing the amended ML predicate offences (crimes against human security) and the NPOs that operate business in relation to social development and human security.

41. Office of the National Culture Commission, Ministry of National Culture (ONCC – MNC)

(Foundations and Associations Registration Unit for cultural purpose)

It is a regulatory body over NPOs engaged in the field of culture and art in Thailand.

42. Federation of Accounting Professions (FAP)

It is a self-regulatory organization (SRO) promoting accounting professionals' acceptance of international standards.

43. The Lawyers Council of Thailand

It is a self-regulatory organization (SRO) promoting and protecting members' interest in accordance with the Lawyer Act BE 2528 (1985).

44. Gold Traders Association of Thailand (GTAT)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

45. Thai Gem and Jewelry Traders Association (TGJTA)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

46. Jewelry Association (JA)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

47. Thai Gem and Jewelry Manufacturers' Association (TJPA)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

48. Thai Hire- Purchase Businesses Association (THPA)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

#### 49. Real Estate Sales and Marketing Association (REMA)

It is a coordinating body responsible for members' compliance with AML/CFT requirements under amended AMLA.

##### **c. Approach concerning risk**

106. Thailand has not formally adopted an overall risk based approach to its AML or CFT framework. Thailand did not share with the assessment team the results of any exercise to assess the ML and TF risks that exist. However, guidelines issued by industry associations, which have been developed consultation with the authorities provide for elements of a risk-based approach to KYC and CDD. Moreover, the two main financial sector regulators carry out risk-based supervision of the FIs that they supervise – including in relation to the AML/CFT obligations of those FIs. Hence, Thailand is advised to complete a assessment of the ML and TF risks that exist in order to make or justify existing decisions about how to apply a risk based approach to combating ML and TF in Thailand.

##### **d. Progress since the last IMF/WB assessment or mutual evaluation**

107. Thailand underwent a mutual evaluation by the Asia/Pacific Group on Money Laundering (APG) in 2002. The APG evaluation team visited Thailand from 4–7 March, 2002. The mutual evaluation was based on the then existing FATF 40 Recommendations and took into account the FATF 25 Criteria for defining Non-Cooperative Countries and Territories (NCCT). Note that the 2002 APG mutual evaluation did not assess Thailand's compliance with the 9 Special Recommendations on Terrorist Financing adopted by the FATF in 2001. The 2002 mutual evaluation also pre-dated the adoption by the FATF, IMF and the World Bank of a methodology for assessing compliance with the FATF 40+9. The APG Mutual Evaluation Report adopted in June 2002 made the following recommendations:

##### ***Legal Issues***

- a. The range of predicate offences under AMLA should be expanded to include all serious offences, including terrorist activity, or the proceeds of all criminal activity.
- b. That Thailand ratifies the Vienna Convention as quickly as possible.
- c. The AMLA should be amended to include “Structuring” or “Smurfing” as an offence.
- d. Legislative amendments should be taken in order to provide necessary authority for law enforcement to conduct undercover and controlled delivery operations.
- e. Consideration should be given to the creation of an “assets forfeiture fund” into which confiscated funds are deposited, and to restrict the funds to certain uses, such as for law enforcement.
- f. To enhance international co-operation, the laws or practices regarding the sharing or receiving confiscated assets should be developed in order to be consistent with (the then) FATF Recommendations 35, 37, 38 and 39.

##### ***Financial issues***

- g. Regulators should establish sector-specific guidelines which will assist financial institutions under their purview respectively to fulfill all applicable requirements of the AMLA and to develop appropriate programs against money laundering. Such guidelines should cover customer identification, record-keeping and suspicious transactions

detection requirements which are on a par with FATF standards, and include employee training and internal control with respect to money laundering in their remit. AMLO as the dedicated anti-money laundering agency should exercise appropriate oversight of such process and provide any necessary input and support to the regulators to secure an adequate outcome. The regulators should check for compliance with such guidelines in their on-site examinations.

- h. Section 24 of the Commercial Banking Act (CBA) and section 77 of the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business<sup>27</sup> should be amended as appropriate if they present any obstacle in the way of the proper supervision by BOT of the banks and finance companies with respect to anti-money laundering compliance. The BOT as regulator for the money changers and remittance agents should avail itself of all its supervisory tools to ensure that there are adequate anti-money laundering controls in these businesses.
- i. AMLO should consider initiatives to encourage reporting compliance by FIs. AMLO and/or the relevant regulator could organize regular “user groups” meetings with compliance officers or other responsible officers of financial institutions to engage in a dialogue with them to ensure that they understand their reporting obligations, and to identify any obstacles to the discharge of such obligations. Consideration could also be given to releasing “feedback reports” to the financial institutions to raise awareness of specific indicators of suspicious transactions and money laundering activities.

#### *Law enforcement issues*

- j. Investigation and prosecution efforts must be enhanced among LEAs, AMLO and the OAG so as to increase the number of ML prosecutions and convictions.
  - k. Thailand should develop an effective seized asset management system to track seized property and assets from seizure to forfeiture.
  - l. 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.
  - m. There is a need for increased communication between BOT and LEAs.
  - n. Early coordination of cases among AMLO, other LEAs, and the prosecutors’ office should be encouraged and enhanced.
  - o. AMLO is encouraged to improve its case management system and the tracking of evidence.
108. The authorities report that, since the 2002 Mutual Evaluation by the APG, Thailand has:
- a. criminalized terrorist acts by amending the PC;

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<sup>27</sup> The assessors concluded that these provisions were not obstacles to proper supervision – see discussion in paragraph 706.

- b. added terrorist acts as the 8th predicate offence for ML by amending AMLA in August 2003;
- c. ratified the 1988 Vienna Convention in August 2002;
- d. ratified the 1999 Financing of Terrorism Convention in September 2004;
- e. made ministerial regulations in response to UNSC Resolutions on terrorism – related matters;
- f. submitted to cabinet a proposal to extent the list of predicate offences by 8 additional categories;
- g. made bilateral and multilateral instruments on AML/CFT related matters to enhance international cooperation; and
- h. formed committees and subcommittees to deal with AML/CFT issues.

109. The FATF standards have undergone significant change since Thailand was last assessed and there a many new detailed requirements. Moreover, the FATF standard now requires that key measures be contained in laws, regulations or other enforceable instruments and that the effective implementation of the measures in place must also be assessed. Accordingly, the progress made by the authorities since the last assessment has been over-shadowed in many areas by new international standards. The assessors acknowledge that the authorities are aware of the new requirements and note, in particular, that the core agencies of the AMLO, the BOT and the SEC have enthusiastically and diligently been taking steps aimed at dealing with them. However, implementation of the new standards in Thailand is very dependent on having a robust legal framework in place that either contains the key elements or which authorizes the making of regulations or other instruments to deal with those elements. Unfortunately, the good intentions of the authorities to implement measures consistent with the latest Recommendations are hampered by inadequate and antiquated laws. The authorities have, nevertheless, pressed on to promulgate many measures to bring Thailand into better compliance with the FATF Recommendations. Often they have also relied on their good relations with and the goodwill of industry to implement measures that may not be in laws or regulations or be otherwise enforceable. This approach may work for law-abiding citizens and entities. However, it is not sufficiently robust to deal with those intent on carrying out ML and TF activities – which is one reason why the FATF Recommendations require implementation using enforceable instruments.

## 2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalization of Money Laundering (R.1 & 2)

##### 2.1.1 Description and Analysis

###### Legal Framework:

###### *Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence):*

110. Section 5 of the AMLA criminalizes money laundering as the conduct of whoever (1) transfers, receives a transfer of, or converts property connected with the commission of an offence for the purpose of covering or concealing the origin of such property or for the purpose of assisting other persons, whether before, during, or after the commission thereof, to avoid the penalty or receive a lesser penalty in respect of the predicate offence; or (2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, location, distribution, or transfer of property connected with the commission of an offence.

111. Although section 5 does not strictly follow the language of articles 3(1)(b) and (c) of the Vienna Convention and article 6(1) of the Palermo Convention, it is broad enough to cover all of the situations referred to in these conventions. There is no constitutional principle or basic concept of Thailand's legal principles prohibiting the criminalization of the acquisition, possession or use of property derived from a related offense, which, in such circumstances, the Vienna and the Palermo Conventions require countries to criminalize. The law does not explicitly make reference to the conducts referred to in the Conventions, but these are all captured by the offense of "receiving a transfer", which is criminalized under section 5(1), and by the generic offense of "acting in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, location, distribution or transfer of property connected with the commission of an offence", which is criminalized under section 5(2). The authorities indicated that, and showed the assessors cases in Thai where the Courts have also confirmed that the offense of "receiving a transfer" covers the conducts of "acquiring, possessing and using" of property derived from a predicate offense.

112. The assessment team noted, however, that under this construction the acquisition, possession or use of property would also be linked to "the purpose of covering or concealing the origin of such property, or to the purpose of assisting other persons, whether before, during, or after the commission thereof, to avoid the penalty or receive a lesser penalty in respect of the predicate offence" set forth under section 5(1), or to "the purpose of concealing or disguising the true nature, acquisition, location, distribution, or transfer of property connected with the commission of an offence" set forth under section 5(2). This is not the same as the Vienna Convention's requirement that "the acquisition, possession or use of property" be done "knowing, at the time of receipt, that such property was derived from an offense or offenses....." According to the authorities, the purpose required by Thai law is able to be inferred from the existence of knowledge. The authorities also showed the assessors relevant cases in Thai, where courts have established that the commission of these conducts by themselves carry already the presumption that they were committed for the specific purposes described under section 5, and that proving that such purposes were intended by the offender is therefore not a requirement under Thai law. However, a presumption could always be rebutted (i.e. there could be a showing that there was no such purpose). Accordingly, and to bring this provision fully in line with the FATF 40+9, the assessment team

recommends that the authorities amend the AMLA to remove the specific purposes described in section 5 in connection with the acquisition, possession or use of property derived from an offense.

***The Laundered Property (c. 1.2):***

113. The offense of ML extends to property, regardless of its value, that directly or indirectly represents the proceeds of a crime. Section 3 of the AMLA provides explicitly that “property connected with the commission of an offence means: (1) money or property obtained from the commission of an act constituting a predicate offence or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence; (2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or (3) fruits of the money or property under (1) or (2). Section 3 applies notwithstanding the number of times that the property under (1), (2) or (3) is distributed, disposed of, transferred or converted, and notwithstanding who possesses it, to whom it has been transferred, or in whose ownership it is registered”. The definition of property connected with the commission of an offense covers property located abroad. However, the process to seize property located abroad has to follow the MLAT.

114. The AMLA does not define the term “property”. However, the term is defined under section 99 of the CCC as including “things” and “incorporeal objects susceptible of having a value and of being appropriated”. The term “things” is defined in section 98 of the CCC as “corporeal objects”. These definitions govern the meaning of the term “property” for the purposes of the AMLA. Accordingly, the term property includes property of any kind, real or personal, movable or immovable, corporeal or incorporeal, and also things in action.

***Proving Property is the Proceeds of Crime (c. 1.2.1):***

115. When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offense. According to the authorities, who showed the assessors Thai language cases in support, Thai case law registers a number of cases where persons were convicted for ML without being convicted of the predicate offences. In accordance with section 227 of the Criminal Procedures Code (CPC), the illicit origin of proceeds must be proved “beyond reasonable doubt”. Such level of proof has to be specific to the predicate offence, but it need not be specific to a particular occasion or instance of such offence.

***The Scope of the Predicate Offences (c. 1.3):***

116. The predicate offenses to ML, as set forth under section 5 of the AMLA, do not cover all of the serious offenses under Thai law, nor the complete list of designated categories of offenses under the FATF 40+9. In accordance with section 5, the predicate offences to ML cover offenses:

- (1) relating to narcotics under the Narcotics Act B.E. 2522 (the Narcotics Act) or the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E. 2534 (the Narcotics Suppression Act);
- (2) relating to sexuality under the PC only in respect of procuring, seducing or taking away for an indecent act a woman and child for sexual gratification of others, offence of taking away a child and a minor, offences under the Law on Measures for the Prevention and Suppression of Women and Children Trading or offences under the Law on Prevention and Suppression of Prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offence relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;

- (3) relating to public fraud under the PC or offences under the Law on loans of a public fraud nature;
- (4) relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the Law on Commercial Banking, the Law on the Operation of Finance, Securities and Credit Foncier Businesses or the Law on Securities and Stock Exchange committed by a manager, director or any person responsible for or interested in the operation of such FIs;
- (5) of malfeasance in office or malfeasance in judicial office under the PC, offence under the Law on Offences of Officials in State Organisations or Agencies or offence of malfeasance in office or dishonesty in office under other laws;
- (6) relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the PC;
- (7) relating to smuggling under the Customs Law, and;
- (8) relating to terrorism under the PC, including TF.

117. The predicate offenses set forth under section 5 refer to categories of offenses under which a number of specific offences are also included, but it does not cover:

- (1) the participation in an organized criminal group and racketeering,
- (2) trafficking in human beings and migrant smuggling,
- (3) illicit arms trafficking,
- (4) illicit trafficking in stolen and other goods,
- (5) counterfeiting currency,
- (6) counterfeiting and piracy of products,
- (7) environmental crime,
- (8) murder and grievous bodily injury,
- (9) kidnapping,
- (10) illegal restraint and hostage-taking,
- (11) robbery or theft,
- (12) forgery,
- (13) piracy, and,
- (14) insider trading and market manipulation.



118. AMLO has drafted a proposal to add eight additional categories of offences under section 5 of the AMLA. The proposal was approved by Thailand's Cabinet on 27 February 2007 and it is now expected to be sent to the Council of State for scrutiny and then to parliament for deliberation and final approval. The eight additional categories of offenses that would eventually be added if the proposal is approved by Parliament include: environmental crime, foreign exchange crime, unfair securities trading (securities fraud), gambling, firearms trafficking, conspiracy to defraud the government in project-bidding, labor-cheating, and customs and excise crime.

119. Even if this proposal is approved by Parliament, the list of predicate offenses for ML would still fall short of covering all serious offenses or a range of offenses within each of the designated categories of offenses, and it would not cover in particular: the participation in an organized criminal group and racketeering, trafficking in human beings and migrant smuggling, illicit trafficking in stolen and other goods, counterfeiting currency, counterfeiting and piracy of products, murder, grievous bodily injury, kidnapping, illegal restraint and hostage-taking, robbery or theft, forgery, and piracy.

120. The assessment team recommends that the AMLA be amended to add to the list of predicate offenses all serious offenses or a range of offenses under each of the remaining designated categories of offenses provided for under the FATF 40+9.

***Threshold Approach for Predicate Offences (c. 1.4):***

121. N/A

***Extraterritorially Committed Predicate Offences (c. 1.5):***

122. Not all of the predicate offenses for ML extend to a conduct that occurred in another country, which constitute an offense in that country, and would have constituted a predicate offense had it occurred in Thailand. Although the AMLA clearly extends the offense of ML to offenses committed abroad, it is silent on the extension of predicate offenses to offenses committed abroad. There is no case law to clarify this uncertainty because the matter has not been tested yet in Thai courts.

123. As a general principle, for a predicate offense committed abroad to be considered as a predicate offense under Thai law, the offense must have been committed within Thailand's criminal jurisdiction. If the conduct under consideration constitutes a predicate offence under Thai laws and falls within the Thailand criminal jurisdiction, it will not matter where it was committed or whether it also constituted an offence in the country where it was committed. On the other hand, if the conduct is committed outside of Thailand's criminal jurisdiction, it will not be considered a predicate offence under Thai laws, irrespective of whether it would have constituted a predicate offence had it occurred in Thailand.

124. Sections 4 through 9 of the PC outline the general boundaries of Thai criminal jurisdiction extending it in some cases to offenses committed abroad. However, such provisions fall short of fully satisfying the standard as the extension of Thai criminal jurisdiction under these provisions is often subjected to meeting additional conditions:

- a. Section 4 of the PC extends Thai jurisdiction to offenses committed in Thai vessels or airplanes, irrespective of their location.
- b. Section 5 of the PC is a provision of general application that extends Thai criminal jurisdiction to offenses that are partially committed in Thailand or that have or could have had effects in Thailand.
- c. Section 8 of the PC extends Thai criminal jurisdiction to some of the offenses listed as criminal offenses under AMLA when they are committed outside Thailand provided that

they are committed: (i) by Thai nationals, and there is a request by the government of the country where the offense was committed or by the victim, or (ii) by foreigners, and the Thai government or a Thai national are the victims and there is a request by the victim. The offenses referred to by section 8 of the PC which are also predicate offenses under AMLA are: offenses relating to sexuality under the PC; offenses relating to public fraud under the PC, and; offenses relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the PC.

- d. Section 9 of the PC extends Thai criminal jurisdiction to offenses relating to malfeasance in office or malfeasance in judicial office under the PC committed abroad.

125. The Narcotics Suppression Act also extends the offenses relating to narcotics, which are predicate offenses under AMLA, to offenses committed abroad, provided that (1) the offender or any accomplice is a Thai person or has a place of residence in Thailand; or (2) the offender is a foreigner and intends its consequence to occur within Thailand or the Thai government is the victim; or (3) the offender is a foreigner and such act is an offense under the law of the country where the offense is committed, if such offender has appeared in Thailand and has not been extradited under the law on extradition.

126. Notwithstanding the provisions referred to above, not all of the predicate offenses listed under the AMLA can be extended to conducts that occurred in another country. As a result, the assessment team recommends that the AMLA be amended to make it absolutely clear that the offense of ML can be committed when any of the predicate offenses take place outside of Thailand.

***Laundering One's Own Illicit Funds (c. 1.6):***

127. The offense of ML applies also to persons who commit the predicate offense. In other words, a person convicted of a predicate offence may also be convicted of ML in connection with dealing with the proceeds arising from that offense. According to the authorities, there have been many cases in Thailand where persons were convicted of self-laundering.

***Ancillary Offences (c. 1.7):***

128. Ancillary offences to ML specifically provided in the AMLA include aiding and abetting, attempt to commit, and conspiracy to commit. Section 7 of the AMLA specifically criminalizes (1) aiding and abetting the commission of the offence or assisting the offender before or at the time of the commission of the offence, and; (2) providing or giving money or property, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offence. Section 8 of the AMLA criminalizes the attempts to commit an offence of ML. Section 9 of the AMLA criminalizes the conspiracy to commit an offence of ML, when there are at least two persons in the conspiracy.

129. The facilitation and counseling of the commission of ML are covered through the general provisions on instigation and support for the commission of an offense which are applicable to the offense of ML. These offenses are both criminalized under sections 84 and 86 of the PC respectively. Section 84 of the PC defines instigation through the conduct of whoever, whether by employment, compulsion, threat, hire, asking as a favour or instigation, or by any other means, causes another person to commit any offense. Section 86 of the PC defines the supporter of an offense as anyone who by whatever means, carries out any act to assist or facilitate the commission of an offense of any other person before or at the time of committing the offense, even if the offender does not know of such assistance or facilities.

***Additional Element - If an act overseas which do not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML (c. 1.8):***

130. As previously explained, for a predicate offense committed abroad to be considered as such under Thai legislation, the offense must have been committed within the criminal jurisdiction of Thailand. If the conduct under consideration constitutes a predicate offence under Thai laws and falls within the criminal jurisdiction of Thailand, it will not matter where it was committed or whether it also constituted an offence in the country where it was committed. On the other hand, if the conduct is committed outside of the criminal jurisdiction of Thailand, it will not be considered a predicate offence under Thai laws, irrespective of whether it would have constituted a predicate offence had it occurred in Thailand.

***Liability of Natural Persons (c. 2.1):***

131. The offense of ML applies to persons that knowingly engage in ML activity. By application of the general principle established in section 59 of the PC, the offence of ML requires the knowledge that property being laundered is the proceeds of a predicate offence.

132. Section 59 of the PC sets forth that “A person shall be criminally liable only when such person commits an act intentionally, except in the case where the law provides that such person must be liable when such person commits an act by negligence, or except in the case where the law clearly provides that such person must be liable even though such person commits an act unintentionally. To commit an act intentionally is to do it consciously and desiring its effect or with the capacity to foresee its effect. If the person committing the act does not know the facts constituting the element of the offence, it cannot be deemed that such person desired or could have foreseen the effects of such doing.”

133. Accordingly, the offence of ML takes place only if it is committed intentionally.

***The Mental Element of the ML Offence (c. 2.2):***

134. The law permits the intentional element of the offense of ML to be inferred from objective factual circumstances, as per the general principles of evidence. There is no specific provision to that effect in the law but the general principles establish that all circumstances should be taken into consideration when inferring the intentional element of an offense. This principle is known in Thailand as the “intention-inferred-from-act approach”.

***Liability of Legal Persons (c. 2.3):***

135. Under Thai law, a juristic person refers to an organization created or registered according to the law. Juristic persons under Thai law include, governmental ministries, monasteries, private and public limited companies, limited partnerships, registered ordinary partnerships, associations and authorized foundations. A juristic person enjoys the same rights and is subject to the same duties as a natural person, except those which by reason of their nature, may be enjoyed or incurred only by a natural person.

136. The main type of juristic persons used for doing business in Thailand are partnerships, limited companies and public limited companies. There are two types of partnerships; ordinary registered partnerships and limited partnerships.

137. The criminal liability for ML extends also to juristic persons. Both natural and juristic persons can therefore commit the offense of ML. In accordance with section 61 of AMLA “any juristic person who commits offences under sections 5, 7, 8, or 9 shall be liable to a fine of 200,000 baht to 1 million baht (\$5,280 to \$26,400). Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offence shall be liable to imprisonment for a term of one year to ten years or to a fine of 20,000 baht to 200,000 baht (\$528 to \$5,280) or to both unless that person can prove that he or she has no part in the commission of the offence of such juristic person.”

138. In addition to this specific provision, according to the authorities, the Supreme Court has established the general principle that criminal liability may also be extended to juristic persons (Source: Supreme Court cases No. 1669/2506 and No. 584/2508).

***Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings & c. 2.4):***

139. A legal person's criminal liability for ML does not preclude the possibility of parallel criminal, civil or administrative proceedings. Criminal, civil, and administrative proceedings are entirely separate from one another in Thailand. As such, criminal liability for ML does not bar civil or administrative proceedings where they can be pursued.

***Sanctions for ML (c. 2.5):***

140. Natural and legal persons are subject to proportionate criminal and administrative sanctions for money laundering.

141. Section 60 of the AMLA provides that a natural person who commits an offence of ML shall be liable to imprisonment for a term of one to ten years or to a fine of 20,000 baht to 200,000 baht (\$528 to \$5,280) or to both.

142. Section 61 provides that a legal person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of 200,000 baht to one million baht (\$5,280 to \$26,400).

143. Criminal liability for ML for legal and natural persons can exist concurrently. For instance, if a natural person engages in ML on behalf of a legal person, both the legal and natural persons may be criminally liable for ML.

144. The prison term for ML in case of natural persons ranges from one to ten years. The maximum term would be considered to be a serious sanction, as it is the same period prescribed for assault with grave injury, robbery, blackmail, and other serious offenses. Moreover, the amounts of the fines for ML are much larger than those prescribed for such other offences. For example, robbery and blackmail carry a maximum amount of the fines of 20,000 and 30,000 baht respectively (\$528 to \$792), while ML carries the maximum fine of two hundred thousand baht (\$5,280). It should also be noted that the fine is separate from the property that may be forfeited as the proceeds of a predicate offence.

***Assessment of Effectiveness***

145. Thailand has secured 19 convictions for ML since 2001, but none since 2004. The assessment team was provided with the following annual statistics for prosecution and conviction of ML:

**Table 10. Statistics on Money Laundering Convictions**

| Year         | Prosecutions | Convictions | Acquittals | Other*    |
|--------------|--------------|-------------|------------|-----------|
| 2001         | 9            | 7           | 0          | 2         |
| 2002         | 4            | 2           | 2          | 0         |
| 2003         | 10           | 7           | 1          | 2         |
| 2004         | 10           | 3           | 1          | 6         |
| 2005         | 12           | 0           | 1          | 11        |
| 2006         | 3            | 0           | 0          | 3         |
| <b>TOTAL</b> | <b>48</b>    | <b>19</b>   | <b>5</b>   | <b>24</b> |

\* Other may mean that further investigations were requested, that the case is still pending at the trial stage or that the defendant has escaped.

146. A preliminary analysis of the number of ML convictions secured in 21 countries assessed under the FATF 2004 Methodology for which data is available reinforces the assessors' concerns that 3 convictions per year is indicative that the ML offence is not being effectively pursued. This is illustrated in the following table:

**Table 11. ML conviction statistics for selected countries**

| Indicator  | Average of assessed countries | Thailand |
|--|-------------------------------|----------|
| Average number of convictions for ML each year                       | 90.12                         | 3.17     |
| Average number of ML convictions each year per million of population | 0.19                          | 0.05     |

147. Although the criminal sanctions for ML seem adequate and proportionate relative to other crimes in the jurisdiction, given the lack of statistics on the level of sanctions, the assessment team was not able to assess how these sanctions are effectively applied and to what extent they are dissuasive. It was also not possible to assess whether legal persons are being prosecuted and convicted for ML.

148. Based on oral reports provided by different agencies, including the OAG, it appears that most convictions for ML, are connected with the commission of drug-related predicate offenses.

149. There do not appear to be any obstacles to applying the criminal offense as such. Thai case law confirms, according to the authorities, that the conduct of "receiving a transfer" described under section 5 of the AMLA covers the conducts of "acquiring, possessing and using" of property derived from a predicate offense. Thai courts have also solidly established that the commission of these conducts by themselves carry already the presumption that they were committed for the specific purposes described under section 5 of the AMLA, and that proving that such purposes were intended by the offender is therefore not a requirement under Thai law. As previously mentioned, according to the authorities, Thai case law also registers a number of cases where persons were convicted for ML without being previously convicted for the predicate offences and cases where persons were convicted of self-laundering.

150. There are also no reasons to suspect that prosecutions undertaken fail for lack of evidence nor that Thai Courts may not be entering convictions due to restrictive judicial interpretations.

151. However, the narrow range of predicate offenses vis-à-vis the FATF 40+9 standard restricts Thailand's capacity to provide mutual legal assistance and execute extradition requests related to ML to limited circumstances. Given the dual criminality requirement applicable in Thailand to the provision of

mutual legal assistance and/or extradition, Thailand is only capable of rendering mutual legal assistance and/or extraditing in cases related to ML derived from one of the eight categories of predicate offenses listed in the AMLA. If the request is related to ML derived from an offense that is not a predicate offense in Thailand, the offense under consideration would not be considered to be a ML offense in Thailand and the dual criminality requirement would therefore not be met, so mutual legal assistance and/or extradition in such cases would not be possible. This lack of clarity in the extension of Thai criminal jurisdiction to predicate offenses committed abroad also affects Thailand's ability to prosecute ML cases derived from predicate offenses that occurred in another country, which constitute an offense in that country, and would have constituted a predicate offense had they occurred in Thailand.

152. There is also a serious problem of implementation in the fact that the AMLO hardly disseminates any reports to LEAs for completion of criminal investigations and further prosecution of ML offenses. In addition, the AMLO appears to have been created with a structure and focus on seizing and confiscating property connected with the commission of predicate offenses using the civil process for vesting property in the State in the AMLA and this, coupled with a rewards system<sup>28</sup>, created in 2003, for AMLO staff, seems to act as a disincentive for AMLO to focus on the criminal aspect of ML cases. These factors may eventually weaken the deterrence factor that the criminal process contributes, if criminals perceive that their actions do not imply the risk of being punished with the serious and retributive type of sanctions (prison) that the criminal system typically comprises.

153. The fact that most convictions are derived from drug-related predicate offenses also demonstrates that there is not an autonomous approach to investigating ML and that more efforts need to be put in investigating the laundering of property connected with the commission of other predicate offenses.

154. LEAs also seem to be reluctant to enter into complex investigations of ML or third-party laundering and more willing to put the weight of their efforts into targeting self launderers connected with the commission of the predicate offense, mainly the drug-related predicate offense.

### **2.1.2 Recommendations and Comments**

155. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the AMLA to add to the list of predicate offences all serious offences or all of the remaining designated categories of offences provided for under the FATF 40+9.
- Amend the AMLA to make it absolutely clear that the offence of ML can be committed when any of the predicate offences take place outside of Thailand.
- Require the relevant authorities to maintain and update comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on ML investigations, prosecutions and convictions, information on sentences imposed, predicate offences involved and type of defendant (legal or natural person).
- Amend the AMLA to remove the specific purposes described in section 5 in connection with the acquisition, possession or use of property derived from an offence.

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<sup>28</sup> The AMLO rewards system is described beginning at paragraph 401.

### 2.1.3 Compliance with Recommendations 1 & 2

|     | Rating | Summary of factors underlying rating <sup>29</sup>   |
|-----|--------|--|
| R.1 | PC     | <ul style="list-style-type: none"> <li>• The list of domestic predicate offenses does not cover all serious offenses and it does not fully cover 14 out of the 20 designated categories of offenses.</li> <li>• Thailand’s criminal jurisdiction does not, in all instances, extend to all predicate offences that occurred in another country, which constitutes an offense in that country, and would have constituted a predicate offense had they occurred in Thailand.</li> <li>• The acquisition, possession or use of property is conditioned to specific purposes that go beyond the requirements of the Vienna Convention.</li> <li>• The assessment team was not able to satisfy itself that the regime is being effectively implemented: <ul style="list-style-type: none"> <li>• on average only 3 ML convictions are obtained each year;</li> <li>• the vast majority of prosecutions and convictions relate to drug ML and not other predicate offenses; and,</li> <li>• AMLO’s poor record for disseminating information to authorities and its focus on pursuing civil processing to seize assets may impede the pursuit of criminal prosecutions for ML.</li> </ul> </li> </ul> |
| R.2 | LC     | <ul style="list-style-type: none"> <li>• No statistics were provided to assess whether the sanctions imposed are effective or dissuasive.</li> </ul>   |

## 2.2 Criminalization of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

156. On August 11, 2003, as permitted by the constitution, the Royal Thai Government issued two Emergency Decrees to enact measures related to TF. The first of these Decrees amended section 135 of the PC. The second Decree amended section 3 of the AMLA to add the offenses related to terrorism under the PC, including TF, as the eighth predicate offense for ML. Parliament endorsed the status of such decrees as legal acts in April 2004.

#### ***Legal Framework:***

157. Section 135/2 of the PC punishes with imprisonment from two to ten years and a fine of forty thousand to two hundred thousand baht (\$1,056 to \$5,280) “*any person who.....(2) collects manpower or stockpiles weapons, provides or compiles any property, or organizes any preparation, or conspires for the purpose of committing a terrorist act; or commits any offense which is part of a terrorist plan; or abets persons to participate in the commission of terrorism; or is aware of the act of terrorism and conceals such act*”. For purposes of the TF offense set forth in this provision, the definition of terrorist acts set forth under section 135/1 applies.

158. The acts of terrorism are defined and criminalized under section 135/1 by setting forth that “a person committing any of the following criminal offences:

- (1) using force to cause death, damage, or serious injury to the life and freedom of an individual;
- (2) causing serious damage to a public transportation system, a telecommunications system, or an infrastructure facility of public use; or

<sup>29</sup> These factors are only required to be set out when the rating is less than Compliant.

(3) causing damage to property, places, facilities or systems belonging to a State or government, a person or an environment system, resulting or likely to result in major economic loss:

who causes serious damages, evokes public fear, or raises civil unrest with the intention to intimidate the population, to threaten or compel the Royal Thai Government, or any government or an international organization to do or abstain from doing any act; that person shall be deemed to have committed an act of terrorism and shall receive a sentence of either a death penalty, life imprisonment, or an imprisonment from three to twenty years. The person shall also pay a fine of sixty thousand to one million baht (\$1,584 to \$26,400),

Any demonstration, gathering, protest, or movement that calls for the government's assistance or for fair treatment, which under the Constitution are legal exercises, shall not be regarded as a terrorist offense."

159. In addition to criminalizing the financing of the acts of terrorism as stated above, section 135/2 also sets forth that "Any person who threatens to commit a terrorist act and shows behavior convincing enough to believe that such person will do as said shall receive a sentence of imprisonment from two to ten years and shall pay a fine of forty thousand to two hundred thousand baht (\$1,056 to \$5,280)."

160. Section 135/3 establishes that "Any person who is involved or collaborates with the offender as stated in 135/1 or 135/2 shall receive identical punishment."

161. Section 135/4 of the PC establishes the presumption against "Any person who is a member of a group of people classified as a terrorist organization by either a United Nations Security Council resolution or declaration, which Thailand has endorsed, setting forth that such person shall be deemed to have committed an act of terrorism and shall receive a sentence of imprisonment not exceeding seven years and shall pay a fine not exceeding one hundred and forty thousand baht" (\$3,696). The person in question could rebut such presumption by showing that they did not commit an act of terrorism or that they are not the person on the list.

***Criminalization of the Financing of Terrorism (c. II.1):***

162. The TF offense in section 135/2 of the PC is not consistent with SR.II as it does not extend to the acts that constitute offenses within the scope of, and as defined in, the treaties listed in the annex of the UN Convention. Thailand signed the Convention for the Suppression of the Financing of Terrorism, New York, December 9, 1999, on December 18, 2001 and ratified it on September 24, 2004. The treaty became effective on October 24, 2004. In ratifying this convention, Thailand declared to the United Nations that "pursuant to article 2 para. 2(a), in the application of this convention, the following treaties, which Thailand is not a party to shall not be included in the annex of this convention: 1) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 1973; 2) The International Convention against the Taking of Hostages, 1979; 3) The Convention on the Physical Protection of Nuclear Material, 1979; 4) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; 5) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, and; 6) The International Convention for the Suppression of Terrorist Bombings, 1997. Thailand also declared, pursuant to article 24 para. 2 of the convention that it did not consider itself bound by article 24 para 1 of the convention.



163. Thailand therefore considered the following treaties to be included in the annex of this convention: 1) the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, December 16, 1970, which Thailand signed on that same day and ratified on May 16, 1978; 2) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, September 23, 1971, which Thailand acceded to on May 16, 1978, and which became effective on June 15, 1978, and; 3) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, February 24, 1988, which Thailand acceded to on May 14, 1996, and which became effective on June 13, 1996.

164. Thailand has not criminalized the financing of the acts that constitute an offense within the scope of, and as defined in those three treaties or any of the other treaties.

165. Thailand must amend the provisions of section 135/2 of the PC to criminalize the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II.

166. The PC requires that the TF conduct be done with a specific purpose that limits the coverage required by the FATF 40+9. Section 135/2 of the PC requires that the provision or compilation of property be done "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan". It should be noted that the Terrorist Financing Convention only refers to the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorist act. While it may appear as a minor difference, the additional requirement of the PC poses a number of significant limitations to the coverage of the TF offense, as required by the FATF 40+9 (i.e. it does not allow coverage of the provision for purposes solely of supporting the terrorist or terrorist organization).

167. In accordance with section 135/3, the law extends to penalize equally a supporter of a criminal committing an offence under section 135/2 as well.

168. Although there is no specific definition of a terrorist or of a terrorist organization under Thai law, from the provisions referred to above the authorities have claimed that such terms could be inferred as follows:

- A terrorist can be interpreted to be a person who is a member of an organization classified as a terrorist organization by either a United Nations Security Council resolution or declaration, which Thailand has endorsed (section 135/4), or a person that commits a terrorist act under section 135/1 and 135/2.
- A terrorist organization can be interpreted to be an organization classified as a terrorist organization by either a United Nations Security Council resolution or declaration, which Thailand has endorsed (section 135/4), or an organization whose members commit a terrorist act under 135/1 and 135/2.

169. However, this claim is not relevant as Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization. This is because of a number of significant limitations. First, as previously mentioned, the law requires that the provision or collection of property was "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan" and thus does not cover the provision for purposes solely of supporting the terrorist or terrorist organization. Secondly, while one could argue that there could be a presumption that the provision or collection of property for/ or by listed terrorists or terrorist organizations is done "with the purpose of committing a terrorist act or any offense which is part of a terrorist plan", if the presumption was rebutted (i.e., if it was shown that such provision or collection of property was not done for any of such purposes),

there could not be a conviction. In addition, the collection or provision for or by others – those not on the lists – is not covered.

170. The law does not require any specific means of provision or compilation of property. Accordingly, if it can be verified that the purpose for which the property was provided or compiled was for committing a terrorist act or any offense which is part of a terrorist plan, the TF offense would be established.

171. The TF offense under section 135/2 is established without regard to the source of the property, whether legitimate or illegitimate. The term “property” covers a broader range of assets than the term “funds” under the UN Terrorist Financing Convention. Property is defined under section 99 of the CCC as including “things” and “incorporeal objects susceptible of having a value and of being appropriated”. The term “things” is defined in section 98 of the CCC as “corporeal objects”. This definition governs the meaning of the term “property” for purposes of section 135/2.

172. Section 135/2 does not require that the “property” was actually used to carry out or attempt a terrorist act. However, it does require that the property be provided or compiled for the purpose of committing a terrorist act. Because the mere provision or compilation of property with the direct and purposeful intent that it be used for the purposes of committing a terrorist act is an offense under Thai law, the actual use of the property is not a requirement.

173. Section 80 of the PC provides, as a provision of general applicability, that whoever attempts to commit a criminal offence shall be punished with two thirds of the punishment provided for such offence.

174. The PC covers all of the conducts set out in article 2(5) of the UN Terrorist Financing Convention. Section 83 penalizes a person who participates as an accomplice in a criminal offence. Under such provision, “whenever any offence is committed by two persons upwards, those participating in the commission of the offence are said to be principals, and shall be liable to the punishment provided by the law for such offence”.

175. Section 84 applies to the case of organizing or directing others to commit an offence by punishing “whoever, whether by employment, compulsion, threat, hire, asking as favour or instigation, or by any other means, causes another person to commit any offence is said to be an instigator. If the employed person commits the offence, the instigator shall receive the same punishment as the principal. If the offence is not committed, whether it be that the employed person does not consent to commit it, or has not yet committed it, or on account of any other reason, the instigator shall be liable to one third of the punishment provided for such offence.”

176. Section 86 criminalizes the contribution by setting forth that “whoever, by any means whatever, does any act to assist or facilitate the commission of an offence of any other person before or at the time of committing the offence, even though the offender does not know of such assistance or facilities, is said to be a supporter to such offence, and shall be liable to two thirds of the punishment provided for such offence.” Furthermore, according to section 135/3, the law extends also to penalize equally a supporter of a criminal committing an offence under section 135/2.

***Predicate Offence for Money Laundering (c. II.2):***

177. In accordance with section 3(8) of the AMLA, offenses relating to terrorism under the PC are predicate offenses for ML. Accordingly, the TF offense criminalized under section 135/2 of the PC is a predicate offense to ML.

***Jurisdiction for Terrorist Financing Offence (c. II.3):***

178. The TF offense is expressed without regard to the location of terrorist acts, a terrorist organization or an individual terrorist. Accordingly, the offense applies, regardless of whether the person alleged to have committed the offense(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organization(s) is located or the terrorist act(s) occurred/will occur.

***The Mental Element of the TF Offence (applying c. 2.2 in R.2):***

179. As in the case with ML, TF is an offense that implies a knowledge element which can be inferred from factual circumstances. However, the assessment team noted that section 135/2 of the PC appears to qualify and condition the provision or collection of property to being done for the specific purpose of committing a terrorist act, whereas the Terrorist Financing Convention only refers to the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorist act. According to the authorities, the intention required under Thai law is able to be inferred from the existence of knowledge. However, there is still no case law to support this argument and therefore it remains to be seen whether the courts will interpret this provision as it is intended by the Terrorist Financing Convention.

***Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):***

180. Section 135/2 of the PC sets forth that “any person” that commits a TF offense shall be punished with imprisonment of two to ten years and payment of a fine of forty thousand to two hundred thousand baht (\$1,056 to \$5,280). There is no distinction in this provision between natural and juristic persons and, according to the authorities, the Supreme Court has established the general principle that criminal liability may also be extended to legal persons. A legal person’s criminal liability for TF does not preclude the possibility of parallel criminal, civil or administrative proceedings. Criminal, civil, and administrative proceedings are entirely separate from one another in Thailand. As such, criminal liability for TF does not bar civil or administrative proceedings where they can be pursued.

***Sanctions for FT (applying c. 2.5 in R.2):***

181. Natural persons are subject to proportionate criminal sanctions for TF. Section 135/2 of the PC punishes the natural person who commits TF with imprisonment from two to ten years and a fine of forty thousand to two hundred thousand baht (\$1,056 to \$5,280). The maximum prison terms could be considered to be serious sanctions as they equate to the ones applicable to the ML offense. However, this does not appear to be the case for legal persons committing the offense of TF, as they would only be subject to a fine of forty thousand to two hundred thousand baht (\$1,056 to \$5,280), whereas in ML they are subject to a fine of two hundred thousand to one million baht (\$5,280 to \$26,400).

***Assessment of Effectiveness***

182. There have been no TF cases so far and therefore statistics are not available. Accordingly, the assessment team could not measure how effectively Thailand was utilizing the TF offense.

183. Given the serious threat of terrorist and TF activities posed by existing terrorist elements operating in the south of the country, it is concerning that Thailand has not obtained any convictions for the TF and that no prosecutions are underway. Discussions with the authorities left the assessment team

with the impression that they had not put much emphasis on pursuing FT as an offence or pursuing FT as a tool to investigate terrorism that had occurred in Thailand until very recently.

184. AMLO's poor record for disseminating reports to LEAs, and its lack of focus in the criminal aspect of cases creates a serious problem of implementation for the TF offense. The assessment team was informed by AMLO that a large number of STRs were received from FIs in connection with FT. However, the fact that no criminal investigations or prosecutions have been derived from such cases generates a serious concern as to the effectiveness of the system. The assessment team also confirmed that no assets have been seized or confiscated in connection with the terrorist related offenses created under section 135 of the PC.

### 2.2.2 Recommendations and Comments

185. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the Penal Code to:
  - extend the TF conduct in section 135/2 to the financing of the acts that constitute an offence within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II;
  - extend the TF offence to the provision or collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered;
  - remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offence which is part of a terrorist plan;
  - fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist;
  - increase the sanctions for legal persons committing TF so as to make them proportionate and dissuasive; and,
  - Require relevant authorities to maintain and update comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on TF investigations.

### 2.2.3 Compliance with Special Recommendation II

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| SR.II | PC     | <ul style="list-style-type: none"> <li>• TF has not been criminalized consistent with SR.II because the FT offence does not extend to the financing of the acts set forth in the treaties in the annex of the UN TF Convention.</li> <li>• Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization.</li> <li>• The TF offence does not extend to the unlisted individual terrorist or terrorist organization.</li> <li>• The mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist is not an offence.</li> <li>• The mental element of the TF offence is narrower than the standard as section 135/2 of the Penal Code requires that the provision or collection of property be done for the specific purpose of committing a terrorist act.</li> <li>• The sanctions for legal persons committing TF are not proportionate or dissuasive.</li> <li>• The Recommendation is not effectively implemented - despite a significant</li> </ul> |

|  |  |   |
|--|--|---|
|  |  | domestic terrorism situation, there have been no TF cases taken so far. |
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## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1 Description and Analysis

186. Property in Thailand can be confiscated under three separate laws: The PC, the Narcotic Suppression Act, and the AMLA. The PC provides for a criminal based confiscation system applicable to any offence, not just ML and predicate offences for ML. The PC provides for both conviction-based and non-conviction based forfeiture schemes. The Narcotics Suppression Act also provides for both a conviction-based and a non-conviction-based forfeiture scheme. The AMLA provides for a civil non-conviction-based forfeiture system for property connected with the commission of an offence. The process is not termed “forfeiture” but the proceeding for vesting property in the State and it is conducted in a Court of Civil Jurisdiction.

187. Provisional measures for seizing and attaching property are found under several laws. The CPC contains provisions related with the seizure of property in the context of gathering evidence for criminal investigations. The Narcotics Suppression Act, and the AMLA contain specific provisions for seizing and attaching property connected with the commission of a drug related offense or a predicate offense respectively. Moreover, the Special Case Investigations Act also establishes seizure powers in the context of investigations of special case offenses (which include ML and TF).

188. An integral aspect of the confiscation measures in place is that the staff of the LEAs and AMLO involved receive an incentive payment for the assets that are seized. These incentive payments are paid pursuant to regulations establishing “rewards systems” under the different legislation applying to the LEAs and to the AMLO. The AMLO rewards system is described below beginning at paragraph 401.

189. Article 32 of the AMLA provides for a Transaction Committee (TC), which is charged with examining transactions and assets associated with the commission of offences, restraining transactions, ordering the temporary seizure of assets, submitting work reports to the AMLB, and carrying out assignments by the Board. The TC is comprised of the Secretary-General of the AMLO as Chairman (The S-G), with four other members who are from a varied of backgrounds including law enforcement, education (Professors) and other professions. According to the authorities, the TC was created to ensure that action taken on assets, which affects the rights of people, is most rightly and fairly taken.

190. Article 15 of the Narcotics Suppression Act establishes a Properties Examination Committee (PEC) and article 17 gives the PEC power to examine properties, make determinations whether property is related to the commission of a relevant offence and to seize or attach property.

#### ***Legal Framework:***

#### ***Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):.***

191. Thai laws provide for the confiscation of property that has been laundered or which constitutes a) proceeds from; b) instrumentalities used in; and c) instrumentalities intended for use in the commission of any ML, TF or other predicate offenses, including property of corresponding value.

192. There are three pieces of legislation providing for confiscation of property in Thailand: The PC, the Narcotics Suppression Act, and the AMLA.

***The Penal Code(PC)***

193. Forfeiture provisions in the PC are applicable to any offence, not just ML and predicate offences for ML. Sections 32 and 33 of the PC authorize the court to forfeit: 1) Property of which possession is illegal; 2) Property used or intended for use in the commission of an offence; and 3) Property acquired by a person through the commission of an offence.

194. Forfeiture of property of which possession is illegal does not require the conviction of an offender, whereas property used or intended for use in the commission of an offence; and property acquired by a person through the commission of an offence may only be forfeited if a conviction is obtained.

195. Other measures in the PC contain forfeiture provisions which are traditional measures found in most civil law jurisdictions.

196. Article 34 deals with the forfeiture of property in cases of corruption.

197. Article 35 vests forfeited property in the State unless the court orders the property to be destroyed.

198. Article 36 allows the court to deal with the submission by the real owner of the property that is considered to be forfeited and that was not involved in the commission of the offense that resulted in the forfeiture order.

199. Article 37 gives the courts power to enforce forfeiture orders either by seizure of property or by ordering the payment of an amount equivalent to the value of the property ordered to be forfeited. It also allows the court to imprison a person who does not comply with a forfeiture order.

***The Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics 1991 (the Narcotics Suppression Act)***

200. The Narcotics Suppression Act also provides for both a conviction-based and a non-conviction-based forfeiture scheme.

201. In accordance with sections 27–29 of the Act, a conviction-based system applies to the forfeiture of property connected with the commission of an offence, which the Act defines under section 3 as “money or properties obtained through the commission of an offence relating to narcotics, and shall include money or properties which are obtained by means of using such money or properties to purchase or by causing in any manner whatsoever to transform such money or properties, irrespective of the number of transformation and whether or not such money or properties will be in the possession of, or transferred to or apparently evidenced on the register as belonging to other persons”.

202. In accordance with section 30 of the Act, a non-conviction-based system applies to forfeiture of all instruments, equipment, conveyances, machinery or other properties used in the commission of an offence relating to narcotics or used as accessories for producing the consequence of the commission of an offence or possessed for use in the commission of such offence.

203. Article 27 requires the prosecutor to seek a forfeiture order from the court once a prosecution order has been issued.

204. Article 28 requires the giving of notice of the motion to seek a forfeiture order.

205. Article 29 requires the court to conduct a trial in respect of all the properties that are the subject of the prosecutor's application for forfeiture and provides that the court must be satisfied that there is a prima facie case that the properties are connected with the commission of a narcotics offence before ordering forfeiture. This provision also details the matters to be proved by a person seeking to challenge the issue of a forfeiture order.

206. Article 30 deals with the forfeiture of instrumentalities.

207. Article 31 deals with the vesting of forfeited property in the Narcotics Control Fund established under Chapter III of the Act.

208. Article 32 deals with property in cases where there is no ultimate prosecution and where prosecution results in dismissal of the charges.

***The Anti Money Laundering Act (AMLA)***

209. The AMLA provides for a civil non-conviction-based forfeiture system for property connected with the commission of an offence. The process is not termed "forfeiture" but the proceeding for vesting property in the State and it is conducted in a Court of Civil Jurisdiction. Property is capable of being vested in the State if it is connected with the commission of an offence. The term "property connected with the commission of an offense" is defined under section 3 of the AMLA as:

1) money or property obtained from the commission of an act constituting a predicate offence or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence;

2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under 1); or

(3) fruits of the money or property under 1) or 2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

210. Section 51 of the AMLA empowers the court to order that property be vested in the State following the investigation of petitions filed under sections 49 and 50. This section also contains a presumption in relation to petitioners under section 50 who are related to persons who committed predicate offences or ML offences.

211. Sections 52 and 53 allow the court to conduct further proceedings in relation to property already ordered vested so as to protect third party rights.

212. Section 54 deals with the vesting of additional property subsequently found.

213. The confiscation of instrumentalities used in or intended for use in the commission of an offense is authorized under section 33 of the PC. Instrumentalities are not covered by the definition of "property connected with the commission of an offense" and are therefore not able to be vested in the State under the system provided by the AMLA. However, instrumentalities are covered by the civil-code definition of "property" and are therefore forfeitable under the rules provided by the PC.

214. Instrumentalities used in the commission of an offense relating to narcotics may also be forfeited under the non-conviction based system provided in section 30 of the Narcotics Suppression Act

***Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):***

215. The vesting system provided for under the AMLA extends the confiscation provisions to property connected with the commission of an offense. The definition of property connected with the commission of an offense under section 3 of the AMLA is broad enough to cover property that is derived directly or indirectly from the proceeds of crime, including income, profits or other benefits from the proceeds of crime. A specific paragraph also clarifies that such definition applies regardless of whether it is held or owned by a criminal defendant or by a third party.
216. The Narcotics Suppression Act also extends its confiscation system to property derived from proceeds of an offense related to narcotics. Article 22 of the Act contains a provision defining properties as including “benefits and the fruits of such properties”.
217. The forfeiture provisions in the PC do not deal with the property derived from proceeds of crime.

***Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):***

***The Criminal Procedures Code (the CPC)***

218. The CPC contains provisions related with the seizure of property in the context of gathering evidence for criminal investigations.
219. Where a criminal offence is alleged to be involved, the provisions of the CPC are available in support of an investigation of the offence: article 69(2) of the CPC allows search warrants to be issued , inter alia, to discover and seize any article which is reasonably suspected of have been used or intended to be used in the commission of an offence (that is, in relation to instrumentalities of crime); article 85 allows for the seizure of an article found during a search; article 91(4) allows seizure of an article obtained through an offence where the article is concealed on property that is being searched without warrant in case where section 91 applies; and article 132(2) gives an inquiry official power to search for and detain articles which are obtained through an offence or used or suspected of having been used for the commission of an offence.

***The Anti Money Laundering Act (AMLA)***

220. Under the AMLA, provisional seizing or attaching orders may be made in the following two stages:
- a. **The investigation stage:** Section 48 authorizes the TC or the S-G of the AMLO to make a provisional seizure or attachment order against property connected with the commission of a predicate offence for not more than ninety days where in conducting an examination of the report, and information on transaction-making, there is a reasonable ground to believe that such property may be transferred, distributed, moved, concealed, or hidden. It is uncertain whether the authorities could apply for an extension of a seizure or attachment order if their examination is not completed within 90 days. There is no precedent on this matter because all cases have so far been completed within 90 days but, given the absence of a specific provision allowing for an extension, it would appear that such extension would not be possible. The authorities claim however, that, in practice, they would not seize or attach any property unless they have sufficient evidence that the property is indeed connected with the commission of an offence. As a result, it is very unlikely that they would need more than 90 days to complete their examination.
  - b. **The Court stage:** Section 55 of the AMLA provides that after the Public Prosecutor has filed a petition with the Court to order the vesting of the property for the benefit of the



State, if there is reasonable ground to believe that there may be a transfer, distribution or placement of property connected with the commission of an offense, the S-G may submit the facts to the Public Prosecutor to file a petition to the Court to order a provisional seizure or attachment of the property prior to ordering its vesting.

221. The AMLA also contains the following provisional measures:

- a. Sections 35 and 36 allow the TC to restrain transactions where there is probable cause to believe that the transaction may be involved in the commission of a ML offence. Section 35 operates only where there is 'probable cause', while section 36 deals with 'concrete evidence'.
- b. Section 38 gives power to require the production of evidence and testimony, and to enter and search premises and other places.
- c. Section 46 allows the AMLO to seek the issuance of a warrant to gain access to specified information where there is probable cause to believe that a ML offence has been committed.
- d. As mentioned above, section 48 allows the TC to restrain or seize assets related to the commission of a predicate offence, where it has a reasonable ground to believe that such property may be transferred, distributed, moved, concealed, or hidden. This section also allows an individual whose asset or money has been restrained or seized to produce evidence to prove that the asset or the money was not related to the commission of an offence.
- e. Section 49 requires restraint and seizure action to be referred to the court and outlines the sequence of events that must be undertaken if the prosecutor considers that there is not sufficient information to file the required motion with the court.
- f. Section 50 gives a person who claims ownership of, or who has a vested interest in, an asset which is the subject of a petition by the prosecutor under section 49 to petition the court to show that the asset is not related to any offence, or that it was acquired honestly and for value.
- g. As also mentioned above, section 55 gives power to order provisional seizure of restrained assets to prevent their disbursement while court proceedings initiated under section 49 are pending.
- h. Section 56 deals with the execution of restraint and seizure orders and requires an assessment of the value of property the subject to such an order, and;
- i. Section 57 deals with the custody of restrained and seized property.

***The Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics***

222. Apart from the AMLA, the Narcotics Suppression Act provides the following:

- a. Articles 19 and 20 set out the powers of the PEC to examine property and article 25 confers powers to compel evidence and to search.
- b. Article 22 allows seizure or attachment of properties where the holder of the property cannot prove that the property is not connected with the commission of a narcotics

offence or that it has been acquired in good faith. This section also allows for provisional seizure or attachment. Property is widely defined in this section to include converted property, income from property, and other property of the alleged offender which cannot be proved to have been lawfully acquired in good faith and for value.

- c. Article 24 deals with the custody of seized and attached property.

***The Special Case Investigations Act (2004)***

223. The Special Case Investigation Act (2004) further empowers a special case inquiry official at the DSI to search any person or conveyance carried out with a reasonable ground for suspecting that it contains a property the possession of which is considered an offense, or which is acquired by committing an offense, or which is used or will be used in committing a special case offense or may be used as evidence, and to seize or attach such property. The ML offense under the AMLA and the terrorist related offenses under the PC fall under the definition of special case offenses provided under that act.

***Ex Parte Application for Provisional Measures (c. 3.3) :***

224. The authorities claim that section 48 of the AMLA and section 22 of the Narcotics Suppression Act both allow for the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. The assessors remain to be convinced of this as neither provision explicitly provides for an ex-parte application to be made and that process may be in conflict with other laws and inconsistent with Ministerial Regulation Nbr. 10. The authorities could not provide any evidence in the form of cases or statistics in support of their claims.

***Identification and Tracing of Property subject to Confiscation (c. 3.4):***

***The Criminal Procedures Code***

225. The CPC contains provisions related with the search of property in the context of gathering evidence for criminal investigations. Section 132 of the CPC sets forth that “for the purpose of collecting evidence, the inquiry official has the power to .....(2) search for articles the possession of which constitutes an offense, or which are obtained through an offense or used or suspected of having been used for the commission of an offense or which may be used as evidence.....”

226. Powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of a crime are also granted to competent authorities under the AMLA and the Narcotics Suppression Act.

227. It should be noted however that the powers under the AMLA can only be used in the context of the vesting procedure contemplated therein and the powers under the Narcotics Suppression Act are only applicable to offenses relating to narcotics. As a result, the identification and tracing of property in criminal procedures for offenses not related to narcotics would be limited to the application of the evidence gathering provisions of the CPC. These general criminal powers to identify and trace evidence are usually not considered sufficient just by themselves, as the objective of investigators may not be to gather evidence but rather to identify and trace property that is or may become subject to confiscation. Accordingly, the assessment team recommends that the authorities expand the powers under the CPC to enable the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence.

***The Anti Money Laundering Act (AMLA)***

228. The TC established under the AMLA, has powers under section 34 of the AMLA to (1) examine a transaction or property connected with the commission of an offence and (2) give an order withholding

a transaction. Sections 35 and 36 of the AMLA provide the TC the powers to give written orders withholding transactions believed to be connected with the commission of an offence of ML. In addition, section 38 entitles a member of the TC, the S-G and the competent official entrusted in writing by the S-G with the powers: 1) to address a written inquiry towards or summon a FI, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration; 2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration; 3) to enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offence or evidence connected with the commission of an offence of ML hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed or converted from its original state.

229. Furthermore, section 40 of the AMLA provides the AMLO with powers and duties: 1) to receive transaction reports; 2) to gather, monitor, examine, study, and analyze reports, and information in connection with the making of transactions; 3) to gather evidence for the purpose of taking legal proceedings against offenders under AMLA. Section 46 empowers the S-G to file an ex-parte application with the Civil Court for an order permitting access to the account, communicated data or computer data, or for the acquisition thereof, where there is a reasonable ground to believe that any account of a FI's customer, communication device or equipment or computer is used or probably used in the commission of an offence of ML.

***The Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics***

230. The Narcotics Suppression Act also contains these type of provisions:

- a. Article 15 of the Act establishes a PEC and article 17 gives the PEC power to examine properties, make determinations whether property is related to the commission of a relevant offence and to seize or attach property.
- b. Articles 19 and 20 deal with the powers to examine property and article 25 confers express powers to compel evidence and to search.
- c. In accordance with section 25, the members of the PEC, the Sub-Committee and the Secretary-General of the ONCB are granted the following powers for purposes of the consideration, examination and seizure or attachment of properties: 1) to issue a letter of inquiry requesting or issue an order requiring an official of a Government agency, State organization, State agency or State enterprise to give statements or give explanations in writing, or to submit any account, document or evidence for examination or supplementing the consideration; 2) to issue a letter of inquiry requesting or issue an order requiring any person concerned to give statements or give explanations in writing, or to submit any account, document or evidence for examination or supplementing the consideration which also includes the examination by the banks, the Securities Exchange and the FIs, and; 3) to enter, during day time and between sunrise and sunset, any dwelling place, premise or conveyance where there is a reasonable ground to suspect that an offence relating to narcotics is committed or the properties believed to be connected with the offense are hidden therein, for the purposes of searching or examining, seizing or attaching the properties. In the case where there is reasonable ground to believe that if a prompt action is not taken, the properties are likely to be removed, the entry may be made during night time.

***Special Case Investigation Act (2004)***

231. Section 24 of the Special Case Investigation Act (2004) further empowers a special case inquiry official at the DSI to search any person or conveyance carried out with a reasonable ground for suspecting that it contains a property the possession of which is considered an offense, or which is acquired by committing an offense, or which is used or will be used in committing a special case offense or may be used as evidence.

***Protection of Bona Fide Third Parties (c. 3.5):***

232. Measures providing protection for the rights of bona fide third parties are contained in the CCC, the AMLA and the Narcotics Suppression Act. Such measures are consistent with the standards provided in the Palermo Convention.

233. Third party protection for acts done in good faith is provided as a measure of general applicability under section 1332 of the CCC, which sets forth that “when a person has in good faith purchased property at a sale by public auction or in the open market or from a trader dealing in such things, such person shall not be bound to return it to the true owner unless the latter reimburses the purchase price.”

234. Section 50 of the AMLA specifically protects the owner of the property sought to be vested in the State where the person proves to be the real owner and such property is not connected with the commission of an offence or is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity. Protection is also given to the beneficiary of such property where it establishes to be its beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

235. It should be noted that section 50 of the AMLA is concerned with a case where the owner or the beneficiary files an application with the Court before the Court gives an order vesting the property in the State. Section 53 of the AMLA governs the protection accorded after the Court has already vested the property in the State. In this case, the owner or beneficiary has to file an application with the Court within one year as from the issuance of the Court’s order vesting the property in the State and prove that it has not filed such application before due to lack of knowledge of the publication or written notice or other reasonable causes. Where such person can establish the same conditions as in the case of section 50, protection would also be given to it. Where the return of the property or protection of the right of the beneficiary is not possible, payment of price or compensation thereof will be made instead.

236. The term “good faith” is not defined anywhere in the AMLA but from the context, it means that the transferee or beneficiary has obtained property without knowing that it is connected with the commission of an offence.

237. The Narcotics Suppression Act provides protection for the rights of bona fide third parties. Under section 22, which deals with the powers of the PEC to examine properties believed to be connected with the commission of an offense relating to narcotics for purposes of seizure and attachment, third parties are given the rights to establish that the properties under examination are not connected with the commission of such an offense, or that they have accepted the transfer of such properties in good faith and for value. Under section 29, which deals with the trial conducted for purposes of confiscation of properties connected with an offense related to narcotics, the Court shall not confiscate the properties if a person claiming to be the owner of such properties submits an application for restitution thereof before the case is finalized and is able to prove to the Court that: 1) such person is a true owner and the properties are not connected with an offence relating to narcotics, or; 2) such person is a transferee or the beneficiary, and has acquired the properties in good faith and for value or has reasonably acquired them on account of good moral or public charity.

***Power to Void Actions (c. 3.6):***

238. While the preventive authority is clearly set out in the seizing and attachment provisions, there are no specific provisions explicitly granting authority to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

239. Both the AMLA and the Narcotics Suppression Act contain provisions covering property subject to confiscation in the freezing and attachment mechanisms, irrespective of certain actions taken by the persons involved, and of who is in possession or ownership of such property. However, there is no specific authority to void actions that may not be covered under such provisions and that could prejudice the authorities' ability to recover property subject to confiscation.

***The Anti Money Laundering Act (AMLA)***

240. For example, under the AMLA, the issue is addressed in the definition of the term "property connected with the commission of an offense" under section 3 which states that ".....it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person".

241. In addition, section 59 of the AMLA also prescribes the mutatis mutandis application of the Civil Procedure Code to a proceeding for vesting property in the State. Accordingly, where the Court has made a provisional seizing or attachment, section 305 or 314, as the case may be, of the Code will apply.

242. Section 305 of the Code states that "seizure of property has the following effect: "no creation, transfer or alteration of rights in the property seized made after the seizure can be set up against the executing officer....."

243. Section 314 of the Code states that "an attachment of property shall have the following effects: "no creation, transfer or alteration of rights in the property seized made after the attachment can be set up against the executing officer....."

***The Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics***

244. The Narcotics Suppression Act also addresses the issue in the definition of the term "property connected with the commission of an offense" under section 3 which states ".....irrespective of the number of transformation and whether or not such money or properties will be in the possession of, or transferred to or apparently evidenced on the register as belonging to other persons."

245. In addition, the issue is also brought up in the definition of the term "properties" for purposes of seizures and attachments under the Act, which includes: 1) properties which have been transformed, claims, benefits and the fruits of such properties; 2) debts due to be paid by the third person to the alleged offender; 3) the alleged offender's properties connected with the commission of an offense relating to narcotics which have been obtained, sold, disposed of, transferred or removed within the period of ten years before the issuance of the seizure or attachment order and thereafter, unless the transferee or beneficiary can prove to the satisfaction of the Committee that such transfer or such act has been made in good faith and for value.

246. The assessment team therefore recommends that the AMLA, or other relevant law, be amended to give to the appropriate authority power to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

***Additional Elements (Rec 3) – Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):***

***a) Confiscation of assets from organizations principally criminal in nature***

247. The confiscation of property of organizations that are found to be primarily criminal in nature is not possible under the AMLA. However, the confiscation of property of such organizations could be possible under the PC.

248. Under the AMLA, property may be vested in the State only if it is connected with the commission of a predicate offence. Accordingly, property of an organization found to be primarily criminal in nature could not be vested in the State unless it was connected with the commission of a predicate offence.

249. However, under the PC, property used or intended for use in the commission of an offence is forfeitable. This is commonly known in Thailand as “instrumentality confiscation”. As long as it was used or intended for use to commit an offence, it is forfeitable irrespective of whether its origin is lawful or illegal. According to the authorities, property of an organization whose principal function is to perform or assist in the performance of illegal activities would be considered to be property intended for use to commit an offence and therefore could be forfeited. Unlike the vesting of property in the State under AMLA, which is a civil non-conviction-based system, this type of forfeiture is a criminal law and conviction-based system. It should be noted however, that there are no precedents confirming that property of an organization principally criminal in nature can be forfeited by application of the PC. As a result, it is still uncertain whether all property of these type of organizations could be considered an instrumentality and thus subject to confiscation.

***b) Civil forfeiture***

250. The AMLA provides for confiscation of property subject to confiscation but without the conviction of any person in addition to the system of confiscation triggered by a criminal conviction. The proceeding for vesting property in the State is civil. Section 59 of AMLA reads: “Lawsuit under this Chapter (Chapter VI Property Proceeding) shall be brought to the Civil Court and the Civil Procedure Code shall apply *mutatis mutandis*”. An integral part of the measures that Thailand has adopted for its civil forfeiture regime is a rewards system in 2003 for those persons involved in seizing the assets. The AMLO rewards system is described beginning below at paragraph 401.

***c) Confiscation of Property which Reverses Burden of Proof***

251. The AMLA provides for the confiscation of property subject to confiscation, and which require an offender to demonstrate the lawful origin of the property. Section 50 protects the owner of the property sought to be vested in the State only if the person is able to prove that they are the real owner and such property is not connected with the commission of an offence or the person is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity. Protection is also given to the beneficiary of such property where the person establishes that they are its beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity. Under sections 51 and 52 of AMLA, if the person claiming to be an owner or a transferee or a beneficiary of property sought to be vested in the State is or was associated with the perpetrator of a predicate offence or an offence of ML, it is presumed that such property is connected with the commission of an offence or transferred in bad faith or is acquired in bad faith. Thus, if this is the case, such person would have to prove that the property is not connected with the commission of an offence. Section 53 of the AMLA establish a similar provision for claims taking place after the property has been vested in the State.

**Statistics of Seizures:**

252. Total seizures by the AMLO, the ONCB, the DSI and the RTP since 2000 amount to 10,246 million baht (\$268 million) as shown in the following table:

**Table 12. Total seizures by the AMLO, the ONCB, the DSI and the RTP since 2000**

| Year<br>Agency                        | 2000<br>(Baht<br>million) | 2001<br>(Baht<br>million) | 2002<br>(Baht<br>million) | 2003<br>(Baht<br>million) | 2004<br>(Baht<br>million) | 2005<br>(Baht<br>million) | 2006<br>(Baht<br>million) | Total<br>(Baht<br>million) | Total<br>(\$<br>million) |
|---------------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|----------------------------|--------------------------|
| AMLO                                  | 24                        | 752                       | 682                       | 944                       | 1,410                     | 370                       | ?                         | 4,181                      | 110                      |
| ONCB                                  | 247                       | 487                       | 710                       | 2,317                     | 683                       | 858                       | 943                       | 6,245                      | 158                      |
| DSI                                   | ?                         | ?                         | ?                         | ?                         | ?                         | ?                         |                           | ?                          | ?                        |
| RTP                                   | ?                         | ?                         | ?                         | ?                         | ?                         | ?                         |                           | ?                          | ?                        |
| Total value of<br>assets (baht m)     | 271                       | 1,239                     | 1,391                     | 3,260                     | 2,094                     | 1,228                     | 943                       | 10,246                     | 268                      |
| Total value of<br>assets (\$ million) | 7                         | 33                        | 37                        | 86                        | 55                        | 32                        | 25                        | 268                        |                          |

253. The AMLO examined transactions associated with commission of offences and reported to the TC for its order to seize or freeze assets involved in the commission of offences or to revoke its earlier orders under article 48 of the AMLA. These can be grouped according to the eight predicate offences.

**Table 13. AMLO: Statistics on Assets Seizure, Vesting and Cases - January 1, 2002 to December 31 2006**

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

254. Statistics for the 5 year period January 1, 2002 to December 31, 2006 show that AMLO, under the AMLA, investigated 1,108 cases from which it seized an estimated total value of assets of 6,416,439,230 baht (\$169 million).

255. A synopsis and status of these 1,108 investigations are as follows:

- 946 of the cases were narcotics related;
- 318 cases have been completed with vesting of 1,279,716,379 Baht (\$34 million) ordered forfeited;
- 40 cases are presently under investigation by AMLO involving total assets seized valued at 238,430,733 baht (\$6.3 million);
- 664 cases are still before the courts relating to 8,338,628,153 baht of assets (\$220 million);
- 22 cases are under consideration by the prosecutor relating to 76,539,663 baht (\$2 million);
- 14 cases have been dismissed by the courts and 307,038,589 baht (\$8 million) has been returned as ordered by the court;
- 32 cases were not pursued due to insufficient evidence to seek vesting. These case involved 65,205,711 baht (\$1.7 million);
- The prosecutor choose not to pursue 5 cases that were recommended by the TC. Assets seized in these cases was 11,163,992 baht (\$300,000). In such circumstances the assets have to be returned to the owner;
- 5 cases (all fraud) were passed on to the RTP for criminal investigation involving 415,865,618 baht (\$11 million). No other cases have been turned over to be investigated criminally for ML or TF;
- No cases of seizures or vesting relating to TF.

256. These figures indicate that just four percent by number and ten percent by value of the cases have been dismissed or not pursued. These figures increase to 13 percent and 22 percent respectively when compared to finalized cases (court ordered vesting or dismissal or case not pursued). Overall, the figures suggest that the vast majority of initial seizures by AMLO are justified.

257. The number of cases that were presented to the TC between 2002 and 2006 are as follows:

**Table 14. Number of Cases Presented to the TC**

|       |           |
|-------|-----------|
| 2002  | 98        |
| 2003  | 298       |
| 2004  | 182       |
| 2005  | 197       |
| 2006  | 183       |
| Total | 958 cases |

258. Authorities stated that cases during the past two years that have been investigated and presented to TC where the TC has decided not to issue seizure order was 25 cases in 2005 (13 percent) and 39 (21 percent) in 2006. No statistics are available for the years prior. These figures suggest that the TC review process is more than perfunctory.



259. The assets vested in the State under the AMLA since 2000 are as follows:

**Table 15. Amount / Value of Asset Classified by Type of Asset**

| Item               | Value<br>(million baht) | Value<br>(\$ million) |
|--------------------|-------------------------|-----------------------|
| 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                     |
| <b>Total</b>       | <b>3,075</b>            | <b>81</b>             |

Source: AMLO - data valid as of January 2007

260. Table 15 above reflect seizures and assets vested in the State since 2002 and these reflect the total seizures since AMLO started operations in 2000.

261. These statistics show that AMLO has been very effective at seizing ML assets. As indicated above, the majority of cases are narcotics related. In these cases, AMLO are either invited in to assist with the investigation or undertake the investigations independently. The authorities advised that some cases are generated as a result of law enforcement or competent authorities reporting assets seized pursuant to the requirements of AMLA.

262. AMLO will secure the necessary predicate offence evidence which is required to seek vesting of the assets in the State. This could involve using an assortment of investigative powers under the AMLA and other techniques commonly used by LEAs including informants, surveillance, search warrants, interviews and other special techniques including wire tap which they have to apply to the court for authorization to use. According to authorities they have used these special techniques on two occasions since 2000. AMLO can choose, based on the evidence collected, whether to refer the case for criminal investigation or to proceed with seeking civil vesting of the property in the State. In those cases where the decision is reached to refer the case to LEAs for criminal investigation, AMLO can share all the evidence it collected during its investigation with LEAs despite that evidence being collected pursuant to the AMLA. The evidence that can be shared includes evidence obtained via special techniques such as the use of wire taps.

263. The statistics show that the AMLO seizes both movable or non-movable assets during these investigations. These assets are handled by the Asset Management Unit within the AMLO with 19 officers whose duties are to manage these assets until they are ordered vested in the State or returned to the owner. In cases where the court orders vesting, the Unit will dispose of the assets through means such as auctions or other methods which are overseen or acceptable to the S-G of the AMLO.

***ONCB Statistics for Criminal ML cases relating to narcotics only:***

The Narcotics Suppression Act establishes a Properties Examination Committee and gives the Committee power to examine properties, make determinations whether property is related to the commission of a relevant offence and to seize or attach property.

**Table 16. Comparative Statistics of Property Seized Under the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics BE 2534 (1991) 1992 – 2007**

| Year       | Examined<br>(Case) | Seized<br>(Millions/Baht) | Seized<br>(\$<br>Millions) | Type of Assets (Millions/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     |

264. The above statistics show seizures totals relating to those criminal proceeds of crime investigations conducted by ONCB and the RTP. ONCB has an investigative unit with over 40 dedicated investigators whose duties focus entirely on seizing and forfeiture of assets relating to narcotic investigations. ONCB state that 95 percent of the cases they undertake are referrals or invitations to participate in ongoing drug investigations being conducted by the RTP. The RTP have a number of drug units who investigate the narcotic cases but also are responsible to identify and seize assets which are believed to be proceeds of crime associated to these offences. LEAs are required in all narcotic cases (whether they seek ONCB or AMLO assistance) to report assets that are seized to ONCB pursuant to the Narcotics Suppression Act and a further report to the AMLO pursuant to the AMLA

265. Authorities state that in the majority of cases, the RTP will request either the ONCB or the AMLO to assist with investigating the POC aspects of their ongoing drug investigations. In these cases, the ONCB or the AMLO will join in the investigation once the predicate offence investigators identify that there is potential for seizure of assets. Once involved in the case the ONCB and the AMLO will utilize a variety of investigative techniques such as surveillance, search warrants, informants, undercover and can also apply pursuant to the Narcotic Suppressions Act and the AMLA to use special techniques such as wire tap to gather evidence to prove the ML offences. The RTP do not have the authority to apply to use these special techniques i.e. wiretap, but if they invite the ONCB or the AMLO to participate in their investigation they can gain access to evidence that is collected through these techniques provided that the ONCB and the AMLO have the judicial authority to use these techniques.

266. The OAG provided the following statistics for forfeiture from all sources, criminal and civil:

**Table 17. Statistics on Property Forfeited**

| Year         | Number of Cases | Amount of Property Forfeited (Baht) | Amount of Property Forfeited (\$) |
|--------------|-----------------|-------------------------------------|-----------------------------------|
| 2001         | 6               | 9,316,300                           | 245,950                           |
| 2002         | 15              | 31,134,844                          | 821,960                           |
| 2003         | 51              | 112,128,519                         | 2,960,193                         |
| 2004         | 105             | 327,727,389                         | 8,652,003                         |
| 2005         | 97              | 505,766,907                         | 13,352,246                        |
| 2006*        | 42              | 163,816,134                         | 4,324,746                         |
| <b>TOTAL</b> | <b>316</b>      | <b>1,149,890,094</b>                | <b>30,357,098</b>                 |

\* Up to 9/29/2006 only.

267. The Authorities were unable to provide additional statistics that would have allowed for a proper assessment of effectiveness to be completed. The information includes:

- statistics on the number and value of property seized by other LEAs such as DSI, RTP or other competent authorities;
- statistics on the number of and value of property seized under the procedures in the PC; and,
- additional details from the ONCB on the number of ML cases and types of assets seized.

***Assessment of Effectiveness***

268. The assessment team was not provided with complete statistics on the number of cases, type and value of property seized or ordered to be forfeited under the PC or under the Special Case Investigations Act. In addition, no statistics were provided showing whether the authorities were successful at securing final confiscation of assets ordered forfeited under any legislation. As a result, the assessment team was not capable of adequately evaluating the effectiveness of these measures.

269. Nonetheless, the statistics presented indicate that the system for *provisional* measures are getting good results and seem effective. The statistics were compared with those of 9 other jurisdictions evaluated under the FATF 2004 Methodology for which useable figures could be obtained. The analysis is very preliminary and the data is difficult to use due to differences in the way assessment and evaluation reports present and define figures for provisional measures and confiscation. A summary table is set out below.

**Table 18. Selected Comparative Information for Assets frozen, restrained, seized, forfeited or confiscated taken from 9 Mutual Evaluation or Detailed Assessment Reports for countries evaluated under the FATF 2004 Methodology**

| Indicator   | Comparative Group Average | Comparative Group Average Excluding USA and India <sup>30</sup> | Thailand      |
|---|---------------------------|---|---------------|
| Assets frozen, restrained or seized                                       |                           |   |               |
| Total   | \$291 million             | \$42 million  | \$256 million |
| Annual value  | \$136 million             | \$9 million   | \$37 million  |
| Annual value per million of population                                    | \$0.72                    | \$0.67  | \$0.56        |
| Annual value as % of GDP  | 0.0076%                   | 0.0027%   | 0.0224%       |
| Assets ordered forfeited (or forfeited)                                   |                           |   |               |
| Total   | \$170 million             | \$19 million  | \$29 million  |
| Annual Value  | \$80 million              | \$4 million   | \$5 million   |
| Annual value per million of population                                    | \$0.48                    | \$0.47  | \$0.07        |
| Annual value as % of GDP  | 0.0052%                   | 0.0018%   | 0.0029%       |
| Annual value compared to annual value assets frozen, restrained or seized | 59%                       | 45%   | 13%           |

270. Thailand has seized more than \$250 million of assets. This is the second highest level in the comparative group and well above the average of \$42 million for the other countries once the figure of \$2,061 million for the USA is removed. A similar picture emerges when focusing on the annual value of assets provisionally frozen, restrained or seized by Thailand. Thailand is closer to the comparative average when comparing its annual provisional seizures against its population but very impressive when comparing the annual value of provisional seizures to its GDP.

271. Thailand is less impressive but still a good performer when it comes to obtaining final forfeiture orders. Its total and its annual value for forfeiture are still above most countries but closer to the average. The amount is very small compared to its population but still above average when compared to GDP. However, one area where Thailand would appear to lag behind compared to other jurisdictions is in its ability to secure final forfeiture orders compared to the value of assets that it seizes.

272. Thus, it is clear that Thailand's provisional measures and confiscation framework contemplates a strong system for the recovery of the proceeds of crime which is largely in line with the material requirements of international obligations and standards. Since the enactment of the AMLA in 1999 there has been a significant increase in the amount of criminal proceeds recovered through the civil non conviction based system.

273. While some of the results obtained are impressive there is still room to improve. The AMLO has been very successful in seizing assets through civil means. However, over 95 percent of overall cases are

<sup>30</sup> The large values for assets seized, forfeited or confiscated in the USA and the size of its GDP materially impact on the group average. Likewise, India's population materially alters some group averages.

narcotics related. Other predicate offence investigations have produced very few ML charges or seizures in either the civil or criminal processes. Authorities have stated that criminal ML charges and forfeiture of assets associated to those crimes is more difficult because of the burden of proof to “prove beyond a reasonable doubt” that the assets were derived from the criminal offence.

274. Of note is that over 50 percent (664 cases of 1,108) of the AMLO’s cases are presently before the courts with some of these investigations going back to 2002. Authorities stated that the nature and complexity of these ML cases and limited available court time has caused this back log of cases.

275. It is also possible that LEAs and the AMLO have had an over zealous interest in civil based provisional seizures due to the incentives that the rewards system creates and may have put relatively less effort into completing the civil vesting procedures or into pursuing criminal investigations.

### 2.3.2 Recommendations and Comments

276. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the powers under the CPC to enable the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence.
- Expand the forfeiture provisions of the PC to deal also with property derived from the proceeds of crime.
- Amend the AMLA, or other relevant laws, to give to the appropriate authority power to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
- Approve legislation to effectively abolish the AMLO “rewards system” such that staff investigating cases no longer have a direct financial interest in the outcome of the investigations that they participate in.
- Undertake criminal investigations and prosecutions for ML and TF cases wherever possible in preference to using civil processes to seize assets and secure forfeiture or vesting in the state.
- Require the RTP, the DSI, the AMLO and the ONCB in narcotic cases, to develop closer relationships and a structured consultation process to ensure that proper decisions are being reached as to when cases or asset seizures should be pursued civilly or criminally. This will assist ensuring that cases that meet the criminal test will be pursued and also avoid the AMLO and the ONCB independently pursuing the same case without each others knowledge.
- More rigorously pursue the obtaining of final forfeiture and vesting orders (which will help ensure that quality seizures are occurring).

### 2.3.3 Compliance with Recommendation 3

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
| R.3 | LC     | <ul style="list-style-type: none"> <li>• The powers to identify and trace property that is or may become subject to confiscation in the context of criminal procedures for offenses not relating to narcotics are not sufficient.</li> <li>• The forfeiture provisions of the Penal Code do not deal with property derived from the proceeds of crime.</li> <li>• There are no provisions permitting the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice.</li> <li>• The authorities could not demonstrate that they could take steps to void actions taken to prejudice the ability of the authorities to recover property subject to confiscation.</li> </ul> |

|  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>• Thailand has a successful record of making provisional asset seizures using criminal and civil processes.</li> <li>• The assessors remain concerned that not all the measures are effectively implemented because: <ul style="list-style-type: none"> <li>• They were not provided with a full set of statistics;</li> <li>• Very few assets are seized for offences other than narcotics;</li> <li>• Assets forfeited are low compared to assets seized and there is a large backlog of the AMLO's civil cases presently before the courts; and,</li> <li>• There may be too much focus on the civil based provisional seizures in the AMLA due to the incentives that the AMLO rewards system creates and not enough focus on completing confiscation procedures – civil or criminal.</li> </ul> </li> </ul> |
|--|--|---|

## 2.4 Freezing of funds used for terrorist financing (SR.III)

### 2.4.1 Description and Analysis

#### *Legal Framework:*

#### *Freezing Assets under S/Res/1267 (c. III.1):*

277. There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated by the UNSCR 1267. The authorities have claimed that the mechanisms for seizing and attaching property under AMLA, the CPC or the Special Investigations Act could be used to give effect to UNSCR 1267. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay.

#### *The Anti Money Laundering Act (AMLA)*

278. The freezing and attachment mechanisms for property connected with the commission of an offense described under the AMLA's AML framework apply also to terrorist funds. However, such mechanisms may only be used to freeze or attach property derived from an illegal origin, as property derived from a legal origin would not be considered property connected with the commission of an offense. The assessors consider that this is an important limitation to the use of these provisions. First, because for TF purposes it should not matter whether the funds are from a legal or an illegal origin. Second, because the source of the property is usually not known until long after the property is identified, making it difficult to use these provisions with the immediacy needed in TF matters.

279. The authorities believe that this limitation could be partially overcome by the application of the presumption against listed persons set forth under section 135/4 of the PC. This presumption, which covers also designated terrorists under UNSCR 1267, establishes that listed persons shall be deemed to have committed an act of terrorism. Building from this basis, the authorities are also of the view that the property of listed persons shall be deemed to be property connected with the commission of an offense (an act of terrorism) and may therefore also be seized or attached under the AMLA. The assessment team is not convinced that there is a solid legal basis for this interpretation and it should be noted that there are still no precedents validating it. It is, in fact, quite stretched to conclude that just because listed persons are deemed to have committed an act of terrorism, all of their property shall also be deemed to be derived from an act of terrorism. In any case, even if the authorities' interpretation prevails, should the person affected by the seizure or attachment be able to rebut the presumption by proving that the property was not derived from an offense, the property would need to be released.

280. As previously described, the seizing or attachment orders under the AMLA are made *ex parte* without prior notice.

***The Criminal Procedures Code***

281. The CPC also contains provisions related with the seizure of property in the context of gathering evidence for criminal investigations.

282. Where a criminal offence is alleged to be involved, the provisions of the CPC are available in support of the investigation of the offence:

- Article 69(2) of the CPC allows search warrants to be issued, inter alia, to discover and seize any article which is reasonably suspected of having been used or intended to be used in the commission of an offence (that is, in relation to instrumentalities of crime). This provision would permit the seizure of terrorist properties derived also from a legal origin when there is a reasonable suspicion that they are intended to be used in the commission of an offense;
- Article 85 allows for the seizure of an article found during a search;
- Article 91(4) allows seizure of an article obtained through an offence where the article is concealed on property that is being searched without warrant in case where section 91 applies; and,
- Article 132(2) gives an inquiry official power to search for and detain articles which are obtained through an offence or used or suspected of having been used for the commission of an offence.

***The Special Case Investigations Act (2004)***

283. Section 24 of the Special Case Investigations Act (2004) further empowers a special case inquiry official at the DSI to search any person or conveyance carried out with a reasonable ground for suspecting that it contains a property the possession of which is considered an offense, or which is acquired by committing an offense, or which is used or will be used in committing a special case offense or may be used as evidence, and to seize or attach such property. Terrorist related offenses under the PC fall under the definition of special case offenses provided under the act. Accordingly, this provision also enables the authorities to seize terrorist properties derived from a legal origin when there is reasonable ground for suspecting that it will be used for committing a special case offense.

284. Despite these provisions, the assessment team is not satisfied that a legal mechanism exists to ensure that terrorist properties related with UNSCR 1267 may be subject to freezing with the immediacy required in TF matters. Accordingly, the assessment team recommends that specific procedures be put in place to freeze terrorist funds or other assets of persons designated by UNSCR 1267 without delay.

***Freezing Assets under S/Res/1373 (c. III.2):***

285. There are no specific laws or procedures to freeze terrorist funds or other assets of persons designated in the context of UNSCR 1373. The authorities have claimed that the mechanisms for seizing and attaching property under AMLA, the CPC or the Special Investigations Act could be used to give effect to UNSCR 1373. However, the authorities were not able to convince the assessment team that such mechanisms can give effect to the freezing actions without delay.

***The Anti Money Laundering Act (AMLA)***

286. The freezing and attachment mechanisms described under the AMLA also apply to terrorist property of persons designated in the context of UNSCR 1373(2001), provided they are not derived from a lawful origin. If the person affected by the measure is able to prove that the property is derived from a lawful origin, the property will have to be released.

287. The difference in the application of freezing mechanisms between cases connected with UNSCR 1267 and UNSCR 1373 is that the latter extends beyond individual terrorists or terrorist organizations

specifically designated as such by the United Nations. As a result, the presumption provided for under section 135/4 of the PC (setting forth that “Any person who is a member of a group of people classified as a terrorist organization by either a United Nations Security Council resolution or declaration, which Thailand has endorsed, shall be deemed to have committed an act of terrorism) would not be applicable for all situations contemplated by UNSCR 1373.

***The Criminal Procedures Code***

288. The provisions of the CPC described above could also be used to freeze property under UNSCR 1373, even when derived from a legal origin so long as there is a reasonable suspicion that it is intended to be used in a criminal offense.

***The Special Case Investigations Act (2004)***

289. Section 24 of the Special Case Investigations Act (2004) could also be used to seize or attach terrorist property of persons designated under UNSCR 1373 even when derived from a legal origin when there is reasonable ground for suspecting that it will be used for committing a special case offense.

290. Despite these provisions, the assessment team is not satisfied that a legal mechanism exists to ensure that terrorist properties related with UNSCR 1373 may be subject to freezing with the immediacy required in TF matters. Accordingly, the assessment team recommends that specific procedures be put in place to freeze terrorist funds or other assets of persons designated by UNSCR 1373 without delay.

***Freezing Actions Taken by Other Countries (c. III.3):***

291. The Mutual Assistance in Criminal Matters Act 1992 governs the process for international cooperation in criminal matters. Section 33 provides that “the properties specified in a request from a foreign State may be forfeited by the judgment of a Court if such properties have been previously adjudicated to be forfeited by the final judgment of a foreign Court and they are forfeitable under Thai laws. If the properties were adjudged to be seized by a foreign court before the Court passed its judgment or after the passing of the judgment to forfeit such properties but the judgment has not become final yet, the Court may deem it appropriate to order the properties to be seized provided that they are able to be seized under Thai laws. The forfeiture or seizure of properties by the judgment or order of the Court becomes effective even if the offense which is the cause of such forfeiture or seizure has not taken place in the territory of Thailand”.

292. Thailand can render mutual assistance even in the absence of a mutual legal assistance treaty with the requesting State. However, reciprocity and double criminality conditions must be fulfilled. Although section 33 refers only to seizure, the Supreme Court has established that the term “seizure” also includes “attachment”. In this context, where there is a freezing order from a foreign court, the only issue for consideration by the Court is whether or not the properties considered under the freezing order are capable of being seized or attached under Thai laws.

293. It should be noted that there are no specific administrative procedures for recognizing freezing orders from other countries. There are also no specific mechanisms for giving effect to out-of-court freezing orders from other jurisdictions.

***Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):***

294. The freezing actions described under the AMLA could extend to property wholly or jointly owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organization and to the property derived or generated from property owned or controlled directly or indirectly by them.



***Communication to the Financial Sector (c. III.5):***

295. There are no specific systems in place for communicating actions taken under the freezing mechanisms to the financial sector.

296. Article 13 of Ministerial Regulation Number 10 issued under the AMLA prescribes the procedures for communicating actions taken under freezing mechanisms in general. Article 13 of MR 10 sets forth that “upon the TC or the S-G, as the case may be, has already issued an order to attach any property, the competent official shall issue notice of the order in writing to the property owner, the persons entitled to or the possessor of such property. Where the attached property is a chose in action or a claim, a written notice must be made to the third party who has a duty in or is liable to make payment or submit things under such chose in action or claim. The authorities claim that article 13 would be applied to communicate any freezing or attachment of terrorist property to the financial sector immediately upon taking such action. Although this system may be used for communicating actions adopted by the TC or the S-G under AMLA, it does not seem to cover freezing or attachment orders issued under the CPC, the Special Investigations Act or in response to a request from a foreign court. The assessors are, therefore, not satisfied that Thailand has an effective mechanism for communicating freezing actions to the FIs.

***Guidance to Financial Institutions (c. III.6):***

297. No guidance is currently provided to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms.

298. The lists of designated terrorists/terrorist organizations are not currently being forwarded to FIs by the AMLO, the BOT or any other control entity and there is no legal basis in place to circulate these lists to the competent authorities and FIs. The Ministry of Foreign Affairs is the contact authority as far as the sanction lists of the UN and 3rd country designations are concerned. The Minister of Foreign Affairs therefore issues the designations. Upon receipt of UN sanction lists, the Ministry of Foreign Affairs is in charge of checking the lists first and then submitting them to Cabinet for approval. The assessment team was informed that Cabinet has not yet approved the UN sanctions lists. When approved, the lists will be distributed among agencies concerned. However, it was not clear to the assessors under what procedure any of this occurred. Moreover, there are presently no legally enforceable obligations for FIs to search their customer base for assets of any such designated terrorists or organizations. The authorities claim that such obligations will be clearly set out in a law on KYC/CDD that Thailand is planning to pass in the near future. In the meantime, the AMLO posts the lists on its secure web site. While this does not create any enforceable obligations for FIs, it does provide them with the opportunity to download and verify the lists against their customer database.

299. The authorities claim that the AMLO Policy Statement, recently endorsed by Cabinet, will provide clear guidance to FIs and the general public on freezing obligations and that under the proposed amended to the AMLA, compliance by the private sector will be fully assured. However, the provisions contained in a Policy Statement are not enforceable under Thai law and the amendments to the AMLA are not yet in place. The assessors therefore consider that no effective guidance has been provided to FIs.

***De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):***

300. There are no specific procedures for considering de-listing requests in a timely manner consistent with international standards.

301. Ministerial Regulations 9, (2000), dated 11 September 2000, applies to matters related to revocation of the seizure or attachment of property under the AMLA. MR 9 outlines the rules and procedures for the person whose property has been seized or attached to file a petition for revocation of

the seizure or attachment with the S-G of the AMLO together with the evidence showing that the property in question is not connected with an offense.

302. MR 9 provides that upon correctly and completely inspecting the petition and evidence, the AMLO officers shall forward it with an opinion to the S-G for consideration to submit the opinion to the TC. The TC will in turn consider whether or not to issue an order revoking the seizure or attachment.

303. Although this system may be used for revoking seizures or attachments ordered under the AMLA, it does specifically address de-listing requests and it does not seem to cover revocations of seizures or attachments ordered under the CPC, the Special Investigations Act or in response to a request from a foreign court.

***Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):***

304. The rules and procedures provided under Ministerial Regulation 9 (2000) would also govern the revocation of seizures or attachments of the property of persons or entities inadvertently affected by a seizure or attachment under the AMLA. However, this regulation would not cover seizures or attachments ordered under the CPC, the Special Investigations Act or in response to a request from a foreign court.

***Access to frozen funds for expenses and other purposes (c. III.9):***

305. There are no appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses.

***Review of Freezing Decisions (c. III.10):***

306. In accordance with section 48 of the AMLA, the person affected by the property seized or attached may produce evidence that money or property is not the property connected with the commission of the offence in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures prescribed in Ministerial Regulation 9.

307. As also explained in the previous section, in accordance with section 50 of the AMLA, the person claiming ownership in the property in respect of which the Public Prosecutor has filed an application for it to be vested in the State may, before the Court orders the property to be vested in the State, file an application satisfying that (1) the applicant is the real owner and the property is not connected with the commission of an offense, or (2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals and public charity.

308. In accordance with sections 51 and 52 of the AMLA, if the person is able to demonstrate that the property in question is not connected with the commission of an offense, the property will be released.

309. The authorities could not confirm there were similar measures available to review seizures and attachment orders made under the CPC or the Special Investigations Act.

***Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):***

310. Criteria 3.1-3.4 and 3.6 in R.3 do not apply in relation to the freezing, seizing and confiscation of terrorist-related property in contexts other than those described in criteria III.1-III.10.

***Protection of Rights of Third Parties (c. III.12):***

311. The measures protecting the rights of bona fide third parties described for under R.3 apply equally to this section. See the discussion above at paragraph 232.

***Enforcing the Obligations under SR III (c. III.13):***

312. There is no authority designated to monitor compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property; However, the BOT and the SEC are being considered to be assigned as competent authorities to monitor and supervise such compliance in their respective sectors.

***Additional Element (SR III) - Implementation of Measures in Best Practices Paper for SR III (c. III.14):***

313. Thailand has not implemented the measures in the Best Practices Paper for SR III.

***Additional Element (SR III) - Implementation of Procedures to Access Frozen Funds (c. III.15):***

314. Thailand has not implemented the procedures to authorize access to funds or other assets that were frozen pursuant to UNSCR 1373 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

***Assessment of Effectiveness***

315. Thailand does not have strong mechanisms in place for freezing funds or other assets of persons designated under UNSCRs 1267 and 1373. Despite the statutes referred to in this section of this report, assessors are not satisfied that a comprehensive and effective legal mechanism exists to ensure that terrorist properties may be subject to freezing without delay as required under the UN TF Convention and UNSCRs 1267 and 1373. The assessment team was not provided with information to verify whether any terrorist property had been frozen using the freezing mechanisms established under Thai law.

316. The assessors have identified a number of shortcomings in the laws and procedures that Thailand has in place. For example, the obligations of the financial sector to take action under the freezing mechanisms are not clear and the process for communicating freezing actions to the financial sector is weak. The financial sector is not notified of designations and freezing orders and no guidance is being provided to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms. The lists of designated terrorists/terrorist organizations are not currently being forwarded to FIs by the AMLO, the BOT or any other control entity and there is no legal basis in place for countries to circulate these lists to their authorities and FIs. There are no effective procedures in place for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner or for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism. There are also no appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses. Furthermore, there are no measures to monitor compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property. The assessment team was not informed of the existence of any sanctions or the application thereof applied for noncompliance, whether of criminal, civil or administrative nature.

317. The assessment team was unable to verify that there is “prompt determination” to give effect to foreign freezing actions pursuant to UNSCR 1373 without delay.

### 2.4.2 Recommendations and Comments

318. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the current legislation and/or procedures or, alternatively, enact new legislation and/or procedures to enable the freezing of terrorist funds or other assets of persons designated under UNSCRs 1267 and 1373 without delay;
- Clarify the obligations of financial entities to take action under the freezing mechanisms;
- Establish a specific and effective system for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action;
- Have the authorities provide clear guidance to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms. In particular, the lists of designated terrorists/terrorist organizations should be forwarded to the financial sector without delay;
- Establish effective and publicly known procedures for considering de-listing requests and unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international standards, or for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism;
- Establish appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses; and,
- Establish appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property.

### 2.4.3 Compliance with Special Recommendation III

|        | Rating | Summary of factors underlying rating   |
|--------|--------|--|
| SR.III | PC     | <ul style="list-style-type: none"> <li>• There is no comprehensive legal mechanism to ensure that terrorist property can be frozen without delay as required under UNSCR 1267 and UNSCR 1373.</li> <li>• There is no effective mechanism for communicating freezing actions to the FIs.</li> <li>• There are no clear obligations of FIs to take action under the freezing mechanisms.</li> <li>• Little guidance has been given to FIs concerning their obligations in taking action under the freezing mechanisms.</li> <li>• There are no procedures in Thailand for recognizing freezing orders or giving effect to out-of-court freezing orders from other jurisdictions.</li> <li>• There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities.</li> <li>• There is no process for authorizing access to funds seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses.</li> <li>• There is no effective monitoring process to monitor compliance with relevant legislation, rules or regulations concerning the freezing and</li> </ul> |

|  |  |                                     |
|--|--|-------------------------------------|
|  |  | confiscation of terrorist property. |
|--|--|-------------------------------------|

## Authorities

### 2.5 The Financial Intelligence Unit and its functions (R.26)

#### 2.5.1 Description and Analysis

319. The Anti-Money Laundering Act (AMLA), B.E 2542 took effect on 19 August 1999 with the Anti-Money Laundering Office (AMLO) acting as the enforcer of the Act. The AMLA provides the authority to create an independent agency responsible for collecting financial intelligence and investigating ML offences for the purpose of civil vesting of property in the State. In 2003, the AMLO's mandate was expanded to include TF.

320. In practice, the AMLA creates a structure for setting and enforcing AML/CFT policy, identifying, tracing and vesting illegal proceeds in the State, and investigating ML activities for civil vesting. The structure includes the AMLB, the TC, and the AMLO. The functions of the FIU envisaged in FATF R.26 are carried out within the AMLO by the Information and Analysis Center (IAC).

321. At the date of the mission, the AMLO employed 245 staff. The government has provided substantial resources and funding to the AMLO since its inception in 1999 which shows the governments commitment to combat ML and TF.

322. Section 40 of AMLA states the functions of the AMLO are as follows:

- 1) Act in accordance with the resolution of the AMLB (whose duties are specified in section 24 & 25 of the AMLA);
  - 2) Receive transaction reports which are delivered in accordance with the requirements in Chapter Two, and issue an acknowledgement of such report(s);
  - 3) Collect, trace, monitor, study and analyze reports or any other information related to financial transactions;
  - 4) Collect evidence in order to prosecute any violator under the provisions of this Act;
  - 5) Launch an education program in order to disseminate information, educate and provide training pertaining to the undertaking of this Act, or assist or support both public and private sectors to launch such program; and
  - 6) Carry out other functions in accordance with the provisions of this Act or other laws.
- Section 24 of AMLA empowers the AMLB to act as a policy formulation body and section 32 authorizes the TC to act as an operating body dealing with restraint or seizure of assets while the AMLO acts as an investigative agency. At the same time the AMLO doubles as the national financial intelligence unit (FIU).

#### *Anti Money Laundering Board*

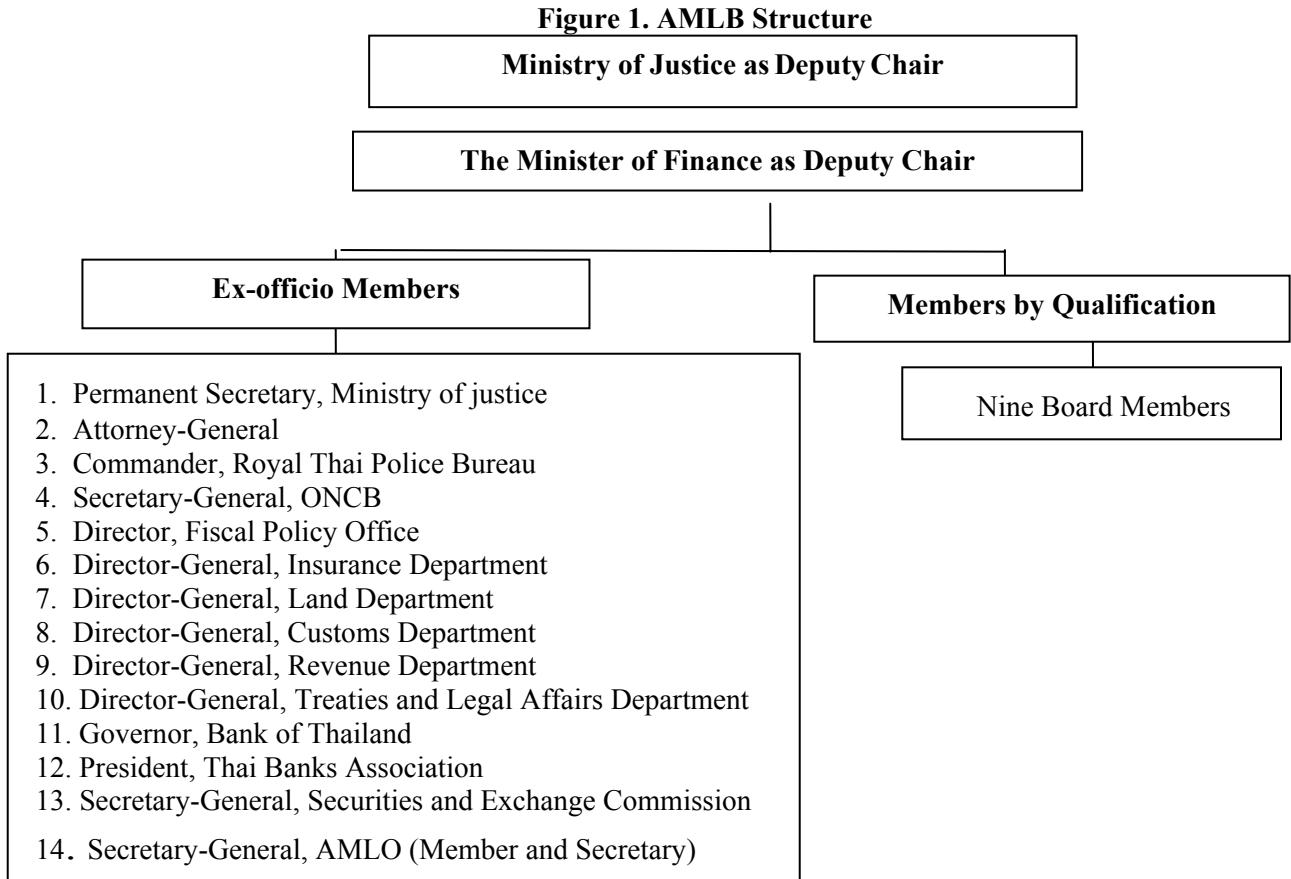
323. An important part of the accountability framework for the AMLO is the AMLB. Article 24 of the AMLA provides for an AMLB, which is to conduct its duties specified by article 25 as follows:

- Propose anti-money laundering measures to the cabinet;
- Submit opinions to the Minister about the issuance of Ministerial Regulations, orders and Announcements to conduct work under the Act;
- Create regulations for the keeping, the selling by auction and the utilization of property and the assessment of damages and deterioration under article 57 of the Act;

- Promote people’s cooperation by giving information for anti-money laundering;
- Monitor and evaluate the execution of the Act; and,
- Perform other acts as provided by the AMLA or other laws.

324. The AMLB consists of two Deputy Chairs who are designates from the Minister of Finance and the Minister of Justice, with the S-G of the AMLO serving as secretary and as a member. This structure of the board was recently changed. In December 2006, the responsibility for supervision of the AMLB shifted from the Prime Minister to the Minister of Justice.

325. The AMLB consists of 25 members in total and is structured as follows:<sup>31</sup>



326. The work of the AMLB is advanced using sub-committees that include representatives from some of the AMLO’s key external domestic partners. Many of the sub-committees are integral to the day-to-day work of the AMLO. Despite having limited resources, the AMLO has been able to organize the work of the sub-committees in a way that results in those key partners having input into decisions about major AML/CFT initiatives and being provided feedback about the results – effectively strengthening the AMLO’s relationships with key stakeholders.

<sup>31</sup> This is a recent change – previously the AMLB was chaired by the Prime Minister.

***Transaction Committee (TC):***

327. Article 32 of the AMLA provides for a Transaction Committee (TC), which is charged with examining transactions and recommendations for seizing of assets associated with the commission of offences, restraining transactions, ordering the temporary seizure of assets, submitting work reports to the AMLB and carrying out assignments. The TC comprised of The S-G of the AMLO as board chairman with four other members who are from varied backgrounds including law enforcement, education (professors) and other professions. According to the authorities, the TC was created as an independent body to ensure that action taken on assets by the AMLO, which affects the rights of people, is most rightly and fairly taken. The TC reviews only the AMLO cases with the majority of these cases being generated by the Examination and Litigation Bureau (ELB) with the remainder brought forward by the IAC. Authorities state that most cases brought forward by the ELB are usually cases that have been under investigation for some time where investigators are seeking permission to seize or restrain assets for a period not exceeding 90 days pursuant to section 48 AMLA. The applications to TC contain a full briefing of the financial investigation conducted by the ELB accompanied by evidence collected that justifies seizing the identified assets. The report would typically include numerous financial documents, a net worth analysis of the target, surveillance reports and any evidence collected in relation to the alleged underlying predicate offence. The second type of case TC reviews are instances where transactions are brought to their attention by the IAC pursuant to section 35 of the AMLA. These sections allow the TC to issue an interim seizure order for a minimum of three days and up to a maximum of ten days for restraining financial assets that are suspicious and can be associated to ML. This usually occurs in “emergency cases” where the AMLO suspects that the assets are being transferred to avoid seizure. The ELB must complete its investigation into the seized assets before the interim order expires.

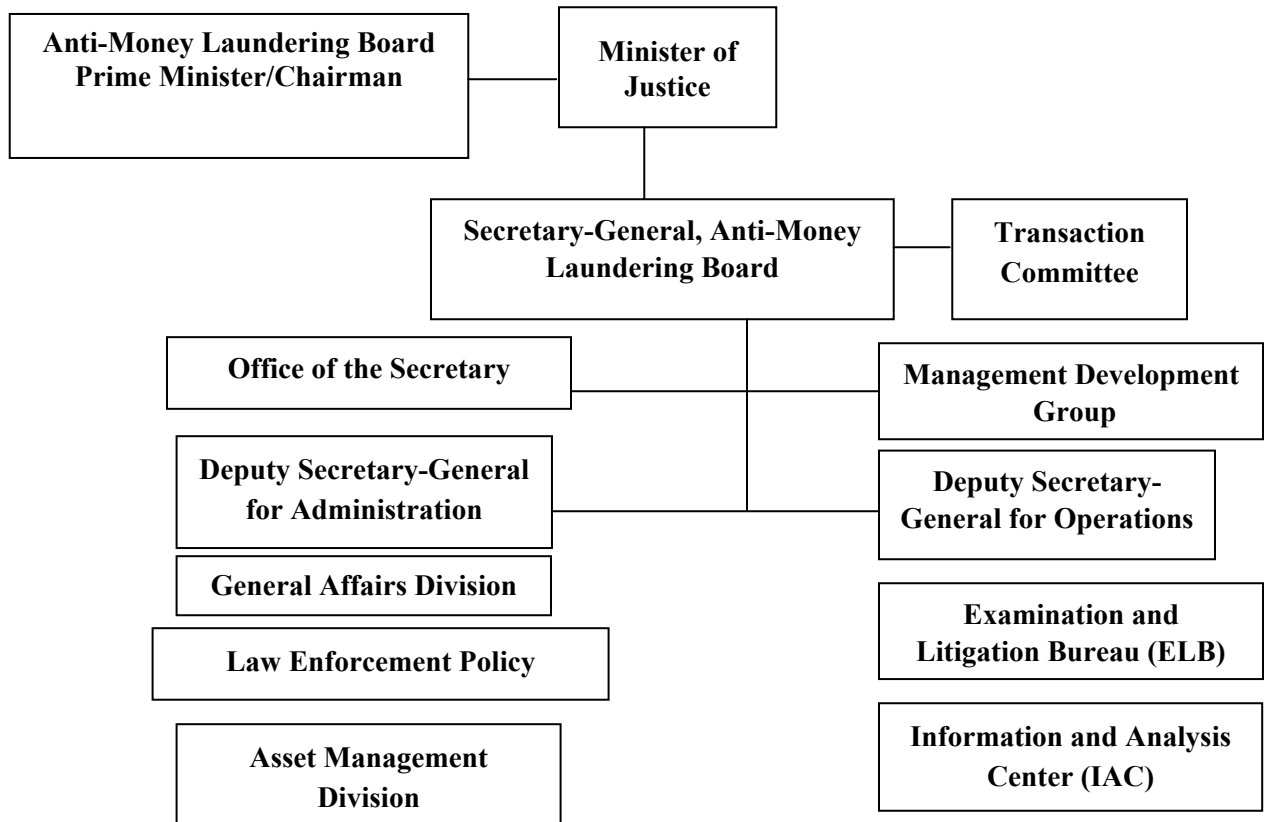
328. Sections 34, 35, 36, 37, 38 and 39 of the AMLA set out the TC’s authorities and duties.

***Establishment of FIU as National Centre (c. 26.1):***

329. The AMLO’s structure is a unique FIU model in that the AMLO includes the ELB, an investigative unit that focuses on pursuing civil vesting of criminal proceeds. The ELB is not a law enforcement agency (LEA) but it can under seek the assistance of LEAs to help pursue its civil cases and it does assist LEAs to pursue their criminal cases through sharing information, usually upon request. The AMLO’s structure is as follows:

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

Figure 2. AMLO Organizational Chart



330. The responsibilities of these divisions are as follows:
- a. The **General Affairs Division** is responsible for the AMLO's administrative support including secretarial work and for budgeting and purchasing.
  - b. The **Law Enforcement Policy Division** makes recommendations on policy to the AMLB and prepares work plans for the AMLO's operations. It is also responsible sharing of AML/CFT information with the public and developing outreach activities for this. The division also conducts research to support operations relating to AML/CFT and is the contact for foreign governments and international organizations seeking assistance and cooperation from the AMLO. The division also coordinates and oversees staff development and training. Lastly, this unit provides the secretariat and support for the AMLB and its sub-committees.
  - c. The **Asset Management Division** is responsible for managing assets seized under the AMLA by the AMLO.
  - d. The **Examination and Litigation Bureau (ELB)** is an investigative unit that is mandated to seize and seek vesting of assets in the State believed to be the proceeds of crime associated with predicate offences or ML pursuant to the civil provisions of the AMLA. ELB investigators utilize investigative techniques that are authorized by the AMLA. These techniques are used to collect evidence to meet the civil threshold to justify vesting of the assets. Techniques used during these civil ML investigations include: examining, and analyzing transaction reports received by the AMLO (LCTR and STR's), conducting surveillance, interviewing suspects, taking witness statements,



undercover operations, executing search warrants for searching suspects' residences, businesses, FIs and also using other special techniques pursuant to section 40 of the AMLA, which allows ELB investigators to obtain court authorization for interception of private communications. Once the investigation is completed, ELB investigators prepare a report for the TC. If the TC agrees that there is sufficient evidence then the investigators send a recommendation to the Attorney-General to proceed to court to seek vesting of the assets in the State. Evidence collected by the ELB during the civil process can be shared with LEAs when it is determined that the case is criminal in nature (pursuant to provisions of Prime Minister Office Regulation on Coordination in Compliance with the AMLA, clause 13). When this occurs, the case and evidence collected is turned over to the competent authorities for criminal ML investigations. In a few of these cases, ELB investigators have testified during the criminal proceeding regarding collection of this evidence. In some other cases the ELB will participate with LEAs on joint operations to assist with the ML aspect of a predicate offence investigation. The focus of these cases is still to seek civil vesting using the AMLA. The AMLO officer(s) will engage with the LEA to assist with seizing assets using the AMLA civil provisions and seeking evidence in support of final vesting of those assets. The authorities also advised that in some of these joint cases the LEA determines during the investigation to pursue ML criminal charges and forfeiture rather than civil vesting. When that occurs, the evidence gathered by ELB can again be used during the criminal proceedings. It should be noted again that the ELB is not an LEA so criminal ML investigations can only be pursued by LEAs not ELB.

- e. The **Information and Analysis Center (IAC)** operates the AMLO's analytical database. It receives STRs and LCTRs and conducts analysis of them to provide intelligence to the ELB for use in its ML or TF investigations for civil vesting purposes. It also shares some information with LEAs, usually upon request, to assist those agencies conduct criminal investigations of predicate crimes and of ML and TF investigations relating to those crimes. It also provides IT support for the AMLO's investigation and intelligence work and functions as the AMLO's communications center. The IAC considers that it has a responsibility for ensuring that all reporting entities are complying with their reporting obligations, although this is not spelt out in the AMLA. They rely on financial regulators to check compliance in regulated sectors and consider that the IAC has the primary responsibility for non-regulated sectors. Finally, it is the AMLO's designated center for exchanging AML/CFT information with other bodies.
- f. The **Management Development Group** is responsible for developing and implementing the AMLO's management policies and systems and ensuring that they meet the standards for internal auditing established by the Department of the Comptroller General, Ministry of Finance.

### ***FIU functions within the AMLO***

331. The AMLO has been created with the explicit task of receiving and analyzing STRs. However, it is not clear to the assessors that the AMLO was created to disseminate STR and other information regarding potential ML or TF. The AMLO disseminates disclosures of STRs to other authorities using a generic authority available to all government bodies. However, there is no explicit authority in the AMLA. In practice, the AMLO has put little effort into dissemination due to the operational tendency of the AMLO to focus on civil seizure cases.

332. Improvement is required in the areas of analysis and dissemination of financial intelligence and the focus on sharing of information for criminal investigations. Assessors found that the AMLO does limited analysis and virtually no dissemination.

### ***Transaction Reporting***

333. Article 13 of the AMLA provides that FIs have the duty to report to the AMLO three categories of transactions:

- 1) cash transactions worth two million baht (\$52,800) or more;
- 2) transactions involving assets worth five million baht (\$132,000) or more; and,
- 3) transactions suspicious on reasonable grounds.

334. Reports are required to be submitted electronically into the AMLO database and authorities' state that over 95 percent of reports received are in this manner. The remaining reports are received via fax or mail. Those are manually inputted into the database for analysis.

335. During 2006, the AMLO received reports for more than 1 million transactions. Since 2000, the AMLO has received over 4 million reports as follows:

**Table 19. Report of the Reception of Transaction Reports Received 27 October 2000 to 31 December 2006**

| Year  | Cash transaction | Transaction involving assets | Suspicious transaction | Total Transaction Reports | STR as % of Total |
|-------|------------------|------------------------------|------------------------|---------------------------|-------------------|
| 2000  | 23,574           | 62,813                       | 290                    | 86,677                    | 0.3%              |
| 2001  | 214,852          | 297,934                      | 16,489                 | 529,275                   | 3.1%              |
| 2002  | 224,223          | 297,777                      | 46,221                 | 568,221                   | 8.1%              |
| 2003  | 255,799          | 352,772                      | 32,338                 | 640,909                   | 5.0%              |
| 2004  | 282,905          | 344,504                      | 38,935                 | 666,344                   | 5.8%              |
| 2005  | 371,723          | 347,400                      | 39,175                 | 758,298                   | 5.2%              |
| 2006  | 539,699          | 487,356                      | 39,395                 | 1,066,450                 | 3.7%              |
| Total | 1,912,775        | 2,190,556                    | 212,843                | 4,316,174                 | 4.9%              |

336. The AMLO also receives information from private informants and, under the Prime Minister Office Agreement setting "Regulation on the Coordination in Compliance with the AMLA" (May, 31, 2001), reports by all LEAs which are responsible for the investigation of the predicate offences of ML (see also the AMLO Regulation on the Measures in Verifying the Report and Information of the Person and Juristic Person under the AMLA (November, 29, 2002).

### ***Analysis of Reports***

337. The AMLO analysts have immediate access to all incoming reports since the reports are received electronically and are loaded directly in to the AMLO mainframe computer for access. This is a unique advantage to timeliness of access to reports for producing analytical products. The quality of electronic reports received is very good since the electronic reports have mandatory fields which if not completed, results in the report not being able to be input into the database until the information is completed. ALMO has utilized electronic reporting since its inception in 1999.

338. The IAC is responsible for conducting analysis and producing intelligence reports on ML or TF. During analysis, the IAC accesses a number of government and public databases, registered informants (over 70,000), open sources (media) and the reports received by the AMLO including STR's, cash transactions and asset transaction reports.

339. Analyst 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 that the AMLO analysts have access to. Authorities state that this can be time consuming inputting this information so they are actively looking developing software that will interface with all the data bases they have access to in efforts to reduce the manual inputting demands on the analyst.

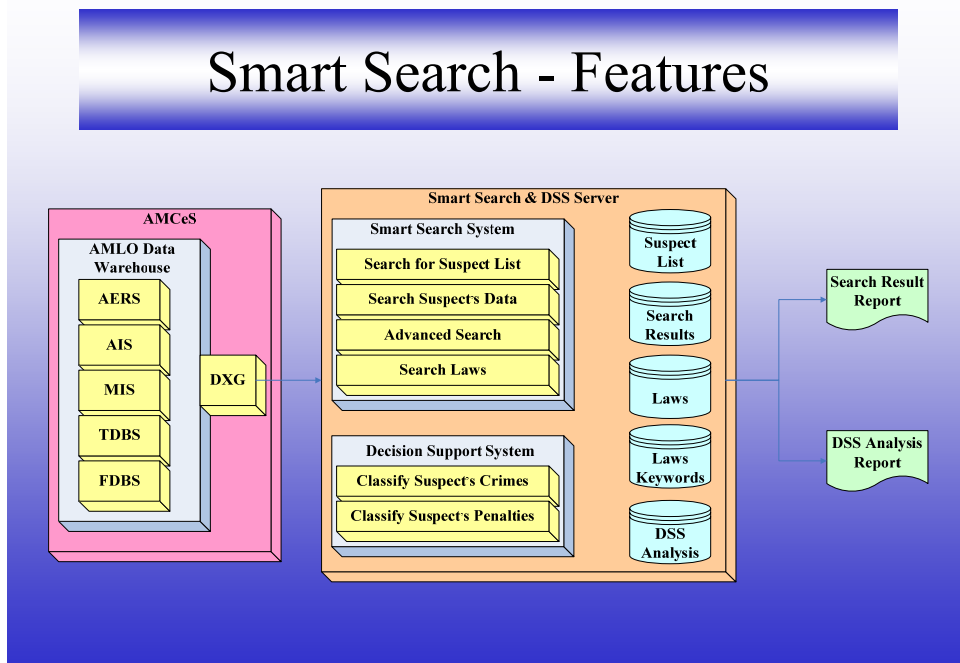
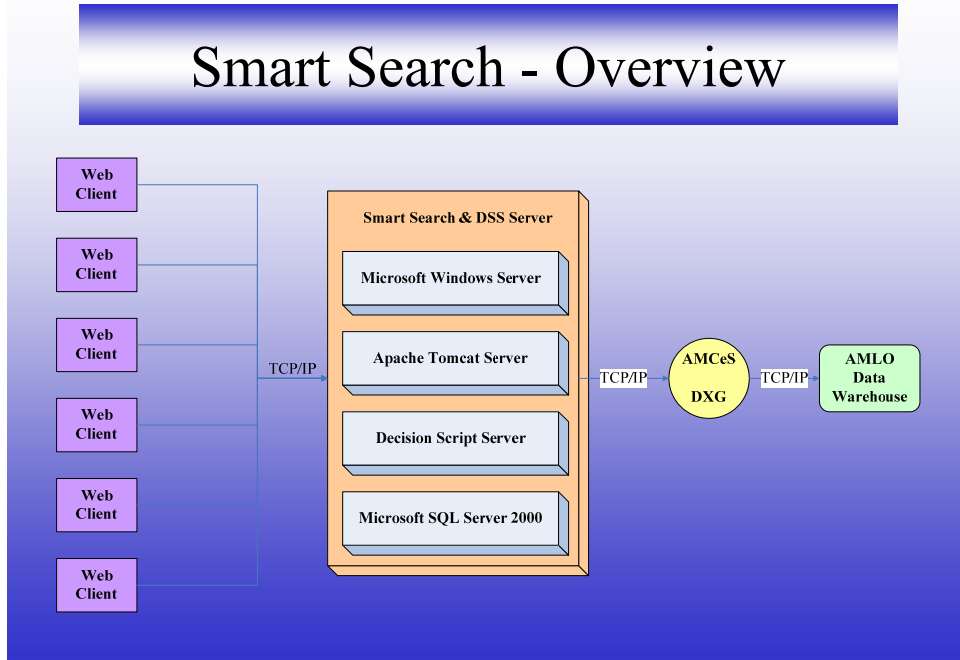
340. Present systems that ALMO analyst work with are:

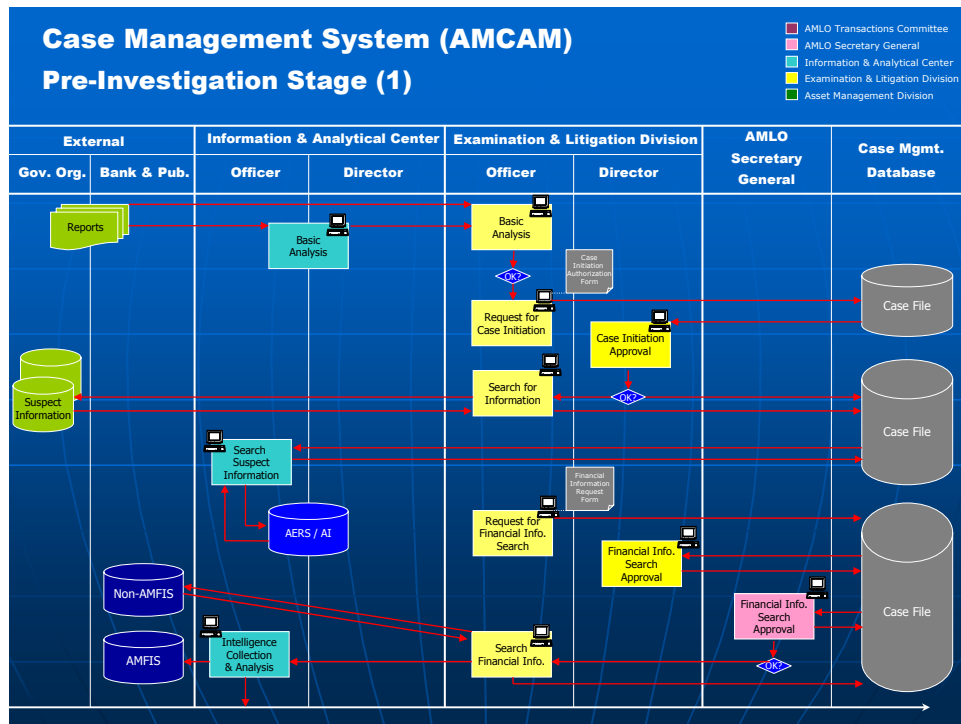
- 1.) The AMLO Electronic Reporting System (AERS): This system collects financial transactions reports or STRs;
- 2.) The AMLO Financial Institute Information System (AMFIS): This system makes a request for banking information from FIs for specific customer information. Highly secured system which tracks all queries;
- 3.) The AMLO Central Integration System (AMCIS): This the web-base application that supports the transferring of information from government data bases (including competent authorities and informant data bases). Also used to administer the AMLO “rewards system”<sup>32</sup> management function; and,
- 4.) The AMLO Central Data Warehouse system (AMCES) : warehouses data received from government agencies;
- 5.) Smart Search & Decision Support System (DSS): This system is used for in-depth searches to compare reports (i.e. STR's, Cash Reports and Assets declarations) with other internal data (government information). This system is designed to assist the analyst make decisions as to what transaction or information is relevant. Analyst also use smart search for analyzing data of suspects from various sources of data received regarding the predicate offence they are being investigated for;
- 6.) The AMLO Case Management System (AMCAM): This system is designed for managing the case and cataloguing the information collected during investigations conducted by the AMLO's asset seizure unit. Analyst can access this system to draw information for conducting analysis of financial transactions;
- 7.) VisuaLinks 2:L - Artificial Intelligence System is the advance search system that was developed for the purpose of search and to analyze complex data from all sources that the AMLO analysts have access to. This software allow the analyst to display and interpret the information plus produce charts showing these links.

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<sup>32</sup> The AMLO rewards system is described beginning at paragraph 401.

Figure 3. VisualLinks Search System





### *Conclusion Regarding Establishment of FIU as National Centre*

341. The AMLO is established with the explicit task of receiving and analyzing STRs.

342. The assessors recommend that the AMLA be amended to provide an explicit power for ALMO to disseminate information instead of relying on other generic authorities for government bodies. The authorities spoken to concurred that the AMLO needs to increase the number of pro-active cases disseminated to LEAs, and agreed that has not been an operational priority to date as the AMLO has focused on civil seizure cases.

343. One reason stated by the authorities for the AMLO not generating pro-active cases is that their present software limits their abilities to analyze reports to conduct or identify patterns, links and other information that would assist analysts to develop pro-active products. The AMLO anticipates that new software will be operational within a few months of the on-site mission. The authorities indicated that the new systems will assist in developing pro-active cases. Assessors had no means to fully evaluate at the time of the mission if the additional systems will improve ALMO effectiveness. Assessors were shown some examples of case output from trials with the new software. The output showed complex cases involving substantial numbers of transactions displayed using X-L tables and I-2 charting software. The AMLO management stated that they are committed to continually improving their software and analytical processes and that they have sought advice from a number of foreign partners in this regard. The assessors encourage the AMLO to continue to improve its IT systems and to commit additional resources to analysis so as to improve the AMLO's capacity to data mine reports and produce STR generated cases.

344. The AMLO needs to re-focus its operations to address pro-active analysis and targeting. LEAs highlighted that the AMLO does not provide many unsolicited disclosures of intelligence that could further its ML or TF criminal investigations.

345. The IAC with only 27 staff is under resourced to carry out the core FIU function when one looks at the full scope of its responsibilities. The lack of sufficient resources has impacted the effectiveness of

the FIU for conducting analysis, disseminating financial intelligence and educating reporting entities – all of which are responsibilities of the IAC. To improve the core “FIU” functions it is recommended that ALMO acquire more resources for analysis, compliance and outreach related functions to add to the existing structure that is performing these functions in limited capacities.

***Guidelines to Financial Institutions on Reporting STR (c. 26.2):***

346. Under section 40 (5) AMLA, the AMLO is responsible for issuing guidance to both “public and private sectors” for reporting STR, LCTR and Property Reports pursuant to the requirements under article 13 of the AMLA.

347. Limited guidance has been provided by the AMLO to reporting entities. The AMLO has posted reporting forms on its website but has offered very little additional information to reporting entities regarding what makes a transaction suspicious, how to report and what information to include in the STR. Authorities stated that other than the Annual Report, they have had limited contact with the reporting entities due to lack of resources to conduct compliance, create communication strategies for reporting entities or pro-actively seek opportunities to conduct this type of “outreach”. The forms on the web site have compulsory fields that are required to be completed before electronic submission is allowed. The information detailed on the STR, LCTR and Property Reports provides adequate information for the AMLO to conduct analysis but according to Authorities could be improved.

348. While the AMLO has distributed more than 2,500 copies of the AMLA and some 100,000 bulletins, manuals and booklets, including to reporting entities, these have focused mainly on legal obligations and the mechanics of reporting and they need to contain more guidance relating to reporting obligations, exemptions, “reason of suspicion” for STR’s, ML typologies or trends. This could account for the lack of reporting in areas outside of banking sector. Interviews with FIs revealed that most developed their own internal guidelines for reporting with little or no guidance from the AMLO. The only publication that the AMLO has generated with statistics is the annual report - with the last version dating back to 2005. The 2005 annual report has been published in October 2006 with the English version published in February 2007 .

349. The AMLO management stated that limited resources and other operational priorities has prevented them from become more engaged in the education of reporting entities on AML/CFT and reporting. Authorities further stated that due to these resource issues they are unable to produce any strategic products that would assist LEAs, FIs and government policy makers.

350. The AMLO has recently completed an evaluation of over 200,000 STR’s which they plan on publishing for reporting entities and the public, including 76 guidelines setting out “reason of suspicion”. The authorities stated that this publication was expected to be released within two months of the on-site mission once they determine the scope of the information they want to share from the report<sup>33</sup>.

351. The AMLO only provides feedback to reporting entities, LEAs and other partners through participating in a number of AML/CFT related committees and “day to day” operations where they are in contact for operational reasons. There is no formal mechanism or consultative flora established for two-way feedback which is something that outside agencies expressed would be helpful.

352. The AMLO could improve the guidance for reporting entities to report STR’s by developing more communication products for reporting. These communication products will be important for the new DNFBPs reporting entities who will be starting to report in the near future.

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<sup>33</sup> AMLO has not confirmed release of this publication.

***Access to information on Timely Basis by FIU (c. 26.3):***

353. The AMLO's analysts have direct access to a number of government, LEA, financial and public databases which facilitate the proper analysis of STR reports pursuant to provisions of the AMLA. The AMLO also receives intelligence from LEAs involved in the predicate offences investigations. STR's, LCTR and Property reports being submitted electronically allows for the reports to be analyzed in a timely fashion.

354. Databases that the AMLO staff have direct access to include:

- Thailand Citizen Registry Records – identification records for all citizens (over 65,000,000 records);
- Motor Vehicle and Drivers License records;
- Criminal Records – RTP data base;
- Drug Records – ONCB data base;
- Public sources – on line access to Thai newspapers; and,
- Business records – land title records (no direct access but can obtain) / Company registry records (on-line)

355. The AMLO staff may also request information from the Customs and Immigration services such as passport information and copies of travel documents.

356. The AMLO has access to sufficient number of databases (including tax-related information, upon request) to allow proper analysis and to undertake their functions however as stated by authorities, they do not presently place operational priority on pursuing pro-active analysis cases for dissemination.

357. The assessors are therefore satisfied that the AMLO has access to sufficient information to undertake its functions.

***Additional Information from Reporting Parties (c. 26.4):***

358. Sections 38 and 46 of AMLA provide authority to obtain further information to assist with the analysis process. Under section 38 (1) of the AMLA, the S-G can, in writing, contact the reporting entity to request further information be provided. Section 46 grants the power to the S-G to file an ex parte application to the Civil Court for an order which enables the competent official "to have access to the account, communicated data or computer data for the acquisition thereof."

359. In instances when there are minor parts of information missing in reports, the AMLO officers will contact the reporting entity "informally" requesting their assistance to clarify. This "informal" contact resolves 95 percent of the issues with the reporting entity. If the entity will not cooperate then the S-G will be requested to make a formal request in writing.

360. Authorities state that they have very seldom had to rely on the formal measures to clarify STR's but rather predominately use the informal methods to gather the information. They further stated the quality of STR reporting is also assisted by electronic reporting process which reporting entities have to use. The software for this report requires that mandatory fields are completed before a report will be accepted. The AMLO has utilized electronic reporting since its inception in 1999.

***Dissemination of Information (c. 26.5):***

361. The AMLA does not provide specific authority for the AMLO to disseminate financial information to the competent authorities for investigation when there are grounds to suspect ML or FT. Instead, the AMLO relies on generic authority for all government bodies to disseminate such financial intelligence with LEAs. Authorities stated that they have disseminated only 14 cases in 2005/2006 that were generated by STR's where the AMLO reached the suspicion that these transactions were related to ML. These cases were unsolicited and not generated by a query or request from LEAs or foreign competent authorities.

362. The AMLA should be amended to provide specific authority for the AMLO to disseminate STR information to LEAs and to respond to queries from LEAs.

363. Section 40(4) of the AMLA empowers the AMLO to "gather evidence for the purpose of taking legal proceedings against offenders under the AMLA." However the provision has been implemented mainly for the purpose of collecting evidence in support of civil vesting of assets in the State.

364. The authorities claimed, and it was confirmed by statistics that they provided, that in recent years the AMLO has focused the majority of its operational priorities on investigating, seizing and vesting assets in the State. This is the primary responsibility of the ELB which accounts for over 50 percent of the AMLO's total resources. Much of the FIU analysis operational resources were spent assisting with preparation of analytical products for this part of the organization. As a result, very few "pro-active" or unsolicited ML or TF related cases were disseminated to competent authorities for use in criminal ML related investigations. Moreover, some of the disseminated cases occurred in the context of investigations into the predicate offenses rather than directly as a result of analyzing STRs.

**Table 20. Cases Disseminated between 2005/2006 – "Pro Active Cases"**

| LEA disseminated to:  | Number of cases |
|---|-----------------|
| Office of the Narcotics Control Board                                       | 4               |
| Office of the National Counter Corruption Commission                        | 1               |
| The Customs Department  | 1               |
| Stolen Vehicle Recovery Center  | 1               |
| Unidentified (these were disseminated to RTP because predicate was unknown) | 7               |
| Total Number of cases initiated from suspicious transaction reporting       | 14              |

365. The authorities stated that in each of these cases a full analysis is prepared which can include charts, reports and an explanation of transactions. The IAC will present the product to the competent authority and explain the contents. The authorities stated that LEAs have complimented and provided positive feedback on the analytical reports that have been provided and have indicated that these products have assisted their on-going investigations. A review of a sample of these reports produced confirmed the intelligence product is thorough, professionally prepared and consisted of multiple transactions in most cases.

366. The AMLO shares intelligence when the ELB determine a case is criminal in nature and refers the matter to LEAs for further investigation. Authorities states that these cases will include financial analysis conducted by the IAC that was prepared for the civil investigation. According to statistics provided, the AMLO has referred five cases since 2002 to LEAs under these circumstances. The assessors do not consider that such sharing of information is a dissemination under R.26.

***Operational Independence (c. 26.6):***

367. The AMLO is established as an independent agency separate from the police, supervised by the Minister of Justice (MOJ). The AMLO is directly overseen by the AMLB and operations of the AMLO



that deal with seizing of assets are over seen by the TC. Both the AMLB and TC are independent bodies that report to the MOJ and the Minister of Finance (MOF) who are Deputy Chairs overseeing the AMLB.

368. The MOJ has a supervisory role but has no authority over the AMLO's operations. The AMLO does not have a direct reporting line to the MOJ. The MOJ's supervisory function for the AMLO includes budgetary oversight and handling any complaints received from the public or government about the AMLO's performance. No complaints about the AMLO's performance have been received since the MOJ took over these responsibilities in October 2005. The MOJ would assign an independent body to investigate any allegations if a complaint was received.

369. The MOJ has no involvement with the TC operational decisions relating to seizing of evidence, assets and advancing cases to the AG for prosecution.

370. The assessors consider that the AMLO has sufficient operational independence and autonomy to ensure that it is free from undue influence or interference.

371. Media reports during the assessment mission claimed that the AMLO had been subject to political interference in its activities during earlier years of its existence. The exact nature of these allegations were unable to be substantiated by interviews conducted during the mission. However, the authorities spoken to indicated that any interference that may have occurred related to personal relationships of previous AMLO employees with high level political figures of earlier governments and not to the AMLO's structure. They noted that the relevant people were no longer involved in the AMLO or government and the AMLO's organization relationship within government was restructured in October 2006 resulting in two joint chairs of the AMLB and having the MOJ overseeing the AMLO. They considered that these changes should have alleviated any concerns relating to the independence of the AMLO's operations.

***Protection of Information Held by FIU (c. 26.7):***

372. The AMLO S-G is responsible for the retention and utilization of all information held by the AMLO (section 38 of AMLA). The AMLO receives over 95 percent of reports electronically with the remainder by fax or mail. The AMLO maintains a highly secure physical environment and has put into place all the physical security measures to protect against unlawful access or dissemination of information that they collect and store. Further, the AMLO utilizes advanced computer software to protect information held on databases from external hackers. The system in place also logs the activity of the AMLO employees who are using the corporate systems or accessing the databases where reports are stored.

373. The AMLA Regulation on Essential Basic Rules in Performing Functions, Clause 8, makes it unlawful for the AMLO's employees to disclose the AMLO's information. Other measures including limiting access to records to certain employees unless authorized by the Deputy General in charge of the IAC are all steps taken to ensure the protection of the information.

374. Information must be kept confidential by the AMLO staff under section 66 of the AMLA. The Director of the IAC is responsible for its safety while any information held in the data bases while information released to outside agencies is only done with the approval of the AMLO S-G. Since the AMLO's inception it has never had information compromised or lost.

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

376. The assessors conclude that the information held by the AMLO is securely protected.

***Publication of Annual Reports (c. 26.8):***

377. The AMLO produces an annual report of its performance which is provided to the parliament through the Cabinet and released annually (section 47 of AMLA). The AMLO posts annual reports on its website and distributes copies to partners involved in AML/CFT activities. The last annual report released was 2005 – it was published in October 2006 which the English version published in late February 2007.

378. The AMLO should release its annual report in more timely fashion to assist with improving ALMO's image by demonstrating transparency of its operations. There is also as need for improvement and commitment of resources for communication of ML trends and typologies to LEAs, reporting entities and the general public.

***Membership of Egmont Group (c. 26.9):***

379. The AMLO has been a member of the Egmont Group since June 2001.

***Egmont Principles of Exchange of Information Among FIUs (c. 26.10):***

380. The AMLO exchanges financial intelligence with other foreign FIU's based on the Egmont Principles and Guidelines which are used in determining the extent of information to exchange. These provisions of information exchanged are outlined by means of signing Memoranda of Understandings (MOU's) bilaterally with foreign FIU's. As of June 14, 2006, Thailand had signed MOU's with 26 foreign FIU's.<sup>34</sup>

381. The authorities indicated that requests received from countries that do not have an MOU with the AMLO may still be responded to provided that the requesting agency is an FIU and follows the Egmont principles. There is an issue about the authority for sharing this information as section 40 of the AMLA does specifically grant these powers but, in practice, as supported by statistics, the AMLO does share financial intelligence with foreign counterparts. The AMLO is not involved in information sharing pursuant to MLAT.

382. During 2003 to 2006, the AMLO responded to 347 of the 351 requests they received from foreign counterparts pursuant to these MOU agreements and other requesting FIU's who they do not have agreements in place. No TF requests have been received.

**Table 21. AMLO Exchange Information with Foreign Counterpart FIUs from 2003 to 2006**

| Category of Report                                 | Year |      |      |      | Total |
|--|------|------|------|------|-------|
|  | 2003 | 2004 | 2005 | 2006 |       |
| Requests received from Foreign FIU                 | 43   | 114  | 95   | 95   | 347   |
| Responses provided to Foreign FIU requests by AMLO | 49   | 117  | 96   | 89   | 351   |

34 (1) Belgium (24-4-2002), (2) Brazil (29-1-2003), (3) Lebanon (25-2-2003), (4) Indonesia (24-3-2003), (5) Romania (24-3-2003), (6) Finland (22-4-2004), (7) UK (11-6-2004), (8) ROK (16-6-2004), (9) Australia (23-6-2004), (10) Portugal (28-6-2004), (11) Andorra (23-7-2004), (12) Estonia (26-10-2004), (13) Philippines (26-10-2004), (14) Poland (26-10-2004), (15) Mauritius (28-10-2004), (16) Netherlands (21-2-2005), (17) Georgia (10-3-2005), (18) Monaco (4-4-2005), (19) Malaysia (18-4-2005), (20) Bulgaria (13-6-2005), (21) Saint Vincent and the Grenadines (10-7-2005), (22) Ukraine (19-7-2005), (23) Myanmar (30-7-2005), (24) Nigeria (24-4-2006), (25) Japan (15-5-2006) and (26) Ireland (14-6-2006).

*Adequacy of Resources to FIU (c. 30.1):*

383. The AMLO stated in its 2004 annual report that their core resources of 160 government official positions and 25 government employees (support staff) was “insufficient when compared to the workload”. The AMLO has since increased strength to 245 staff. However, the assessors consider that the AMLO requires further resources in all areas of its operations to carry out its existing and planned AMLA responsibilities and be able to discharge its core FIU role effectively.

384. The AMLO has 27 staff resources in the IAC that are responsible for analysis and producing information products for reporting entities on how to report transactions. These resources will be further stretched as the IAC undertakes further planned responsibilities for supervising reporting entities compliance – very little of which has been done to date. The present dedicated resources in the IAC can not possibly respond to all these areas of responsibilities given the volume of reports received annually, the number of international requests made, the number of reporting entities and the range of regulators to maintain relationships with. The assessors recommend that a separate unit should be established to deal with the planned compliance related issues rather than having IAC undertake those responsibilities. The IAC focus should be entirely on the FIU core function of analysis and dissemination of financial intelligence. There is a lack of capacity to conduct analysis of TF. The AMLO has not generated any TF cases, despite a significant domestic terrorism situation. No TF financial intelligence reports have been shared with domestic authorities although some information has been shared with international counterparts in response to inquiries. An implication is that the AMLO does not have adequate resources or expertise to develop these cases.

385. The AMLO will also need more resources to properly meet the expected additional demands of DNFBP reporting streams, expected increase in STRs and to further focus on TF related activities in the South of Thailand. Once the AMLO becomes more engaged in some of the unregulated DNFBP activities it will require substantially more resources to ensure these reporting entities are in compliance.

386. The AMLO has been unable to recruit sufficient qualified personnel or upgrade its IT to meet these demands. It certainly does not have sufficient staff to adequately conduct outreach on AML/CFT to increase awareness of reporting requirements. This compromises the quality of the reports that it receives. It also does not have sufficient staff to adequately monitor that entities are meeting their reporting obligations under the AMLA (as seems to be the common expectation even though it is not clear whether there is proper authority to carry out monitoring in the AMLA), or to engage with regulators and develop closer partnerships with industry associations. There is, therefore, a further need to expand the AMLO’s powers so that the AMLO can determine whether reporting entities are reporting as required.

387. ALMO also needs to consider creating a dedicated or separate unit with additional resources to build communication tools including maintaining, developing and adding guidelines to the AMLO website and developing other communication products that will assist with compliance by promoting increasing AML/CFT awareness amongst the public, government and reporting entities. Authorities have confirmed that lack of resources have prevented them from undertaking initiatives like these that they would like to have done.

388. The existence of the “reward system” within the AMLO compounded these resource challenges as employees in parts of the AMLO that were not involved in seizing assets were not entitled receive this benefit. Consequently, it was difficult to attract experienced employees into analysis or compliance related functions. The planned cancellation of the reward system is likely to assist with balancing operational priorities and recruitment of staff between investigation and the FIU functions.

389. The AMLO and the AMLB play a key roles in coordinating a number of AML/CFT working groups amongst partner agencies. The AMLO is also has been responsible for developing, drafting and

advancing changes to existing legislation while also creating new laws in relation to ML or TF. This continues to involve a considerable commitment of resources by the AMLO, which exacerbates the pressure on resources to carry out the core FIU function.

390. According to authorities, funding is not a big issue compared to meeting the demands of finding technical resources and expertise of qualified employees. ALMO recruits new officials from other government agencies which has many limitations when trying to identify employees with the expertise to meet those challenges of the AMLO's operations.

391. It is recommended that the AMLO consider recruiting staff with financial sector specific expertise similar to the recruiting practices that DSI presently utilize. Presently, the AMLO has a high percentage of employees with law enforcement background. In order to meet the demands for compliance of reporting entities and analysis of transactions from those sectors outside banking, the AMLO should consider hiring employees with backgrounds in those non-banking sectors (i.e. insurance, money exchanges, gems and jewelry etc.) to complement their existing expertise. This may also be accomplished by the AMLO entering into to MOU's for secondments similar to those they have with BOT.

### ***Planning and Budgeting***

392. For the fiscal year 2005, the AMLO's budget was 157 million baht (\$4.1 million):

**Table 22. AMLO Budget 2005**

| Item             | Budget Allocated (Baht M) | Budget Allocated (\$ M) |
|------------------|---------------------------|-------------------------|
| Personnel        | 31.8                      | 0.8                     |
| Work performance | 48.3                      | 1.3                     |
| Investment       | 40.6                      | 1.1                     |
| Support          | 30.6                      | 0.8                     |
| Others           | 5.2                       | 0.1                     |
| <b>Total</b>     | <b>156.5</b>              | <b>4.1</b>              |

### ***Integrity of FIU Authorities (c. 30.2):***

393. The AMLO must recruit pursuant to the provisions of the Civil Service Regulations. All AMLO's incoming employees undergo background checks and a security clearance which includes criminal record checks and interviews to ensure that the appropriate security measures are in place to maintain the integrity of the AMLO's operations. When the AMLO recruits staff from the police, Revenue Department or other related government departments the transferring officers are required to become a public service official in an equivalent position under the Civil Service Regulations. The majority of the AMLO staff transfer in from LEAs.

### ***Training for FIU Staff (c. 30.3):***

394. The AMLO provides staff training in analysis, compliance, investigation, and management of assets seized pursuant to the AMLA. The AMLO seeks assistance from other international partners involved in AML/CFT activities such as the UNGPML, APG, WB, IMF, etc. to secure and develop the required training.

395. The AMLO's officials have to undergo training for language skills, computer programming and administration arranged by various government agencies and institutions. Each AMLO official is required

to take at least 2 courses per year and must complete the following core training, depending on which sector they are employed with by the AMLO:

- 1) Compulsory training (3 days) for all the AMLO employees which covers knowledge of the AMLA, powers and duties of competent officials (not only the AMLO), investigation techniques, and case procedures.
- 2) Operational staff involved in analysis and investigations are provided with financial investigator training - a more intensive course (1 month).

396. In addition, the AMLO has conducted the following training courses for officials of government agencies and FIs that have direct reference to AML laws:

- Course on operational approaches under AMLA;
- Course on operations under AMLA;
- Course on investigations under AMLA;
- Course for competent officials under AMLA; and,
- Workshop on investigations and seizure of crime-related assets under AMLA.

397. The AMLO has recently developed, with the assistance of international partners, a three year plan for training and other various aspects of their operations.

398. The assessors consider that the AMLO staff are provided with adequate and relevant training for combating ML and TF.

***Statistics (applying R.32 to FIU):***

399. The AMLO maintains comprehensive annual statistics for transaction reports received (by total, by category, by type of reporting entity, by geographic region etc), seizure and vesting of assets in the State, and cases generated under predicate offences. The AMLO also publishes comprehensive statistics in its Annual Report.

400. The assessors were concerned, however, that there were inconsistencies between some of the statistics provided to them.

***Assessment of Effectiveness***

401. A dominating element of the framework of the civil vesting regime operated under the AMLA by the AMLO is a “rewards system”, which remains in place as of the time of the onsite visit. This “rewards system” has the effect of skewing the AMLO’s operational priorities and raises very serious integrity issues regarding the FIU’s work.

402. Pursuant to the 2003 Prime Minister Regulation on Payment and Gratuity in the Undertaking of the Property under the Law Governing Anti-Money Laundering, a payments and incentives rewards system was established for the AMLO’s employees. Under this system, investigators from the AMLO and other investigative agencies receive personal commissions calculated as a percentage of the property that they seize and which is ultimately vested in the State under the AMLA.

403. “Rewards” and “Gratuity” systems related to ML investigations are exercised in various forms in other jurisdictions, but accepted practices have been for forfeited funds to be directed back to law enforcement programs, victims’ compensation programs or government revenue and not directly to

individuals who work on the investigations. In some jurisdictions investigators may benefit by receiving a moderate bonus or performance pay on their entire year of work, which may be drawn from a proceeds of crime fund or other government funds. Usually these funds are drawn from within another budget that is separate from the asset forfeiture funds.

404. In Thailand however, the “rewards system” involves payments derived from the assets (or amount of equal value) that the court had ordered forfeited or vested in the State. This amount has to be requested through normal budget appropriation process. Financial investigators and their supervisors can apply and be rewarded up to 40 percent from such assets. In most cases this percentage is divided between the AMLO (20 percent) and the agency that investigated the predicate offence and referred the case to the AMLO (RTP, DSI, NOCC or ONCB). The referring agency usually receives half of the 40 percent (i.e. 20 percent). The AMLO staff receive all of the 40 percent reward for cases that they investigate without the assistance of LEAs. Informants are also awarded from the assets seized (up to 25 percent in some cases). Once an application for reward is submitted, the AMLB or the S-G determines the amounts to be paid to investigators, informants and management at the AMLO involved in the case.

405. It should be noted that similar rewards systems are offered to the LEAs when they conduct a criminal forfeiture case (i.e. ML fraud, drugs etc.) without the assistance of the AMLO. These cases are criminal investigations and in those instances the courts will award LEA rewards up to 40 percent which is shared amongst those agencies /officers involved in the case (i.e. the same practice is also followed by the ONCB, the RTP and the DSI).

406. Some countries and international organizations have criticized this system of personal rewards on the grounds that it threatens the integrity of Thailand’s AML/CFT regime and creates a conflict of interest by giving law enforcement officers and the AMLO officials a direct financial stake in the outcome of vesting cases. Questions have also been raised within Thailand about the appropriateness of continuing with this system – particularly in relation to its impact internally on morale within the AMLO.

407. It is clear to the assessors that the rewards system in the AMLO has compromised the AMLO’s reputation and as a result its effectiveness. In addition, the rewards system appears to have acted as an incentive for the AMLO to carry out its civil vesting role at the expense of its other roles.

408. The Ministry of Justice announced in October 2006 its decision to abolish the rewards system and indicated that the final decision to effect the abolition rests with the office of the Prime Minister – being the office that first introduced the rewards system. The draft ministerial regulation to abolish the rewards system has been prepared for cabinet consideration.

409. The assessment team supports the decision to abolish the rewards system as a matter of priority. The assessors also encourage the authorities to quickly pass effective abolishing legislation such that AMLO staff and staff of other investigating agencies no longer have a direct financial interest in the outcome of the ML, TF or other predicate offence cases, that they participate in. The assessors also invite the authorities to investigate the creation of an asset forfeiture fund (or similar) to provide additional budgetary resources for the AMLO.

410. In addition, since the AMLO was created it has focused its efforts and resources on seizing assets using the civil process created in the AMLA rather than on the core FIU functions. The AMLO’s effectiveness as an FIU is compromised by not producing many pro-active STR generated cases for LEAs, having insufficient capacity to perform strategic analysis and not being able to produce consistent and accurate statistics on AML/CFT.

411. Nonetheless, the ambitious approach of the government to have the AMLO operate as a traditional FIU and to also carry out civil vesting of proceeds of crime in the State has resulted in an

impressive amount of assets being seized and has also contributed to the government’s objective of tackling drug crime. These results have occurred despite the short falls identified in this assessment against the FATF AML/CFT standard. The current AMLO staff demonstrated repeatedly to assessors that they are enthusiastically committed to improving the AMLO’s capacity to play its part in combating ML and TF in Thailand and to addressing the issues identified in this report.

### 2.5.2 Recommendations and Comments

412. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend AMLA to provide the AMLO with specific authority to, and a duty to, disseminate financial analysis to domestic competent authorities for investigation.
- Pass legislation, as soon as possible, to effectively abolish the “rewards system” in the AMLO and other competent authorities such that staff investigating cases do not have a direct financial interest in the outcome of the investigations.
- Require the AMLO to issue comprehensive guidelines to reporting entities regarding reporting STRs and other reports
- Require the AMLO to develop and implement a communication strategy for publishing ML trends and typologies and annual reports in a more timely manner in order that they can be shared with reporting entities and other AML/CFT partners
- Ensure that the FIU part of the AMLO focuses on producing more “pro-active” unsolicited STR analytical products for dissemination to other domestic competent authorities for investigation or other action where there are grounds to suspect ML or TF.
- Require the AMLO to establish a separate unit to deal with any compliance related responsibilities the AMLO takes on or is given rather than having the IAC undertake those.
- Require the AMLO to review its production of statistics on AML/CFT matters to ensure the integrity of those statistics.
- Provide additional budgetary resources for the AMLO including for it to develop dedicated capacity to analyze STRs, including those related to TF cases, to carry out compliance monitoring of and outreach with reporting entities.
- Consider creating an asset forfeiture fund (or similar) to contribute additional resources to the operation of the FIU, through enhanced program budgets, not through individual rewards.
- Require the AMLO to consider recruiting staff with financial sector specific expertise.

### 2.5.3 Compliance with Recommendation 26

|      | Rating | Summary of factors relevant to s.2.5 underlying overall rating   |
|------|--------|--|
| R.26 | PC     | <ul style="list-style-type: none"> <li>• The FIU does not give adequate guidance to reporting institutions on STR reporting.</li> <li>• The AMLO does not publish periodic reports containing ML/FT typologies and trends.</li> <li>• The AMLO’s effectiveness as an FIU is compromised by:               <ul style="list-style-type: none"> <li>• Focusing too much attention on seizing assets using the civil vesting processes;</li> <li>• Disseminating few pro-active STR generated cases for LEAs;</li> <li>• Having insufficient resources or expertise to perform strategic analysis, including in relation to TF;</li> <li>• Its inability to produce consistent and accurate statistics on AML/CFT; and,</li> <li>• The existence of a “rewards” system with may encourage some of these</li> </ul> </li> </ul> |

|  |  |  |
|--|--|--|
|  |  | outcomes and also harm the AMLO's integrity. |
|--|--|--|

## **2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)**

### **2.6.1 Description and Analysis**

413. Thailand has criminal and civil laws available to law enforcement for investigating ML and TF related offences. The criminal process involves investigating the ML or TF case pursuant to the provisions of the Narcotics Suppression Act for drug related cases and the PC (PC) for all other predicate offences.

#### ***Designation of Authorities ML/FT Investigations (c. 27.1):***

414. The competent authorities that have been mandated to investigate the eight predicate offences for ML are the RTP, ONCB, Division of Special Investigation (DSI) and the NCCC. All of these organizations are national enforcement agencies whose powers extend across all of Thailand.

415. The AMLO is not a LEA and cannot investigate any criminal offences.

416. The RTP, DSI, NCCC and ONCB have the authority to investigate ML offences and to seize assets associated with the eight predicate offences under provisions in the laws that govern their respective operations. In practice, NCCC do not exercise these authorities while the RTP, ONCB and DSI focus most efforts on ML cases related to narcotics. Limited information was provided by the authorities that would support that ML charges have been pursued or assets have been seized relating to the other seven predicate offences. Generally, ML offences are not considered for investigation in relation to the other predicate offences by LEAs.

#### ***The Office of the National Counter Corruption Commission (NCCC)***

417. The NCCC was created in 1997 pursuant to Organic Act on Counter Corruption B.E. 2542 (1999). The NCCC is the national authority for conducting corruption investigations of senior political persons, a person holding a high-ranking position and others according to the law. They are an independent investigative body that is separate from other LEAs. Cases generated by the NCCC are handled by a special prosecutor and separate court established for corruption cases.

418. The Organic Act on Counter Corruption B.E. 2542 (1999) article 23 provides the authority for NCCC to investigate and lay charges for ML offences relating to corruption. Article 31 allows for the seizure of assets relating to ML offences when the predicate offence is corruption.

419. The NCCC Corruption Suppression Unit is designated to conduct corruption investigations, which could include ML offences relating to corruption offences. The Corruption Suppression Unit has approximately 150 investigators out of the NCCC total staff of over 500 employees. The NCCC receives through referrals from other LEA, the public and other government agencies about 2,000 cases per year – they investigate on average 1,200 of those. Approximately ten percent of these cases investigated end in prosecution. Statistics regarding predicate offences, ML offences and seizure of assets relating to predicate offences were requested but not provided. The NCCC has no dedicated resources for conducting ML investigations which is of concern to the assessors given the nature of the offence, the potential for ML and Thailand's susceptibility to corruption.

420. Authorities stated that no ML related investigations or assets seizures had been pursued by the NCCC and that no cases had been referred to the AMLO for pursuing under the civil provision of AMLA.



421. The NCCC has not received any reports disseminated by the AMLO and their involvement with the AMLO has been limited to participating in training seminars. The NCCC has requested information from the AMLO in a small number of cases which was supplied. Authorities could not provide any statistics for the number of the cases worked or referred to the AMLO. Authorities stated that the sensitive nature of their investigations was a factor for their limited contact with the AMLO.

***The Office of the Narcotics Control Board (ONCB)***

422. The ONCB has over 730 law enforcement officers dedicated to only narcotic investigations of which 300 are located in Bangkok and the remainder assigned to 9 regional offices across the country.

423. The Narcotics Suppression Act provides the authority for the ONCB to conduct drug related investigations which includes the seizing of proceeds of crime (POC) related to narcotic offences. The RTP and the DSI can also investigate drug and ML laundering offences under the NSA. Any RFP or DSI investigative unit that seizes any assets that are believed to be proceeds of crime pursuant to the NSA is required to notify the ONCB under Ministerial regulation. Frequently, the ONCB Asset Forfeiture Unit is invited to join predicate narcotic investigations early so that they can initiate the financial investigations and assist with seizing any POC.

424. The ONCB has dedicated resources to investigate the ML offences and seize assets relating to narcotic investigations. The Asset Forfeiture Bureau has 40 investigators and is based in Bangkok. Officers travel throughout the country to conduct ML financial investigations when required.

425. The number of ML narcotic cases referred to the ONCB from the RTP is not known exactly. The only statistics provided by the authorities were the ML cases opened by the ONCB listed below. ONCB stated that 95 percent of their cases were generated from the RTP. Statistics for cases examined by the ONCB are as follows:

**Table 23. Number of ML narcotic cases opened by the ONCB**

|      |             |
|------|-------------|
| 2003 | 1,838 cases |
| 2004 | 1,059 cases |
| 2005 | 1,238 cases |
| 2006 | 1,639 cases |

426. The ONCB will occasionally enter into joint investigations with the AMLO. As indicated earlier, the AMLO is not an LEA. The ONCB invites the AMLO to participate in the investigation so that the ONCB can utilize the civil process available to the AMLO under the AMLA to seize and vest assets in the State. They have also on a several occasions requested and received disseminated financial intelligence from the AMLO. The ONCB indicated that this financial intelligence has been beneficial to their investigations.

427. The ONCB is also requested to join with other LEAs during narcotic related criminal investigations to assist with securing evidence, seizing assets and laying of ML charges associated to the predicate drug offence. Authorities state that over 90 percent of the Asset Forfeiture Group cases come from the RTP with the other ten percent from the DSI and other sources like informants.

***Royal Thai Police (RTP)***

428. The RTP has the responsibility for investigating all the eight predicate offences related to ML or TF as well as the ML offence pursuant to the PC and the Narcotics Suppression Act.

429. The RTP system for initiating investigations is to assign an Inquiry Officer who has the authorities to investigate the offences according to the PC and other criminal acts including ML (CPC

sections 17 to 19). The PC provides judicial authority for the RTP to conduct ML investigations as outlined in the following:

- a. The RTP process for conducting ML investigation includes a preliminary investigation to determine if there are grounds to believe that the predicate offence is related to ML. If the evidence is enough to proceed with a ML case, the RTP would consider the matter for further investigation and then report the result to the AMLO (and the ONCB if the case is drug related).
- b. The officer has authority under 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 2544.
- 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.

430. The number of notifications the RTP submitted to the AMLO advising of ML cases is as follows:

**Table 24. Number of RTP Notifications Submitted**

|      |            |
|------|------------|
| 2003 | 640 cases  |
| 2004 | 464 cases  |
| 2005 | 441 cases  |
| 2006 | 335 cases. |

431. The **Central Investigation Bureau (CIB)** of the RTP has 8,473 officers who are responsible for investigations of serious crimes. Units within the Central Bureau that are mandated to conduct ML investigations are the Economic and Cyber Crime Division (fraud or commercial crime) the Counter Corruption Division and the Children, Juveniles and Women Division (prostitution). None of the Divisions have resources dedicated to investigating ML offences. Authorities stated that the primary focus has been on the predicate offences and they do very few ML investigations. Authorities could provide no statistics that would support that they have seized assets or have laid charges relating to ML.

432. The **Narcotic Suppression Bureau (NSB)** of the RTP comprises 1,595 officers who are responsible for investigating ML and narcotic related crimes. The NSB has no specialized resources or dedicated units to investigate ML offences. In the majority of narcotics investigations when proceeds of crime have been seized or identified, the inquiry officer will request the assistance of the ONCB when the matter is considered criminal (pursuant to the NSA) or the AMLO when they decide to seek civil vesting (pursuant to AMLA). Either the ONCB or the AMLO will conduct the financial investigations and seize assets with the assistance of drug unit. Authorities stated the decision on whether to use the ONCB or the AMLO is based on the opinion of investigators as to the degree of difficulty to prove the ML case criminally. Authorities could not provide statistics as to the number of cases or amount of seizures that were referred to the ONCB or the AMLO. No statistics on ML convictions or forfeitures were provided for the NSB.

433. The **Immigration Bureau** of the RTP comprises 3,113 officers located in 3 Divisions at 6 centers across the country. Most of these centers are situated at point of entry into the country. The Immigration Bureau is mandated to conduct investigations pertaining to PC offences including human trafficking,

illegal immigrants and provide cooperation to foreign jurisdictions for these types of criminal investigations. Authorities state that the Immigration Bureau has conducted no ML investigations and has no dedicated resources or unit for investigating ML or TF offences.

434. The **Border Patrol Police Bureau (BPB)** comprises 24,651 officers located in the Border regions of the country. The BPB investigate immigration, narcotics, human smuggling, arms smuggling amongst other offences related to border areas pursuant to the CPC. The BPB are mandated to, but do not conduct, ML investigations for these predicate offences and have no dedicated resources or units within their structure for investigating ML or TF offences.

***The Department of Special Investigation (DSI)***

435. The DSI was established under The Special Investigation Act BR 2547 (2004). It has 1,021 officers under the Ministry of Justice of which there are 283 Special Case Inquiry Officials and 286 Special Case Officers. DSI is responsible for the prevention, suppression and conducting of special complex investigations having a serious effect on public order and moral, national security, international relations or national economy or finance by investigation of facts and prosecution in order to maintain the state's economy. DSI also investigate serious transnational crime, organized crime and cases that involve influential persons (politicians).

436. Authorities stated that one of DSI priorities is investigating and prosecuting economic and financial related crimes which includes ML and TF offences.

437. The DSI has unique features compared to other Thai LEAs, including:

- Broad enforcement powers pursuant to the Special Investigation Case Act;
- Integrated approach to investigations – police, public and prosecution expertise;
- Assigned prosecutors that work with investigative units from the beginning of the case;
- Highly trained personnel that can be hired outside government employment guidelines – salaries can be offered above normal government levels;
- Special Funding for cases;
- Can hire consultants i.e., accountants or other experts to further an investigation; and
- Can require resources from any government agency to be provided for ongoing investigations including personnel from BOT, other LEAs, etc.

438. DSI can conduct investigations relating to 27 Acts, which include all eight predicated ML offences:

- Law on Loan Amounting to Public Cheating and Fraud
- Competition Act
- Commercial Banking Act
- Law on the Finance Business Securities Business and Credit Foncier Business
- Chain Loan Control Act
- Exchange Control Act
- Law on Government Procurement Fraud
- Act for the Protection of Layout-Designs of Integrated Circuits
- Consumer Protection Act
- Trademark Act
- Currency Act
- Tax and Duty Compensation of Exported Goods
- Produced in the Kingdom Act
- Interest on Loan by the Financial Institution Act

- BOT Act
- Public Company Act
- AMLA
- The Industrial Product Standard Act
- Copyright Act
- Board of Investment Commission Act
- Enhancement and Conservation of National Environmental Quality Act
- Patent Act
- Security and Exchange Commission Act
- Revenue Code
- Customs Act
- Excise Tax Act
- Liquor Act
- Tobacco Act

439. Apart from the aforementioned, the DSI defines ML offence as a special case in section 21, first Paragraph (2).

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

441. The DSI must seek approval from the Board of Special Case (BSC) and establish that a case meets criteria in the Special Investigations Act before it can utilize the investigation powers of that Act.

442. The DSI's sweeping powers under the Special Investigation Act are an effective means of investigating ML related offences. The DSI indicated that since becoming operational in 2004/2005 they have worked 3 joint cases with the AMLO and 1 task force case with the ONCB and the AMLO that have involved ML offences. DSI stated that most ML and predicate cases take 6 months to complete. The National Security Group of DSI advise that they presently have one TF relating case under investigation but no seizures or charges have been executed.

**Table 25. Special Cases Investigated Under the SIA**

| Year         | Special Cases | Cases Completed | Still being Investigated |
|--------------|---------------|-----------------|--------------------------|
| 2004         | 31            | 29              | 2                        |
| 2005         | 89            | 70              | 19                       |
| 2006         | 170           | 71              | 99                       |
| 2007         | 12            | 1               | 11                       |
| <b>Total</b> | <b>302</b>    | <b>171</b>      | <b>131</b>               |

443. Competent Authorities under the provisions of the Special Investigations Act and the Narcotics Suppression Act have the authority to delay arrest and exercise discretion as to whether to commence legal proceedings which allows them to waive arrest of suspected persons or seizure of money for the purposes of identifying persons involved in ML/TF activities for evidence gathering. The use of undercover techniques are frequently used by Thai LEAs for ML predicate offences where these authorities of waiving arrest are frequently used when required to gain further evidence.

***Additional Factor***

444. The effectiveness of the criminal investigation actions of the LEAs is supplemented by the civil investigations conducted by the AMLO. The AMLO, pursuant to ALMA, can investigate ML offences with the intention of vesting assets in the State pursuant to civil provisions. During this investigation stage if the AMLO determines the matter is criminal in nature it can refer the case and intelligence gathered to the relevant LEA for investigation under the PC - or Narcotics Suppression Act if drug related. The authorities did not have statistics to show how often this occurs. However, they stated that “several” cases had been shared with LEAs and that on a number of occasions the AMLO investigators have been required to testify in criminal proceedings.

***Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):***

445. The assessors were able to establish that LEAs investigating ML cases can postpone or waive the arrest of suspected persons and/or postpone or waive the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

***Additional Element - Ability to Use and Use of Special Investigative Techniques for ML/TF (c. 27.3, 27.4):***

446. LEAs use a wide range of special investigative techniques.

447. The ONCB Asset Forfeiture Bureau utilizes special techniques such as undercover, wire tap, reverse sting or other covert investigative techniques to acquire evidence for both the narcotics case and related ML investigation under the NSA.

448. The RTP Narcotics Suppression Bureau conducts undercover operations but has no legal authority to apply to the courts to intercept private communications in a narcotic or ML investigation. The RTP will invite the DSI, the ONCB or the AMLO to join into investigations which then allows those special investigation techniques powers to be used once court approval is received provided those other agencies are jointly conducting the investigation.

449. DSI has access to a wide range of special powers under the Special Investigations Act to:

- Obtain Information from all communication (including wiretapping) with permission from the court;
- Search without warrant (after the search report to the court);
- Powers to utilize undercover techniques including back stopping, reverse sting, or other; approaches in an undercover capacity to penetrate organizations involved in crime
- Special funding for investigations;
- Appointing 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.

450. Under the Organic Act on Counter Corruption B.E. 2542 (1999) article 50, the NCCC can use Special Investigative techniques including wire tap and undercover methods for investigating the predicate offence which would extend to the ML aspect of the investigation.

451. Authorities meet the requirements for the availability and use of special techniques for ML and TF investigations. Authorities need to consider using these techniques more frequently in ML investigations other than narcotic related cases.

***Additional Element - Specialized investigative Groups & Conducting Multi-National Co-operative Investigations (c. 27.5):***

452. The agencies involved in investigating ML and TF offences relating to predicate offences including the DSI, the RTP, the ONCB, the NCCC and the AMLO have the authorities to work collectively on joint investigations. This occurs frequently in narcotics cases as all agencies will work together on both the predicate and ML offences using their collective powers and special investigative techniques to seize assets and pursue ML charges.

***Additional Elements - Review of AML/CFT Methods and Trends by Law Enforcement Authorities (c. 27.6):***

453. The agencies involved in AML/CFT investigations meet regularly through a number of consultative committees, including the Board of Special Case, AMLB, the PEC and a number of other working groups.

454. Sharing of AML/CFT trends and methods between LEAs is limited to when they are working ongoing investigations or when they interact at the above-mentioned committees. In narcotics related matters, the ONCB are notified regarding assets seizures by the RTP or DSI but that information is not shared with other agencies. Beyond narcotics investigations there is no formal means established for sharing trends and typologies relating to the financial investigations.

455. The AMLO receives notification of asset seizure pursuant to AMLA but does not publish any reports regarding trends or typologies relating to ML or TF to be shared with LEAs.

456. Authorities need to improve methods for sharing trends and typologies relating to AML.

***Recommendation 28***

***Ability to Compel Production of and Searches for Documents and Information (c. 28.1):***

457. For the purpose of criminal proceedings in relation to ML, TF, and other underlying predicate offences, the Inquiry Official (RTP) or the Special Case Inquiry Official (DSI) has powers under the CPC or the Special Case Investigation Act 2004, as the case may be, to compel production of, search persons or premises for and seize and obtain relevant documents and information for use in investigations.

458. Section 132 of the CPC provides powers to:

- examine the injured person with that person's consent or the accused, or anything or place which may be used as evidence including the taking of photographs, the drawing up of plans or sketches, the molding or the taking of fingerprints, hand or foot-prints and the recording of any particulars likely to clarify the case;
- search for articles of which possession constitutes an offence or which are obtained through an offence or used or suspected of having been used for the commission of an offence or which may be used as evidence;
- issue a summons to a person who possesses any article this may be used as evidence; and,
- detain all the articles found or produced.

459. Section 133 of the CPC authorizes the Inquiry Official to summon to appear before the Inquiry Official the injured person or any person where there is reason to believe that the person's testimony may be useful to the case.

460. Although these provisions do not address specifically whether financial confidentiality can be raised against the exercise of the above powers, it is certainly the case that financial confidentiality is not an obstacle for criminal investigation. In fact, section 46 of the CBA explicitly prescribes criminal investigation as an exception for financial secrecy. It reads: “Whoever, in the performance of [their] duty under the authority prescribed by this Act, having acquired knowledge of the affairs of a commercial bank which, in normal banking business, is to be held in confidence, reveals such knowledge, except in the performance of [their] duty or for the purpose of investigation or trial, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 100,000 baht (\$2,640) or both”.

461. According to section 24 of the Special Case Investigation Act, B.E.2547, the inquiry officer has the authority to search places or person without a search warrant, to request the FIs to submit any relevant documents or evidences, and then to seize or freeze the assets found or submitted for an exhibit to be used in the prosecution.

462. The authority for search without a warrant is in section 24, and is subject to a reasonable ground to believe that a person suspected of committing a special case is hiding in a dwelling place or possessing properties which is considered an offence or acquired by committing a crime. The search shall proceed according to the CPC. The inquiry officer has to manifest the officer’s transparency prior to the report reason and results of the search in writing to their superior, and record reasonable suspicion and reason of search in writing to the possessor. In case there is no possessor at the place, the inquiry officer shall deliver the copy of such document to the possessor as soon as possible. In case of the search during night time after sunset, the inquiry officer leading the search must be a civil official with the rank of level 7. After finishing the search and within 48 hours, the inquiry officer who leads the search has to submit a record of reasonable doubt and reason and a record of search and an inventory of the property seized to a provincial court or a criminal court in Bangkok as evidence. In case there is any special case relating to MT and FT, the inquiry officer is likely to exercise their functions of investigation.

463. ONCB under the NSA are authorized to collect evidence and seize assets in drug related matters:

- Section 19 provides the authority on reasonable probable grounds for provisional freezing of ML assets;
- Section 22 provides the authority to remove movable property that is suspected to be POC;
- Section 25 (1) & (2) authorizes seizing of evidence including financial records;
- Section 25 (3) contains authority to conduct searches of dwellings to collect evidence or to seize property relating to the ML offence.

464. The NCCC has specific powers, including to inspect the accuracy and actual existence of assets and liabilities of State officials and inspect change of assets and liabilities or the persons holding political positions including the position of Prime Minister and Minister.

465. Competent authorities do have the authorities to conduct investigations, searches, seize evidence and assets relating to ML and TF offences, but as discussed elsewhere do not effectively use these to pursue criminal investigations of ML and TF.

***Power to Take Witnesses’ Statement (c. 28.2):***

466. All the competent authorities responsible for under taking ML or TF investigations have the authority either pursuant to the AMLA, Special Investigations Act or the CPC to take statements from witnesses in ML, TF or related predicated offence investigations. The criminal and civil procedures require “reverse onus” on the accused to prove that assets seized were not the proceeds of crime. Witnesses are required to testify in court and the police have no powers to compel a person to give a statement.

467. The RTP, DSI and ONCB can also utilize the provisions of the Mutual Legal Assistance Act (1992) when obtaining statements for other jurisdictions or attempting to use statements in foreign countries who Thailand has signed MOU's.

### ***Recommendation 30***

#### ***Prosecutorial Agencies***

468. The OAG handles both criminal proceedings for ML and proceedings for forfeiture of property connected with predicate offences. The Office of the Executive Director of the Special Litigation 3 within the Office of the OAG is a specialized unit for ML, both criminal proceedings and forfeiture cases, within Bangkok. Prosecutors attached to this Office are experienced prosecutors. Currently, there are 9 prosecutors and 3 staff members who do secretarial work. Provincial prosecutors take care of similar cases in other provinces.

#### ***Adequacy of Resources ( 30.1)***

##### ***Independence***

469. The OAG is an independent agency, not under the control of any ministry, but reports directly to the Justice Minister. However, the Minister exercises supervisory functions on administrative matters, but not on prosecutors' discretion in case handling. The purpose of its independent status is to ensure justice and prevent political influence from interfering with prosecutorial functions. In order to guarantee the independence of public prosecutors, the personnel management is separated from that of civil servants. The personnel management of public prosecutors is the sole responsibility of the Public Prosecutor Commission chaired by a retired senior government official or retired senior public prosecutor elected by public prosecutors nationwide.

##### ***Structure***

470. The organization structure of the OAG may be divided into two main areas; central offices in Bangkok and regional offices in provinces.

##### ***Central Offices***

471. All OAG central offices are located in Bangkok. Basically, they have jurisdiction only over cases which occurred in Bangkok, but subject to some conditions, the central offices can handle some serious cases which occurred in the provinces. For economic crimes, the Department of Economic Crime and the Department of Intellectual Property and International Trade Litigation have jurisdiction. The Department of Special Litigation is in charge of corruption, ML and cases investigated by the DSI under the Ministry of Justice.

472. The OAG has 3 civil litigation departments in Bangkok. The regional offices outside Bangkok are grouped into 9 regions; 3 in the central region and 2 each in the north, the northeast and the south.

473. In January 2005, the OAG had 2,575 public prosecutors. From 2000, due to the lack of work force in the OAG, the Act on the Appointment of Senior Public Prosecutor 2543 B.E. allows the retirement age of public prosecutors to be extended from sixty to seventy years old.

474. The assessors are satisfied that the OAG has sufficient staff to deal with the number of ML and TF cases that are referred to it currently.



***Integrity of Competent Authorities (c. 30.2):***

***Professional Standards***

475. Under section 303 of the Constitution, public prosecutors, unlike many other government officials, are subject to scrutiny by the Senate for dismissal on the grounds of malpractice. The qualifications required for public prosecutors are stringent. Candidates must have a Bachelor of Law degree and a Thai Barrister certificate, be at least 25 years of age, and have at least two years of legal practice experience. They must pass a recruiting examination and undergo one-year training prior to being appointed as public prosecutors.

476. For ethics, the Act on Code of Conduct for Prosecution Officials 2521 B.E. (1978) covers the status and conditions of service, qualifications, selection and training of public prosecutors, as well as disciplinary actions. The OAG also issues an Ethical Code of Conduct of Public Prosecutors, consisting of 27 rules of obedience.

***Training for Competent Authorities (c. 30.3):***

477. From discussions with the authorities the assessors are satisfied that, as part of the routine Prosecutors Training Course, prosecutors receive adequate and relevant training on financial crimes, including ML. The International law enforcement Academy also provides training to prosecutors in these areas. However, the authorities signaled that there may be a need for stronger training outside of Bangkok.

***Law Enforcement Agencies***

***Adequacy of Resources (c 30.1)***

478. The competent authorities designated to investigate ML and TF are national enforcement agencies whose budgets and resources are controlled by the Minister of Justice.

479. Authorities interviewed all stated that, with increasing numbers of predicate offences of ML being committed that resources are stretched to capacity. The rising frequency of production and trafficking of methamphetamines combined with the Government two year commitment in 2005 making narcotics offences a priority to LEAs has resulted in the majority of the focus of the AML/CFT competent authorities to be narcotics investigations. The attention to drug related cases and involvement of the ONCB and the AMLO in these cases have shown a dramatic increase in seizing and forfeiture of assets as shown by statistics. The ONCB has 40 dedicated resources in its assets forfeiture group while the AMLO has 133 officers who could indirectly support criminal investigations by providing evidence they seize during the civil vesting investigation.

480. Other serious predicate offences 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 offences, 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 offences 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.

481. No TF investigations have taken place, except in the DSI where there is one ongoing case. The lack of TF investigations is alarming when considering the ongoing terrorist related activity in the South of Thailand.

482. The RTP is a large organization (over 200,000) and presently has no dedicated units or resources that are solely responsible for ML investigations in both Bangkok and regional operations. Similarly, the NCCC (over 700) lacks dedicated AML/CFT capacity. Both of these authorities need to consider having dedicated resources to conduct ML investigations in order to effectively pursue criminal ML cases related to predicate offences. This will become even more increasingly important when the eight additional ML predicate offences just approved by parliament come into force.

483. DSI have been have been unable to demonstrate their full capabilities from a ML or TF investigation perspective because they are a very young organization (2004). DSI appear to be well funded, resourced and provided with significant powers for attacking organized crime, terrorist offences and economic crimes. The future looks promising for DSI to become more involved in ML or TF cases as they have determined that economic related crimes are a priority.

***Integrity of Competent Authorities (c. 30.2):***

484. Authorities stated that corruption is an ongoing problem in Thailand at all levels of government and in LEAs. Authorities in the government and LEAs are committed to combating this problem and have legal measures in place to assist preventing corruption. The professional standards for employees are set out in National Security Regulations, B.E. 2517 and the Civil Service Regulations Act B.E. 2535 which provision for hiring civil servants or law enforcement related duties. These applicants must under go a number of criminal record checks and interviews before being engaged. In specialized units like DSI and NCCC, there are further specific requirements under their acts which require higher educational criteria for employment and additional security clearance. For instance in DSI qualifications for new staff according to the Special Investigations Act section 14, requires employees or new hires to have finished a Bachelor of Law and having useful experience in related fields for 3 years or being a civil servant in a related field for over 10 years.

485. The standard of measurement concerning confidentiality for civil employees is describe in the PC in section 164 which refers to offences and penalties for improper sharing of information. DSI employees are subject to three times the penalties if they commit these offences.

***Training for Competent Authorities (c. 30.3):***

486. The ONCB and the AMLO investigators have received the most extensive training in ML investigation techniques from foreign LEAs or programs developed domestically. While the AMLO is not an LEA it is the focal agency for AML/CFT matters and its staff are responsible for conducting much of the domestic training that occurs for the LEAs. Hence, the AMLO staff attendance at training courses enhances the effectiveness of the domestic training that is provided. Thai officials from all LEAs and from the AMLO have received training from foreign agencies and have attended training and seminars abroad such as the IMF Workshop on AML/CFT Measures for Criminal Justice Officials (July 2005, Singapore), the Workshop on Intelligence Analysis and Intelligence Reports (September 2005, Indonesia), the Terrorism Typologies Workshops (November 2005, Malaysia), and the Alternative Remittance Systems Training Workshop (March 2006, Australia) – last threes sponsored by AUSTRAC.

487. Both the AMLO and the ONCB (narcotics) in cooperation with other agencies have held a number of training courses and financial investigation workshops. Most of these workshops have been attended by the other competent agencies including the RTP, NCCC and Customs. Over the past three years the AMLO has trained over 8,000 investigators who, after completing a three day seminar on financial investigations, are designated as “competent officers” under the AMLA. This training is mostly offered to the RTP and has been very useful in increasing the awareness of LEAs regarding these techniques for investigating ML and financial crimes.

488. Courses completed by RTP include:

- Combating ML course (1 week)
- Combating Transnational Terrorism (1 week)
- Complex Financial Investigations (1 week)
- Supervisory Criminal Investigators (3 weeks)

489. DSI have attended the following financial crime related courses:

**Table 26. DSI Financial Crime Related Courses**

| Course  | Date                  | Host               | Trainee |
|---|-----------------------|--------------------|---------|
| Financial Investigation                                   | 24 Nov. – 6 Dec. 2002 | AFP/Australia      | 2       |
| Pacific Rim International Conference on ML                | 24 – 26 Mar. 2003     | AMLO               | 2       |
| Financial Investigation                                   | 12 – 23 May 2003      | ILEA               | 1       |
| Financial Underpinnings of Terrorism in South – East Asia | 19 – 22 Apr. 2004     | USA + MFA Malaysia | 2       |
| ASEM Anti – ML Project                                    | 1 – 12 Nov. 2004      | ASEM               | 2       |
| AML Training  | 18 – 20 Jan. 2005     | ILEA               | 5       |
| TF And ML Course  | 24 – 28 Jan. 2005     | RTP + FBI & IRS    | 1       |
| Asset Management Training ASEM AML Project                | 8, 11 – 12 Apr. 2005  | ASEM               | 2       |
| The Formation on AML and Financing Seminar                | 25 – 28 Oct. 2005     | Embassy of France  | 17      |
| TF Seminar  | 25 – 28 Oct. 2005     | British Embassy    | 4       |
| ML and Financial Transaction Training                     | 6 - 9 Feb. 2007       | CIA                | 4       |

490. The Department of the Special Litigation and the Criminal Litigation Department of the OAG are responsible for prosecutions of ML and TF. The OAG at times provided training to prosecutors in these Departments on the prosecution of ML and TF as well as legal techniques to trace, seize, and forfeit proceeds of crime.

491. Both the RTP and NCCC have participated in some training but statistics of seizures and cases indicate that there is a lack of trained financial investigators in fraud, corruption and other predicate offence areas.

***Additional Element (Rec 30) - Special Training for Judges (c. 30.4):***

492. Authorities provided no feedback. However, the assessors are aware that officials participated in judicial training provided as part of a AML/CFT project in Thailand funded by ASEM.

***Statistics (applying R.32):***

493. Despite being requested, with the exception of narcotics related statistics, authorities involved in other predicate offences and AML/CFT have provided limited statistics for ML or TF investigations. It is not known whether these types of statistics are maintained or if the agencies do not have any occurrences or seizures to report regarding this activity.

494. The ONCB, the DSI and the AMLO were the only agencies who could supply statistics relating to ML or TF investigations. Other competent authorities should maintain these types of statistics to facilitate sharing with domestic and foreign partners.

***Assessment of Effectiveness***

495. Sufficient legal authorities exist that allow LEAs to undertake and effectively investigate a ML or TF offence.

496. The AMLO is not a LEA but independently can use AMLA powers to collect evidence and turn it over to LEAs for criminal investigation if the AMLO determines that the case is criminal. If this does not occur, then the AMLO can seek vesting of the assets in the State believed to be linked to the predicate offence using the AMLA civil process which can be an effective method for taking assets associated with these offences away from criminals.

497. LEAs generally only pursue the ML or seizing of assets relating to predicate offences in cases that are narcotics related. Corruption, fraud and crimes relating to prostitution and human smuggling are major criminal problems in Thailand and yet authorities have had very few cases where ML or assets associated to these offences have been seized pursuant to the PC.

498. This culture of not undertaking the financial investigation except for narcotic cases needs to be changed. There needs to be a commitment from LEA senior management to encourage ML and TF investigations and to educate the investigative units in techniques for conducting such investigations. Assessors are optimistic that the recent arrival of DSI, coupled with that agency's integrated approach to investigations using the additional special authorities granted to that agency, will be an effective approach to investigating ML and TF offences. The RTP, NCCC and other LEAs should consider having their units investigating predicate offences use similar approaches for undertaking ML and TF investigations.

499. The ONCB and the AMLO are the only agencies that have dedicated units or resources for investigating ML or carrying out TF investigations. This is surprising considering the size of the other agencies and the scope of their responsibilities. In narcotics cases ONCB do have dedicated resources focused on only seizing proceeds of crime. The AMLO, which is not an LEA, also has dedicated resources but these can only be used for civil purposes. Assessors believe that Thailand needs to increase these LEA resources. It should develop expertise with specialized units to deal with ML and TF investigations in both Bangkok and other large centers in the country, considering Thailand's size and the suspected ongoing ML and TF activities in areas outside of Bangkok.

500. The DSI integrated enforcement model is a promising approach to tackling complex ML and TF investigations. DSI are limited to work only on designated special investigations which ML and TF can fall within.

501. Authorities do meet the criteria but other LEAs should consider adopting the DSI model for use in financial investigations relating to the predicate offences they are responsible for.

## **2.6.2 Recommendations and Comments**

502. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Require each LEA to commit resources to ensure that ML financial investigations are undertaken during ML predicate offence cases, including ensuring that:
  - investigators are aware of and committed to seeking evidence to pursue ML charges;
  - LEA management support the carrying out of criminal ML investigations; and,
  - necessary training is provided on how to secure evidence to pursue ML charges.
- Require that the RTP establish a dedicated unit for investigating ML offences other than narcotics. Consider establishing dedicated units within the RTP and the ONCB in each of the major centers or regions outside of Bangkok for investigating ML offences alongside units investigating the predicate offences.

Require that each LEA establishes ML financial investigation training programs for predicate investigating units across all of Thailand (not just Bangkok).

Provide training to prosecutors across the country on ML and financial investigations with a focus on

how to prepare cases for criminal proceedings.

Require competent authorities including LEAs, prosecutors and other agencies involved in ML or TF investigations to keep up to date statistics on charges for ML predicate offences, seizure of assets and forfeitures.

Require the NCCC to dedicate resources or create special units to conduct ML and TF investigations. Have its LEAs seek more assistance from, and develop closer relationships with, the AMLO to increase the sharing of financial intelligence in criminal ML and TF investigations.

Ensure that its competent authorities, including the DSI, obtain training for investigating TF cases.

Have the DSI consider locating some of its TF trained investigators in the south of Thailand to work closer with officials investigating terrorism incidents.

Require its competent authorities to work together to develop trends and typologies relating to ML and TF cases for distribution to other AML/CFT partners and the general public.

### 2.6.3 Compliance with Recommendations 27 & 28

|      | Rating | Summary of factors relevant to s.2.6 underlying overall rating   |
|------|--------|--|
| R.27 | PC     | <ul style="list-style-type: none"> <li>• There are no comprehensive statistics, and none beyond narcotic cases, on ML and TF investigations to assess the effectiveness of the investigative effort.</li> <li>• Investigations focus predominantly on drug ML not other predicate offences.</li> <li>• LEAs seem reluctant to enter into complex investigations into ML and more willing to investigate self laundering connected mainly with drug related predicate offences.</li> <li>• The LEAs prefer to hand cases to the AMLO to handle under the civil vesting procedure instead of properly investigating ML.</li> <li>• The effectiveness of LEA investigation of ML and TF is hampered by them not receiving proactive financial intelligence from the AMLO.</li> <li>• The effectiveness of the investigative effort appears to be compromised by the lack of specialized dedicated resources who have expertise in investigating ML offences.</li> <li>• The assessors were not satisfied that investigating TF was being utilized as a tool to deal with domestic terrorism.</li> </ul> |
| R.28 | LC     | <ul style="list-style-type: none"> <li>• The only LEA that effectively pursues criminal investigations of ML and TF is the ONCB who only deal with narcotic cases.</li> </ul>  |

## 2.7 Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1 Description and Analysis

503. There are no restrictions in Thailand to import or export foreign currency (or bearer negotiable instruments) nor are there restrictions to import domestic currency. As a result, there are no declaration or disclosure requirements for the above mentioned circumstances. The only restrictions concern export of domestic currency, which is subject to authorization when the amount exceeds 50,000 baht (\$1,320) or 500,000 baht (\$13,200) when traveling to Myanmar, Laos, Malaysia and Cambodia (Item 2 of the Ministry of Finance Notification relating to Money Exchange Control). These restrictions are applicable only in the case of currency, and would not cover other bearer negotiable instruments as defined by the FATF.

504. Under the ECA the Minister of Finance is empowered to issue Ministerial Regulations “controlling, restricting or prohibiting the execution of all exchange or other operations in which foreign currency is concerned in whatever form” (section 4.1.) and is also empowered to issue Regulations with

regard, among other things, to the “exportation of currency, bank notes, money orders, securities foreign currency or gold” (section 4.2). Under the same act, these (as well as foreign banknotes, and Thai or foreign securities) are considered “articles” under the Custom laws (section 8 bis) for the purpose of prevention and suppression of unauthorized exportation or importation of currency and foreign currency.

505. This means that the powers established under the Custom laws (described below with reference to the various criteria of the Methodology) can be exercised only in the case of the above mentioned restrictions to the exportation of domestic currency.

506. Under the ECA the definition of “foreign exchange” includes “ bank balance, bill of exchange, cheque, promissory notes, telegraphic transfer, mail transfer or money order payable in currency. However, as the Minister can issue restrictions with reference to “foreign currency”, (defined as legal tender in any country other than Thailand), it is not clear (nor were the authorities able to clarify) whether any restriction on exportation could be applicable to “foreign exchange” as well, which would cover the notion of “other bearer negotiable instruments” under the FATF recommendations.

507. The authorities stated that importation of foreign currency into the Kingdom through the Suvarnabhumi Airport in Bangkok may be declared voluntarily (in order to receive a certified declaration from Customs that the foreign currency has entered the Kingdom), in which case the person importing foreign currency can apply for a Foreign Currency Declaration form to the Customs officers, according to Item 4, 02, 08, 05 of the Customs Code, B.E. 2544 supplemented by Part 4, Category 2 relating to Customs Procedure for Specific Unit of the Customs Regulations No. 31/2549.

508. The authorities acknowledged that Customs have very limited powers in ML or FT cases where the case is not one of the Customs-related predicate offences. Outside the customs-related offences, only in the case of offenders caught red-handed (typically in drug-related offences) would the Customs officers be able to seize the object of the crime (in the case of drugs, the matter would be then handed over to the ONCB). Even in the case of ML related to customs offences, the Customs would not be able to freeze the proceeds of crime (though they would have to report to the AMLO for the purpose of asset seizures).

509. It is interesting to note that on April 1 2548 (2005), the Office of the National Security Council – which has the responsibility to coordinate actions to review and assess the adequacy of measures to prevent and remove problems of international terrorism and transnational crime – acknowledged that large amounts of foreign currencies in cash are brought into the country for no clearly known purposes and that “this money can be used for acts of terrorism or transnational crime as cash is easy to hide, conceal or disguise, making it difficult to track down.” The Office therefore expressed its concerns to the Permanent Secretary of Finance that a draft ministerial regulation providing for the obligation to report cross-border transportation of foreign exchanges in bank notes or in coins exceeding \$10,000 or its equivalent was still under the consideration of the Council of State and that the draft did not clearly provide for the agency responsible to check compliance.

***Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):***

510. In the case of exporting domestic currency in the circumstances described above, it is not clear whether the person wishing to export the currency, besides applying for the prescribed authorization, must also disclose it to the Customs authorities. That the Customs Department may inquire whether the prescribed authorization for the exportation of domestic currency has been obtained, can be inferred from section 99, which implies the power of Customs officers to make inquiries. This provision also provides for the obligation to provide truthful answers to questions asked by Customs officials. However the authorities did not provide explanation as to how the authorization is sought in practice, i.e. whether at the border or before traveling, and, in the latter case, whether the agents at the border check the authorization.

***Request Information on Origin and Use of Currency (c. IX.2):***

511. There is no specific reference to the false declaration/disclosure as empowering Customs the authority to request/obtain further information of the carrier. With reference to the restrictions provided for the exportation of domestic currency, such authority can be inferred from the obligation of any person to provide truthful answers to questions asked by Customs officials (section 99).

***Restraint of Currency (c. IX.3):***

512. The Customs has no authority to stop or restraint currency or other bearer negotiable instruments in order to ascertain whether evidence of ML or FT may be found. In the case in which Customs officials find out that the authorization to export domestic currency in the circumstances described above has not been obtained, they have the authority to seize the aforesaid currency for prosecution under customs law.

***Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):***

513. The Customs keep hard copies of the authorizations to export domestic currency in the circumstances described above. This documentation is only kept in a hard copy archive. This inhibits Customs from monitoring the flow of currency or persons (the information could be useful, for instance, to determine how often a particular person carries domestic currency out of the country).

514. Information of all seizures which are done under the Customs law – including seizures resulted as a violation to comply with the authorization requirements prescribed in the case of exportation of domestic currency – is kept in a central database that can be queried by all Customs points.

***Access of Information to FIU (c. IX.5):***

515. It would appear that the information obtained through the process described above with reference to the exportation of domestic currency is not made available to the AMLO.

516. According to the Agreement under the PM Office Regulation on the coordination in compliance with the AMLA (no. 1/2001), Customs are required to report to the AMLO “the offenses relating to smuggling and customs evasion under the law governing customs” (which are predicate offences of ML under section 3.7. of the AMLA). In this respect the Customs Department has issued a directive (no.465/2546) which specifies criteria and guidelines for the determination of offences of smuggling or duty evasion which are to be reported to the AMLO. However, the directive only applies to asset seizures. The authorities also claimed that upon detection of a large amount of cash brought into or sent out of the Kingdom, the Customs Department will file a report with the AMLO (or to the ONCB or the Office of National Intelligence Agency, as appropriate). However this would appear to be limited to where Customs suspects that the cash is the proceeds of a crime under the Customs Act, and not for other predicate offences. According to the information provided by the authorities 6 such cases were reported to the AMLO since 2004. The authorities reported one case of non-declaration of authorization in 2007, and five in 2006 and 2005 respectively.

***Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):***

517. According to the authorities, under the Notification No. NR 0805/18010, dated 1st April 2548, 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.” Customs would report to the AMLO, the ONCB, and the Office of National Intelligence Agency, cases in which a large amount of cash is detected. Customs report that they have close cooperation with the AMLO and that they are regularly invited to training initiatives organized by the AMLO; however it would appear that only occasionally the AMLO would provide

customs information that may be useful to target people suspected to be involved in criminal activities or in terrorist organizations.

***International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):***

518. Thai Customs signed MOUs and Cooperative arrangements on cooperation and mutual assistance in Customs matters with Australia, Cambodia, China (including one with Hong Kong), Korea, Malaysia, New Zealand and the USA.

***Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)***

519. Failure to comply with the authorization requirements under the restrictions provided for the importation of domestic currency triggers the sanctions provided for by section 27 of the CA, which are imprisonment not exceeding ten years or a fine up to four times the value of the imported currency including tax, or both. Untruthful disclosures (and other related wrongdoings) carry the sanctions provided for by section 99 of the CA (imprisonment not exceeding six months or a fine not exceeding 500,000 baht (\$13,200) or both). Prosecutions may be waived by the Director General of the Customs department (or by a Commission when the value of the duties is more than 400,000 baht - \$10,560) with a settlement agreement under the provisions set forth by Chapter XIII of the CA. The authorities explained that in the case of violations of the restrictions to the exportation of domestic currency the offender will have to surrender the whole amount for which the license has not been obtained. Sanctions can be also inflicted to a legal person (including the managing director, the managing partner or the person responsible for the operation of the legal person) by virtue of section 115 Quarter of the CA.

520. While the sanctions available appear to be proportionate and dissuasive it is difficult, in the absence of any statistics provided by the authorities, to determine whether they are effective.

***Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):***

521. There are no sanctions available for cross-border physical transportation of currency for purposes of ML or TF.

***Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10); Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):***

522. As mentioned above, there is no possibility for Customs to seize or confiscate assets related to ML or FT; if Customs detect an offence related to the CA it will have to report the case to the AMLO for its consideration regarding the adoption of the civil vesting process.

***Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):***

523. There is no particular arrangement in the case of discovery of an unusual cross border movement of gold, precious metals or precious stones to notify Customs or other competent authorities of countries from which these items originated. In case gold, precious metals or stones have been brought into or sent out of the Kingdom without respecting the customs procedures and duties, this would be considered as wrongdoing subject to the sanctions provided by section 27 of the CA.

***Safeguards for Proper Use of Information (c. IX.13):***

524. The authorities were unable to assure the assessors that their system for reporting cross border transactions – in the circumstances described above - is subject to strict safeguards to ensure proper use of the information or data that is recorded.



### *Assessment of Effectiveness*

525. As mentioned earlier, the only restrictions available under Thai law regard exportation of domestic currency. However it has to be noted that even for this part, doubts can be raised about the effectiveness of the system. The information regarding the exportation of domestic currency is only stored in a hard copy archive which cannot be searched to determine whether a person be a cash courier (to determine how frequently a person crosses the border, for instance). This information is not made available to the AMLO. The actual cooperation between Customs and the AMLO seems rather limited, and circumscribed only to the case of customs-related offences which may be predicate of ML. It is not clear if sanctions have been applied for the violation of the regime of exportation of domestic currency.

#### ***Additional Element – Implementation of SR.IX Best Practices (c. IX.15) :***

526. Thailand has not implemented the FATF SR.IX Best Practices paper.

#### ***Additional Element – Computerization of Database and Accessible to Competent Authorities (c. IX.15):***

527. Thailand does not have a computerized database of the reports that are collected.

### **2.7.2 Recommendations and Comments**

528. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Expand the declaration/disclosure requirements to all circumstances set forth by SR.IX and extend it also to “bearer negotiable instruments” as defined by the international standard;
- Provide the Customs authorities with the power to stop/restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity;
- Make available to the AMLO the information obtained through the process of declaration/disclosure;
- Enhance cooperation and exchange of information between Customs and the AMLO beyond the area of customs-related offences, when there is a suspicion of ML or FT;
- Provide Customs authorities with the power to freeze and confiscate proceeds of crime and funds related to TF;
- Establish sanctions in the case of cross-border physical transportation of currency for purposes of ML or TF; and
- When originating from other countries, consider reporting to authorities of these countries the discovery of unusual cross-border movements of gold, precious metals or precious stones.

### **2.7.3 Compliance with Special Recommendation IX**

|              | <b>Rating</b> | <b>Summary of factors relevant to s.2.7 underlying overall rating</b>   |
|--------------|---------------|---|
| <b>SR.IX</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• There are no cross border declaration or disclosure requirements applying to the import or export of foreign currency, bearer instruments or the import of domestic currency.</li> <li>• There is no authority to stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity.</li> <li>• Declarations that are disclosed are not made available to the FIU.</li> <li>• There is no ability to seize, freeze and confiscate proceeds of crime and funds related to TF.</li> <li>• There are no sanctions available for cross border physical transportation of currency for purposes of ML or TF.</li> <li>• There does not appear to be any consideration given to reporting to foreign</li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <p>authorities when unusual cross-border movements of gold, precious metals or precious stones are discovered.</p> <ul style="list-style-type: none"> <li>• There are no effective systems in place to analyze the cross-border information that they collect from a ML or TF perspective.</li> <li>• The assessor are not satisfied that the cross border declaration or disclosure framework is effective to mitigate the known cross border risks that exist for Thailand.</li> </ul> |
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### **3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS**

#### **Customer Due Diligence & Record Keeping**

##### **3.1 Risk of money laundering or terrorist financing**

529. Thailand has not undertaken a risk assessment nor has it explicitly decided to not apply certain AML/CFT requirements to its FIs, or to reduce or simplify the measures being taken by any of those FIs, on the basis that there is low or little risk of ML or TF.

530. The authorities should consider conducting a risk assessment of the financial sector to determine whether certain types of FI pose a risk for AML/CFT. This process would help the authorities to determine whether some FIs could be exempted from AML/CFT requirements because of their low risk and as a result, conceive and implement a risk-based approach for supervision purposes.

##### **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

###### **3.2.1 Description and Analysis**

531. The legal framework setting provisions regarding CDD is extremely fragmented and consists of AMLA, ministerial regulations and other secondary legislation and guidelines issued by various supervisory authorities. In the Thai system the secondary legislation and guidelines issued by supervisory authorities are referred to as “Notifications” (sometimes circular letters) or “Policy Statements.” The latter would only set unenforceable guidelines.

532. Secondary legislation can be in the form of a “Notification”: when the enabling law of the relevant agency empowers it to enact implementing provisions on a specific matter. Non-compliance to the requirements set forth in these “notifications” triggers sanctions. These notifications can be considered as “law or regulation” according to the FATF standard. In some sectors (such as in the securities sector) there are also other types of “notifications”, the authority of which is not directly in the enabling law, but in other “notifications” which have been issued pursuant to provisions of the enabling law, and which empower a certain office of the supervisory authority to detail further rules, conditions, and procedures for specific matters (in the case of securities, the notifications issued by the Office of the SEC, such as the Notification of the Office of the SEC (OSEC) on “Rules, Conditions and Procedures Concerning the Management of Risks to Prevent the use of Securities Business for Money Laundering and Financing of Terrorism”). Though these cannot be considered as “law or regulation” they would fall into the category of “other enforceable means”, as non-compliance to the provision they set forth indirectly triggers sanctions (including criminal sanctions). Lastly, in the securities sector, and for the area of AML/CFT, these notifications may also refer to as “Industry Association Guidelines.”

533. Notifications issued by supervisory authorities can also contain guidelines only, and in this case their direct enforceability is not clear.

534. Lastly, authorities can issue “Policy statements.” These do not constitute either law or regulation nor other enforceable means. When endorsed by the Cabinet, as in the case of the AMLO Policy Statement described below, authorities claim that they constitute a policy for the relevant ministries or supervisory authorities to implement the recommendations they contain, although this would appear more a process which stems from the government’s political authority rather than being founded in law.

535. Supervisory authorities do not have power to issue secondary legislation under the AMLA. Under section 4 of the AMLA only the PM has the power to issue “Ministerial Regulations, Rules and Notifications for the execution of the Act”. Notifications or policy statement which have been addressing various elements of the CDD process have been issued in the context of prudential supervision and of mitigating the operational risk of the industry that each supervisory authority regulates or supervises.

536. The AMLA and the Ministerial Regulations issued pursuant to the AMLA constitute the only set of legally enforceable AML/CFT provisions which are applicable across a broad range of FIs. Even then they do not apply to the full range of institutions identified in the FATF definition of financial institution nor to all of the FIs that operate. There is more detailed discussion on this coverage later in this section and above in paragraph 90.

537. Apart from setting provisions which criminalize ML, establish an FIU and provide for civil vesting and provisional measures, the AMLA contains identification and record-keeping requirements for transactions which are subject to reporting to the AMLO (threshold-based or suspicious).

538. The AMLA is applicable to “financial institutions”, which, by virtue of section 3 are defined as:

- the BOT under the law on BOT, a commercial bank under the law on commercial banking and such bank as specifically established by law;
- a finance company and “credit foncier” company under the law on the operation of finance, securities and credit foncier businesses, and a securities company under the law on securities and stock exchange;
- the Industrial Finance Corporation of Thailand under the law on Industrial Finance Corporation of Thailand and a small industrial finance corporation under the law on small industrial finance corporations;<sup>35</sup>
- a life insurance company under the law on life insurance and an insurance company under the law on insurance;
- a savings co-operative under the law on co-operatives; or
- a juristic person carrying on such other businesses related to finance as prescribed in the Ministerial Regulation.

539. The Ministerial Regulation No. 1/2000 extends the applicability of the AMLA to four additional categories of FIs:

- *Ad hoc* juristic persons under the law governing the *ad hoc* juristic persons for securitization of assets; Juristic persons permitted to operate the business relating to the foreign currency payment factors under the law governing currency exchange control. (these are the juristic persons which, under section 3 of the Ministry of Finance Notification “on the Minister’s order to the permitted juristic persons regarding the operation relating to foreign currency payment factors,” are authorized to only businesses as follow (1) buy foreign bank notes or traveler’s cheques that are meant to be bought in foreign currency, (2) sell foreign bank notes to persons traveling abroad under rules and procedures

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<sup>35</sup> The IFCT no longer exists as a separate entity – it has merged with a commercial bank. There are no other “small industrial finance corporations.” See tables about structure of the financial sector in section 1 of this report.

prescribed by the authority). As only juristic persons can be registered as money changers, this Ministerial Regulation is to apply to all money changers;

- Financial institutions asset management corporations under the law governing financial institution asset management corporations; and
- Asset management companies under the law governing asset management companies.

540. The range of FIs subject to the AMLA is not fully consistent with the international standard, as the following institutions that carry out financial activities, as defined in the glossary to the FATF 40+9, are not covered:<sup>36</sup>

- a. The Small Business Credit Guarantee Corporation (an non-bank SFI),
- b. Agricultural Cooperatives,
- c. Personal Loan Business Companies,
- d. Pawnshops,
- e. Hire Purchase Companies,
- f. Authorized Money Transfer Agents,
- g. The Postal Office,
- h. Credit Card Companies,
- i. Companies Authorized to issue travelers cheques,
- j. E-Money companies,
- k. Agriculture Futures Brokers,
- l. Derivatives Business Operators, and
- m. Companies that handle cash on behalf of clients (such as security firms that provide payroll services).

541. As illustrated in the table at paragraph 90. individually or collectively these types of entities do not appear to play a major role in financial intermediation. However, given the size of the informal sector, the importance of cash transactions in Thai society and known typologies about ML and TF in Thailand, it is material that entities involved in the remittance industry and others with significant customer bases and balance sheets (such as some of the cooperatives) are not comprehensively caught under the AMLA.

542. Nine additional Ministerial regulations were issued pursuant to the AMLA: setting forth the thresholds for reporting cash/property connected transactions by FIs (no. 2/2000) and by the Land Offices (no. 3/2000); establishing the template report forms and the timelines for reporting (no. 4/2000); exempting certain institutions/subjects from the reporting requirements (no. 5/2000); requiring FIs to make arrangements for customers' identifications in the case of transactions subject to reporting (no. 6/2000); setting rules for the recording of facts in the case of the recording requirements (no.7/2000);

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<sup>36</sup> For more detail see the table in section 1 of this report at paragraph 90.

setting rules for the reception of reports by the AMLO and the transmission to the TC (no. 8/2000) and rules related to the seizure of property under the AMLA (no. 9 and 10/2000).

543. A PM Office Notification was issued on September 11, 2000 setting forth rules for the “self identification procedure of Customer of Financial Institution.

544. These provisions are applicable to all FIs which are subject to the AMLA.

545. The legal framework is completed by various other provisions which have been issued by the Supervisory authorities. These are mentioned below with reference to the industry they are directed to.

### ***Banks***

546. The BOT Notification dated 24 December 2001 Re: Requirement for Commercial Banks on the Practice in Accepting Deposits, issued pursuant to article 13 *Quater* of the CBA (The BOT Notification on Accepting Deposits). This notification constitutes a “Regulation” under the FATF definition as, in the Thai system, it stems its authority from a provision of the CBA.

547. The BOT has also issued a Policy Statement Re: Measures on AML and CFT for Financial Institutions, issued on 19 January 2007 (The BOT Policy Statement) and containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies. The BOT has also distributed to the FIs subject to BOT supervision its Risk-Based Examination Manuals and Risk Self Assessment of financial institutions which the FIs “may follow.”

548. While these documents do not set forth compulsory and enforceable requirements under the FATF standard, the BOT claims that non-compliance to these documents may result in downgrading the rating of the relevant FIs as a result of the inspection process and can also have an impact on the process of licensing additional or connected banking activities (under section 9 *bis* of the CBA) and opening of branches.

### ***SFIs and Saving Cooperatives***

549. The regulations issued by the BOT are not applicable to nor enforceable against SFIs or saving cooperatives. In the case of SFIs, however, the MoF has delegated to the BOT the power to undertake inspections on its behalf. In practice, the BOT reviews SFIs against the requirements applying to the banking sector even though those requirements are not legally binding on SFIs. The BOT cannot issue sanctions to the SFIs for non compliance with these requirements. Instead, it sends a report to the MoF for further action. Regarding the Establishment Act of each SFIs, Minister of Finance is able to impose corrective measures or penalties to the SFIs in relation to prudential, operation and management aspects. Those could be done through a setting up of committee or working group to investigate all unusual or suspected transactions related to all level of directors and staffs.

### ***Securities***

550. Under section 3 “financial institutions” is defined to include “securities companies” under the SEA. The SEA defines "securities company" as any company, or FI licensed to undertake securities business under the SEA. The SEA defines “securities business" as any of the following securities businesses:

- securities brokerage;
- securities dealing;
- investment advisory service;
- securities underwriting;

- mutual fund management;
- private fund management; and
- other businesses relating to securities as specified by the Minister upon the recommendation of the SEC.

551. As mentioned earlier, the AMLA requirements apply to securities companies but not to derivative businesses established under the DA, including futures brokers. Moreover, agricultural futures brokers are not regulated by the SEC but by the 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.

552. The SEC has issued various notifications pursuant to provisions of the SEA (which therefore constitute “regulation” under the FATF standard), which set forth some CDD provisions. These notifications apply with varying degree to different aspects of securities businesses and derivatives businesses, with the exception securities underwriting as specified later in this report. Under section 113 of the SEA the SEC is empowered to issue notifications relating to brokerage business that occurs outside the SET and the board of directors of the SET is authorized to issue notifications for brokerage business that occurs within the SET. However, legally, SEC notifications also apply to on-market transactions as the SET board has issued a notification that states that on- market transactions must be conducted in accordance with the notifications of the SEC.

553. In addition, implementing provisions set forth in notifications issued under the SEA the Office of the SEC issued on March 1, 2007 a Notification on “Rules, Conditions and Procedures Concerning the Management of Risks to Prevent the Use of Securities Business for ML and FT” (No. SorThor./ Nor/ Yor/ Kor 3/2550, which entered into force on March 16, 2007) (“the OSEC Notification”) and which, according to the authorities, is applicable to all securities licensees except those under BOT and DOI. While the SEA does not grant a power to the Office to issue Notifications the authorities claim that this notification can be considered enforceable, because it would implement other Notifications issued under the SEA, which grant the Office the power to issue additional rules and guidelines to complement those set forth in these notifications. Though not a “Regulation” in the sense of the FATF Recommendations<sup>37</sup>, the OSEC notification could be considered as “other enforceable means” as it would appear that non-compliance, according to the authorities, can trigger sanctions (apparently also of a criminal nature). These sanctions are however, indirect as non-compliance with the OSEC Notification equates to non-compliance with the primary Notifications that the OSEC Notification was issued under. The authorities alluded to other notifications issued in a similar manner to the OSEC Notification where the SEC had successfully taken enforcement action.

554. The OSEC Notification is supplemented by two industry guidelines on KYC/CDD that have been approved by the SEC. One issued by the ASCO which came into force on March 28, 2007 and one issued by the (AIMC) which became effective on April 2, 2007. The OSEC Notification explicitly acknowledges the two sets of guidelines in the following ways:

- a. Clause 6 requires securities companies to designate an AMLO officer ... to ensure compliance with ... the Industry Association Guidelines;
- b. Clause 7 requires “securities companies to establish on-going training programs for all employees... to ensure compliance with ... the Industry Association Guidelines”;

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<sup>37</sup> The authorities indicated after the mission that they planned to “reissue” the OSEC Notification as an SEC Notification. This will need to be confirmed prior to the APG plenary for this footnote to be retained in the report.

- c. Clause 16 requires securities companies to perform KYC/CDD on all existing higher-risk customers within the timeframe specified under the Industry Association Guidelines.

555. The authorities also consider that the ASCO and AIMC Guidelines are indirectly enforceable by the SEC as they are approved by the SEC and are also considered as “interpretive notes” to the OSEC Notification. In this regard, the OSEC, has conveyed in Circular No. Thor/Nor.(Wor) 10/2550 and in other ways that securities companies must be able to demonstrate to SEC examiners that they comply with the guidelines issued by the ASCO or AIMC in order for them to show that they meet the requirements of the OSEC Notification. The existence of both sets of guidelines, their approval by the SEC and their explicit acknowledgement in the OSEC Notification are likely to enhance the effective implementation of the Notification.

### ***Insurance***

556. The DOI has issued 2 notifications, one, on September 25, 2006, setting forth “Operational guidelines for compliance function of insurance company”, the other, dated February 13, 2007, informing life insurance companies to use “as their practical guidelines” the DOI Policy Statement containing “General Rules on Know Your Customer/ Customer Due Diligence (KYC/CDD) for the Anti-Money Laundering and Combating the Financing of Terrorism: AML/CFT”. The authorities indicated that these notifications do not set forth enforceable provisions for the insurance sector.

### ***Measures in place for FIs***

557. There are many FATF Recommendations where Thailand has no enforceable measures in place for some sectors or FIs. This lack of coverage is not explicitly repeated throughout this section of the report. Instead, readers should assume that if there is no discussion about a particular sector or type of FI in respect of a Recommendation being assessed that there are no applicable measures in place. The lack of coverage is, however, taken into account in the overall conclusions and ratings.

## ***Recommendation 5***

### ***Prohibition of Anonymous Accounts (c. 5.1.)***

#### ***Banks***

558. For the banking sector, article 6 of the BOT Notification on Accepting Deposits, states that “A commercial bank is prohibited from allowing depositors to conceal their real names and to use aliases or false names to open deposit accounts”. However, this notification is limited to opening of deposit-taking accounts including current accounts. It is not applicable to the SFIs, nor to credit cooperatives. The enabling laws of SFIs do not contain provisions prohibiting anonymous or fictitious names accounts.

#### ***Securities***

559. With regard to securities, while there is no explicit provision prohibiting the use of anonymous account in the law, an effective prohibition can be inferred in some of the notifications issued under the SEA. These notifications contain provisions which require that the client be the same person as the one whose name appears on the application document for opening an account. Under Clause 11 of the OSEC Notification, the use of anonymous or fictitious names in opening accounts or when conducting securities transactions is prohibited. However, as mentioned above in paragraph 553. , the assessors do not consider this Notification is a “law or regulation” under the FATF Recommendations.

### *Insurance*

560. Section 867 of the CCC prescribes that a life insurance policy must be in the name of the policyholder and the beneficiary thereby discouraging the use of false or anonymous names.

### *Assessment of Effectiveness*

561. The representatives of the industries with which the assessors met, confirmed that they do not have any anonymous, numbered or fictitious name accounts. However, for the banking sector, there remains a possibility that such accounts exist, prior to 2001 when the BOT Notification on Accepting Deposits was adopted. According to article 7 of that notification, banks only had to notify their depositors about the identification requirements; and could assume that the identification was confirmed if they heard nothing back from customer. The BOT claims that such possibility would involve only accounts that had been inactive from the date of the notification.

562. Commercial banks and SFIs with which the assessors met, also informed that they have just started a comprehensive screening of their current existing customers who have opened accounts before the BOT's CDD Policy Statement took effect on 19 January 2007 in order to verify the consistency of the information previously obtained and classify those customers on a risk-based approach.

563. Moreover, it is not clear in the case of other FIs that any effective mechanisms have been put in place to review customer identification of their existing customers. Hence, the assessors are not satisfied that they can conclude that no anonymous accounts exist in relation to FIs that are not subject to the BOT Notification (e.g. SFIs, cooperatives).

### *When is CDD required (c. 5.2.): a, b, c, d, e*

564. The AMLA does not comprehensively address the CDD requirements set forth in R.5. The AMLA requires identification only in the case of suspicious transactions, of cash transactions exceeding 2 million baht (\$52,800) and transactions connected with property worth more than 5 million baht (\$132,000), which fall under the scope of the ministerial regulations and which are subject to reporting to the AMLO.

565. There is no obligation applying to all FIs requiring them to undertake CDD measures when establishing business relations. Section 20 of the AMLA states that "A financial institution shall cause its customers to identify themselves on every occasion of making a transaction prescribed in the Ministerial Regulation unless the customers have previously made such identification". The Ministerial regulation in question (no. 6/2000) requires identification of customers "for the transactions to be reported by financial institutions to the AMLO", which are (according to AMLA section 13 and the Ministerial Regulation no.2/2000) those specified above.

566. These identification requirements are applicable to all FIs subject to the scope of the AMLA. For the part in which they refer to "suspicious transactions", though they would not explicitly mention the suspicion of ML or FT for triggering the identification obligation, they nevertheless cover the obligation to undertake CDD measures under criterion 5.2. d) A suspicious transaction under the AMLA is in fact defined as "a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offence, irrespective of whether such transaction is made once or more than once."

567. The identification requirement for occasional transactions does not meet the standard of FATF R.5.2. b), as the threshold of 2 million baht (\$52,800) is far greater than the international standard (15,000 USD/EUR). While the AMLA contains no explicit provision regarding the obligation to carry out CDD



requirements in the case of several operations that appear to be linked, this may be inferred by the obligation set forth by section 14 of the AMLA. This provision states that “when a financial institution subsequently obtains probable cause to believe that any transaction previously carried out which was not reported in accordance to section 13 appears to have been a transaction that financial institution must report in accordance with section 13, then the financial institution shall report the transaction to the AMLO without delay”. As explained earlier the identification requirements are triggered by the obligation to report transactions, and the above mentioned provision would cover also the case of linked operations.

568. Beside the AMLA, CDD requirements for the other circumstances set forth by R.5 are scattered in provisions of different nature issued with reference to a particular sector. However there would appear that no mandatory provisions exist under Thai law to comply with the obligation to undertake CDD measures when FIs are carrying out occasional transactions that are wire transfers under the circumstances covered by SR VII nor in the case where the FIs have doubts about the veracity or adequacy of previously obtained identification data.

### ***Banks***

569. With reference to the requirement of undertaking CDD upon establishing business relations (5.2.a) this is addressed by a mandatory provision for commercial banks but only when they are accepting deposits under the BOT Notification on Accepting Deposits. As a result this Notification does not cover other financial services or activities undertaken by a bank (e.g. issuing a credit card, opening a safety box etc.). As mentioned earlier this Notification is not applicable to the SFIs nor to credit cooperatives.

570. The BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies requires that these FIs (those subject to supervision by the BOT) “shall adapt the guidelines stated in the BOT notification .... dated December 24, 2001, upon commencing any relationship or financial transaction with a customer, namely accepting deposits granting credit facilities, conducting money transfers, undertaking securities or debt instruments related facilities, any transactions through a corresponding bank, providing services and conducting any other similar transactions.”

### ***Securities***

571. Under the OSEC Notification Clause 8, securities companies must undertake KYC/CDD process on clients.....both when the accounts are opened / the first transaction is processed and on an on-going basis throughout the course of the relationships with clients”. While, as indicated elsewhere, this Notification cannot be considered as a “Law or Regulation” under the FATF standard, there are other Notifications which were issued by SEC under the SEA (and therefore qualify as Regulations under Thai law), which set CDD requirements for specific securities sectors. These are:

- *Notification No. Kor Thor. 42/2543* (setting rules, conditions and procedures of securities brokerage and securities dealing which are not debt instrument). While not explicitly setting an obligation to identify the customer when entering into a business relationship such an obligation may be inferred from the provisions set forth by clause 16, which states that “In considering an application for opening an account and entering into the contract agreement appointing the securities company as the securities broker of a client, the securities company shall establish the guideline for considering the application for account opening and entering contract with the client in writing. The guideline shall contain sufficient procedures to ensure that the client is the identical person as the one that appears in the application document for opening an account.”
- *No. Kor Thor. 65/2547* (Rules for Undertaking Derivatives Business for Licensed Derivatives Broker). *Clause 18 requires that* “The Consideration of the application for opening of the derivatives trading account shall be prepared in writing with steps and procedures sufficient to

ensure that the customer is the same person as the one appearing in the documents and evidence used for opening of the account, including identification of the customer's identity, source of funds used for derivatives trading and the real beneficiary of the customer."

- *No. KorThor 43/2543* (Rule, Condition and Procedure for Securities Trading in Debt Instruments); the CDD requirement can be inferred by clause 16/1, which states that "For the benefit to know their client, securities company shall at least having relevant documents showing the existence of the client or showing a person who have authorized to make a decision to trade in the case where the client is a juristic person."
- *No. KorThor. 24/2549* (Rules, Conditions and Procedures for Operational Control of Securities Underwriting), clause 4 (which refers to clause 16 of *Notification No. Kor Thor. 42/2543*).
- *No. KorKhor. 42/2547* (Rules, Conditions and Procedures for Brokerage, Dealing and Underwriting of Investment Units), the CDD requirement is set out in clause 5(1) which requires that the account opening process includes "steps ensuring that the customer is the same person as the one appearing in the documents and evidence used for opening the account..." and clause 7(2) that requires investment unit dealers to "get to know the customer and at a minimum to arrange to have identification documents..."

572. However, it is not clear that these Notifications apply to all activities in the securities sector. Some private funds management by securities firms would not be subject to CDD requirements in the case of establishing a business relationship, either because the relevant notification does not contain rules on CDD or because it would not appear to be a law or a regulation:

- Establishment and Management of Funds – No.Kor.Nor 30/2547 (no CDD requirements);
- Sale or Acceptance of Redemption of Investment Units and Solicitation of Customers to Enter into a Private Fund Contract (*Sor Khor. 43/2547*: not a regulation as it is issued by the OSEC).

### ***Insurance***

573. There is no clear obligation for the insurance industry to undertake CDD. Authorities believe that such an obligation may be inferred from section 865 of the CCC, but this opinion does not seem convincing, as this provision stipulates only that the insurance contract can be void if, at the time of the contract, the assured, or, in the case of insurance on life, the person upon whose life or death the payment of the sum payable depends, knowingly omits to disclose facts which would have induced the insurer to raise the premium or to refuse to enter into the contract.

### ***Identification measures and verification sources (c. 5.3)***

574. As noted earlier, the identification requirements set forth in the AMLA are applicable by virtue of section 20 only in the case of suspicious transactions, of cash transactions exceeding 2 million baht (\$52,800) and transactions connected with property worth more than 5 million baht (\$132,000). These transactions are subject to reporting to the AMLO. In these circumstances Section 20 of the AMLA requires that "A financial institution shall cause its customers to identify themselves", "unless the customers have previously made such an identification." The identification must be in accordance with the procedure prescribed by the Minister. In this respect, on September 11, 2000, the Office of the Prime Minister issued a notification on "Self Identification Procedure of Customers of Financial Institutions."

575. The obligation to identify appears to be placed on customers rather than on FIs (see the reference to the "self identification" in the notification of the Office of the Prime Minister). However, the relevant criminal sanction for failure to comply with section 20 (a fine not exceeding 300,000 baht - \$7,920 –

which can only be applied to an “individual” and not to a legal person) would appear to confirm that it is the responsibility of the employee of the FI to identify the customers.

576. The types of documents and information required are stipulated by the Notification as follows:

- For a natural person: The personal identification documents required are official ID card, official civil servant or state enterprise employee or other government officer ID card, passport or other document issued by a national authority. The information required includes full name, official ID number for Thai nationals or passport number for foreigners, address according to the official house registration or place of residence, date of birth, sex, nationality, occupation (including address and telephone number of the employer), contact address and number, and signature.
- For a legal person: The information and documents required are the name, tax identification card and number, address & telephone number, type of business, corporate seal, official corporate registration and signatures of the authorized signatories. It is to be noted that official corporate registration specifies names of directors and names of authorized signatories.

577. All Thai ID cards or other identification documents bear a photograph of their holders. Discussions with the authorities and industry representatives indicated that these documents could be relied upon as they are difficult to forge. However, discussions also revealed that forged foreign passports are able to be obtained in Thailand and that these have been used by foreigners to open accounts and conduct transactions.

578. There is no explicit obligation to verify the identity, although this can be inferred, for a natural person, from clause 2 of the said Prime Minister Notification, which states that “in the case that the FI is able to verify the authenticity of the information provided by electronic means, the FI may ask the customer to identify himself or herself by presenting only the name, family name, date of birth, official ID number and the signature.”

579. These requirements apply to the identification obligation provided in the case of transactions which are subject to reporting to the AMLO not universally for all situations where CDD is required. There are other provisions regarding identification procedures scattered in various regulations for the relevant industries.

### ***Banks***

580. Article 3 of the BOT Notification on Accepting Deposits states that commercial banks shall require the depositor to provide detailed information on the account opening application of his/her full name, current address (both official resident and contact addresses), occupations and place of work .

581. Article 4 (5) of the same BOT Notification requires the depositors “to submit identification documents or certified copies of those documents as evidence for opening deposit accounts.”

- For a natural person - full name, current address, place of employment, contact address and citizen ID card;

- For a legal person incorporated in Thailand – an official copy of the registration issued by the Ministry of Commerce, consent from the board of directors or partners to the opening of the account, names of authorized signatories and authorization criteria as well as corporate seal and authorized signatories' identification documents;
- In the case of the Thai government, a Thai state agency or a Thai state enterprise – a letter of intent, names of authorized signatories, authorization criteria and signatories' identification documents;
- For a co-op, a charity, an association, a club and a religious establishment – official proof of registration issued by an authority such as the Ministry of Interior, power of attorney or a letter of appointment, minutes of the board of directors or a letter of intent, names of authorized signatories and authorization criteria and signatories' identification documents;
- For a non-citizen or a non-resident – a passport, an ID card or other official ID card.

582. Article (5) further requires commercial banks to verify the identification documents “according to a normal practice with honesty and meticulously”.

583. These provisions are applicable only in the case of opening a deposit account not other types of account; a more general provision which would cover the whole banking activities (though not mandatory) is indicated in the BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies. This provision (clause 2.2.2. on Customer Identification and Verification) extends the identification requirements of the Notification of 24 December 2001 to other banking activities and requires FIs to “use their best effort to authenticate the identification document upon commencing any relationship or financial transaction with a customer”.

### *Securities*

584. As mentioned above in paragraph 571. above some notifications applicable to parts of the securities industry contain some provisions on the identification of the customers (though none of them would provide for the obligation to verify customer's identity using reliable, independent identification data).

585. More comprehensively, clause eight of the OSEC Notification states that securities companies must undertake the KYC/CDD on customers (1) upon accepting or establishing a business relationship with customers, and (2) on an ongoing basis throughout the course of such relationship. Clause nine paragraph one of the same Notification prescribes that in conducting the KYC/CDD process, securities companies shall:

- (1) identify the customer's true identity, including the identities of the ultimate beneficial owner and the controlling person of the transactions (customer identification);
- (2) verify the customer's identity using reliable sources of information (customer verification).

586. The same provision states that all information received must be up-to-date and reliable at the time the KYC/CDD process is undertaken and that, in case of individual clients, all documents concerning identification data must bear client's photograph. This provision arguably meets the minimum requirement of the standard even though it does not indicate what specific documents are to be used in the identification process. In addition, as mentioned previously, the OSEC Notification cannot be considered as a “law or regulation” under the FATF Recommendations.

### ***Pawnshops***

587. Pawnshops are not legally subject to the AMLA. However, some provisions in the Pawnshop Act B.E. 2505 are relevant to AML/CFT. As stipulated in section 18 (bi), in making a pawning deal, a pawnbroker shall clearly record data of the ID card of the pawning person on the stub of the pawning ticket. Where the pawning person does not need a citizen ID card, the pawnbroker shall record data of the paper stating the name and address of the person.

### ***Identification of Legal Persons or Other Arrangements (c. 5.4(a) and (b))***

588. There is no requirement applying to all FIs—for customers that are legal persons—to verify that any persons purporting to act on behalf of the customer is so authorized and to identify and verify the identity of that person. As described above, the Prime Minister Office Notification Re: Self-Identification Procedure of Customer of Financial Institutions requires, among other information, the “signature of the authorized signatory on behalf of the juristic person,” but it does not provide for the obligation to identify such a person nor does it require to verify the identity of such person. As already mentioned these provisions are applicable to all FIs, but only in the circumstances in which such FIs are required to report transactions to the AMLO (see AMLA sections 13 and 20).

### ***Banks***

589. The BOT Notification on Accepting Deposits, requires the identification and the verification of the identity of the authorized signatory for a depositor who is a juristic person registered in Thailand, a government, a government organization a state enterprise or other government agency, for “a cooperative, a foundation, association, club, a temple, a mosque, a shrine or other juristic person.” However, in the case of a juristic person registered outside of Thailand, there is no such specific requirement: article 4.5 only requires “a passport or an alien identification card or an identification document, which is issued or certified by a credible agency or organization.” The BOT claims that, in practice, non-resident juristic persons would still be requested by banks to obtain various alternative forms of government-issued identification certifying the existence of the business or enterprise in the same manner as juristic persons registered in Thailand. However, this is not sufficient to meet the standard.

590. Other banking activities would not be covered by the notification. However, the BOT Policy Statement requires commercial banks, finance companies, credit foncier companies and asset management companies to apply the BOT Notification December 24, 2001 to activities other than accepting deposits.

### ***Securities***

591. Clause seven of the SEC Notification No. KorKhor 42/2547, requires securities firms carrying out funds management business in the conduct of their KYC to obtain identification documents for authorized signatories of legal person customers. That Notification nor any other laws or regulations require FIs in the securities sector to verify that any persons purporting to act on behalf of a customer that is a legal person are so authorized. The only other references are in Appendix A of the ASCO and Clause 6 (1 and 2) of the AIMC Guidelines on KYC/CDD. The assessors do not consider that those parts of the Guidelines can be considered enforceable as there is no direct obligation to follow those parts of the guidelines in the OSEC Notification. The authorities consider that general KYC requirements in regulations OSEC Notification No. Kor Thor. 42/2543 (Clause 16), Kor Thor. 43/2543 and No. Kor Thor. 65/2547 requiring that all securities and futures broker/dealers take reasonable steps to establish and ascertain the true and ultimate identity of each customer and customers are sufficient to meet the requirements under essential criteria 5(4)(a) and (b). Although the authorities claim that, in practice, securities firms conduct verification as part of the identification requirement, none of the provisions are sufficiently explicit to require verification that a person acting on behalf of a legal person is authorized to do so nor to require that such a person’s identity be verified.

*(c. 5.4. (b))*

592. In the case of customers that are legal persons, provisions applicable for all FIs (but only for transactions subject to reporting to the AMLO) and requiring proof of incorporation or similar evidence of establishment, information concerning customer's name, legal form, address name, address, directors, are contained in the above mentioned Prime Minister Office Notification Re: Self-Identification Procedure of Customer of Financial Institutions (clause three, described above). In particular, the certificate of statement in the register (issued by the Registrar of companies) would specify names of directors and names of authorized signatories (though it is unclear if the certificate would also contain provisions regulating the power to bind the legal persons).

***Banks***

593. In the case of accepting deposits, the BOT Notification dated December 24, 2001 indicates for commercial banks the information to be required in the case of legal persons:

- (1) official copy of the registration issued by the Ministry of Commerce in case of a company or partnership as well as a consent from the board of directors or partners to the opening of the account, names of authorized signatories and authorization criteria as well as corporate seal and authorized signatories' identification documents;
- (2) in case of the government, a state agency or a state enterprise, a letter of intent, names of authorized signatories, authorization criteria and signatories' identification documents; or
- (3) in case of a co-op, a charity, an association, a club and a religious establishment – obtaining official proof of registration issued by an authority such as the Ministry of Interior, power of attorney or letter of appointment, minutes of the board of directors or letter of intent, names of authorized signatories and authorization criteria and signatories' identification documents.

594. As previously noted, in the case of non-resident legal persons the documents required (under article 4.5.) would not be able to satisfy the international standard.

***Securities***

595. Appendix A of the ASCO Guidelines and Clause 6 of the AIMC Guidelines on KYC/CDD contain not enforceable provisions requiring proof of incorporation, company's directors and authorized signatories of the entity. Securities companies are not directly required by the OSEC Notification to follow those parts of the guidelines. While the SEC considers that the industry will have incentives to follow these specific provisions in the guidelines the assessors are not convinced that the arrangements are sufficient for the references in the guidelines to be "other enforceable means."

***Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2)***

596. There is no provision generally applicable to all FIs in Thai law requiring them to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner, nor are there provisions requiring FIs to determine whether the customer is acting on behalf of another person (and to obtain sufficient information data to verify the identity of that other person) or to determine who are the natural persons that ultimately own or control the customer.

***Banks***

597. The BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies contains a definition of "customer" which

covers also “the ultimate beneficiary.” “Customer” is defined as “any natural person or juristic person who has relationship or conducting transactions with FIs or who is delegated or authorized to conduct activities related to relationship or transactions with FIs on behalf of another party; including the ultimate beneficiary of the relationship or transaction as well as a person having power control or final decision making.” Therefore, through the recommendations under clause 2.2 on Customer Identification and Verification, authorities claim that it may be inferred that banks are subject to the requirements set forth by criteria 5.5.1 and 5.5.2. However, as pointed out elsewhere in the report, the BOT Policy Statement cannot be considered enforceable. Even if it could though, it would not be clear whether the provisions set forth by clause 2.2. of the Statement – which aim at extending the identification requirements set forth in the BOT notification December 24, 2001 – could be interpreted as setting forth a specific obligation for banks to actually determine whether the customer is acting on behalf of another person or who are the natural persons that ultimately own or control the customer.

598. While there is no specific law requiring commercial banks to determine whether the customer is acting on behalf of another person, many commercial banks have internal policies to take reasonable steps to determine whether a customer is acting on behalf of another person. Some banks require the customer to declare whether he or she opens an account for a third party. If the customer reveals that he or she is acting on behalf of another person, banks would require the customer to make further disclosure on the identity of the party on whose behalf he or she is acting or the nature of the activities. Some other banks determine from the behavior and account activities whether they are commensurate with the occupation and source of funds or wealth declared by the customer.

599. Many commercial banks conduct CDD to identify the beneficial owner of a legal person in accordance with their internal procedures such as conducting CDD on directors with authorized power to act on behalf of the customer and on shareholders holding shares above the bank’s internally set threshold, ranging from 5 to 20 percent depending on the bank.

600. As mentioned earlier, there is no specific requirement for commercial banks to undertake measures to understand the ownership and control structure of the customer or to determine the natural persons who ultimately own or control the customer. However, many commercial banks, as part of their internal CDD policies, claim that they have applicable measures in place such as conducting CDD on directors who are authorized to act on behalf of the legal person and on shareholders who own more than a certain percentage of the legal person. The rigor of the CDD depends on the types of the legal person. For example, a non-listed company is subject to more rigorous measures than a public company listed on a stock exchange.

601. The TBA has issued a guideline for its members on KYC/CDD. It states that commercial banks need to be vigilant in preventing corporate business entities from being used by natural persons as a method of operating anonymous accounts. Commercial banks should understand the structure of the company, determine and verify the source of funds, and identify the beneficial owners and those who have control over the funds.

602. The authorities do not exclude in the MEQ that there might be accounts opened in the name of one of the trustees of foreign trusts. The authorities and the banks that were interviewed, however, were not aware of such phenomenon. It is not clear, however, if such a case occurred how the bank would conduct the CDD to identify the settlor, the beneficiaries, the trustee or the person exercising effective control over the trust.

### *Securities*

603. There are some provisions requiring some securities companies to ensure that the client is the same person as the one who appears in the application document of an account, including identification of

the real beneficiary of the customers (see Notification No. Kor Thor. 42/2543 setting rules, conditions and procedure of securities brokerage and securities dealing which are not debt instrument; Notification No. Kor Thor. 65/2547 for Undertaking Derivatives Business for Licensed Derivatives Broker and Notification No. KorThor. 24/2549 for Operational Control of Securities Underwriting). The SEC has also issued a circular letter to all securities companies (Thor 1896/2549) which contains provisions on beneficial ownership. However, the circular is not enforceable.

604. The OSEC Notification, described earlier, also contains provisions on beneficial owners. According to clause 2 (3 and 4, respectively):

- (3) “ultimate beneficial owner of the transactions” means a natural person who ultimately owns the account, or materially benefits from the customer’s transactions;
- (4) “ultimate controlling person of the transactions” means a natural person who ultimately exercises effective control in relation to the customer’s account or transactions;

605. Clause eight requires that securities companies undertake KYC/CDD on clients, “including the ultimate beneficial owners and controlling persons of the transactions;” and Clause 9 requires identification and verification of the client’s true identity (client identification), “including the identity of the ultimate beneficial owner and the controlling person of the transactions.” Note, however, that the assessors do not consider that this Notification is a law or regulation under the FATF Recommendations as it is not a law or regulation under Thai law.

606. Though there is no direct reference to “determine” that the customer is acting on behalf of another person or to determine who are the persons that ultimately own or control the customer, such an obligation can be reasonably inferred from the scope of the identification and verification requirements of the customers.

607. In addition, Section 4.2 and 4.6 of the ASCO and Clauses 4-6 of the AIMC Guidelines on KYC/CDD suggest that during the account opening process, securities companies should request customers, including corporate and other legal entities, to self-declare the identities of ultimate beneficial owners and controlling persons, and if the information is insufficient securities companies may collect more information, verify with third parties, or undertake certain due diligence on the customers, to ascertain the ultimate beneficial owners and controlling persons and make records of such information.

#### ***Information on Purpose and Nature of Business Relationship (c. 5.6)***

608. There is no requirement applying to all FIs to obtain information on the purpose and intended nature of the business relationship. The only provisions are found in sector or institution specific requirements.

#### ***Banks***

609. There is no specific mandatory provision for the banking industry. That banks should be obtaining such information could be inferred from Section 2.1 (1) of BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies, which requires all commercial banks to establish customer acceptance policy in line with international standards and that takes into consideration various factors related to the customer such as background, type of business, etc. There is a specific provision in the case where credit is being granted - see BOT circular Wor 2725/2544 which requires banks to have documents related to customers to “*understand the purpose of the credit facilities.*” However, this circular does not meet the FATF definition of “other enforceable means.”



610. According to the FBA, in practice many of its members obtain such information from their customers through having to comply with AML/ CFT measures of their home countries.

### ***Securities***

611. There are some provisions requiring parts of the securities industry to obtain information on the purpose and nature of the business, aimed at understanding the objective of the investment (see *SEC Notifications No. KorThor. 42/2543* setting rules, conditions and procedure of securities brokerage and securities dealing which are not debt instrument; *KorThor. 65/2547*, for Undertaking Derivatives Business for Licensed Derivatives Broker, *KorNor.30/2547* for private fund management companies). However, in the case of SEC Notification 42/2543 the applicability of these requirements when the client is a juristic persons is limited only to juristic persons that are defined as “retail client” (for instance, companies the financial budget of which does not exceed 100 million Baht (\$2.6 million)).

612. Clause 9 of the OSEC Notification requires securities firms during the client identification process to obtain information about the nature of the client’s business and the objectives of the client’s transactions. This language meets the requirement of the standard.

### ***Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2)***

613. Currently there is no specific requirement under Thai law applying to all FIs to conduct ongoing due diligence on the business relationships. As detailed below, there are some provisions applicable to parts of industries, which in the assessors’ view, cannot, however, be considered as law or regulation under the FAFT 40+9. In addition it has to be noted that the focus of those provisions is mostly on updating account opening information and they do not include scrutiny of transactions undertaken.

### ***Banks***

614. The BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies, has a provision (clause 2.3.) on ongoing monitoring of accounts and transactions which requires FIs to “pay attention to monitor the movement of customer accounts and update their related information.” However, as mentioned previously this Policy statement is not a law or regulation.

615. Some requirements for periodical checks of documents and for keeping them up to date also exist for credit customers and for credit purposes only in circulars issued by the BOT. In particular the BOT Circular No. ThorPorTor. ForNorSor. (21) Wor. 419/2549 Re: Principles of Credit and Contingent Liabilities Review, and Related Reports dated 24 March 2006 requires commercial banks to conduct a periodic review of all categories of credit facilities, to check, update and maintain complete documents pertaining to customers and to ensure that the facilities are used for the intended purposes disclosed to commercial banks. However, the scope of this guidance is limited to making loans and does not include other requirements for CDD, such as those for walk-in customers or, in the case of deposits, requirements for monitoring of accounts and transactions.

616. Many commercial banks that are members of the FBA have a due diligence process which includes scrutiny of transactions, in compliance with their home regulator’s AML/ CFT measures. BOT Guidelines for On-site Examination of AML/ CFT Compliance under Item 3 of the Policy on AML/ CFT established by Financial Institution (FI) lists “ongoing account monitoring” as part of the required AML/ CFT policies that commercial banks must have and under item 4 of article 2.1 Know Your Customer Procedures requires commercial banks to have monitoring and accounting management processes that are sufficient and commensurate with the risk exposure to individual customer groups.

617. According to FBA, many of its members conduct ongoing due diligence on an ongoing basis on business relationships considered to be high risk. Most FBA members with retail business undertake periodic reviews of higher risk customers. Since the majority of FBA members are only involved in wholesale banking, they are required to periodically review and update customer documentation and information under BOT Circular No. ThorPorTor. ForNorSor. (21) Wor. 419/2549 Re: Principles of Credit and Contingent Liabilities Review, and Related Reports dated 24 March 2006. BOT Guidelines for On-site Examination on AML/ CFT Compliance under item 1 of article 3 Procedures in line with AML/ CFT policy specify that commercial banks must keep up-to-date records on customers and regularly review such information.

618. As for Thai banks, however, in terms of internal control and on-going monitoring of transactions, most of them (commercial banks as well as SFIs) with which the team met acknowledged the fact they are in the process of implementing new IT architecture and KYC software aimed at detecting abnormal or complex transactions as well as detecting transactions above the regulatory threshold for STRs purposes. Some small FIs like cooperatives or small SFIs are not equipped with adequate IT system that would allow them to identify split transactions carried out by customer. The assessors conclude that on-going monitoring in the banking industry is not adequate and not commensurate to the risk of ML/TF.

### *Securities*

619. Securities companies are required to establish proper procedures to periodically review or monitor existing customers' records to ensure that the customers' records previously obtained; including the information regarding the identities of ultimate beneficial owners and controlling persons, and objectives in doing transactions, remain complete and up-to-date (ongoing due diligence) in the material contents. In this respect the OSEC Notification requires (Clause 17.2) that in conducting KYC/CDD process throughout the course of the relationship with clients (on-going KYC/CDD), securities companies must establish a review process to ensure that clients' records previously obtained remain accurate, complete, and up-to-date as follows:

(1) periodically review clients' records previously obtained according to the level of each client's risk;

(2) review previously obtained clients' records, including making further enquiries, in certain circumstances, such as material change in value, form, or condition of transactions, including payment/receipts of funds (transaction monitoring); when there are doubts concerning the accuracy, up-to-date, reliability, or adequacy of clients' records obtained under the KYC/CDD process; or for certain customers (which should be recorded in the securities company database as PEPs, clients involved in jurisdictions or countries that do not or insufficiently apply the FATF Recommendations, or clients on which there are suspicions of involvement in ML or predicate offences). In this latter case, both the ASCO and AIMC specify in their Guideline on KYC/CDD that securities companies shall examine whether such circumstance in (3) occurs at least once a year. The securities companies shall repeat the KYC/CDD process as deemed necessary as well as make record and retain the record for audit trails. Where there are material changes in customers' records, the companies are required to review and re-classify customers' risk profiles in relation to risk associated with ML and financing of terrorist, as well as to consider whether a STR must be made to the AMLO.

620. The securities companies must repeat the KYC/CDD process as deemed necessary as well as make records and retain those records for audit purposes.

621. However, neither the OSEC Notification nor the ASCO or AIMC Guideline explicitly require securities firms to scrutinize transactions as part of the ongoing CDD.

***Risk – Enhanced Due Diligence for Higher Risk Customers (c. 5.8)***

622. There are no binding provisions applying to all FIs, requiring to perform enhanced due diligence for higher risk customers. The AMLO Policy Statement contains a recommendation for FIs to “have appropriate and enhanced due diligence measures for specifically attended customers”. These are defined as “a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently complies with the FATF Recommendations, or a customer from a country not having AML measures, or a customer undertaking suspicious transactions or listed as having relationship with a person that may commit a predicate offence or ML, or a customer that the AMLO has informed a FI to treat as such accordingly, or a customer that has been listed as a high risk business or profession such as trading in metals or precious stones, money exchange or illegal loans, etc.”. It was already noted that this Policy Statement does not set compulsory requirements under Thai law; here it has to be pointed out that these provisions do not fully cover non-resident customers, nor do they cover private banking, legal persons and companies that have nominee shareholders or shares in bearer form. Moreover, though they are addressed to all FIs, there are some wording differences between the AMLO policy statement and other guidance provisions issued on enhanced due diligence by other authorities that may confuse industry.

623. The sector specific requirements that exist are addressed in the following paragraphs.

***Banks***

624. The BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies indicates (clause 2.1.) that FIs should establish enhanced policies and procedures for “customers requiring special attention”, non residents, private banking customers, correspondent banks and customers whose source of fund is unclear. These provisions, though not compulsory, would appear to cover more of the circumstances in which the international requirement requires enhanced due diligence. “Customers requiring special attention” are defined as “customers who are or who have been entrusted with prominent public functions in a foreign country (Politically Exposed Persons: PEPs), or whose residence or source of funds is from countries that do not use or apply the FATF Recommendations or do not have AML/CFT measures, or customers who undertake suspicious transactions, or customer whose names appear on the list of or who have relation with a person who may conduct predicate offence or offence on ML or customers with high risk profession such as jewelry or precious metal, foreign exchange, or informal lending business etc.”

625. Many FBA members claim that they conduct enhanced CDD on higher risk customers. The measures range from senior management approval to establish a relationship; close monitoring, periodic reviews, etc.

626. The BOT Guidelines for On-site Examination of AML/ CFT Compliance specify under article 3 Procedures in line with the AML/ CFT policy that policies and operating procedures of commercial banks should at least consist of:

- Specific operating procedures for non-residents;
- The customer identification process and information inspection for private banking;
- The methodology to inspect information of customer whose banking services were denied by other FIs;
- Operating procedures for existing customers having business transaction before the issuance of Customer Acceptance Policy and having problem in meeting identification requirement satisfactorily;

- Specific operating procedures for business transaction with companies having nominee shareholders or shares of unidentified bearer form;
- Policy and operating procedures in contacting high-risk customers.

627. Some FBA members claim that they do not conduct or accept transactions with high-risk companies such as companies with nominee shareholders or shares of unidentified bearer form, etc. In such cases, the banks may not establish some of the above-mentioned policies or procedures.

### *Securities*

628. The OSEC Notification (Clause 15) prescribes that the following should be regarded as higher-risk category customers in relation to ML and FT, where the enhanced KYC/CDD process must be performed by securities companies:

- a. Customer is involved, or is associated with persons who are involved, in ML or FT acts, either inside or outside Thailand.
- b. Customer is, or is associated with, a Politically Exposed Person (PEP), either Thai or foreign, to be prescribed or recommended by the AMLO.
- c. Customers whose nationalities or sources of funds are from, or who reside/conduct business in, jurisdictions or countries that do not or insufficiently apply FATF Recommendations, or are listed as non-cooperative countries & territories (NCCTs), to be prescribed or recommended by the AMLO.
- d. Corporate clients with complex shareholding or functional structures that may raise doubt or difficulty in determining the true and full identities of the clients, the beneficial owners, or the controlling persons of companies.
- e. Customers are unregistered or unauthorized offshore funds.
- f. uncooperative clients who fail to provide requested documents or information under the normal KYC/CDD process, or clients who produce doubtful evidence or documents which apparently appear that they are not issued by responsible authorities;
- g. Customers whose transactions have been reported by securities companies as suspicious transactions.
- h. Customers whose occupations or businesses are regarded as “higher-risk category” by the AML/CFT authorities.
- i. Clients categorized as higher-risk categories by the AML authorities or the Securities Industry Associations.

629. However, it is not clear in relation to the items numbered (b), (c), (h), or (i) that the other organization referred to (e.g. the AMLO) has, to date, issued a relevant list to make that corresponding part of the OSEC Notification operational.

630. According to the OSEC Notification the enhanced KYC/CDD process consists of extending the scope of information to be gathered and verified, gathering information concerning sources of funds used for transactions, obtaining approvals from or reporting to senior management, requesting face-to-face meetings with clients, ultimate beneficial owners, or ultimate controlling persons, assessing the effectiveness of clients’ KYC/CDD measures and controls in cases of omnibus accounts opened by other FIs, or conducting closer scrutiny programs on clients’ transactions.

631. In this regard, the ASCO’ and AIMC’ Guidelines on KYC/CDD require that the customers mentioned above are to be classified as high-risk customers where the enhanced KYC/CDD process must be applied. The enhanced KYC/CDD process includes obtaining an approval from senior management

and extending the scope of information to be obtained which is varied according to different types of customers.

***Risk – Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9 – 5.10 – 5.11 – 5.12)***

632. There are no provisions with reference to reduced or simplified CDD measures in the AMLA. However the Ministerial Regulation No. 5 dated 11 September 2000 issued under Section 4 of the AMLA exempts from the reporting obligations set forth by Sections 13, 15 and 16 of the AMLA the following types of transactions:

- Those to which H.M. the King and H.M. the Queen and certain members of the Royal family are parties;
- Those to which the government, state agencies and state enterprises are parties;
- Those to which the 3 foundations under the patronage of H.M. the King and H.M. the Queen namely Chaipattana Foundation, H.M. the Queen’s Silapacheech Foundation and Sai Jai Thai Foundation are parties;
- Those, with the exception of wire transfers, made by FIs where transactions involve movable property such as ships, vehicles and machinery;
- General (non-life) insurance policies;
- Transactions involving transferring of rights over assets to become public property or by possession in accordance with Section 1382 or Section 1401 of the CCC (with reference to the acquisition of property by virtue of statute of limitation and acquisition of servitudes).

633. Considering that the identification requirements set forth by the AMLA are linked to the reporting obligations, it is unclear whether the exemptions from the obligation set forth by Sections 13, 15 and 16 would also trigger the identification requirements. In any case it has to be noted that an assessment of the ML/FT risk related to these categories has not been made (the issue is of particular concern in the case of transactions to which the government, state agencies and state enterprises are parts given the acknowledged problem with corruption by government officials in Thailand).

634. As there is no general requirement on simplified CDD for FIs, consequently there is not a general prohibition for FIs to apply simplified CDD when there is a suspicion of ML or FT. This can be however inferred from the obligation that FIs have under the AMLA to continuously monitor the account and to provide the AMLO subsequent information when a suspicious transactions has been filed under Section 13.

635. It is only in the securities sector that specific guidance has been issued about the extent to which simplified CDD is permitted. Item 4 under article 2.1 of the BOT Guidelines for On-site Examination of AML/ CFT Compliance requires FIs to have a process to monitor and administer customers’ accounts that is adequate and commensurate with the ML risk exposure for each customer group.

***Banks***

636. While there is no legal provisions indicating whether reduced or simplified CDD measures can be applied, commercial banks have recently established policies and procedures which allow simplified CDD based on a risk classification of the customer. According to the TBA guidelines on KYC/CDD, certain customers are defined with level 1 (Low Risk). Such customers include:

- (1) Customers and companies listed in the SET or creditable stock exchange market of other countries;

- (2) Customers with a stable financial status including their affiliated companies managed by professional management;
- (3) Public organizations or state enterprises;
- (4) Charity organizations and NPO that have contributed to the developing countries more than 10 years and earned more than 10 million dollars (400 million baht);
- (5) FIs and branches or affiliated companies that are not in the higher risk countries.

### *Securities*

637. Clause 16 of the OSEC Notification provides for some circumstances where “reduced KYC/CDD process” can be applied by securities companies:

- (1) customers whose information in relation to the true identities, including ultimate beneficial owners and controlling persons, are publicly available;
- (2) customers are FIs or collective investment schemes regulated or registered in jurisdictions or countries whose regulatory and oversight regimes in relation to AML and TF are comparable to international standards accepted by the Office, and the FIs or funds have adequately and effectively complied with such measures;
- (3) government agencies, state enterprise agencies, and statutory entities or juristic persons set up under special legislation;
- (4) clients prescribed by the ASCO, or the AIMC.

638. The Notification does not specify what “reduced KYC/CDD process” consist of; and no guidance has yet been given to the industry (as the notification was adopted during the mission). The assessors are not convinced that reduced KYC/CDD process for government agencies, state enterprise agencies, and statutory entities or juristic persons set up under special legislation can be justified in a country where corruption is considered a major risk. The authorities state that the reason they have adopted such a position is because the identities of the staff controlling such agencies and entities is publicly available, their transactions must still be monitored and enhanced KYC/CDD must be applied in any situation where the controlling staff are PEPs. The authority delegated to the associations to identify clients for the reduced KYC/CDD also appears contrary to the FATF Recommendations as they imply that guidelines in this respect must come from the “competent authority”). It is worth noting that, while the SEC must approve the ASCO and AIMC Guidelines, there does not appear to be any SEC approval for the clients prescribed for reduced KYC/CDD. The simplified/reduced KYC/CDD process does not apply in the case where there is a risk of ML/FT. In this case the customer would be classified as a high risk customer under clauses 14.1 and 15. *Appendix A of the ASCO and Clause 23 of the AIMC Guidelines on KYC/CDD impose that if there is a suspicion of money laundering or terrorist financing, the relevant customer shall be re-classified as level 3 (high-risk) and enhanced KYC/CDD shall be applied.*

639. By virtue of clause 16.(4) mentioned above, Appendix A of the Guideline on KYC/CDD issued by the ASCO allows securities brokers/dealers companies to conduct reduced KYC/CDD in cases of Thai FIs, regulated collective investment schemes, listed companies, government and state enterprise agencies, as well as occasional customers (e.g. PO/IPO subscribers, sellers under a tender offer). Similarly, the AIMC guideline includes natural persons who are Thai resident investing in mutual funds or entering into private fund management contracts in cash not exceeding 2 million baht (\$52,800) for each transaction or

making a cheque payment not exceeding 5 million baht (\$132,000) and holding a combined amount of investment in a single AMC not exceeding 20 million baht (\$528,000). However, the AMC has to examine and ensure that the customer does not meet any criteria specified under the high-risk category. This provision is set in order not to interrupt the normal asset management business, providing that majority of the customers invest only one or a few times with a small amount of money. Moreover, it should be noted that under AIMC's Guideline on KYC/CDD, asset management companies are required to classify every client into three risk levels i.e. low, medium and high risk. For medium and high risk customers, enhanced CDD is required whilst low risk customers still have to undergo a full process customer identification and verification without any exemptions.

***Timing of Verification of Identity – general rule (c. 5.13, 5.14, 5.14.1) :***

640. There is no general rule for FIs in the AMLA on the timing of verification of the identity of the customer and beneficial owner.

***Banks***

641. Article 1 of BOT Guidelines for On-site Examination of AML/CFT Compliance, which has been distributed to the banks as guidance for the on site inspection process contains a note emphasizing the importance of having a customer acceptance policy that is not so restrictive that it results in a denial of access to the general public of banking services nevertheless requires extensive CDD for high net worth individual whose source of funds is unclear. Article 3 of the same document, requires commercial banks to have operating procedures and risk mitigation measures relating to transactions with agents, intermediaries or other non-face-to-face customers. Banks informed the assessors that the verification of identity is done on the onset of the relationship

***Securities***

642. Under Clauses 8 and 9 of the OSEC Notification, securities companies must undertake the know-your-customer and due diligence process on customers (KYC/CDD), consisting of identification and verification of customers, upon accepting or establishing a business relationship with customers and on an ongoing basis throughout the course of such relationship. As to the possibility to complete identification and verification of customer's identity following the establishment of the business relationship ASCO and AIMC suggest under Section 5.5 and Clause 11 of their Guidelines that the verification process may be extended to not more than 10 business days after the first transaction but not for higher-risk category clients, and under an ongoing CDD basis, securities companies must establish proper procedures to ensure that customers' records previously obtained remain complete and up-to-date soon after the transactions occur and at the frequency specified by securities companies (ASCO and AIMC suggest further under Section 8 and Clause 27 of their Guidelines that these should be undertaken every 1-2 years depending on the circumstances involved).

***Failure to Complete CDD before commencing the Business Relationship (c. 5.15): 5.15. and 5.16***

643. Section 62 of AMLA stipulates that failure to comply with customer identification as stipulated under Section 20 of AMLA is subject to a fine not exceeding 300,000 baht (\$7,920). However, as noted earlier, the identification requirements under the AMLA are linked only to the circumstances in which FIs are required to report transactions to the AMLO.

644. There is no requirement in the AMLA that FIs, in the case they are unable to comply to the identification/verification requirements of the customer/beneficial owner, should not be permitted to open the account, commence business relations or perform the transaction.

645. The AMLA provides no requirement that FIs consider, in the above mentioned circumstances, to consider to file an STR; only in the context of a refusal from the customer to state all facts in connection with a transactions subject to reporting section 21 of the AMLA there is an obligation for FIs to immediately report to the AMLO.

646. Likewise there is no general obligation applicable to FIs subject to the AMLA to terminate the business relationship and consider to file an STR in the case of already commenced business relationship.

### ***Banks***

647. The BOT Notification on Accepting Deposits and Section 44 of the CBA states that any commercial bank violating or failing to comply with the provisions thereof shall be liable to a fine not exceeding 300,000 baht (\$7,920). However, where a commercial bank is unable to comply with CDD requirements, there is no legal provision to prohibit it to open an account, commence business relations or perform the transaction.

### ***Securities***

648. Measures as to termination of services are left largely to securities companies. Clause 4 of the OSEC Notification only requires securities companies to have in place written policies and procedures to prevent the use of securities transactions in ML and FT. Such policies and procedures must include, inter alia, temporary restriction /suspension of services, termination of services, or other types of actions; in case a customer is found involved in ML or financing of terrorist acts, either inside or outside Thailand, or where KYC/CDD process cannot be materially performed by a securities company.

649. As to filing a STR, the SEC, under Clause 20 (11) of its Notification, together with Section 5.8 of the ASCO' and Clause 24 of the AIMC' Guidelines on KYC/CDD, suggest that securities companies should consider making reports to the AMLO if a customer refuses to cooperate by not revealing the true identity or refusing to produce identification or other requested documents, or (the customer) provides documents which appear to be counterfeited, altered, or not properly issued by responsible authorities.

### ***Existing Customers – CDD Requirements (c. 5.17):***

650. There is no requirement generally applicable to FIs, as AMLA is silent on this point.

### ***Banks***

651. Article 7 of the BOT Notification on Accepting Deposits instructs commercial banks to notify existing depositors prior to the effective date of the Notification of identification requirements. However it has to be noted that the simple notification to the customer is sufficient – to deem that the bank has complied with the obligation even if the depositor does not respond to the notification and show up with the requested identification information. The BOT explained that it modified its initial Notification that it issued on 7 April 2000 to deal with the situation of dormant accounts that had no transaction movements. It was satisfied that the commercial banks had done their best to comply with the initial requirements but technically were in breach of the Notification if a customer did not respond. It also considers that dormant accounts are unable to be used as vehicle for ML and TF because their first use would alert the banks to investigate the circumstances and to consider filing an STR. Accordingly, the BOT modified the initial Notification on 24 December 2001 to solve the practical implementation dilemma presented by dormant accounts. Article 7 of the revised Notification provided that a commercial bank has complied with the Notification in relation to any depositors who opened accounts before 22 August 2000 for which the commercial bank had notified but had not received any response from the depositors.

652. In practice banks claim that they have just started a comprehensive screening of their current existing customers who have opened accounts before the BOT's CDD Policy Statement took effect on 19



January 2007 in order to verify the consistency of the information previously obtained and classify those customers on risk-based approach.

### ***Securities***

653. Under Clause 18 of the OSEC Notification, securities companies must perform the KYC/CDD process on all existing customers within three years from the date that the Notification comes into effect, except for cases where customers are classified as Level 3 (higher-risk category) customers in relation to ML and financing of terrorist acts, which the KYC/CDD process is to be performed sooner as specified by ASCO and AMIC. As such, Section 12.1, ASCO's Guideline and Clause 37 of AIMC's Guidelines on KYC/CDD suggest, for Level 3 (higher-risk category) customers, that securities companies should undertake the KYC/CDD process within 1 year of the OSEC Notification coming into effect.

### ***Existing Anonymous-account Customers – CDD Requirements (c. 5.18):***

654. See analysis starting above at paragraph 558. above

### ***General implementation issues with reference to Recommendation 5***

655. Implementation of Rec. 5 in the banking industry can be summarized as follows:

656. The lack of precise guidelines from the authorities on customer identification has led the industry to take initiatives to draft CDD guidelines under the TBA and the FBA umbrellas. The TBA AML/CFT Policy dated December 2006 has been conceived on the basis of Standard Chartered internal AML/CFT rules. These guidelines provide quite extensive details on how to verify customer identity, whether national or foreigner, whether individual or juristic person. Banks told the assessors that these guidelines are very useful, although they were circulated only a few months ago.

657. In practice, banks verify the identity of the customer according to the discussion held with the industry. As for individuals, banks require the national identity card. As for non-resident or foreign individual customers, banks require in addition to the passport, other supporting documents from reputable sources to support the identity of the customer, e.g. letter of good standing, work permit, letter from Embassy. Regarding juristic persons, banks require all registration documents (article of incorporation, tax registration number, notarized supporting documents if the juristic person is registered abroad). Banks also check the identity of the executives, the list of shareholders along with the commercial certificate and inquire about the purpose of the business.

658. Implementation of R.5 is, however, challenging. Most interlocutors spoken to by the assessors acknowledged that Thai people are resistant to the idea of being asked to provide information on their identity, occupation and source of wealth. In this regard, the AMLO has already released a publication in Thai and English to request cooperation from the public. Banks also raised the issue of fake ID which jeopardizes the KYC process. Although bank staff is required to verify the veracity of the documents displayed by customers, they have not been trained on how to detect counterfeit documents.

659. Financial industry associations have taken a proactive role to ensure member firm's AML/CFT compliance.

### ***Recommendation 6 PEPs – all criteria***

660. There are some provisions concerning PEPs which stem from various sources. The AMLO Policy Statement contains a recommendation for FIs to "have appropriate and enhanced due diligence measures for specifically attended customers". This category also comprise customers "relating to politics, or any person having relationship with such a customer". The BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies also

defines PEPs in the category of “customers requiring special attention” as “customers who are or who have been entrusted with prominent public functions in a foreign country (Politically Exposed Persons: PEPs)”. The OSEC Notification contains provisions regarding “politically exposed persons (PEPs) either or Thai or foreign, including their associates” (see clause 14, no.2).

661. It has to be noted that there are inconsistencies among these different provisions: the AMLO Policy Statement (which is directed to all FIs, including banks and securities) does not limit the notion of PEPs to foreign ones, whereas the BOT policy statement does. These definitions differ also in other aspects: the definition of PEPs in the AMLO policy statement is too generic (as it refers only to “customers relating to politics”) and does not fully capture the concept of being or having been entrusted with “prominent public functions”; the reference of the AMLO to “any person having relationship” with the PEP would cover family members or close associates, whereas no reference to family members or associates is mentioned in the BOT policy statement; the OSEC Notification does not define what a PEP is and mentions only associates but not family members (though, according to the authorities, the term “associate” has been used in the securities sector to indicate family members as well).

662. The AMLO policy statement indicates that in the case of “specially attended customers” such PEPs FIs should have “appropriate and enhanced due diligence measures” (see point 4); however these are not defined; which poses the issue of lack of guidance for those FIs for which supervisory authorities have not yet provided procedures/guidance (such as insurance companies, credit cooperatives and SFIs). In the view of the authorities, for enforcement and effective implementation, each and every jurisdiction should have databases in place and available for sharing about information about PEPs.

### ***Banks***

663. The BOT policy statement requires, in the context of the customer acceptance policy that FIs establish enhanced policies and procedures for customers requiring special attention, and establish enhanced customer acceptance policies and procedures. There is no further specification of these procedures other than indicating that the opening of an account of such customers be subject to senior management approval. Therefore other banking services other than accounts would not be covered by this requirement. The guideline for on-site examination on AML/CFT compliance (item 9 under article 3) requires FIs to develop customer acceptance policies and rules that require more extensive due diligence for higher risk customers whose names are indicated in the lists of the AMLO’s databases. Note that no such database of names had been created at the date of the on-site mission; authorities claim that it is in the process of being created by the AMLO.

664. There is no indication that where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, banks are required to obtain senior management approval to continue the business relationship. Also, while indicating that there should be enhanced customer acceptance policy and procedures in the case of PEPs there is no requirement for banks to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. The BOT guideline for on-site examination on AML/CFT compliance requires all factors such as customer history, country of origin, social status, transactional account, transaction types and risk indicators to be included in CDD procedures.

665. The Policy statement indicates that FIs should monitor accounts held by PEPs and update related information. Item 5 under article 7.1 of the BOT Guidelines for On-site Examination of AML/ CFT Compliance specifies that BOT’s bank examiners must verify that commercial banks conduct ongoing monitoring to update customer’s information, in particular that of high-risk customers.

666. In line with the TBA guideline, banks claim that they gather sufficient information from a new customer, and check publicly available information in order to establish whether or not the customer is a PEP. Banks shall as well investigate the source of fund before accepting a PEP.

667. According to the FBA many of its members have in place risk management systems to determine if a customer, potential or existing, or beneficial owner is a PEP by using commercial PEP database services for foreign PEPs and using the list of local PEPs disseminated by the Office of the National Counter Corruption Commission to FIs at elections. While there is no specific legal provision requiring commercial banks to obtain senior management approval to continue a business relationship, it is a policy of many FBA members to reclassify the customer into a high risk category when the customer is found to be or subsequently becomes a PEP, which would subject the customer to enhanced measures. According to the TBA guideline, banks shall adjust the customer risk level to higher risk category when the customer is found to be or subsequently becomes a PEP, which would subject the customer to enhanced measures. In the same manner, the TBA guideline indicates that banks should investigate the source of funds before accepting a PEP. According to the FBA many its members currently include determining customer's source of wealth or source of funds as part of their CDD policies, in particular where the customer is a PEP. Banks informed the assessors that when a loan is granted to a PEP the request is submitted for approval to executive committee of the bank.

### *Securities*

668. As mentioned earlier the OSEC Notification sets provisions for customers who are, or are associated with, a PEP), either Thai or foreign (though there is no definition of what a PEP is) are regarded as “higher-risk category and subject to enhanced KYC/CDD (see clause 14.2 and 15). Securities companies are required to monitor public and media release, maintain database and have procedures to get access to external databases aimed at determining (for the inclusion in the internal database of the company) whether a customer is a PEP. In this case, as a high risk customer, enhanced KYC/CDD process will apply. This process, spelled out in clause 15, appears to cover all the criteria set forth for R.6, for it consists of “extending the scope of information to be gathered and verified, gathering information concerning sources of funds used for transactions, obtaining approvals from or reporting to senior management, requesting face-to-face meetings with clients, ultimate beneficial owners, or ultimate controlling persons, assessing the effectiveness of clients’ KYC/CDD measures and controls in cases of omnibus accounts opened by other FIs, or conducting closer scrutiny programs on clients’ transactions”. In addition, under the provisions set forth by clause 17, which require ongoing monitoring of customers’ relations, securities firms should review names of their customers and beneficial owners and controlling persons of customers against the databases mentioned above periodically to examine whether those persons have become PEPs. (see in particular 17.2. c) The frequency in doing so is suggested by the Securities Industry Associations to be at least once a year (Section 8.3 and Clause 28 of the ASCO’s and AIMC’s Guidelines on KYC/CDD, respectively). Where securities companies find that any of those persons have become a PEP, the companies shall reclassify the relevant customer into higher-risk category, a KYC/CDD shall be re-processed and an approval from a senior management is required in order for the companies to continue business relationship with the customer (see Section 4.8 and Appendix A of the ASCO and Clause 29 of the AIMC Guidelines in KYC/CDD, respectively).

669. As for a potential customer who wishes to open an account or establish a business relationship with securities companies, according to ASCO and AIMC’ Guidelines on KYC/CDD, the companies shall check against the databases aforementioned the customer’s name as well as beneficial owners and controlling persons of the customer (see Section 5.2 and Clause 9 of the ASCO’s and AIMC’s Guidelines on KYC/CDD, respectively). If any of them are identified as PEPs, the relevant customer shall be placed in the high-risk level where the enhanced KYC/CDD must be applied.

670. The ASCO' and AIMC' Guidelines on KYC/CDD classify a PEP customer to be level 3 (high risk) where senior management's approval must be obtained before establishing a business relation (see Appendix A of the ASCO' and Clause 10 of the AIMC' Guidelines on KYC/CDD, respectively) and where securities companies must obtain information and evidence concerning the source of funds from the customer (Section 5.7.1& Appendix A, as well as Clauses 5-8, respectively)

***Domestic PEPs – Requirements (Additional Element c. 6.5):***

671. The definition of “customers requiring special attention” under the AMLO's draft Policy Statement Re: KYC/CDD of Financial Institutions and DNFBPs, which includes PEPs, does not specify whether they are domestic or foreign. It must then be concluded that the definition applies to both as well as requirements related to “customers requiring special attention”. However, as noted, this poses an inconsistency with the BOT Policy Statement which refers only to foreign PEPs. The definition of PEPs of the OSEC Notification includes both foreign and domestic PEPs.

***Domestic PEPs - Ratification of the Merida Convention (Additional Element c. 6.6):***

672. The 2003 United Nations Convention against Corruption has been signed since December 9, 2003. However, it has not yet been ratified.

***Cross Border Correspondent Accounts and Similar Relationships – introduction***

673. Although there are no specific legal provisions that provide the legal basis for cross border correspondent accounts and similar relationships, there are some provisions for cross border correspondents accounts in the case of commercial banks and in the case of securities for “cross border omnibus accounts” (specified in the OSEC Notification). These provisions, however are not enforceable (for the banking sector, they are in the case of securities), are not applicable to SFIs nor are they applicable to other FIs such as credit cooperatives. However the authorities informed the assessors that other FIs such as credit cooperatives do not have correspondent banking relationships (though it is not clear if they would be allowed to do so).

***Banks***

674. The only provision in the BOT Policy Statement containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies has a brief reference to correspondent banking in clause 2.2. Through this clause the BOT indicates that the guidelines stated in the BOT notification re: The requirement for Commercial Banks on Practices in Accepting Deposits dated 24 December 2001 should be adapted to the case of commencing any relationship or financial transaction with a customer, including, among others “any transaction through a correspondent bank”. This provision is therefore only aimed at extending the CDD requirements set forth in the case of accepting deposits also to the case of “transactions” which are done through a correspondent bank, rather than setting rules for establishing/running a correspondent banking relationship. Besides, they are not enforceable, as they are contained in a Policy Statement. Another brief reference is on the BOT guideline for on-site examination on AML/CFT compliance which states that operating procedures concerning correspondent accounts should be included in the AML/CFT policy; but no further specification/guidance is given as to how the correspondent banking relationship should be established or conducted.

675. The only guidance is contained in Guidelines issued by the banking industry associations.

***Requirement to Obtain Information on Respondent Institution (c. 7.1)***

676. Under the TBA guideline, banks shall:

- (1) gather sufficient information about their respondent banks to understand fully the nature of the respondent's business. Factors to consider include: information about the respondent bank's management, major business activities, where it is located and its money-laundering prevention and detection efforts, the purpose of the account, the identity of any third party entities that will use the correspondent banking services, and the condition of bank regulation and supervision in the respondent bank's country .
- (2) only establish correspondent relationships with foreign banks that are effectively supervised by the relevant authorities. For their part, respondent banks should have effective customer acceptance and KYC/CDD policies.
- (3) refuse to enter into or continue a correspondent banking relationship with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (i.e. shell banks).
- (4) pay particular attention when continuing relationships with respondent banks located in jurisdictions that have poor KYC/CDD standards or have been identified as being "non-cooperative" in the fight against ML .Banks should establish that their respondent banks have due diligence standards.

***Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):***

677. The TBA guideline stipulates banks to only establish correspondent relationships with foreign banks that are effectively supervised by the relevant authorities. For their part, respondent banks shall have effective customer acceptance and KYC/CDD policies. In practice, banks shall request the respondent institutions to answer the questionnaire related to AML/CFT policies and procedures.

***Approval of Establishing Correspondent Relationships (c. 7.3):***

678. There is no specific legal requirement for commercial banks to obtain senior management approval for establishing new correspondent relationships at this time. Item 11 under article 3 of BOT Guidelines for On-site Examination of AML/ CFT Compliance requires commercial banks to have policies and procedures for establishing new correspondent accounts, without further specification, as already noted. According to the authorities there are some indirect sanction mechanisms in place.

679. For FBA members, approval for establishing new correspondent banking relationships is in accordance the authority matrix for each FI. Special approval is not required.

***Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):***

680. There is no existing legal provision requiring commercial banks to document the AML/ CFT responsibilities of their correspondent banks.

***Payable-Through Accounts (c. 7.5):***

681. The assessors were unable to obtain any information about whether payable-through accounts exist in Thailand. It is clear that there are no explicit laws, regulations or OEM regulating their use for AML/CFT. Accordingly, the assessors are unable to conclude that Thailand has adequate measures in place to deal with payable through accounts.

***Securities (all criteria)***

682. Securities companies are recommended, in case a customer is a foreign financial or professional intermediary engaging in transactions on behalf of customers (cross-border omnibus account), to make enquiries to assess the effectiveness of the customer's KYC/CDD measures and controls, before obtaining approvals from the senior management to open accounts or establishing new business relationships (see

Clause 12 of the OSEC Notification). There is no requirement to document the respective AML/CFT responsibilities of each institution.

683. According to Section 6.1 and Appendix A of the ASCO's and Clause 17 of the AIMC's Guidelines on KYC/CDD, securities companies are required to comply with the specific procedures mentioned therein by making enquiries to ensure that (1) the jurisdictions or countries in which the FIs are registered have a regulatory and oversight regime in relation to KYC/CDD that are consistent with FATF Recommendations, and (2) KYC/CDD measures have been effectively implemented by the FIs, i.e. by requesting customers to fill in a self-assessment questionnaire, obtaining information in relation to disciplinary history concerning ML legislations and customer account base.

***General consideration on correspondent banking relationships.***

684. Correspondent banking relationship is a concern in Thailand. The authorities have not issued any regulation nor guidelines to instruct banks on the due diligence required before establishing correspondent banking relationships with banks located abroad. It appears from discussions held with banks that the practice in the banking industry is uneven, Bank representatives stated that the Banker's Almanac is a useful source of information when establishing a correspondent banking relationship to make sure that the applicant is not a shell bank. Some representatives also stated that they sent a questionnaire to foreign banks to ascertain the level of AML/CFT compliance before entering into business, while others acknowledged the absence of due diligence in this respect. This is a matter of concern especially with regard to relationships with FIs in a country that until recently was listed on the FATF's list of NCCTs. No policy or guidance about establishing or maintaining correspondent banking relationships that country have been issued by the authorities. One bank acknowledged having established correspondent banking relationships with FIs from that country without taking any further measures. Besides, in the absence of guidance, financial flows between the Thai bank and its correspondent bank that country have not been subject to any enhanced screening.

***Misuse of New Technology for ML/FT (c. 8.1):***

685. There is no existing legal provision applying to all FIs requiring them to take measures needed to prevent the misuse of technological developments in ML or TF. The sector specific provisions that apply are discussed below.

686. The AMLO Policy Statement simply states that "Financial Institutions should have appropriate measures in place to deal with ML and TF that might occur by the use of information technology" – without specifying what exactly the measures are.

***Banking:***

687. The BOT has issued the circular letter No. ThorPorThor.SorNorSor. (11) Wor. 378/2547 regarding Policy Guidelines on Supervision of Electronic Money Services. The commercial banks wishing to offer electronic money services must seek the BOT's permission. To grant permission, the BOT may take into consideration the possible effects and risks that may incur, as well as the ability and credibility of other parties jointly offering the service. The circulation requires commercial banks offering the service must put in place an appropriate risk management system, comply with Guideline for Security of Electronic Services and Practicing Guidelines for IT outsourcing and comply with the principles of good governance.

***Securities***

688. Under Clause 4 of the OSEC's Notification, securities companies must have in place written policies and procedures to prevent the use of securities transactions in ML and FT. The policies must be approved by the Board of Directors and the written procedures should contain all necessary details to be

practicable to employees of securities companies, and should address specific risks associated with non-face-to-face business relationships or transactions and the use of new or developing technologies in securities business.

***Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):***

689. According to the BOT Policy Statement, FIs are required to establish risk mitigating procedures and measures for opening an account of non-face-to-face customers and to effectively monitor procedures “no less than those who are personally present”. There is no further guidance with reference to the content/requirements of these risk mitigating procedures. Item 8 under article 3 of BOT Guidelines for On-site Examination of AML/ CFT Compliance basically repeats that commercial banks must have procedures and risk mitigation measures in place where agents introducers or intermediaries are used or for non-face-to-face customers.

690. Under the TBA guideline, concerning the non-face-to-face customers, banks should apply equally effective customer identification procedures and ongoing monitoring standards for non-face-to-face customers as for those available for interview and adequate measures to mitigate the higher risk. Annex 2 of TBA’s AML/CFT Policy clearly specifies the required documents for account opening.

691. As regards non-face to face trading, placing of orders by telephone, fax or internet is allowed, provided that a reliable system for verifying that the sender of the orders is the owner of the trading account or the authorized person thereof (see Clause 27 of Notification GorNor 2/2548; Appendix B), and, in the case of internet trading, the owner of the account has to provide a confidential password for entering the trading facilities (see clause 3.2 of the AFET’s Notification no. TorGorKor 7/2549 re Standard and Procedures for Trading Through Internet Facilities; Appendix E).

692. According to the FBA none of its members conducts any internet banking services at this time. Products such as ATM or telephone banking are exclusively offered to customers with accounts with the banks, hence already subject to KYC/CDD.

693. For mass products such as credit cards, FBA members conduct telephone verification on all customers to authenticate identities and related documents.

***Securities Industry:***

694. Clause 4 of the OSEC’s Notification, states that the written policies and procedures concerning risk management which securities companies need to have in place to prevent the use of securities transactions in ML and FT, should address specific risks associated with non-face-to-face business relationships or transactions and the use of new or developing technologies in securities business. There is no further guidance; some other provisions are contained in ASCO and AIMC guidelines. In order not to interrupt new market developments and technologies, according to Section 6.2 and Appendix A of the ASCO’s Guideline and Clauses 13 and 14 of the AIMC’s Guideline , though suggesting that the face-to-face meeting should be performed during account opening process, non-face-to-face transactions may be allowed (with certain exceptions). In this regard, securities companies are to adopt other measures and to justify that such measures can replace the signing of account opening documentation and sighting of identity documents in the presence of the securities companies. However, ongoing KYC/CDD under Clause 17 of the OSEC Notification must be undertaken by securities companies in the same manner as face-to-face transactions.

***Effective Implementation for all preventative measures for Securities***

695. **Securities:** The majority of AML/CFT requirements are new for the securities sector, being contained in the OSEC Notification that came into force on 16 March 2007. The SEC has been proactive

and supported the development of industry guidelines to supplement the notification. The SEC also issued a draft of the notification in advance of the notification being formally adopted in order to assist the industry prepare for the new requirements. Industry representatives indicated that many firms have adopted policies and procedures and given may be two hours of general training on AML/CFT to their staff. Those firms with international securities house relationships would appear better prepared to implement the new requirements as they have had some exposure to meeting the AML/CFT policies and procedures of their overseas partner firms when conducting cross-border transactions. Moreover, the SEC carried out in early 2007 an AML/CFT themed onsite inspection of all securities firms and fund management companies, including utilizing a self assessment questionnaire. The inspection focused on whether the firms had adopted AML/CFT policies and risk management systems, a documented KYC/CDD process, and a process for recording and filing STRs and the contents of those policies and procedures. All firms had put in place written in-house policies. However, the SEC found that 37 percent of firms had begun to establish procedures and systems to implement the policies that they have adopted – with the rest of the firms indicating that they would begin implementation once the OSEC Notification was finalized. The SEC reported that all firms were having challenges creating effective processes and systems to identify PEPs and potential terrorists due to the unclear definition and scope of the terms and the lack of any central databases or guidance. The SEC also indicated that there was a general lack of detailed and practical procedures in firms in relation to KYC/CDD and identifying STRs and that 61 percent of firms did not have proper systems to monitor transactions to identify STRs. On April 23, 2007, the SEC issued deficiency letters to 48 securities companies (including fund management companies) to identify each company’s weaknesses and to require them rectify those deficiencies within 30 days.

696. The SEC has added compliance with the OSEC Notification, with the ASCO KYC/CDD Guidelines and with the AIMC KYC/CDD Guidelines to its routine inspection checklist for the SEC risk-based inspection program.

697. However, to date, there has been no effective monitoring to ensure that securities firms have been complying with the limited CCD/KYC requirements that apply to them under the AMLA. In addition, there have been no substantive inspections focusing on whether the AML/CFT policies and procedures adopted by the securities firms are effectively implemented and no sanctions imposed as many of the AML/CFT requirements are new for the securities sector. In addition, the assessors believe that it would be premature to conclude that sanctions can be effectively applied given the legal and administrative process that must be followed to impose sanctions for breach of OSEC Notifications (see further discussion on the enforcement powers under the SEA starting below at paragraph 979. ).

#### *Effective Implementation for all preventative measures for Insurance*

698. **Insurance:** 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.

### **3.2.2 Recommendations and Comments**

699. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:



- Amend the AMLA to make all FIs that carry out financial activities in Thailand, as defined in the glossary to the FATF 40+9, subject to AML/CFT requirements under the AMLA unless their exclusion can be justified on the basis of a robust risk assessment relating to their activities.
- Amend the AMLA to fully incorporate CDD requirements and in particular:
  - Require identification and verification of clients and beneficial owners in the circumstances set forth by a), b), c) and e);
  - Lower the threshold triggering the identification requirement in the case of occasional transactions to at least below \$15,000;
  - Lower the threshold triggering identification requirement in the case of occasional transactions that are wire transfer to at least below \$1,000;
  - Require FIs to verify customer's identity using reliable, independent source documents, data or information;
  - Require FIs, in the case of customers that are legal persons, to verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;
  - Require FIs to determine whether the customer is acting on behalf of another customer; and,
  - Require FIs to conduct ongoing due diligence of the business relationship.
- Introduce enforceable requirements for FIs (other than securities) prescribing enhanced due diligence for higher risk categories of customer, business relationship or transaction.
- Introduce an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship.
- Conduct a ML/FT risk assessment for the categories of transactions exempted from the requirements set forth in the AMLA.
- Introduce for FIs other than securities enforceable requirements in relation to the timing of verification.
- Introduce enforceable obligations for FIs who cannot complete CDD requirements to not open accounts, commence business relations or perform transactions.
- Introduce enforceable obligations for FIs (other than the securities sector) requiring them to undertake enhanced due diligence for PEPs.
- Redraft existing guidelines and policy statements concerning PEPs to use common terminology.
- Introduce enforceable obligations for FIs (other than the securities sector) requiring them to put policies and procedures in place to addresses risks from new technologies or doing business with non-face to face business.

### 3.2.3 Compliance with Recommendations 5 to 8

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.5 | NC     | <ul style="list-style-type: none"> <li>• There are a large number of FIs that carry out financial activities in Thailand as defined in the glossary to the FATF 40+9 that are not subject to AML/CFT requirements under the AMLA (The Small Business Credit Guarantee Corporation, Agricultural Cooperatives, Personal Loan Business Companies, Pawnshops, Hire Purchase Companies, Authorized Money Transfer Agents, The Postal Office, Credit Card Companies, Companies Authorized to issue travelers cheques, E-Money companies, Agriculture Futures Brokers and Derivatives Business Operators).</li> <li>• Although in practice some FIs, particularly in the banking sector, have been implementing measures and guidelines issued by the regulators and industry, there are only limited CDD requirements under the AMLA which means that there are no effective requirements in place for FIs covered by the AMLA whose financial supervisor has not issued regulations or other enforceable means (e.g. life insurance companies).</li> <li>• The assessors were not satisfied that comprehensive measures have been put</li> </ul> |

|  |  |   |
|--|--|---|
|  |  | <p>in place to prohibit the use of anonymous accounts for accounts opened prior to 2001 and in relation to deposit taking entities not subject to the BOT notification relating to the acceptance of deposits.</p> <ul style="list-style-type: none"> <li>• There are no requirements in law or regulation relating to undertaking CDD when: <ul style="list-style-type: none"> <li>• establishing business relations with the exception of the banking and securities sectors;</li> <li>• carrying out occasional transactions above \$15,000 or that are wire transfers under SR VII; and,</li> <li>• where the FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> </li> <li>• The threshold for occasional transactions is in excess of the amount established in the standard</li> <li>• The only requirements in law or regulation requiring FIs to identify customers (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information relate to: <ul style="list-style-type: none"> <li>• Transactions reportable to the AMLO;</li> <li>• The opening of deposit accounts by banks (but not by SFIs); and,</li> <li>• The securities sector (excluding agricultural futures brokers).</li> </ul> </li> <li>• The existing obligations requiring FIs, in relation to legal persons and legal arrangements, to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person cover only some elements of the Recommendation and do not apply to all FIs.</li> <li>• The requirements in law or regulation requiring FIs to identify beneficial owners apply only to parts of the securities industry.</li> <li>• There is no general requirement in law or regulation requiring FIs to conduct ongoing due diligence of the business relationship.</li> <li>• 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.</li> <li>• 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.</li> <li>• The exemptions for certain transactions from the requirements of the AMLA do not appear to be based on a assessment of the risks of ML or TF.</li> <li>• 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.</li> <li>• Some banks are conducting reduced CDD measures on a risk sensitive basis even though this is not authorized and for which no guidance has been issued.</li> <li>• There are no obligations imposed on FIs who cannot complete CDD requirements to not open accounts, commence business relations or perform transactions or consider making a suspicious transaction reports except in limited circumstances securities companies.</li> <li>• The fragmented nature of the laws, regulations and notifications poses an obstacle to the effective implementation of the regulated sector by making it</li> </ul> |
|--|--|---|

|            |           |   |
|------------|-----------|---|
|            |           | <p>challenging for the FIs to know with certainty what their obligations are</p> <ul style="list-style-type: none"> <li>The assessors were not satisfied that all the measures that are in place are effectively implemented because many have only recently been introduced, the FIs are still in the process of implementing them and there is a lack of guidance issued by the authorities.</li> </ul> |
| <b>R.6</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>The only requirements that apply are in the securities sector (excluding agricultural futures brokers).</li> </ul>   |
| <b>R.7</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>In the absence of any enforceable correspondent obligations for the banking sector it is a concern that banks have operated correspondent relationships with jurisdictions considered to be at risk of ML without any guidance from the authorities.</li> </ul>  |
| <b>R.8</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>There is no general enforceable requirement applying to all FIs that addresses risks from new technologies or doing business with non-face to face business relationships.</li> <li>The securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented.</li> </ul>                           |

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

##### *Legal Framework:*

700. There is no general regulatory framework applicable for the whole FI sector to allow FIs to rely on intermediaries to perform some elements of the CDD process. The AMLO Policy Statement on Compliance with the Know your Customer and CDD for Financial Institutions and DNFBPs contains a recommendation for FIs to “have intermediaries or other third parties conduct due diligence as if it is conducted by the institution itself”. The recommendation appears to go beyond the international standard as, for it generically refers to due diligence, raises the issue of its applicability also to other circumstances which can be qualified as due diligence, but for which no reliance on third parties is permitted. Besides, as mentioned elsewhere in this report, it is not an enforceable obligation.

##### *Banks*

701. For the banking sector there is a brief provision in the BOT guideline for on-site examination on AML/CFT compliance, which states that banks should develop operating procedures and risk mitigation measures in light of transactions with introducers or intermediaries or non-face-to-face customers, but there are no enforceable provisions to detail the requirements set forth by the international standard. Some additional guidelines is contained has been issued by the TBA.

##### *Securities*

702. Securities companies may appoint with the prior approval of the Office of the SEC any person to be an agent or a broker (Section 100 of SEA); in this case SEC claims that KYC/CDD may delegated or outsourced to the third party through a license being granted by the SEC. It is unclear, however, if the security company is still held legally responsible for all the KYC/CDD process taken by the such parties, though SEC would claim that it would. For asset management companies section 3.3.6 of the OSEC Notification No. OrKhor./Nor. 5/2549 provides that they are held responsible for any roles delegated or outsourced. For securities and futures brokers and dealers, there are no explicit requirements, however, the SEC has told the industry that it will hold the “outsourcer” or the “relying party” liable based on the general obligations contained in the OSEC Notification and the SEC’s expectation that the industry should comply with the ASCO and AIMC Guidelines on KYC/CDD which make some references to the

principle that the relying party is responsible for the CDD that is performed. Moreover, R.9 does not apply to pure agency or outsourcing relationships nor to situations where FIs rely on other FIs to conduct aspects of CDD. Accordingly, given that the focus of section 100 is on agency relationships and that the SEC and the industry also focus on outsourcing there may not be many actual situations where introducers as contemplated by FATF operate in the securities sector.

703. Enforceable provisions addressing the obligations set forth in R.9 exist only with reference to the securities sector, but there is no clear indication in those provisions that the ultimate responsibility for customer identification and verification remains with the FI relying on the third party. However, that principle is set out in the unenforceable industry guidelines issued by ASCO and AIMC.

### *Assessment of Effectiveness*

704. Discussions with the securities sector indicated that introducers were not used even though the OSEC Notification permitted their use. The nearest practice was to accept clients from foreign securities firms via cross border omnibus account relationships. Coupled with doubts about whether the arrangements contemplated by the SEC's authorization under section 100 of the SEA focus more on agents and outsourcing than on third party introducers the extent to which the requirements in the securities sector fall short of the requirements in R.9 are considered to be a minor short-coming.

### **3.3.2 Recommendations and Comments**

705. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the regulatory framework for FIs to clarify whether the use of third party introducers is permitted or prohibited.
- Issue enforceable obligations consistent with R.9 for circumstances where the use of third party introducers is permitted.
- Have the SEC amend the OSEC Notification so that it imposes an obligation to immediately obtain information from the third party so that it clearly establishes that the ultimate responsibility for CDD remains with the FI relying on the third party.

### **3.3.3 Compliance with Recommendation 9**

|            | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|------------|---------------|--|
| <b>R.9</b> | <b>NC</b>     | The only requirements regulating the use of third party introducers apply in the securities sector (excluding agricultural futures brokers). |

## **3.4 Financial institution secrecy or confidentiality (R.4)**

### **3.4.1 Description and Analysis**

#### **Recommendation 4**

#### *Inhibition of Implementation of FATF Recommendations (c. 4.1):*

706. The CBA contains a provision that appears initially to limit access to information with reference to the power of the Minister of Finance to appoint inspectors of commercial banks for the purpose of examining and reporting on the affairs and assets of commercial banks or to delegate the BOT to appoint its officers for this purpose (Section 24). According to this provision, there is a prohibition for the

Minister to appoint or delegate the BOT to appoint inspectors “for the specific purpose of examining the affairs of a private individual or their property which may be found or held in any commercial bank,” except when there are reasonable grounds for suspecting accounting irregularities or fraud in the commercial bank, or that the commercial bank has granted credit or invested funds which are not in accord with the BOT’s prudential guidance, or has carried out connected lending or investments. The authorities explained that this provision is only aimed at impeding inspections whose only purpose is the control of an individual account and that it does not impede the BOT inspectors to access individual accounts in the course of a general inspection of a commercial bank. The BOT also claimed to have full authority to have access to individual account in the course of an inspection under Section 35.2 of the CBA. This provision sets forth the power to “enter into business premises of a commercial bank or into places which are used for collecting or analyzing the data of the commercial bank either by employing the use of computers or other instruments in order to examine the affairs, assets and liabilities of the commercial bank, including document, evidences or information *relating* to a commercial bank.”

707. According to the authorities AMLA overrides any customer confidentiality agreement that commercial banks may have with the customer on a contractual basis.

708. Section 38 of the AMLA empowers a member of the TC, the S-G and the competent official entrusted in writing by the S-G, for the purpose of performing duties under the AMLA, to address a written inquiry towards or summon a FI (and other entities) to furnish written explanations or any account, document or evidence for examination or consideration. The BOT reported to have often been designated as a “competent official” under this section for assisting in investigation involving predicate offense relating to embezzlement or cheating and fraud involving assets or acts of dishonesty or deception as described in the law governing commercial banks, 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 FI.

709. While the power set forth in section 38 can be only exercised by the TC, the S-G and the competent officials so designated by the AMLB, section 46 of the AMLA provides additional powers for the designated competent official. In the case where there is a reasonable ground to believe that any account of a FI's customer, communication device or equipment or computer is used or probably used in the commission of an offence of ML, the competent official designated by and acting on behalf of the AMLB 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.

710. The assessors could not find any other provisions that contained restrictions on the ability of competent authorities to share information either domestically or internationally or which restricted the ability of FIs to share information nowhere this is required under Recommendations 7, 9 or SR VII.

#### *Assessment of Effectiveness*

711. Discussions with the authorities and representatives of FIs indicated that the authorities in practice had appropriate access to information in FIs. No adverse comments were received from other countries indicating that they had experienced difficulty obtaining information from Thailand on the basis of secrecy considerations.

#### **3.4.2 Recommendations and Comments**

712. This recommendation is fully met.

### 3.4.3 Compliance with Recommendation 4

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.4 | C      | <ul style="list-style-type: none"> <li>The Recommendation is fully met.</li> </ul> |

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### *Rec. 10 & SR VII (all criteria)*

713. According to the FATF Recommendations the record-keeping requirements referred to in R.10 must be contained in law or regulation.

714. Thailand has taken some substantive action to comply with R.10 and complies with some parts of all the essential criteria. However, further improvement is needed. In the AMLA records of **all** transactions are not required to be kept; Section 22 of AMLA requires FIs to maintain all customer identification records for the transactions subject to reporting to the AMLO, for a period of 5 years from the date the account was closed or the termination of relation with the customer or from the date that such transaction occurred, whichever is the longer, unless otherwise notified in writing by the competent officer. According to the authorities records of other transactions are required to be maintained for 10 years after the transaction date under Section 193/30 of the CCC; however this provision sets the “prescription” (statute of limitation) time in 10 years for cases in which the law does not provide for otherwise and it is unclear how it can be invoked as setting record keeping requirements. There is no legal provision applying to the financial sector requiring that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity nor any requirement that FIs ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.

715. There are some other sector specific provisions which refer to record keeping requirements.

716. The AMLO’s Policy Statement suggests that FIs should maintain, for at least five years, all necessary records on transactions sufficiently to permit retrieval of individual transactions, as from the date the account was closed or the business relationship was ended. It also recommends FIs to maintain, for at least five years, customer identification documents, from the date the account was closed or the business relationship was ended. The documents must be made available and submitted, upon request, to the competent officials.

717. As previously indicated, the Policy Statement cannot be considered enforceable; however it has to be noted that when requiring FIs to maintain records on transactions for five years as from the date the account was closed or the business relationship was ended it goes beyond the standard, which in the case of transaction records sets forth the record keeping obligation for five years following the completion of the transaction.

#### ***Banks***

718. The BOT Notification on Accepting Deposits requires banks to maintain only the documents obtained through the identification process, for at least 5 years from the closing date of the deposit accounts “for examining or to support an investigation or prosecution by the BOT or other legally authorized persons.” There is no reference to account files and business correspondence; moreover there is no provisions concerning records of transactions.

719. A reference to records of transaction is indicated in the BOT Policy Statement, issued on 19 January 2007 containing guidelines for commercial banks, finance companies, credit foncier companies and asset management companies. Section 2.3 indicates that FIs should keep records of transactions for at least five years from the transaction date “for examining or to support an investigation or prosecution by the BOT or other legally authorized persons.” However, as previously noted, the Policy statement cannot be considered enforceable.

### ***Securities***

720. For the securities industry, there are some provisions which can be considered as “regulation” only with reference to Security Brokerage and Securities Trading which is not debt (SEC Notification Nos. Kor Thor. 42/2543, clause 9 of the SEC Notification No. Kor Thor. 42/2543, , requires that records on securities trading transactions must be maintained for at least 5 years after the transactions occur. Clause 16 of the same Notification requires firms to keep for 5 years from the account closing date the documents collected under the CDD process), and for Derivative Instruments (SEC Notification Kor Thor. 65/2547 with reference to derivatives trading only, but also “in accordance with the rules specified in the Notification of the SEC office”).

721. There are other record-keeping requirements applying to the securities sector but, while enforceable, they are not contained within instruments that the assessors consider as laws or regulations under the FATF Recommendations. The OSEC Notification prescribes, under clause 22, that securities companies must maintain and record all “information and opinions” under the KYC/CDD process as well as those in relation with suspicious transactions for at least 5 years from the day the account is closed or the business relationship with the client is terminated and these records must be available to the office of the SEC as soon as practicable, upon request. However, this Notification does not explicitly cover account files or business correspondence (although the authorities believe that they would be captured by the term “all records related to transactions”), nor records of transactions that are not suspicious (these are covered by the two Notifications mentioned in the previous paragraph). In addition the requirement for record keeping in the case of suspicious transactions goes beyond the standard, as the 5 years for transaction records are calculated from the time the account is closed, not from the moment following the completion of the transaction. Notification No. SorKhor./Nor. 4/2549 of the Office of the SEC provides that asset management companies must keep records of every transaction for no less than 5 years from the date the relationship with the customer has come to an end and customer identification data for not less than five years from the date the relationship with the customer ends. Guidance on what information and data must be kept by asset management companies is set out in SEC Notification No. Or.Khor./Nor. 5/2549.

### ***Insurance***

722. Section 41 of Life Insurance Act and Section 45 of Non-life Insurance Act, the registers and account books shall be kept by the insurance company at its office for not less than 10 years from the date of the last entry in such book.

### ***SR VII- Description***

723. The retail inter-bank payment and settlement system consists of systems such as System for Management Automated Retail Funds Transfer (SMART) and Online Retail Funds Transfer system (ORFT). SMART System is an off-line retail funds transfer system for transactions occurring on a recurring basis operated by the BOT which allows funds to be transferred to any branch of all banks throughout Thailand. The system provides inter-bank clearing for small-valued transfers, including payroll and dividend transfers on the credit side and payments of household utility bills on the debit side. To promote the use of retail electronic funds transfer, the BOT has encouraged the TBA to develop an ORFT system. The ORFT enables bank customers to make inter-bank retail funds transfer on-line through an inter-bank ATM network. Both systems are mainly developed for low value transactions and for

customers' direct usages. The assessors were informed that the authorities are in the process of shifting the management of SMART to the private sector.

724. The wholesale inter-bank payment and settlement system is a high value fund transfer system. The BOT Automated High-Value Transfer Network (BAHTNET) system developed and managed by the BOT works as a financial infrastructure for electronic funds transfer among FIs. BAHTNET came into operation on 24th May, 1995 on an on-line and real time gross settlement (RTGS) basis. It is designed to be an inter-bank funds transfer system for credit transfers between commercial banks, other FIs and other organizations whose accounts are held at BOT.

725. It also serves own account transfers for its members, as well as third party transfers for their customers. In 2006, there were 65 members in BAHTNET comprising of 61 direct members and 4 associate members (34 commercial banks, 14 finance companies and securities companies, 6 specialized financial institutions, 8 BOT internal departments, 2 government agencies and the TSD, which operates the securities settlement system). The estimated volume of activity through BAHTNET in 2006 was 1.7 million transactions totaling 143,302 billion baht (\$3,783 billion). Nearly fifty percent of this value was from the third party funds transfer and about forty-four percent was from the inter-bank funds transfer. The BOT does not set any threshold for transactions in BAHTNET system.

726. FIs also provide electronic financial services to customers. These include making fund transfer, cash deposit to and withdrawal from different branches, and via ATM, and a number of plastic card services, including credit and debit cards services, as well as, internet banking service. Eleven commercial banks provide domestic inter-bank funds transfer via the ATM network allowing any individual to transfer up to 100,000 baht (\$2,640) per transaction from any bank counter to any account of these commercial banks.

### ***Legal Framework:***

#### ***SR VII***

727. AMLA requires ordering and beneficiary FIs to report any wire transfer, domestic or cross border, with a value equal to or above 2 million baht (\$52,800) for cash transactions and 5 million baht (\$132,000) for non-cash transactions. Cross-border wire transfers are additionally subject to the regulations of the Exchange Control Officer which require FIs to arrange for the customer to complete a foreign exchange form for any transaction equal to or above \$20,000. Both the AMLA report and the foreign exchange report require full originator information since they are required to arrange for the customers (i.e. originators) to identify themselves under Sections 13, 20 and 21 of AMLA, Clause 1 (1) of Ministerial Regulation No. 2 and Clause 1 of Ministerial Regulation No. 6. The Notification of the Office of the Prime Minister Re: Identification of Customers of Financial Institutions dated September 11, 2000 further specifies that name, ID number, address, occupation and proof of identity are required for a natural person. For a legal person, information required includes name, tax identification number, address and proof of corporate registration issued within 1 month before the transaction. These are waived only upon the customer having already provided the necessary information and document prior to the transaction.

728. The BOT Regulation on BAHTNET Services B.E. 2549 (2006) requires financial institutions to obtain from the customer making BAHTNET transfers the following details:

- name and/or account number of an originator,
- name and/or account number of the intermediary institution (if any),
- name and/or account number of the funds receiving institution,



- account number of the beneficiary,
- name of the beneficiary,
- the amount that the originator wishes to transfer to the beneficiary, and
- the date that the funds should be credited to the beneficiary's account, as specified by the originator.

729. However, there is no other existing law requiring FIs to include the full originator information on the wire transfer message other than the name of the originator. In addition, information on the originator's account number and address is not mandatory fields for either the international transfer system, SWIFT, or the BAHTNET system.

730. Cross-border wire transfers involving foreign currencies are subject to foreign exchange control regulations. Clause 44 of the Notification of the Exchange Control Officer dated March 31, 2004 stipulates that the person conducting any transaction of value equal to or above \$20,000 or its equivalent is required to complete a "Foreign Exchange Transaction Form" stipulated by the Competent Officer under Clause 1.3 of the BOT Circular No.: ThorPorTor. SorGorNgor. (03) Wor. 700/2547 Re: Notifications of the Ministry of Finance and the Foreign Exchange Control Office dated March 31, 2004. The form requires the full originator information (originator's name, account number, address, identification number and nationality) as well as purpose of the transaction. Financial institutions are required to complete a simplified form for foreign currency transfers less than \$20,000 or the equivalent thereof under the same article of the said Notification of the Exchange Control Officer.

***Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):***

731. As specified above, full originator information is only obtained for wire transfers equal to or above the threshold of 5 million baht (\$132,000) where cash is not involved or 2 million baht (\$52,800) if cash is involved.

732. These thresholds exceed the \$1,000 threshold in the FATF Recommendations and, in any event, are too high, especially when compared to average incomes. The assessors do not agree with some bank representatives who think that these thresholds are appropriate for a cash-based economy. It is clear that thresholds in other jurisdictions do not restrict or hinder domestic or international trades. The thresholds do not adequately protect Thailand from the TF threat that the country is facing.

***Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):***

733. Full originator information as well as purpose of the transaction is obtained for cross-border wire transfers involving foreign currencies for any transaction of value equal to or above \$20,000 as specified above. FIs are also required to complete a simplified form for foreign currency transfers of less than \$20,000 (or equivalent). However, there is no obligation that such information be transmitted in the wire transfer as required in SR.VII.

734. Additionally, clause 11 of the Notice of the Competent Officer on Rules and Practices regarding the Undertaking of Authorized Money Transfer Agents dated August 6, 2004 (the Competent Officer Notice) requires Money Transfer Agents to obtain full originator information and include such information in their transaction records. However, FIs are only required to include the name of the originator in the wire transfer message. Some FBA members, however, have implemented the requirement for full originator information by setting originator's account number and address as mandatory fields in their message systems.

***Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):***

735. According to the authorities, BOT Regulation on BAHTNET Services B.E. 2549 (2006) requires originators to fill in their name and/or account number, which will permit the authorities to trace back to the originator, as well as beneficiary's name and account number in the payment instruction.

736. In addition, the full information can be provided by the ordering FIs to the beneficiary FIs or appropriate authorities upon request since the ordering FIs must keep transaction records for 10 years according to the CCC which complies with the FATF's Revised Interpretative Note to SR.VII.

737. However, according to the assessors' recommendation, the BOT will consider the possibility to enable the ID of originator, which is currently an optional field, as mandatory field on BAHTNET.

***Processing of Non-Routine Transactions (c.VII.4):***

738. As a general rule, all FIs are required to keep records relating to sections 20 and 21 under AMLA for 5 years and any other transaction records for 10 years under the CCC.

***Maintenance of Originator Information (c. VII.4) :***

739. See comments under criteria VII.3 above

***Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):***

740. There are no applicable requirements imposed in Thailand

***Monitoring of Implementation of SR VII (c. VII.6):***

741. The BOT monitors compliance of BAHTNET members with the system's rules and regulations that support SR.VII. The BOT has the power to terminate the service for any user which is unable to comply with the BOT regulations (section 85). As for authorized money transfer agents, the Competent Officer is empowered to demand submission of books, accounts and documents relating to foreign transactions as set forth in Section 7 of the Exchange Control Act B.E. 2485 (the ECA). The Competent Officer has, therefore, the power to monitor the operations of such persons and ensure their compliance through both off-and on-site site examination.

***Sanctions (applying c. 17.1-17.4 in R.17, c. VII.7):***

742. The BOT oversees the payment system as empowered by the provisions of the BOT Act 1942, the Royal Decree Regulating the Affairs of the BOT 1942, the Currency Act 1958, and certain related rules and regulations. Regarding to the BOT regulation on BAHNET services B.E. 2549, the BOT does have the power to terminate the service for any user who does not fill-in all required information.

***Assessment of Effectiveness***

743. Discussions with the authorities and with some FIs indicated that FIs generally keep records for the minimum periods established in the FATF Recommendations. However, the records may not cover all of the information that is required to be retained under R.10.

744. The BAHTNET operating system enforces the basic requirement for the name of originators to be transmitted with domestic wires. There are no other effective procedures for ensuring compliance with the limited requirements that apply.

### 3.5.2 Recommendations and Comments

745. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the AMLA to require all FIs to keep transaction records and identification data beyond the case of transactions subject to mandatory reporting consistent with the requirements of R.10; and,
- Introduce a law, regulation or other enforceable means to regulate wire transfers in accordance with the requirements of SR.VII.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

|               | Rating    | Summary of factors underlying rating  |
|---------------|-----------|---|
| <b>R.10</b>   | <b>PC</b> | <ul style="list-style-type: none"> <li>• Other than some securities firms FIs are not required by law or regulation to keep transaction records or identification data except in relation to transactions that have been reported to the AMLO under the AMLA.</li> <li>• The identification data retention requirements in law or regulation that apply only to banks do not extend to business correspondence and account files.</li> <li>• There are no other identification data retention requirements in law or regulation for other FIs.</li> </ul>   |
| <b>SR.VII</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• There is no existing law, regulation or other enforceable means regulating wire transfers other than operational rules for the BAHTNET system which do not comprehensively address the requirements of SR. VII.</li> <li>• Customer identification information is only obtained for wires that are cash transactions in excess of 2 million baht (\$52,800) and non-cash transactions exceeding 5 million baht (\$132,000).</li> <li>• Full originator information is not required to be transmitted with wires.</li> <li>• No obligation placed on receiving institutions to adopt risk-based procedures for handling wire transfers lacking originator information.</li> </ul> |

### Unusual and Suspicious Transactions

#### 3.6 Monitoring of transactions and relationships (R.11 & 21)

##### 3.6.1 Description and Analysis

###### *Rec. 11*

746. The existence of a requirement for FIs to pay special attention to transactions as described by R.11 can be inferred by Section 3 of the AMLA which defines a suspicious transactions – as such subject to reporting under Section 13 – not only as a transaction “connected or possibly connected with the commission of a predicate offence”, but also as a “transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act”.

747. However, there is no specific requirement applying to FIs to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing nor a specific requirement, even though this could be inferred (at least for the transactions which have been reported to the AMLO) by the requirement of section 13 of AMLA for the FIs to report to the AMLO any fact which might have appeared subsequent to the reporting. Nor is there a clear requirement to keep such findings available to competent authorities and auditors for at least 5 years. It has to be noted, however, that

section 22 of the AMLA requires FIs to retain for 5 years (from the day the account is closed or the relation with the customer is terminated) the records of statements which customers are obliged to do with reference to facts related to transactions subject to recording (section 22). These, however, cannot be considered as ‘findings’ of the FIs with reference to the suspicious transactions.

748. Accordingly, given that the AMLA applies to the FIs that conduct most of the financial activity some substantive action has been taken to comply with R.11. However, there are short comings that need to be addressed.

749. The AMLO Policy Statement suggests that FIs pay special attention to unusually large or suspicious transactions which have no apparent economic or visible lawful purpose and states that the background and purpose of such transactions should, as far as possible, be examined and that written record must be made available to competent authorities or auditors.

### ***Securities***

750. Clause 19 of the OSEC Notification requires that securities companies establish internal guidelines relating to the characteristics and nature of transactions which can be considered as suspicious; effective monitoring systems to promptly identify or detect STRs and proper procedures to consider and file STRs. Clause 20 indicates some examples of transactions occurring which the security company should consider reporting to the AMLO, including the case of a transaction of significant amount which is apparently inconsistent with client’s profile or for which no justification as to the source of funds is given.

### ***Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1) and Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):***

751. There is no general enforceable requirement for the FIs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.

752. At present, there is no measure by the authorities in place to ensure that FIs are advised of concerns about weaknesses in the AML/ CFT system of other countries.

753. Likewise, there is no requirement with specific reference to transactions with countries not sufficiently applying FATF recommendations for FIs to examine their background and purpose of these transactions when they do not have apparent economic or visible purpose, other than the requirements described above under R.11.

### ***Banks***

754. For banks, the BOT guideline for on-site examination on AML/CFT compliance requires banks to have specific operating procedures for non-residents and for FIs located in countries whose AML/CFT policy is of lower standard; however, no further guidance has been provided by the BOT or by the AMLO to advise banks of concerns about weaknesses in the AML/CFT systems of other countries.

755. Some FBA members have internal list of such countries issued by their head office. The internal policies also instruct measures to be taken by the branches or subsidiaries. In addition, US transactions required to be settled in the United States must comply with OFAC regulations.

756. The TBA guideline states that banks should pay particular attention when continuing relationships with respondent banks located in jurisdictions that have poor KYC/CDD standards or have

been identified as being “non-cooperative” in the fight against ML. In such cases, the guideline enlisted the high-risk jurisdictions and countries in corresponding to TI Index, OFAC, and NCCT.

757. The implementation of criteria 21.1 in the banking industry is a major concern. Although the TBA has given guidance to its members to deal with person from countries which do not or insufficiently apply FATF recommendations, some banks claimed that they did not pay special attention to business relationships with countries identified in this category, especially with a country that until recently was listed on the FATF list of NCCTs. Banks who claimed of having established relationships with that country told the assessors that they sent a questionnaire to their counterparts to collect information on their internal AML/CFT regime. However, apart from this basic measure, they have not taken any further action for more than two years, notably in terms of on going surveillance of transactions carried out between Thailand and the other country.

### *Securities*

758. The OSEC Notification requires securities companies to monitor jurisdictions or countries that do not or insufficiently apply FATF Recommendations, or are listed as NCCTs (Clause 14 (3)). In the case in which a client (or the beneficial owner or the controlling person) is linked to one of these jurisdictions (because of nationality, business or residential address, sources of funds) is considered a higher-risk customer and the security company has to undertake enhanced KYC/CDD (Clause 15 (1)). In this regard, the securities companies should follow the Guidelines on KYC/CDD issued by ASCO or AIMC.

759. In the case of transactions with countries which do not sufficiently apply FATF recommendations, while securities companies are required to carry out enhanced CDD (see requirements described above in paragraph 750. , under R.11, there is no explicit requirement to record findings in writing when these transactions do not have apparent economic or visible purpose.

### *Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):*

760. At present, Thailand does not have a mechanism to impose any counter-measures on transactions or relationships with countries that apply insufficient AML/CFT measures. Some FBA members’ internal policies include enhanced monitoring and reporting, limiting or ceasing transactions, and terminating relationships.

### *Assessment of Effectiveness*

761. The FIU receives a lot of STRs and, at least for those, it can be deduced that the requirements of R.11 are largely being followed as indications from regulators and the AMLO was that the major institutions supervised by the BOT and the SEC were adhering to the requirements of the AMLA for reporting suspicious transactions. It is too early to know whether entities in the securities sector are effectively implementing the new requirements in the OSEC Notification. There was no information available to indicate the extent to which the limited requirements applying under R.21 were being complied with.

## **3.6.2 Recommendations and Comments**

762. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Introduce an obligation for FIs to set forth their findings in writing with reference to unusual, complex transactions and retain those findings.

- Extend to the FIs that are not subject to the AMLA, the obligation to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
- Introduce an enforceable obligation requiring FIs to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.
- Introduce a mechanism to be able to apply counter-measures against countries that do not apply or insufficiently apply the FATF Recommendations.

### 3.6.3 Compliance with Recommendations 11 & 21

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.11 | PC     | <ul style="list-style-type: none"> <li>• The obligation in the AMLA for FIs to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose does not extend to the FIs that are not subject to the AMLA.</li> <li>• Other than when making STRs, there is no requirement in the AMLA that FIs should set forth their findings in writing nor retain those findings.</li> </ul>  |
| R.21 | NC     | <ul style="list-style-type: none"> <li>• The only requirement that FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is in the securities sector (excluding agricultural futures brokers) and these do not require that findings be recorded in writing.</li> <li>• Thailand does not have a mechanism to apply counter-measures against countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul> |

## 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1 Description and Analysis

#### Recommendation 13

##### *Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):*

763. Under the AMLA (Section 13.3), FIs are required to report to the AMLO a) cash transactions over two million baht (\$52,800); b) transactions connected with property worth more than five million baht (\$132,000), and c) suspicious transactions, regardless of the amount of the transaction.

764. A suspicious transaction is defined by Section 3 of the AMLA as “a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offence, irrespective of whether such transaction is made once or more than once.” Accordingly, FIs are required to report a mix of “unusual” transactions and transactions suspected of being connected to predicate offenses.

765. As mentioned under the analysis of R.1, the predicate offenses to ML are restricted to the eight categories mentioned in Section 3 of the AMLA under the definition of the predicate offense. As a result, the obligation to report suspicious transactions is limited to transactions that are related to those predicate offenses, which do not fully cover the designated category of offenses under the FATF Recommendations.

766. In addition, the persons who are required to report suspicious transactions are limited to the FIs as defined in the AMLA and these do not cover all of the categories of persons required to report suspicious transactions under the FATF 40 Recommendations.

767. The reporting requirements exempt transactions relating to those set out in Ministerial Regulation 5 of 2000 which leaves a gap in the reporting regime of the AML/CFT framework of Thailand, as it would appear that no assessment has been undertaken of the ML risk (especially in the case of transactions to which the Government state agencies or enterprises are parties). The exempted transactions include:

- Transactions to which H.M. the King and H.M. the Queen and certain members of the Royal family are parties;
- Transactions to which the government, state agencies and state enterprises are parties;
- Transactions to which the 3 foundations under the patronage of H.M. the King and H.M. the Queen namely Chaipattana Foundation, H.M. the Queen's Silapacheep Foundation and Sai Jai Thai Foundation are parties;
- Those, with the exception of wire transfers, made by FIs where transactions involve movable property such as ships, vehicles and machinery;
- General (non-life) insurance policies; and
- Transactions involving transferring of rights over assets to become public property or by possession in accordance with Section 1382 or Section 1401 of the CCC (with reference to acquisition of servitudes or property rights by statute of limitation).

***STRs Related to Terrorism and its Financing (c. 13.2):***

768. Under the AMLA one of the 8 predicate offenses of ML is terrorism or FT, therefore the reporting obligation covers also suspicious transactions that are related to terrorism or FT.

***No Reporting Threshold for STRs (c. 13.3):***

769. It has been mentioned that the obligation to report suspicious transactions is regardless of the thresholds mentioned by section 13.1 and 13.2. of the AMLA, described above. However, reporting of attempted transactions that are suspicious is not covered.

***Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):***

770. Reporting entities are required to report transactions that fall within the definition of a suspicious transaction under section 3 of the AMLA even where they consider them to involve tax matters. Given that tax evasion is not a predicate offense for ML, this means that such transactions are likely to be considered as suspicious because they are complicated, lack economic feasibility, or are believed to have been made to avoid the applicability of the AMLA.

***Assessment of Effectiveness:***

771. The overall statistics concerning STR reporting from the financial sectors is as follows:

**Table 27. Transaction Reports Received  
October 27, 2000 to December 31, 2006**

| Year  | Cash Transaction | Transaction Involving Assets | Suspicious Transaction | Total Transaction Reports | STR as % of Total |
|-------|------------------|------------------------------|------------------------|---------------------------|-------------------|
| 2000  | 23,574           | 62,813                       | 290                    | 86,677                    | 0.3%              |
| 2001  | 214,852          | 297,934                      | 16,489                 | 529,275                   | 3.1%              |
| 2002  | 224,223          | 297,777                      | 46,221                 | 568,221                   | 8.1%              |
| 2003  | 255,799          | 352,772                      | 32,338                 | 640,909                   | 5.0%              |
| 2004  | 282,905          | 344,504                      | 38,935                 | 666,344                   | 5.8%              |
| 2005  | 371,723          | 347,400                      | 39,175                 | 758,298                   | 5.2%              |
| 2006  | 539,699          | 487,356                      | 39,395                 | 1,066,450                 | 3.7%              |
| Total | 1,912,775        | 2,190,556                    | 212,843                | 4,316,174                 | 4.9%              |

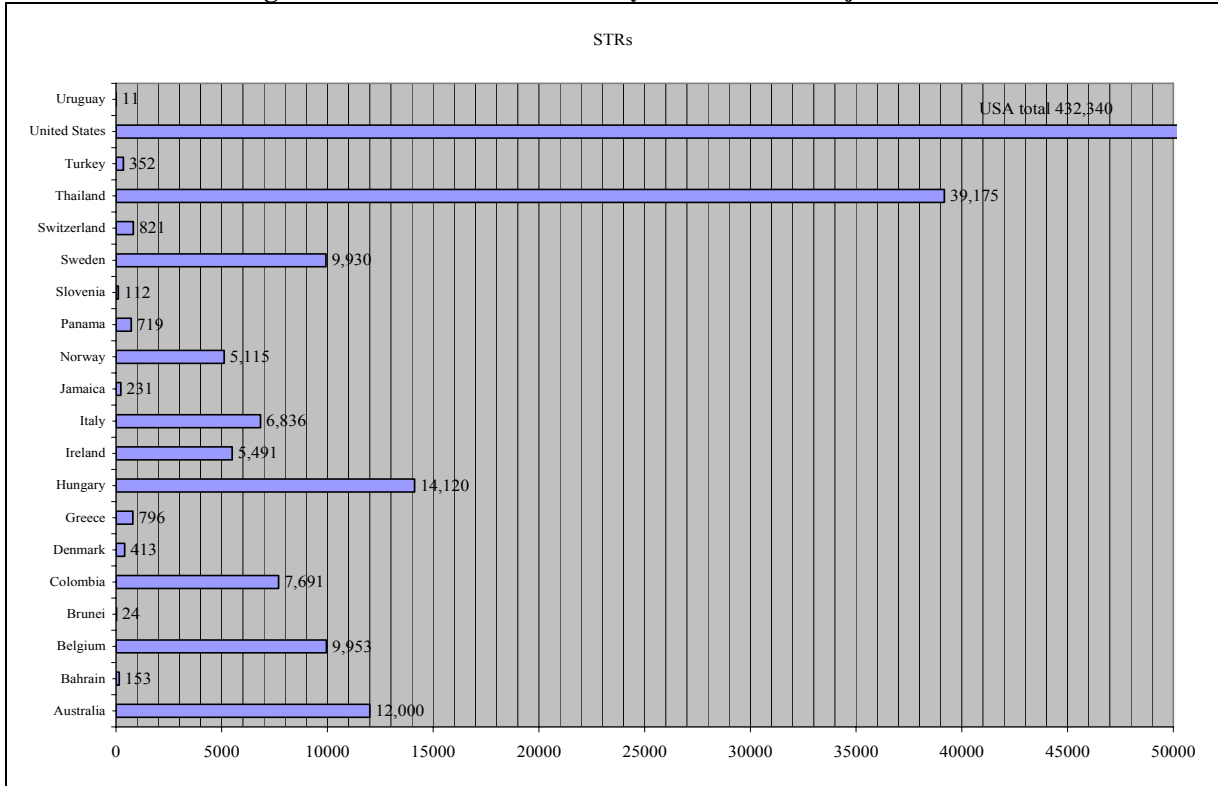
772. FIs have been reporting approximately 39,000 STRs each year since 2004. By contrast, the number of cash transaction and asset transaction reports have increased steadily over that period. The STRs make up around 5 percent of the total reports received. As discussed in section 2 of this report, the AMLO may not have sufficient dedicated staff or adequate systems to be able to data-mine this volume of information effectively.

773. STRs concerning the FT have been a very small percentage of this total, amounting to 34 in 2004 and 40 in 2005.

774. Overall, Thai reporting entities have filed significantly more STRs than those in most jurisdictions that have been assessed using the 2004 methodology. The following chart presents STRs filed during the year immediately before the assessment (usually 2004, with a few 2003). It excludes some countries which had no STRs because their AML/CFT regimes had not yet been established.

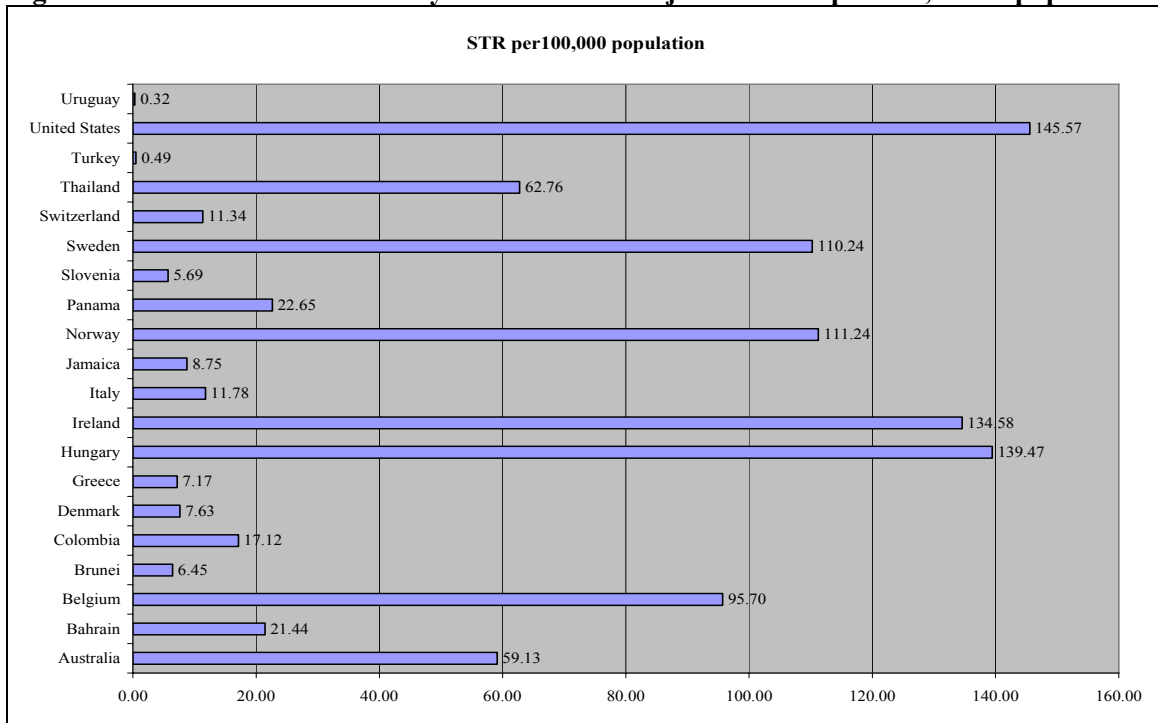


**Figure 4. Annual STRs received by selected assessed jurisdictions**



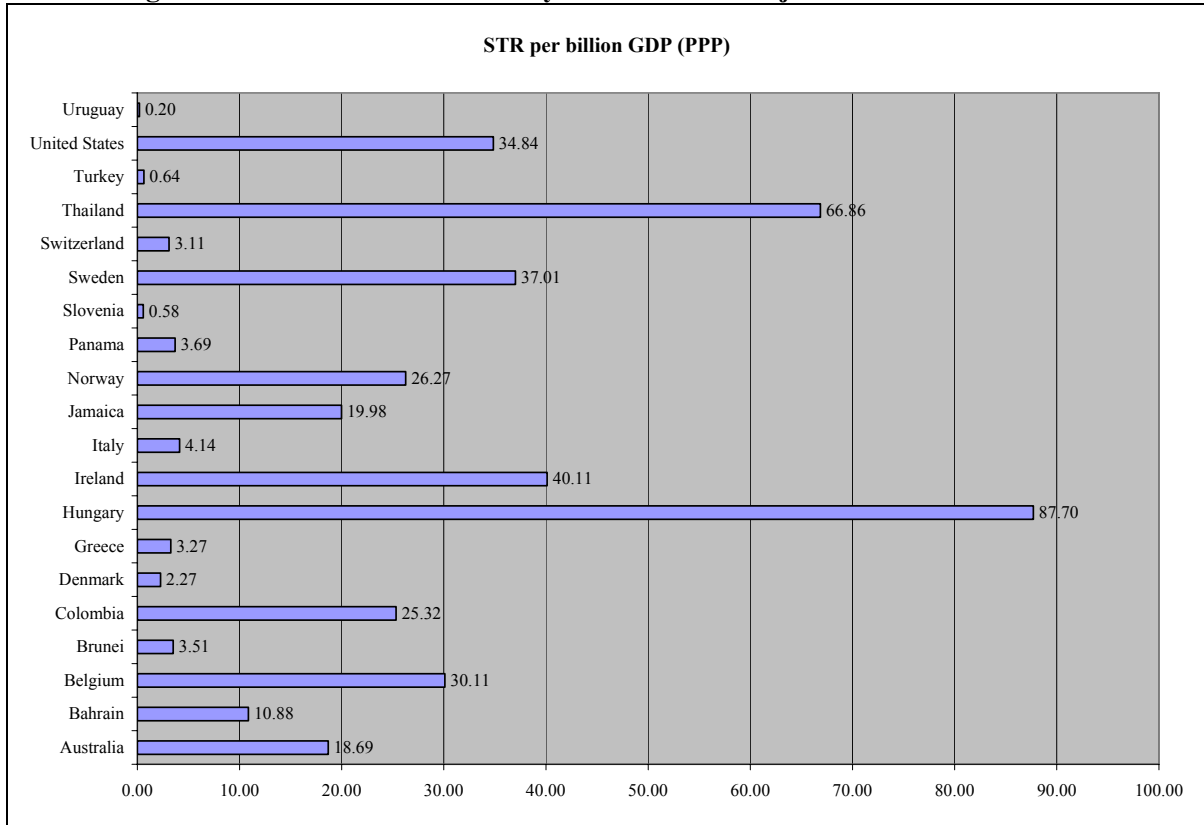
775. The picture changes slightly when Thailand’s STR reporting is benchmarked using other common indicators. Thailand’s STR reporting is “middle of the pack” relative to population.

**Figure 5. Annual STRs received by selected assessed jurisdictions per 100,000 of population**



776. However, Thailand has a high level of reporting when benchmarked against the size of its economy.

**Figure 6. Annual STRs received by selected assessed jurisdictions relative to GDP**



777. Other statistics indicate that reporting by banks is actually modest when measured against their asset base. Nevertheless, the quantity of STR reporting by the banks, coupled with concerns expressed by bankers about the lack of guidance on how to recognize STRs raises the possibility that the Thai banks are practicing defensive filing of STRs.

778. The pattern of reporting by sector raises questions. Almost 99 percent of reports received come from commercial banks (including the SFIs).

779. There may also be some other issues that raise questions about the usefulness of the STR reports received. The assessors were unable to obtain information indicating how many of the approximately 39,000 STRs received each year are actually filed because the reporting FI is suspicious that they are linked to a predicate offence and how many are simply unusual. Moreover, the table below shows that only 15 percent of STRs (less in recent years) are for transactions below the cash transaction reporting (CTR) threshold of 2 million baht (\$52,800). This may indicate that most reporting FIs focusing mainly on higher value transactions rather than scrutinize all transactions for potential suspicion. It is possible that they could perceive that this is their duty due to the existence of the CTR threshold.

**Table 28. Breakdown of STRs received by Value**

|           | Number Below<br>2 Million baht<br>(\$52,800) | % of<br>Total | Number 2<br>Million baht<br>(\$52,800) and<br>above | % of<br>Total |
|-----------|--|---------------|---|---------------|
| Year 2001 | 4,807  | 29.2%         | 11,972  | 70.8%         |
| Year 2002 | 17,908                                       | 38.7%         | 28,313  | 61.3%         |
| Year 2003 | 2,031  | 6.3%          | 30,307  | 93.7%         |
| Year 2004 | 2,304  | 5.9%          | 36,631  | 94.1%         |
| Year 2005 | 1,113  | 2.8%          | 38,062  | 97.2%         |
| Year 2006 | 4,772  | 12.1%         | 34,623  | 87.9%         |
| Total     | 32,937                                       | 15.1%         | 179,906   | 84.5%         |

780. Likewise, the following information shows that the average value of STRs is almost twice as high as the CTR threshold of 2 million baht (\$52,800) and significantly higher than the average Thai income of just over \$3,000. This reinforces a concern about the decision framework being used by FIs to determine whether to report a transaction as suspicious:

### 29. Summary of Transaction Reports from FIs

| Year  | No. of<br>STRs | Value of<br>STRs<br>(baht m) | Value of<br>STRs<br>(\$ million) | Average Value of STRs<br>(baht) | Average Value of<br>STRs (\$) |
|-------|----------------|------------------------------|----------------------------------|---------------------------------|-------------------------------|
| 2002  | 46,221         | 171,251                      | 4,521                            | 3,705,047                       | 97,818                        |
| 2003  | 32,338         | 120,013                      | 3,168                            | 3,711,207                       | 97,976                        |
| 2004  | 38,935         | 135,251                      | 3,571                            | 3,473,764                       | 91,907                        |
| 2005  | 39,175         | 156,908                      | 4,152                            | 4,005,310                       | 105,740                       |
| 2006  | 39,395         | ?                            | ?                                | ?                               |                               |
| Total | 173,448        | 583,423                      | 18,218                           | 3,723,921                       | 98,312                        |

781. Overall the assessors are not satisfied that the STR reporting framework is fully effective. There are likely too many poor quality reports made to the AMLO.

782. Thailand has taken substantive steps to introduce an STR reporting system that applies to the most important parts of its financial sector. The system also results in a very large number of STRs. However, as the analysis indicates there are issues that need to be addressed to improve the system.

#### *Additional Element - Reporting of All Criminal Acts (c. 13.5):*

783. Section 3 of the AMLA requires FIs to make reports when they detect transactions for proceeds of all predicate offenses. Note that the list of predicate offenses only covers eight of the 20 predicate offence categories identified in the FATF Recommendations.

### **Recommendation 14**

#### *Protection for Making STRs (c. 14.1):*

784. Provision exists under the AMLA to ensure that “the reporter” is protected from both criminal and civil liability when reporting STRs in good faith to the AMLO. Section 19 of AMLA states that “In the case where the report under sections 13–16 has been made in good faith by the reporter, if the report causes injury to any person, the reporter shall not be responsible.” Despite that the provision does not expressly clarify whether the protection applies to FIs, their directors officers and employees, as technically required by the standard, it can be argued that the reference to “the reporter” appears broad

enough to cover both the institution (on behalf of which the report is sent out) and the staff materially involved in the reporting process.

***Prohibition Against Tipping-Off (c. 14.2):***

785. The securities sector (excluding agricultural futures brokers) is the only one with a general prohibition on tipping off. Sections 64 and 66 of AMLA set forth penalties for any person revealing confidential information except in the course of official duties or when required by law. Section 64, however, refers to the information retained under section 38 paragraph 4 of the AMLA (which sets forth the responsibility of the SG for “all information obtained from the statements, written explanations or any account, document or evidence” gathered under that section) and does not refer to FIs. Section 66 states that “Any person who, having or probably having knowledge of an official secret in connection with the execution of this Act, acts in any manner that enables other persons to have knowledge or probable knowledge of such secret shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand baht (\$2,640) or to both, except in the case of doing such act in the performance of official duties or in accordance with the law.” While the obligation is on “any person,” assessors are not convinced that it could cover the case of “tipping off,” as this would imply that the report that FIs file to the AMLO is classified as “official secret.” This was suggested by the authorities. However, this interpretation would not appear to be supported by any relevant legal provision. In addition, it is not clear that section 66 would extend to cover notifying another person of the mere fact that an STR had been made as opposed to disclosing its contents.

786. Moreover, it has to be noted that section 21 of the AMLA requires that “in making a transaction under section 13, a FI shall also cause a customer to record statements of fact with regard to such transaction.” As this obligation applies also in the case of STRs, it can be tantamount to tipping off and would confirm that there is no legal prohibition for FIs, their directors officers and employees to disclose the fact that an STR or related information is being reported/provided to the FIU.

***Securities***

787. Under Clause 21 of the OSEC Notification, securities companies must establish a proper measure to prevent their employees from tipping off or disclosing information concerning suspicious transactions or other reporting made to customers or unrelated parties.

***Additional Element – Confidentiality of Reporting Staff (c. 14.3):***

788. It is not clear that section 64 and 66 ensure that the names and personal details of staff of FIs that make an STR are kept confidential by the FIU.

**Recommendation 19**

***Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):***

789. Thailand has a reporting obligation for cash transactions exceeding 2 million baht (\$52,800), as provided by section 13.1 of the AMLA.

***Additional Element - Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):***

790. The AMLO operates such a database – see discussion starting above at above paragraph 333.

***Additional Element - Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):***

791. See analysis of the AMLO’s data protection and integrity under R.26.

## Recommendation 25

### *Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.1) [Note: guidelines with respect to other aspects of compliance are analyzed in Section 3.10]:*

792. The SEC is the only competent authority to have any detailed guidance with respect to STR and other reporting. Clause 20 of the OSEC Notification contains a list of 13 types of transactions that may be suspicious. This list is a good start. It would be desirable for the authorities to supplement this list with more detailed guidance that was applicable to more sectors.

793. Regulations have been issued to the FIs regarding the requirements under AMLA and guidelines have been provided to some of the FIs on the procedure for reporting to the AMLO.

### *Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):*

794. The AMLO provides very little feedback to reporting FIs. As noted, the annual report is not regularly updated and it does not contain information or statistics on current techniques and sanitized examples. Also case-by-case feedback is extremely limited.

795. The financial sector expressed the wish to receive more guidance and information on how to detect suspicious transactions, particularly in the case of FT (considering the lack of indication with regards to the lists of terrorists) and indicated that they would like more feedback from the AMLO regarding the STRs that they submitted.

## Special Recommendation IV

796. Section 3 of the AMLA defines “suspicious transactions” as “a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offense, irrespective of whether such transaction is made once or more than once.”

797. The term “predicate offense” includes “offenses relating to terrorism under the penal code”. As previously explained under the analysis of SR II, section 135 of the PC criminalized certain acts of terrorism and other terrorist related offenses, including the FT in certain circumstances but not as comprehensively as required by the FATF Recommendations. To reach a determination of suspicion, a FI can be satisfied that a transaction is suspicious if it is “possibly” connected with a commission of a predicate offense. Accordingly, any suspicious transaction connected or possibly connected with an act of terrorism, TF, terrorists and terrorist organizations classified as such by either UN Security Council resolution or declaration, must be reported to the AMLO by FIs as suspicious transactions in accordance with section 13 (3) of the AMLA. In Thailand, this is a direct mandatory obligation established by law.

798. As already mentioned under the analysis of R.13, there is no requirement for FIs to report attempted transactions that are suspicious. Note, however, that, for the securities sector, the OSEC Notification clause 20 does give guidance listing attempted transactions as a type that should be monitored and which may trigger the need to file an STR.

### *Assessment of Effectiveness*

799. It is surprising and a source of concern that very few STRs have been sent to the AMLO about TF given the domestic terrorism issues that Thailand is facing. It is possible that this is linked to the lack of guidance issued to FIs about how to identify suspicious transactions. It could also be linked to an impression that the assessors got from talking to the authorities and to industry that many people in

Thailand perceive that ML or TF is associated with high volumes of cash, coupled with the existence of the 2 million baht (\$52,800) cash reporting threshold in the AMLA.

### 3.7.2 Recommendations and Comments

800. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Expand reporting requirements to all FIs as defined by the FATF Glossary;
- Introduce an obligation to report attempted transactions;
- Conduct an evaluation of the ML/FT risk for the transactions which are exempted by the reporting requirements;
- Provide more guidance to FIs on how to detect suspicious transactions;
- Prohibit “tipping off” and modify or delete section 21 of the AMLA as it appears to have the effect of tipping off the customer; and,
- Require the AMLO to give more feedback to FIs about the STRs that have been reported.

### 3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

|              | Rating    | Summary of factors underlying rating   |
|--------------|-----------|--|
| <b>R.13</b>  | <b>PC</b> | <ul style="list-style-type: none"> <li>• FIs outside of the definition in the AMLA are not required to report suspicious transactions.</li> <li>• The reporting obligation does not cover all of the predicate offences for ML under the FATF Recommendations.</li> <li>• There is no requirement to report attempted transactions.</li> <li>• There is no evaluation of ML risk in relation to the transaction that are exempted from the reporting obligation (e.g., transactions to which the government is a party given the risk of corruption that exists in Thailand).</li> <li>• The assessors are not satisfied that the requirements are effectively implemented even though a very large number of reports are received: <ul style="list-style-type: none"> <li>• There is negligible reporting of STRs by FIs that are not banks;</li> <li>• There is no guidance issued by the authorities to help FIs identify suspicious transactions;</li> <li>• There may be poor quality reporting as the obligation to report includes for “unusual” transactions and very few reports result in ML or TF investigations or convictions; and,</li> <li>• There may be defensive filing of STRs by banks.</li> </ul> </li> </ul> |
| <b>R.14</b>  | <b>PC</b> | <ul style="list-style-type: none"> <li>• The law does not prohibit “tipping off”.</li> <li>• Section 21 of the AMLA, which requires FIs to obtain a statement from a customer for whom they are considering making an STR, appears to have the effect of tipping off the customer.</li> </ul>  |
| <b>R.19</b>  | <b>C</b>  | <ul style="list-style-type: none"> <li>• The Recommendation is fully met.</li> </ul>   |
| <b>R.25</b>  | <b>PC</b> | <p>Section-specific rating would be: <b>PC</b></p> <ul style="list-style-type: none"> <li>• The guidelines that have been issued by competent authorities to FIs which deal with STR and other reporting are not comprehensive.</li> <li>• The AMLO provides limited specific and general feedback to FIs.</li> </ul>  |
| <b>SR.IV</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• FIs outside of the definition in the AMLA are not required to report suspicious transactions related to TF.</li> <li>• TF in the Penal Code has not been criminalized consistent with SR.II which</li> </ul>  |

|  |  |  |
|--|--|--|
|  |  | <p>narrows the scope of the reporting obligation.</p> <ul style="list-style-type: none"> <li>• Reporting does not extend to attempted transactions.</li> <li>• The assessors are not satisfied that the requirements are effectively implemented: <ul style="list-style-type: none"> <li>• There are no statistics to assess the effectiveness of this recommendation;</li> <li>• There is no guidance issued by the authorities to help FIs identify suspicious TF transactions; and,</li> <li>• The existence of a high CTR threshold may influence FIs to not pay sufficient attention to low value transactions typically associated with TF.</li> </ul> </li> </ul> |
|--|--|--|

## Internal controls and other measures

### 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

#### 3.8.1 Description and Analysis

##### *Recommendation 15*

801. Legal Framework:

##### *Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):*

802. There is no general enforceable requirement for FIs to establish and maintain internal procedures, policies, and control to prevent ML and FT, nor are there provisions applicable to all FIs requiring designation of an AML/CFT compliance officer (empowered to have timely access to customer identification data and other CDD information). Scattered provisions exist for the banking, securities and insurance sector; however, only those provided for the securities sector would appear to be enforceable under the standard.

##### *Banks*

803. The BOT Policy Statement indicates that the board of each FI should pay attention to and arrange to have clear and appropriate risk management for AML/CFT as well as communicate to all staff to acknowledge and comply with so that their implementations will be effective (a reference is made to establishing clear and written procedures for reporting STRs). As discussed above in paragraph 547. , the BOT Policy Statement is not enforceable.

804. The BOT stipulates in section 2.3.4.2 of its Operational Risk Audit Manual disseminated under the BOT Circular No. SorGorSor. (03) Wor. 875/2547 Re: Risk Audit Manuals and Self-Assessment for Financial Institutions dated May 11, 2004 that FIs should establish policies, rules and regulations to prevent ML, in addition to installing a practice and controls in accordance with the notification, regulations and guidelines issued by the AMLO and the BOT such as the AMLA and the notification of the BOT on requiring the commercial banks to undertake regarding money deposit, dated December 24, 2001. The Operational Risk Audit Manual does not create enforceable obligations - being more in the form of guidelines that are based on moral suasion and cooperation from FIs. As such, it does not fall into the category of OEM under the FATF Recommendations.

805. In addition, the BOT Guidelines for on-site Examination on AML/CFT Compliance set as part of the examination objectives the following:

1. To evaluate the adequacy of the AML/ CFT policies, measures, procedures of the FI.
2. To assess the internal control system related to AML/ CFT of the FI to ensure that the system is rigorous, that ongoing review is conducted and that there is an independent unit to audit the compliance.

806. Article 5.1 states that the FI should disseminate its written AML/CFT procedures, regulations or manuals to its employees and update these documents upon changes and arrange AML/CFT related training for its staff.

807. Article 5.2 further stipulates that the manual for front-office staff should contain rules for establishing deposit relationships, customer identification and transaction reporting. These rules must be in compliance with rules and regulations of the BOT and the AMLO.

808. The TBA guideline states that it is the statutory responsibility of the bank management to make reasonable efforts to combat ML and prevent the misuse of its own bank by criminals by implementing effective policies and procedures to prevent the bank from entering into any business relationship with potential criminals or customers conducting suspicious transactions. It appears from the different meetings held with the banking industry that top management of FIs, namely commercial banks and SFIs, are attentive to the necessity to prevent the misuse of their own bank by criminals by implementing adequate AML/CFT policies and procedures. The assessors identified a fair level of awareness among bank management.

809. The BOT issued in 2001 a letter to request banks to designate compliance officers responsible for AML but not CFT.

810. The BOT Policy Statement indicates that FIs shall set up a unit independent from business units or have a compliance unit to take full responsibility in monitoring compliance with the established policies and procedures. The statement indicates that the person in charge of an independent unit or a compliance unit that has responsibilities to evaluate and review customer acceptance policy should be a senior manager and report to the FIs' board of directors. Note that the BOT Policy Statement is not enforceable.

811. The BOT guideline for on-site examination on AML/CFT compliance states that examiners shall verify if an FI has established a specific unit independent from business unit or has in place a compliance unit to cooperate with the established policy as well as to evaluate adequacy and appropriateness of policy and operating measures. Accordingly, senior management should take responsibility for assessment and review of customer acceptance policy and report to the Board. Section 4.2 stipulates that a compliance officer must be appointed to take full responsibility in monitoring AML/CFT compliance and that the board of directors or the senior management of the FI should grant the compliance officer with adequate authority and resources.

812. There is no specific legal provision stipulating for the AML/CFT compliance officer to have timely access to such information. However, the BOT Guidelines for On-site Examination on AML/CFT Compliance stipulates under article 4.1 that the AML/CFT unit of the FI has the responsibility to ensure compliance with the various AML/CFT laws and regulations and article 4.2 stipulates that the board of directors or senior management of the FI must grant adequate authority to the compliance officer.

813. For many FBA members, compliance officers have the authority to access customer identification data and other relevant information. In some banks, compliance officers are required to review such information and some are required to approve relationships with new customers.



814. The practice in several banks, including foreign banks, has consisted of assigning AML/CFT responsibilities to the compliance officer. In that case, the assessors were told that the AML/CFT compliance officer has timely access to customer identification data and other CDD information. This was also confirmed by the BOT. It is noteworthy that some banks have not yet appointed an internal AML/CFT officer to deal with AML/CFT issues, which is an important weakness.

815. In practice, several banks claimed that AML/CFT responsibilities have been assigned to their compliance officer who actually plays the role of liaison officer with the AMLO. In most of the cases, the compliance officer is responsible for (i) receiving reports from the operational unit (including from branches, where applicable), (ii) analyzing the supporting evidence, and (iii) transmitting the report to the AMLO. Banks also claimed that management is systematically informed of STRs that were sent to the FIU; those banks also stated that management does not interfere in the STR process. However, other banks, including SFIs with which the mission met, acknowledged the fact that they have not yet appointed an AML/CFT officer. Some banks also admitted that they were still in the process of drafting their internal control procedures to better monitor ML/TF risks. One bank stated that its internal procedures were sent to the board for consideration and approval. In addition to that, some FIs admitted the fact that their internal audit unit has not yet included AML/CFT issues into the scope of their duties. The fact that some banks have not yet finalized their internal procedures with regard AML/CFT raises concerns about the effectiveness of the internal control system. The assessors conclude that implementation of Thai requirements for R.15 is inconsistent across the banking system.

### *Securities*

816. Clause 4 of the OSEC Notification requires that securities companies must have in place written policies and procedures to prevent the use of securities transactions in ML and FT (such as in the case of accepting customers or establishing business relationships and KYC/CDD, reporting of STRS and record keeping). These policies must be approved by the board of directors and must be regularly reviewed within the timeframe deemed appropriate by each security company (clause 5).

817. With reference to the obligation to designate a compliance officer, clause 6 of the OSEC Notification requires securities companies to designate a key person (AML/CFT officer) to be responsible for rendering advices, monitoring, and reviewing transactions in order to ensure compliance with AML legislation, the internal policies and procedures, as well as the Industry Association Guidelines. There is no reference to the circumstance that the AML/CFT officer be at management level, although, according to the SEC, in practice it would appear that most appointments are made at this level. In addition, there are other Notifications which were issued by SEC under the SEA and which contain applicable requirements for specific securities sectors (they are not generally applicable to all industry). These are:

- *Notification No. Kor Thor. 42/2543* (setting rules, conditions and procedure of securities brokerage and securities dealing which are not debt instrument), sets out in clause 5 that “A securities company shall arrange to have compliance unit... with recognizable and reliable standard. Such units shall undertake independent operation and be independent from other units.” Note that it is not clear what the scope of responsibilities of such a compliance unit is, although one could reasonably expect it to cover AML/CFT compliance;
- *No. Kor Thor. 65/2547* (Rules for Undertaking Derivatives Business for Licensed Derivatives Broker) provides in clause 5 that a derivatives broker shall establish an internal audit and control system and in clause 6 that the broker shall have a compliance unit that shall independently operate. Again it is not explicit that the compliance unit covers AML/CFT compliance;
- *No. KorThor. 24/2549* (Rules, Conditions and Procedures for Operational Control of Securities Underwriting), applies requirements in *Notification No. Kor Thor. 42/2543* to securities underwriting;

- *No. SorKhor/Nor 4/2549* (Work System to the Undertaking of Fund Management Business) provides in clause 4(4) that the fund management businesses shall establish a unit to oversee and audit the operation that is independent. Note that it is not clear what the scope of responsibilities of such a compliance unit is, although one could reasonably expect it to cover AML/CFT compliance.

***Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):***

818. The AMLO Policy Statement indicates that FIs should have “an audit function to test the compliance system;” however, as mentioned earlier in this report, the Policy statement cannot be considered enforceable.

***Banks***

819. The BOT Operational Risk Audit Manual (which does not impose enforceable obligations for the purposes of the FATF Recommendations) specifies in Section 2.2.2.2 the responsibilities of the audit committee of the FI to include review of its compliance with the applicable laws and with its internal regulations. Section 2.3.4.2 specifies that the FI should have an audit system to ensure that the business units operate within the scope of regulations and rules of the FIs, government agencies or related organizations as stipulated in order to avoid any transaction that may have created risks or losses both in terms of financial and reputation losses. Finally, Section 2.2.2.5 states that the FI should have an internal audit unit that is commensurate with the scope and complexity of its business to ensure that the unit is able to perform the functions of verifying and testing the control systems and that it is most essential that the internal audit unit is to operate independently.

820. Furthermore, article 7.1 of the BOT Guidelines for On-site Examination on AML/CFT Compliance instructs the BOT examiner to assess the internal audit system of the FI that it includes evaluation of the compliance with AML/CFT measures such as testing the amount of CDD performed, inspecting compliance with the AMLO reporting requirement, etc. and that the audit scope including sampling number is established. Article 7.2 further stipulates that the internal audit unit is suitably staffed by persons knowledgeable about AML/CFT, has adequate training and is to report directly to the FI’s audit committee.

821. For the FBA members, internal audit functions are generally performed by the audit teams from the regional office or head office.

***Securities***

822. The AML/CFT officer referred to by clause 6 of the above-mentioned OSEC Notification is also responsible to ensure compliance with the established internal policies and procedures. There are requirements for securities companies to maintain an adequately resourced and independent audit function as required under R.15 contained in other Notifications which were issued by the SEC under the SEA and which contain applicable requirements for specific parts of the securities sectors (but they are not generally applicable to all the securities industry). These are:

- *Notification No. Kor Thor. 42/2543* (setting rules, conditions and procedure of securities brokerage and securities dealing which are not debt instrument), sets out in clause 5 that “A securities company shall arrange to have ... an internal audit unit with recognizable and reliable standard. Such units shall undertake independent operation and be independent from other units.”
- *No. Kor Thor. 65/2547* (Rules for Undertaking Derivatives Business for Licensed Derivatives Broker) provides in clause 5 that a derivatives broker shall establish an internal audit and control system.
- *No. KorThor. 24/2549* (Rules, Conditions and Procedures for Operational Control of Securities Underwriting), applies requirements in *Notification No. Kor Thor. 42/2543* to securities underwriting.

- *No. SorKhor./Nor. 4/2549* (Operating System Relating to the Undertaking of Fund Management Business) prescribes in clause 5(2) that the internal audit unit shall be independent and in clause 3(1) that mutual fund management companies shall ensure adequate amount of staff in the management of fund.

823. There are also enforceable internal audit guidelines in SEC Compliance Guideline No. Or Kor/Nor 5/2549. The SEC has successfully sanctioned one asset management for not following these guidelines so these may be considered as “indirectly” enforceable as they are “interpretative note” for SEC Notification No. SorKhor./Nor. 4/2549. The preamble to the notification indicates that it sets out a minimum acceptable standard for asset management companies’ operating systems to be considered in compliance with Notification No. SorKhor./Nor. 4/2549.

***Ongoing Employee Training on AML/CFT Matters (c. 15.3):***

824. The AMLO Policy Statement indicates that FIs should have “personnel training”; however, as mentioned earlier in this report, the Policy statement cannot be considered enforceable.

***Banks***

825. The BOT Policy Statement indicates that FIs should organize training on AML/CFT policies and procedures to all relevant staff on a regular basis to ensure that they are aware of the relevant duties (there is no reference to ML and FT techniques, methods and trends). Section 4.1 of the BOT Operational Risk Audit Manual (which does not impose enforceable obligations for the purposes of the FATF Recommendations) stipulates that the BOT examiner should ensure that the FI, as part of its risk control measures, has training programs that provide periodic trainings, particularly for the new employees or upon any changes in its operations and to hold special training on rules and regulations as well as on control measures related to operational risks. Article 6 of the BOT Guidelines for On-site Examination on AML/CFT Compliance instructs the examiner to verify that the FI has AML/CFT training programs for its employees; and, article 7 outlines key points related to the FI’s controls, monitoring and audit systems that the examiner needs to verify.

826. The TBA AML/CFT Policy document issued in December 2006 contains guidelines and principles that Banks must have an ongoing employee-training program so that bank staff are adequately and regularly trained in all AML/CFT compliance policies and procedures. Some FBA members have already incorporated ongoing AML/CFT training for their employees, in particular for compliance officers and front-office staffs.

827. Banks demonstrated that significant efforts have been made to raise awareness among their employees and to train them on technical issues related to AML/CFT. An example of this is the training developed for SFI officers who were trained on interview techniques aimed at collecting accurate and proper information about new customers. The training course focused on ID procedures and approaches to collect further information on the occupation and origin of funds. Banks also pointed out that no assistance had been received from relevant national agencies. In this regard, a bank told the team that further guidance from the authorities would be most helpful to make training programs even more effective; important questions remain pending such as techniques to verify the origin of wealth or the veracity of the ID.

***Securities***

828. Under clause 7 of the OSEC Notification, securities companies must establish ongoing training programs for all employees to ensure compliance with the anti-ML legislations, the internal policies and procedures, and the Industry Association Guidelines, as well as to keep informed of new ML and FT techniques within the timeframe deemed appropriate by each securities company. Also, the ASCO and the

AIMC, under clause 10.1 – 10.3 and chapter 7, respectively, issued Guidelines on KYC/CDD concerning training and staff ongoing education, and maintaining of training records.

829. Discussions with the securities industry indicated that staff in securities firms had received around two hours of general training in AML/CFT compliance matters. Indications were that more training would occur once the OSEC Notification was finalized and issued.

***Insurance***

830. There are no requirements for insurance firms to conduct staff training on AML/CFT matters. However, discussions with the industry indicated that some firms did conduct extensive training on such matters to implement their obligations under the AMLA.

***Employee Screening Procedures (c. 15.4):***

831. There is no general enforceable provision requiring FIs to put in place screening procedures to ensure high standard when hiring employees.

***Banks***

832. In the case of banks section 1.2 of the BOT Operational Risk Audit Manual (which does not impose enforceable obligations for the purposes of the FATF Recommendations) identifies the risk from inappropriate hiring as one type of operational risk that FIs need to address as part of their risk management. Screening procedures used by some FBA members include screening new recruits' names against the sanction lists or with the credit bureau.

***Securities***

833. In the case of securities, there is no requirement to have screening procedures when hiring employees; provisions exist, under sections 103 and 104 of the SEA (together with SEC Notification No. GorThor/Nor/Khor. 3/2548, No. GorThor/Nor/Khor. 4 /2548, No. OrThor/Nor/Khor/Yor. 6/2548 and No. SorKhor 15/2548) as well as under sections 23 and 24 of the DA (together with Notifications No. GorThor/Nor/Khor. 35/2548, No. GorThor/Nor/Khor. 37/2548, No. OrThor/Nor/Khor. 11/2548 and No. SorKhor 25/2548) to require that directors, CEOs, management, advisors, external persons to whom the securities company contractually gives the managing power, and sales representatives of securities companies must be subject to a number of statutory disqualifications or minimum qualification requirements, and in certain cases it requires approvals or registrations with the SEC. There are forms and procedures set out in SEC Notifications that must be completed for any person applying for a position that requires SEC approval and these are utilized for those positions. The SEC ensures that the screening is carried out for positions where no SEC approval was required through its routine inspection program.

***Additional Element – Independence of Compliance Officer (c. 15.5):***

834. There are no requirements applying to FIs that provide that the compliance officer be independent other than for those parts of the securities sector where there are requirements for an independent compliance function. It is only in the securities sector that there are requirements applying to FIs that explicitly provide that the compliance officer report to senior management or the board of directors.

***Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):***

835. There is no legal requirement specifying that foreign branches and subsidiaries of a locally incorporated FI should observe AML/CFT measures consistent with Thailand's requirements.

### ***Banks***

836. However, the BOT specifies in item 12 under article 3 of its Guidelines for On-site Examination on AML/CFT Compliance for FIs to have policy and operating procedures for branches or offices located in countries whose AML policies are lower than international standards.

837. As the FBA members are branches or subsidiaries of commercial banks domiciled in other countries, they are required to observe measures and regulations imposed by competent authorities, the AMLO and the BOT, as well as measures imposed by their respective home regulators, head office or parent company.

#### ***Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable to Implement AML/CFT Measures (c. 22.2):***

838. There are no enforceable obligations requiring FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe its appropriate AML/CFT measures.

#### ***Additional Element – Consistency of CDD Measures at Group Level (c. 22.3):***

839. There is no enforceable obligation applying to banks, including SFIs, securities firms or insurance firms requiring them to apply consistent CDD measures at the group level.

#### ***Assessment of Effectiveness***

840. Information obtained by the SEC from conducting inspections of securities firms indicated that most had adopted internal policies, procedures, and controls for ML and TF and appointed compliance officers and introduced an employee training program. The BOT indicated, and the banks spoken to confirmed, that the major banks had adopted similar arrangements as part of their general risk-management procedures even though there is no enforceable obligation for them to have in place AML/CFT policies, procedures and controls. Insurance companies spoken to showed that they had done the same.

### **3.8.2 Recommendations and Comments**

841. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Ensure that the financial sector supervisory agencies (BOT, DOI, and CPD), in collaboration with the AMLO:
  - introduce enforceable requirements that FIs must develop programs against ML and TF, including the development of internal policies, procedures and controls, and adequate screening procedures to ensure high standards when hiring employees, an ongoing employee training program, and an audit function to test the system;
  - consult with, and raise awareness among, industry about these matters; and,
  - introduce enforceable obligations for FIs requiring them to apply AML/CFT measures to foreign branches and subsidiaries consistent with R.22.

### **3.8.3 Compliance with Recommendations 15 & 22**

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|-------------|---------------|---|
| <b>R.15</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• The only enforceable requirement for FIs to develop appropriate compliance management arrangements apply to the securities sector (excluding agricultural futures brokers).</li> </ul> |

|             |           |   |
|-------------|-----------|---|
|             |           | <ul style="list-style-type: none"> <li>• Although in practice many FIs carry out extensive AML/CFT training for their staff, there is no enforceable requirement for FIs to establish ongoing employee training related to ML and TF.</li> <li>• There is no requirement applying to all FIs to screen potential employees.</li> <li>• The OSEC Notification does not require that the AML/CFT officer be at management level.</li> </ul> |
| <b>R.22</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• There are no requirements in place.</li> </ul>   |

### 3.9 Shell banks (R.18)

#### 3.9.1 Description and Analysis

##### *Prohibition of Establishment Shell Banks (c. 18.1):*

842. By practice shell banks are not permitted in Thailand since an application for a license to establish a bank requires approval from the Minister of Finance under sections 5 and 6, of the CBA. The MOF has issued the rules, procedures, and conditions for establishing a bank. According to the authorities, the implementation of these rules, procedures and rules by the BOT does not, in practice, allow the establishment of shell banks in Thailand. Although there is no legal provision explicitly prohibiting establishment of shell banks, applications for a banking license are subject to the scrutiny of the BOT before the Ministry of Finance would grant approval. As indicated by the authorities, commercial banks are also subject to rigorous laws and regulations and stringent examinations by the BOT after the financial crisis in 1997.

843. The assessors are therefore satisfied that Thailand does not approve the establishment or accept the continued operation of shell banks.

##### *Prohibition of Correspondent Banking with Shell Banks (c. 18.2):*

844. There is no enforceable prohibition on banks entering into or continuing correspondent banking relationships with shell banks. The unenforceable AMLO Policy Statement specifies the customer identification and verification procedure which prohibits transactions with shell banks or intermediaries that run accounts for shell banks or shell companies. The TBA guideline states that banks should refuse to enter into or continue a correspondent banking relationship with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (i.e., shell banks). The FBA members are prohibited by their head office or parent bank to transact with shell banks and are required to discontinue the relationships upon recognizing their natures. There are no specific requirements for SFIs regarding shell banks.

##### *Requirement to Satisfy Respondent Financial Institutions to Prohibit Use of Accounts by Shell Banks (c. 18.3):*

845. There is no enforceable obligation requiring FIs to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.

##### *Assessment of Effectiveness*

846. The BOT has not allowed the establishment of shell banks in Thailand. The major banks indicated that they do not conduct transactions with shell banks as this is prohibited by their internal policies.

### 3.9.2 Recommendations and Comments

847. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Introduce enforceable obligations to prohibit Thai FIs from dealing with shell banks.

### 3.9.3 Compliance with Recommendation 18

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.18 | PC     | <ul style="list-style-type: none"> <li>• There is no requirement prohibiting FIs from having correspondent banking relationships with shell banks.</li> <li>• FIs are not required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.</li> </ul> |

### Regulation, supervision, guidance, monitoring and sanctions

#### 3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 & 29)

##### 3.10.1 Description and Analysis

###### *General Overview.*

848. The legal regulatory and supervisory regime governing the financial industry as a whole is as follows: The BOT Act B.E. 2485 (1942) (BOT Act), sets out the organization, tasks and powers of the BOT while the Commercial Banking Act B.E. 2505 (1962) provides the legal foundation for Thailand's banking supervision over banks and other financial and non bank institutions (e.g., Finance Companies, AMC, Credit card operators). On the other hand, the Act of Undertaking of Finance Business, Securities Business, and Credit Foncier Business B.E.2522 (1979) provides BOT with the authority to regulate and supervise finance companies and credit foncier companies.

849. In addition to banks and other finance companies and credit foncier companies, there are eight SFIs operating in the country.<sup>38</sup> These SFIs are regulated under separate, individual laws and the powers of supervision are vested with the MOF. All of the SFIs Enabling Acts have given the regulatory and supervision power to the MOF. However, in practice, the MOF has authorized the BOT to perform on-site examinations of SFIs and report back the result of those examinations to MOF. This delegation of authority also applies to money changers. The Securities and Exchange Commission is the primary authority to regulate and supervise securities companies as set out in the SEA and the DA (B.E.2546). The regulatory and supervisory authorities for the Life Insurance Companies, Agricultural and Saving Cooperatives, Social Security Fund and Pawnshops, are respectively the DOI within the Ministry of Commerce (Life Insurance Act B.E. 2510), Ministry of Agriculture (Cooperative act B.E. 2511), Ministry of Labour and Social Welfare (Social security Act B.E. 2533), and the Ministry of Interior (Pawn-shop Act B.E. 2505).

850. Certain categories of FIs are regulated and supervised directly by the BOT (commercial banks, including foreign bank branches, finance companies, and credit foncier companies) or by the SEC (i.e., securities companies, mutual funds management companies, provident funds), or by the Ministry of Interior (i.e., pawnshops) while other types of institutions are placed under the primary regulatory and

<sup>38</sup> All SFIs are state-owned enterprises, except the Islamic Bank of Thailand.

supervisory power of the MOF (i.e., SFIs, asset management corporations and companies) but with a delegation to BOT for on-site oversight.

851. The regulatory and supervisory arrangements for the financial system is summarized above in the table above at paragraph 93.

***Regulation and Supervision of Financial Institutions (c. 23.1):***

***Regulation and supervision of banks***

852. As mentioned above, banks and non bank institutions (namely the credit card operators and credit bureau) are regulated and supervised by the BOT. The BOT and MOF are the prudential supervisors for all FIs as set out in the CBA. The BOT is empowered by CBA to issue prudential policies and regulations covering all material risks areas and activities. In practice, prudential policies are issued as notifications, guidelines or circulars. Only notifications issued under a law and for a specific topic are legally binding. Although CBA covers a large scope of prudential issues (capital adequacy ratio, liquidity reserve requirements, asset classification and provisions, among others), there is no reference at all to ML obligations. Nevertheless, by virtue of section 13 quarter of the CBA, BOT has issued the BOT Notification on Accepting Deposits which also serves some AML/CFT purposes. The BOT Notification spells out documents required for opening an account, for verification and sets out requirements for keeping of such documents (Sor.Nor.Sor. (03) Wor. 15/2544).

853. The BOT also issues guidelines that are based on moral suasion and cooperation from FIs such as the BOT Policy Statement issued on January 19, 2007 which spells out the KYC and CDD practices for all FIs to comply with. The BOT has issued and circulated to the profession the Guideline for On-site Examination on AML/CFT Compliance. This document is used as guidance for BOT examiners in reviewing banks' AML/CFT policies, procedures, internal controls and compliance with laws and regulations. Such guidelines have been distributed to commercial banks for their self-assessment on AML/CFT compliance. They require banks to have KYC/CDD policies and procedures, verification of customer's name against terrorist lists provided by competent authorities, enhanced CDD measures for high-risk customers. According to the BOT Guidelines for On-site Examination mentioned above, one of the examination objectives is to ensure that policies or measures and operating procedures pertaining to AML/CFT of FIs are adequate and compliant with international standards and regulatory rules. Examination of AML/CFT compliance is a factor for the FI's operational risk assessment, which has an impact on the FI's rating as determined by the BOT. Along the same lines, the BOT issued in December 2003 its called "Operational Risk Audit Manual" which provides guidelines on operational risk management, and according to which FIs should "establish policies, rules and regulations with respect to the transactions it offers to its customers in order to prevent ML, in addition to installing a practice and control in accordance with notification, regulations and guidelines by the AMLO and the BOT."

854. Another tool for regulating FIs is the Circular. Circulars are used to clarify issues of common concern, to make announcements, or to clarify the methodology for compliance. For example, the BOT has prescribed the Circular (No.ThoPoTor.SorNorSor.(31) Wor.2725/2547) regarding Credit Documentation requiring a bank to have in place loan supplementary documents as well as sufficient information for decision making, understanding objectives of borrowing and assessing customer's repayment capability. The circular, for instance, requires that debtors provide credit documentation including debtor's personal documentation. According to authorities, although the main purpose of this Circular is for credit risk profile, the requirement also supports the AML/CFT monitoring and awareness of banks in the same manner.



855. In addition to its regulatory duties, the BOT exercises supervisory duties. Although the CBA defines and divides the authority to regulate and supervise banks between the MOF and BOT, the Minister of Finance has delegated examination and supervision, but not sanctioning of banks, to the BOT.

***Regulation and supervision of SFIs.***

856. There are eight Specialized Financial Institutions (SFIs) operating.<sup>39</sup> Each SFI is established by a specific enabling Act.<sup>40</sup> Some of the SFIs accept deposits and provide lending to the public; they conduct commercial banking activities as defined in section 4 of the CBA. Some SFIs have also expanded their activities into general banking operations in addition to their original function to provide specialized financial services for defined purposes, e.g., to low-income customers.<sup>41</sup> The deposit-taking SFIs currently have a market share of deposits which is one fifth of that of commercial banks, therefore, they shall be regarded as a significant part of the financial system. The largest SFI, GSB, has total assets of 712 billion baht (\$19 billion), and 26 million accounts with an average account balance of 23,821 baht (\$629).

857. According to each SFI's establishment Act, the Minister of Finance is given the authority to supervise and regulate general activities and operations conducted by the SFI. Furthermore, the Minister of Finance also has authority to stop the SFI's activities. The MOF has authorized the BOT to exercise oversight of all SFIs and to perform on-site inspections pursuant to the supervision and regulation authority given to the MOF under each SFI establishment Act. The MOF has requested that the supervision be performed to the same standards as those for commercial banks. The BOT is required to report the result of its supervision to the MOF and make suggestions or express opinion to the MOF about any action the MOF should take in respect of each SFI.

858. All SFIs that are banks are subject to the requirements of the AMLA (section 3 (1)). The MOF has not yet issued specific AML/CFT guidelines nor regulations for SFIs. The CBA and the rules issued by the BOT are not applicable to SFIs. As indicated by the authorities, SFIs are "allowed to apply" the BOT Notification on Accepting Deposits. In practice, when inspecting SFIs on behalf of the MOF, the BOT would expect each SFI to be following the same regulatory framework as the BOT applies to banks.

859. The MOF, by letter dated November 23, 2006, ordered all SFIs to follow the requirements of a policy document regarding AML/CFT and KYC/CDD for SFIs which will mirror the contents of the TBA Guidelines. Each SFI will then implement their own AML/CFT internal policies, rules and regulations based on that policy document.<sup>42</sup>

***Regulation and supervision of Credit Cooperatives***

860. The Agricultural and Saving Cooperatives are regulated and supervised by the Department of Cooperative and Promotion (CPD) and the Department of Cooperative Auditing of the Ministry of

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<sup>39</sup> 1) Government Housing Bank (GHB), 2) Government Savings Bank (GSB), 3) Bank for Agriculture and Agricultural Cooperatives (BAAC), 4) SMEs Development Bank (SMEDB), 5) Export – Import Bank of Thailand (EXIM), 6) Islamic Bank of Thailand, 7) Secondary Mortgage Corporation (SMC), 8) Small Business Credit Guarantee Corporation (SBCGC).

<sup>40</sup> For example: Government Savings Bank Act B.E. 2489; Government Housing Bank Act B.E. 2496; Islamic Bank of Thailand Act B.E. 2545; The Export-Import Bank of Thailand Act B.E. 2536.

<sup>41</sup> See FSAP, Basel Core Principles of Effective Banking Supervision, Detailed Assessment of Observance, January 2007, page 21.

<sup>42</sup> Information about completion of the policy was provided to the assessors after the onsite mission and its effective implementation was not able to be assessed.

Agriculture and Cooperatives. Under Section 52 of the Cooperatives Act B.E. 422542, the CPD reviews fitness and properness of members of board of directors or managers of cooperatives in the registration process. The Cooperative Auditing Department (CAD) conducts on-site inspections of cooperatives on an annual basis. The CPD issued an unenforceable circular from the Director General of the Cooperative Promotion Department to the thrift and credit cooperatives or savings cooperatives in 2000 and requested that all of their transactions be performed in compliance with the requirements of the AMLA. However, the effectiveness of this request cannot be ascertained because, although the CPD reviews cooperatives' overall compliance with regulations in the course of its on-site inspections, there is no specific supervisory oversight by the CPD relating to compliance with the AMLA. The CPD does not require any information from cooperatives regarding STRs submitted to the AMLO, although the number of STRs by cooperatives seems quite small. The CPD has had no contact with the AMLO regarding its supervisory oversight for AML/CFT compliance.

***Regulation and supervision of money changers and value transfer services***

861. 558 authorized money changers and two money transfer agents are operating. Money changers are subject to the AMLA requirements pursuant to the Ministerial regulation No 1 (2000) issued under the AMLA. Under the Competent Officer Notice, the Ministry of Finance is responsible for licensing of money changers while the BOT is in charge of regulating and supervising money changers and money transfer services through its Exchange Control and Credits Department. Two networks of money transfer services are operating in the country: a chain based in a large department store and services operated through the Postal Service—both use the Western Union money transfer platform. In addition, the 7-Eleven shopping chain offers money transfer services, but it is not an authorized money transfer business as its business falls outside the scope of the Competent Officer Notice.

***Regulation and oversight of Pawnshops***

862. The Pawnshop Act B.E. 2505 sets out regulatory and supervisory regime for Pawnshops and makes the Minister of Interior responsible for the regulation and oversight of pawnshops.

***Other Non-bank institutions.***

863. Credit card operators in Thailand can be classified into 2 groups; non-bank companies (non-banks) and commercial banks (banks). The MOF is the primary authority for regulating non-banks, but the MOF permits the BOT to set all related regulations for non-banks, which requires the prior approval from MOF. At present, 12 non-bank FIs are operating credit card business<sup>43</sup> two of them are subsidiaries of commercial banks (eight commercial banks are also providing credit card services) in addition to six e-money companies.

864. None of the credit card companies are subject to the AMLA.

865. The BOT has supervised non-bank credit card companies since November 2002 and non-bank e-money businesses since December 2004. The BOT issued regulations aimed at enhancing consumer protection and for preventing the excessive build-up of household debts, especially credit card debt but neither of these specifically address AML/CFT issues.

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<sup>43</sup> 1) Capital OK Company Limited, 2) GE Capital (Thailand) Company Limited, 3) General Card Services Company Limited, 4) Cetelem (Thailand) Company Ltd., 5) Diners Club (Thailand) Company, 6) Tesco Card Services. Company Limited, 7) Krungthai Card Public Company Limited, 8) Krungsriyudhya Card Company Limited, 9) American Express (Thai) Company Limited, 10) AEON Thana Sinsap (Thailand) Public Company Limited, 11) EASY BUY Public Company Limited, 12) AIG Card (Thailand) Company Limited

### ***Regulation and Supervision of Securities Sector***

866. The securities sector is regulated under the SEA and the DA. The MOF approves market entry for securities firms on the recommendation of the SEC and the SEC approves market entry for derivatives businesses. The SEC is responsible for regulating the securities and derivatives sector through issuing notifications under both the SEA and the DA. The SEC supervises securities firms and derivatives firms (except for agricultural futures brokers – supervised by the AFTC) for compliance with the requirements applying to them using a risk-based supervision framework comprising both off- and on-site supervision. For AML/CFT securities firms but not derivatives firms are subject to the AMLA and the SEC has issued the OSEC Notification applicable to both types of firm. The SEC monitors firms' compliance with its notifications but not with the AMLA. In early 2007, the SEC conducted a themed AML/CFT inspection of securities firms to ascertain whether they had in place AML/CFT policies and risk management systems, a documented KYC/CDD process, and a process for recording and filing STRs. However, there has been no substantive inspections focusing on whether those policies and procedures are effectively implemented and, understandably, no checking of whether the OSEC Notification is being implemented. In terms of sanctions, the SEC has issued letters to 48 of the firms inspected in early 2007 requiring them to rectify the deficiencies in their policies and procedures that were discovered but has not imposed any other type of sanctions as many of the AML/CFT requirements are new for the securities sector.

867. There is no effective AML/CFT regulation or supervision of agricultural futures brokers. They are not subject to the AMLA and the AFTC has not imposed any regulatory requirements containing AML/CFT elements.

### ***Regulation and Supervision of Insurance Sector***

868. Under the Life Insurance Act, life insurance businesses are granted a license by the Minister of Commerce with the approval of the Cabinet. In addition, the Act provides that life insurance agents or brokers must operate with a license from the Insurance Commissioner, an official within the DOI. The DOI supervises insurance firms focusing primarily on whether their financial health is sufficient to sustain their insurance business. There is no off- or on-site inspection that focuses on AML/CFT compliance in the insurance industry. The DOI considers that the AMLO is responsible for monitoring the compliance of life insurance firms with AML/CFT requirements of the AMLA.

### ***Designation of Competent Authority (c. 23.2):***

869. None of the laws or regulations in force specifies clearly which designated competent authority or authorities are responsible for ensuring that FIs adequately comply with their AML/CFT requirements. The assessor's impression is that the allocation of duties between the different supervisory authorities to monitor compliance with AML/CFT requirements is based on an undocumented understanding between the different national agencies than on a specific legal provision. As indicated by the authorities, *“it has been agreed within the ROSC Working Group by the Secretary-General of AMLO that the financial regulators, i.e. BOT, SEC, will be considered as the lead or frontline regulator to ensure that proper AML/CFT measures have been in place through its routine examination programs. However, this will not have any impact on the AMLO surveillance or enforcement programs.”*

870. An example of this arrangement between the AMLO and the national supervisory authorities on supervisory duties is the Memorandum of Understanding concerning Cooperation in the Exchange of Financial Intelligence related to AML and CFT between the AMLO and the BOT (February 20, 2007, B.E. 2550). As stipulated in clause 2 (1), *“the AMLO and the BOT shall cooperate with each other to support the exchange of financial intelligence prepared by each organization. This will enable both parties to have available information for supervision of financial institutions, investigation, inquiry or prevention and suppression of ML as well as of TF under the law governing the supervision of both contributors.”* Clause 3 (3) also indicates that *“the BOT shall proceed on examination of financial*

*institutions under the governing provision of the BOT in regarding to policy, practices and internal control for AML/CFT.”*

871. The assessors note that, in practice, the supervisory authorities (mainly the BOT and SEC) whose responsibilities involve overall supervision of FIs, are acting as the front-line supervisor and are taking the lead in monitoring AML/CFT compliance in their respective sectors.

872. The regulators’ primary focus appears to be on ensuring compliance with reporting requirements and KYC/CDD measures imposed under instruments that they have issued. They can also more generally monitor FIs’ compliance with the laws applicable to them (including the AMLA). However, it is not clear to the assessors that they are actively monitoring FI compliance with the AMLA and, if they are, they do not appear to be taking action to pursue enforcement action under the AMLA for any breaches that they uncover. In fact, discussions with the SEC indicated that it considers the AMLO to be responsible for monitoring compliance with the AMLA in the securities sector.

873. The assessors note that the AMLA is unclear about whether the AMLO has a specific power to monitor compliance with the AMLA. In terms of government administration, the AMLO is probably meant to have a prime role to monitor compliance given that it administers the AMLA but, it is not clear to the assessors that the AMLO is actually carrying out any monitoring (other than when following up on STRs). Moreover, one source of this confusion is that BOT staff often also act as AMLO competent officers. The assessors understand how in legal terms the BOT staff can move from their BOT role to their AMLA role in the course of the same inspection but do not see how that demonstrates that there is effective monitoring of compliance with AMLA other than to follow up on STRs.

874. Hence, the assessors are not convinced that either the AMLO or the financial regulators are effectively monitoring compliance with the AMLA (other than to follow up on STRs). The assessors are also not convinced that the AMLO and the financial regulators have effectively agreed on how to share the responsibility for monitoring compliance with the AMLA. Likewise, the assessors are not satisfied that the AMLO and each of the financial regulators have agreed on what information to share regarding their monitoring roles.

875. The supervisory duties are carried out as follows:

#### ***Responsibilities of the AMLO***

876. As noted earlier, under section 25 (5) of AMLA, the AMLB has the duty to, among other things, “*monitor and evaluate the effectiveness of the enforcement*” of the AMLA. It is not clear whether this provision can be interpreted as giving the Board responsibility for checking compliance to the requirements set forth in the AMLA. Section 40 (4) empowers the AMLO to collect evidence in order to prosecute any violator under the provisions of AMLA, that in principle may include breaching of the STR requirements, and failure to comply with KYC and record-keeping obligations. However, the provision seems more addressed at, and in practice is used more for, collecting evidence for ML prosecutions and for seizing assets using the civil vesting process. The authorities were not able to convince the assessors that the on-site visits performed by the AMLO were done for the purpose of supervisory oversight. Instead, the assessors conclude that the AMLO on-site inspections were for the purpose of collecting evidence for investigation and prosecution of ML or seizing assets.

877. In this respect, BOT recognizes that the assistance provided by its examiners (who can be appointed to the AMLO as “competent officials” under section 38 of AMLA) is aimed at providing support to the AMLO for investigating suspicious transactions reported by FIs.

### ***Responsibilities of BOT:***

878. As indicated above, the CBA divides the authority to regulate and supervise banks between the MOF and BOT. However, as far as banking supervision is concerned, the MOF has delegated examination and overall supervision of banks to the BOT. As a result, classical on-site and off-site supervision is done by the BOT. Neither the BOT Act nor the CBA specify the duties of the BOT regarding the oversight of AML/CFT compliance. However, the authorities stated that, “*the BOT, as the lead supervisor for banks, has general power to assess AML compliance as stated in the Guidelines for Onsite Examination on AML/CFT compliance.*” According to these Guidelines dated December 26, 2005, the scope of AML/CFT examination is to consider adequacy, completeness and appropriateness of policies and measures for AML/CFT.

### ***Responsibilities of SEC***

879. The SEC, as the lead regulator in securities and futures businesses, is responsible for regulating and supervising securities and futures businesses (excluding agricultural futures brokers). It has imposed AML/CFT requirements primarily through the OSEC Notification and other more general notifications that focus on the management of operational risk within the securities and futures sector. However, the OSEC Notification does not apply to securities businesses that are also banks or insurance firms. The SEC has explained that it was agreed among all financial regulators that at the initial stage of the introduction of AML/CFT regulatory measures for FIs that the primary regulator for each sector should play the leading role. This was done to ensure consistency, as well as to avoid duplication of supervisory responsibilities and to avoid undue burdens on FIs. While the assessors understand this approach and understand that the regulators are collectively monitoring the situation (with a view to making any banks or insurance companies undertaking securities business subject to the OSEC Notification when a deficiency is observed), the assessors were left with a slight unease that certain activities of some FIs were not effectively subject to AML/CFT requirements (e.g., banks, when carrying out securities transactions). In the circumstances, the assessors consider this to be a minor deficiency.

880. The SEC conducts risk-based on-site and off-site audits on securities and futures companies to ensure compliance with both the OSEC Notification and the AMLA. It is empowered to take legal actions against those found insufficient in implementing SEC AML/CFT measures. The SEC shares information with the AMLO, to consider taking separate legal action for breaches of the AMLA.

881. Failure of securities companies to put in place effective AML/CFT measures is regarded as a criminal violation for the securities companies and their management under sections 282, 283, and 285 bis., of the SEA, and disciplinary sanctions against the securities companies and their management, while under the DA, administrative actions can be taken against both the companies and their management under Sections 111 and 114.

### ***Responsibilities of the Ministry of Commerce***

882. Under the Life Insurance Act, the DOI within the Ministry of Commerce is responsible for regulating and supervising life insurance companies. The focus of the DOI is on regulating the overall prudential health of life insurance companies. The DOI considers that the AMLO is the primary regulator of life insurance companies for AML/CFT. The DOI has not issued any regulatory requirements on AML/CFT for life insurance companies. The DOI does not conduct any supervision of life insurance companies for compliance with AML/CFT requirements under the AMLA. Accordingly, there is no real effective supervision of the insurance sector for compliance with AML/CFT requirements.

***Responsibilities of the Ministry of Agriculture***

883. Under the Royal Decree B.E. 2545 (2002), the Cooperative Promotion Department and Cooperative Auditing Department within the Ministry of Agriculture is responsible for regulating and supervising Cooperatives.

***Responsibilities of the Ministry of Interior***

884. The Ministry of Interior is vested with the power to regulate and supervise pawnshops under the Pawnshop Act B.E. 2505.

***General conclusion on criteria 23.2.***

885. The conditions in which “supervisors” interact, coordinate, collaborate, and perform their respective supervisory duties do not appear clearly at first glance and may hamper the effectiveness of the overall oversight system. The authorities have made some important efforts to clarify the breakup of duties between the different supervisory agencies and to document understanding among the regulators and the AMLO about where the boundaries lie. In this respect, working groups hosted by the AMLO help the authorities to find practical arrangements defining the respective duties of the FIU and the other stakeholders (mainly the MOF, BOT and SEC). Besides, the MOU that has just been signed between the AMLO and the BOT will promote better and more effective cooperation between the two agencies from a supervisory standpoint. The clarification will be even greater with the adoption of the provisions of a “Financial Sector Master Plan”<sup>44</sup> that will lead in the medium term in a simplification of the financial sector structure. The assessors encourage the authorities to seek formal MOUs or cooperation agreements between the AMLO and the other regulators. The WG, chaired by the AMLO, should continue to engage with the supervisors to clarify and reach agreement on roles within AML/CFT. A major improvement would be to clarify who is monitoring overall compliance with the AMLA as the assessors do not consider this clear.

***Fit and Proper criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):***

***Market entry for Banks***

886. The licensing process for banks is regulated by the CBA and by notifications issued by the MOF. The CBA section 5, provides that bank licenses are granted by the MOF. In practice, the BOT drafts the licensing criteria and provides recommendations concerning the qualifications of the banking applicant to the Minister for approval. The Minister, with the recommendation from BOT, issued the Notification of Ministry of Finance Re: Rules, Procedures, and Conditions for establishing a Commercial Bank, dated January 23, B.E. 2547 (2004) (Licensing Notification).

887. This Licensing Notification provides, in chapter 2, that an applicant eligible to apply to establish a commercial bank must fulfill certain rules and qualifications. The most relevant for AML/CFT are:

- Shareholder structure;
- Fitness and propriety of directors, management and major shareholders;
- Compliance of corporate governance guidelines;
- Role of the board of directors, of the shareholders, and of senior management;
- Internal controls and audit;

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<sup>44</sup> Dated August 24, 2006.

- Adequacy of risk management systems and management oversight, in particular in the management of high-risk business operations;
- Overall evaluation of management quality;
- Past behavior of major owners (which might be the parent bank if it is establishing a subsidiary or, if foreign-owned, a branch), directors and senior management starting from director level; and,
- Organizational structure, e.g., to facilitate efficient supervision and to ensure compliance with regulations and official policies.

888. Under chapter three, a company intending to apply to establish a commercial bank must submit an application to the BOT together with supporting documents that include, (i) the equity holding structure, (ii) names of directors and senior managers, (iii) the structure of the business group, (iv) financial statements over the past two years, qualifications and experiences of its key personnel, (v) names of persons to be appointed as chairman of the board of directors, chairman of the executive board and/or chief executive officer, managing director and deputy managing director.

889. Both the CBA (section 12) and the Licensing Notification prescribe fit and proper criteria for management and key personnel. The Licensing Notification requires that the persons who will be in charge of the abovementioned responsibilities must be competent in management, with a good track record and must have had at least five years of experience in senior management positions with reputable commercial banks or FIs. In addition, these persons must: be honest (art. 7.2, (2) b.); have no record of misconduct; have never been sentenced to imprisonment by a final court judgment; have never been charged or involved in a litigation process on grounds of cheating and fraud or dishonesty. When reviewing applications for licensing banks, BOT reviewers regularly consult with other relevant domestic and external supervisory agencies to get information on fitness and propriety.<sup>45</sup>

890. BOT corporate governance initiatives, which are applied in the license review, also cover the fitness and propriety of significant shareholders, senior management, and directors (chairman of the board, directors, chairman of the executive board and/or chief executive officer, managing director, deputy managing director, and other equivalent positions). As set forth in section 3 of the Notification dated December 3, 2002 re: the Board Structure of a Commercial Bank to Enhance Corporate Governance, directors of the board must meet several fit and proper obligations. It is noteworthy that according to paragraph 2 (8) of section 3, political official, member of parliament, senator, member of local government or manager of local government are prohibited to hold a position in the board. Along the same lines, in order to further enhance corporate governance standard in the banking system, the BOT issued on July 29, 2004 a Notification establishing the “Fit and Proper” criteria for Senior Management for Commercial Banks (Wor.1326/2547)<sup>46</sup> which are basically identical to those as set out in the Licensing Notification.

891. Art.7 (4) also requires the applicant to provide details of each shareholder regarding the structure of core shareholders as defined by the relevant BOT circular, including name(s), background and shareholding ratio in the commercial bank to be established. In essence, the major shareholders, who possess ten percent and above of the total shares sold, must also satisfy the qualifications stated in art. 7.2 (2) b. to h. as described above. Such information together with inquiries from other government agencies concerning wrongdoings are assessed by BOT examiners. BOT also performs in-depth review of the

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<sup>45</sup> See FSAP, Basel Core Principles of Effective Banking Supervision, Detailed Assessment of Observance, January 2007, page 21 and 22.

<sup>46</sup> This notification does not apply to branches of foreign banks as stipulated in paragraph 3.

proposed bank's ownership and management structure. The applicant must also reveal the source of the bank's initial capital for verification by BOT examiners.<sup>47</sup>

892. As for foreign banks, the Notifications of Ministry of Finance dated January 30, 2004 (Wor.138/2547 and Wor. 139/2547) set out the conditions for establishing subsidiaries and branches of foreign banks, in line with those applying to Thai commercial banks. An applicant eligible to establish either a branch or a subsidiary of foreign bank must meet certain qualifications: it has to be a foreign bank registered in a country with sound and respectable banking supervision standard (chapter 2, 3.6) and registered in a country to which BOT can request information for supervisory purposes (chapter 2, 3.7). In addition, the applicant must submit to BOT several supporting documents, notably a confirmation letter from the supervisory authority of the applying foreign bank confirming that it has applied prudential regulations in accordance with the international standards (chapter 3, 5.3). It should be noted that the "fit and proper requirements" for the person to be appointed to top management of the branch are the same as those applied to a Thai commercial bank as described above.

893. Section 5 of CBA empowers the MOF to reject applicants that do not meet the licensing requirements. In practice, BOT makes recommendations to the Minister concerning whether to approve or reject an applicant. Under the recent licensing scheme and the Licensing Notification, the Minister established the Committee to Review Application to Establish a Commercial Bank under the Financial Sector Master Plan (Committee) that consists of (1) the BOT Governor, (2) representatives from the insurance supervisory agency, (3) representatives from the securities supervisory agency, (4) representatives from MOF, and (5) an independent expert. The Committee reviews whether or not applicants comply with the qualifications for establishing a bank based upon findings and analysis of BOT examiners and submits the names of qualified applicants to the Minister for approval. Throughout this process, the Committee can request additional information and documents from applicants as may be deemed necessary. The Minister may revoke an earlier granted license in accordance with chapter 6 of Administrative Procedure Act, B.E. 2539 (1996) if it was found that the company supplied the authority with false information. Two finance companies and two credit foncier companies that submitted applications to become upgraded into banks were rejected in the year 2005.

894. As noted in the Detailed Assessment of Observance with the Basel Core Principles of Effective Banking Supervision, the framework for licensing is in accordance with the Core Principles requirement. The various methods, used by BOT to identify the true owners of banks, in cases where shares are held by nominees and through custodians, comply with international best practices.

#### ***Market entry for SFIs***

895. Market entry conditions for SFIs are governed by each specific enabling Act for the eight SFIs currently operating in the country. However, since SFIs are State Owned enterprises (SOEs), they must adhere to a set of management and governance rules and regulations which ensure the fit and proper criteria for management. Those rules and regulation are: 1) SOE's Board of Director and Employee Qualification Guideline B.E. 2518;2) SOE's accounting and Financial Guideline, Finance Ministerial Order B.E. 2548;3) SOE's Good Governance Guideline;4) Audit Committee Guideline; and 5) Violation of Duty of Government Officer ACT B.E 2539.

#### ***Market entry for Securities***

896. Securities firm license applications are reviewed by the SEC, which makes a recommendation to approve or reject to the MOF. The SEC retains the authority to approve application licenses for derivatives operators. In its review process for securities firms and derivatives firms, the SEC considers

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<sup>47</sup> See FSAP, Basel Core Principles of Effective Banking Supervision, Detailed Assessment of Observance, January 2007, page 21 and 22.



the management and operating capacity of the firm, its risk management, and its internal control systems. The SEC also reviews and must license the firms' directors, executives, and shareholders holding more than ten percent. Other firm executives may be reviewed by the SEC and prohibited from the industry. The SEC applies a fit and proper test, based upon prior violations of securities or banking laws as well as relevant educational degrees or work experience or a combination. The SEC also reviews a firm's board of directors. A securities or derivatives firm must obtain prior SEC approval for any changes in firm control, its board, its managing directors or its major shareholders.

897. Under sections 103 and 10 of the SEA, as well as the SEC Notifications No. GorTor/Nor/Khor 3/2548 and No. GorTor/Nor/Khor 4/2548 senior management (director, manager, and any person with power of management) must not have any of the following prohibited characteristics:

- being incompetent;
- being a person on the black list under the regulations of the SEC;
- being under the accusation or proceeding of or having been convicted of any wrongdoings, or having been penalized on the ground of the wrongdoings under the laws governing securities and exchange, finance business, commercial banking, or the laws relating to financial business of a similar nature, etc., whereby such action is instituted for the wrongdoings in respect of unfair securities trading or fraudulent, dishonest, or deceitful management; and,
- having been dismissed, terminated, or discharged from work due to dishonesty, or having worked in such a manner giving the implication of dishonesty, etc.

898. Furthermore, according to the Notification of the Ministry of Finance re: Prescription of Conditions for Securities Company to Apply for Approval of Person to be Major Shareholder, the SEC reviews the 3-year track records (criminal records) of the major shareholders of any securities company when applying for securities licenses prior to submission of the application. Any major shareholder who holds more than ten percent of the total outstanding shares of the company is required to (1) have sound financial status, (2) have no anticipated financial problems, and (3) have no past adverse records (i.e., records in relation to fraud, corruption, perjury, theft, false accounting or other dishonesty, ML, market abuse or insider dealing, offenses under the laws governing insurance, banking or other FIs). If the shareholder is a juristic person, those qualifications are also required of its directors.

899. In identifying "anticipated financial problems," the SEC analyzes the applicants' financial status (usually from their financial statements). In case the applicants are FIs under supervision of other authorities, the SEC will also take into account opinions of the lead regulators.

900. There is a limited criminal record background check done that focuses primarily on whether the relevant person has breached laws related to operating financial businesses. There is no requirement for a general background check to see whether the relevant person has a criminal record. However, the SEC stated that as part of its general practice, a broader check is likely to be undertaken of mainly publicly available material to try and discover additional information. No formal enquiry is made, however, with law enforcement to obtain a full criminal record check.

### ***Market entry for Insurance***

901. Under the Life Insurance Act, life insurance business may be undertaken only by a limited company that has been granted a license to engage in the life insurance business from the Minister of Commerce with the approval of the Cabinet. A foreign life insurance company may establish a branch office for the undertaking of the life insurance only after a license from the Minister with the approval of the Cabinet has been obtained. The Act prohibits persons from being a director, a manager, an officer or a person having management authority or an adviser who has among other things been bankrupt; been imprisoned for a dishonesty offense, or involved with the management of a life insurance company which

has had its license withdrawn. There are no requirements relating to the background of the shareholders of applicants. In addition, the Act provides that a life insurance agent or broker must also receive a license from the Insurance Commissioner. Agents or brokers must be domiciled in Thailand; not be adjudged incompetent; never have been sentenced to imprisonment for dishonesty offenses in the previous five years and not have been bankrupt. A juristic person may also apply to be a life insurance broker only if it has officers who are licensed to be life insurance brokers. There is no background check undertaken on the shareholders of such juristic persons.

***Application of Prudential Regulations to AML/CFT (c. 23.4)***

***Banking***

902. For commercial banks and other banking businesses, regulatory and supervisory measures as described above include requirements for licensing, risk management process and on-going supervision that are provided under the CBA and AMLA. All commercial banks are subject to the Notifications issued by BOT and according to which banks are required to adopt internal control and audit procedures, risk management policies and on-going monitoring mechanisms. For example, BOT has issued various guidelines with regard to the corporate governance practices in bank boards (see for example BOT notification 2770/2545 on Corporate governance). BOT Letters No.397-413/2549 focus on the roles, duties and responsibilities of bank's directors, which include the oversight of the bank's compliance with laws, regulations, and prudential policies and of the risk management policies, procedures, and monitoring process. BOT Circular No. 2770/2545 prescribes specific requirements for the board of directors to ensure that the bank has in place effective internal control and audit systems for the five risk areas: credit risk, market risk, liquidity risk, operational risk, and strategic risk. In addition, the board's responsibility in relation to internal control and risk management is stressed in several other BOT circulars related to banks' activities and risk areas.

903. The MOF is given the authority under each SFI's establishment Act to supervise and regulate general activities and operations conducted by the SFI. The MOF has authorized the BOT to perform an examination on SFIs and report the result as well as suggestions or opinion to the MOF. The examination guideline is based on the risk-based approach and examination of AML/CFT issues using FATF and Basel standards.

***Securities***

904. As mentioned earlier in this report, the SEC has issued notifications for securities firms and derivatives business operators related to AML/CFT. The SEC does not regulate the agricultural futures brokers – that is the responsibility of the AFTC.

905. The SEC has full powers to conduct surveillance, inspections and investigations of securities companies and futures businesses. It may demand all relevant information from regulated entities without the need for formal process (sections 264 of SEA and 103 of DA).

906. SEC staff conducts investigations when they receive information concerning a violation of the securities laws. To initiate an investigation, authorization must be obtained from the SEC Secretary-General. The SEC Board has no responsibility at the authorization stage.

907. The SEC has a staff of 25 responsible for inspection of securities firms and a comparable number responsible for inspection of mutual funds and investment advisers. Typically, the SEC conducts annually 12-15 routine inspections, 3-4 "for cause" inspections and 1-2 "thematic" inspections.

908. A risk-based approach is used to select firms for inspection and to determine which areas to inspect. Routine inspections focus on four key areas – prudential risk, operational risk, risk to client, and IT risks. SEC staff estimates that a routine exam will require 3-4 staff working on-site for two weeks.

909. The SEC staff estimates that all securities firms are inspected on a four-year cycle. During the past three years the inspection staff referred 64 inspection reports to the enforcement staff for further investigation, resulting in 18 administrative sanctions against securities firms.

910. The SEC has not conducted any inspections for compliance with the OSEC Notification as it was only issued during the assessment mission. However, the SEC has conducted a themed AML/CFT inspection of securities firms to ascertain whether they had in place AML/CFT policies and risk management systems, a documented KYC/CDD process, and a process for recording and filing STRs. However, there has been no substantive inspections focusing on whether those policies and procedures are effectively implemented.

### ***Insurance***

911. The DOI supervises insurance firms focusing primarily on whether their financial health is sufficient to sustain their insurance business. There is no off- or on-site inspection that focuses on AML/CFT compliance in the insurance industry. The DOI considers that the AMLO is responsible for monitoring the compliance of life insurance firms with AML/CFT requirements in the AMLA. Hence, there is no effective supervision of insurance companies for AML/CFT. However the DOI has informed the assessors after the on-site mission that, pending amendments to the AMLA to provide for monitoring of FIs by the AMLO, the DOI is creating a special team to conduct on-site supervision to check compliance by insurance companies of their AMLA responsibilities and to see that they are following the DOI's February 13, 2007 guideline.

### ***Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)***

912. Under the ECA and Ministerial Regulation No13, foreign exchange transactions businesses requires a license by the Minister of Finance through the BOT and such business is only allowed through banks, remittance agents,<sup>48</sup> and money changers.

913. Money changers can only buy foreign notes and traveler's checks, and sell foreign notes in an amount not exceeding \$5,000 per customer per transaction, and are not allowed to do remittance business. On August 11, 2004, the BOT Notice of the Competent Officer on the Procedures and Guidelines to operate as Authorized Persons and a Notice to set guidelines and criteria for licensing money transfer agents went into effect.

914. In the same notice, the regulations relaxed the paid-up capital requirement for a licensed money changer. Thai companies now require one million baht paid up capital (\$26,400). The intention is to encourage more licensed applicants, reducing the informal (and illegal) sector. 558 authorized money changers are operating in the country.

915. Before the grant of a license, both money changers and money transfer agents are subject to on-site examination by the BOT who also consults with the AMLO on their ML record and checks for convictions. Licensed agents are also subject to monthly transaction reporting and 5-year record maintenance requirements. At present, money changers have to report financial transactions to the AMLO, but remittance agents do not.

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<sup>48</sup> Currently, two authorized remittance agents operate in Thailand. In addition, unregulated remittance services are offered by the 7-Eleven store chain.

916. In 2004, the BOT limited the annual transaction volume for agents to \$60,000 for offices in the Bangkok area and \$30,000 for offices located in other areas.

***Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)***

917. Money changers, but not money remitters, are subject to the AMLA requirements according to the Ministerial regulation No. 1 (2000). As a result, money changers should apply STR, KYC/CDD and record-keeping requirements as set out in sections 13, 20, 21, and 22 of the AMLA. On a yearly basis, BOT conducts, in both money changers and money transfer businesses, on-site examinations on a risk-based basis (transaction value, type of business, client). BOT examiners verify, among other things, that value transfer/exchange services verify the identity of the customers, retain the relevant information in the files, and that suspicious activities are reported to the AMLO. In order to help the profession to observe the AML/CFT requirements, the BOT provides training to staff.

918. Thailand acknowledges the existence and use of alternative remittance systems that attempt to circumvent FIs. Reportedly, an underground banking or informal remittance system, locally known as “Poei Guen,” operates among the Chinese and Indian communities, but its details are not intimately known to the authorities. The authorities suggested that a lot of the activity relates to the Chinese business community attempting to evade tax and is often linked to other businesses in Hong Kong and Singapore.

919. Alternative remittance systems in Thailand are illegally used to shelter and move funds produced by illegal activities (e.g., international migrant smuggling, counterfeit consumer goods, as well as illegal gambling and lotteries, and prostitution (see International Narcotics Control Strategy Report, US Department of State, Vol. II, March 2006). The authorities indicated that, since remittance business requires a license from the MOF, informal remittance business is illegal and subject to criminal investigations and sanctions if the authorities learn of it. The potential sanctions comprise a fine not exceeding 20,000 baht (\$528) or to imprisonment not exceeding 3 years or both.

920. The BOT also indicated that it has educated interested parties about applying for the license so they have a better understanding of practice and regulation. According to the authorities, the RTP has arrested non-licensed or underground money changers who fail to comply with the regulation – although no statistics were provided to indicate how many arrests had taken place. According to the Office of the National Security Council and National Coordinating Center for Combating Terrorism and Transnational Crime, a research group has been set up to analyze the underground remittance system and assess the risk that it may pose in terms of TF.

***Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7)***

***Credit Foncier businesses and Finance Companies***

921. As of March 2007, three credit foncier companies are operating in the country.<sup>49</sup> The licensing requirements and the supervisory device for this category of FIs are set out in the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, B.E. 2522. Basically, the requirements for undertaking a credit foncier or a finance business are as follows:

- Under section 8 of the Act, the business may be undertaken only by a limited public company formed under the law on limited public companies and after a license from the Minister has been obtained. Finance companies need to have a registered capital and a paid-up capital. No person shall hold more than ten percent of the total amount of a finance company’s shares sold except in the case where

<sup>49</sup> Thai Keha Credit Foncier Co.Ltd; Lynn Philips Mortgage Credit Foncier Co. Ltd ; Sahavirya Credit Foncier Co, Ltd and Asia Credit Foncier Co. Ltd.

shareholders are government agencies, state enterprises under the law on the BOT, or juristic persons established under the provision of a specific law (section 14).

- The Act also requires that no finance company shall dispose of its shares to a person if such disposition will cause any person to hold shares in a percentage greater than that prescribed under section 14. The amount of shares of a finance company held by persons of Thai nationality shall not be less than three-fourths of the total amount of shares sold and the number of its directors who are persons of Thai nationality shall not be less than three-fourths of the total number of directors.
- The Act also contains “fit and proper” requirements for the persons holding management position (director, manager, officer or a person with power of management, or an adviser). The MOF regulates the sector but the BOT has also the power to issue prescriptions to be complied with by finance companies concerning the procedures on receiving or paying of money, as well as procedures on internal auditing and internal control. As set forth in the Act, the BOT also supervises credit foncier and finance companies through on-site and off-site monitoring. In this respect, as stipulated in Section 24 of the Act, the BOT may require any finance company to submit reports or present any document periodically or occasionally as prescribed by the BOT and may also require an explanation to clarify or amplify such documents or reports.

### ***Credit Card Business***

922. The market entry conditions for this type of business operators who are not commercial banks are laid out in the BOT Notification Re: Prescription of Rules, Procedures and Conditions for Credit Card Business Operations of Credit Card Business Operators.<sup>50</sup> As stipulated by the Notification, clause 1 (2), the credit card business operators will issue a credit card to a cardholder only if the latter has a deposit in an account at a FI. In that case, the KYC/CDD obligations are performed by the FI.

### ***Cooperatives***

923. A "Cooperative" is defined as a group of persons who jointly conduct affairs for socio-economic interests on the basis of self-help and mutual assistance. They can receive saving or fixed deposits from members or other cooperatives in accordance with the regulations of the cooperative which are approved by the Registrar of Cooperatives (see below). The cooperatives are also allowed to grant a loan or credit to their members, transfer or take mortgage or pledge of property of the members. According to the Cooperative Act B.E. 2542, the registration, licensing, and supervision duties are exercised by the Permanent Secretary of the Ministry of Agriculture and Cooperatives (the Registrar). In this respect, as stipulated in section 16 of the Act, the Permanent Secretary is vested with the power to (i) prescribe the system of accounting, the standard of audit, books and forms which the cooperatives have to submit to the Registrar; (ii) appoint an auditor, a cooperative inspector and a liquidator; (iii) order a cooperative to be inspected or investigated on matters relating to the formation, operations or the financial conditions of the cooperative; and (iv) suspend all or certain acts of a cooperative, or to order the dissolution of a cooperative being considered that its action or non-action may cause any damage to itself or its members.

924. To be registered, an applicant is required to meet certain requirements. The most relevant to AML/CFT are the “fit and proper” requirements applying to members of the board of the cooperative as stipulated in section 52 and the obligation for the applicant to provide the authorities with the list of names of the prospective members together with the number of shares which each of them wishes to hold when the cooperative is registered.

925. The supervisory regime for cooperatives is set out in section 17 of the Act B.E. 2542. The Registrar of Cooperatives, Deputy Registrar of Cooperatives, cooperative inspectors, auditors or competent officials entrusted by the Registrar, have the power to issue a written order instructing a board

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<sup>50</sup> This Notification refers to the MOF Notification Re: Business Requires Permission as per Clause 5 of the 58<sup>th</sup> Announcement of the Revolutionary Council, dated November 11, 2002.

of directors, supervisors, manager and/or personnel of a cooperative, or inviting any member of a cooperative, to explain to the said authorities the facts concerning any activity of the cooperative, or to send any document concerning operations of the cooperative. To carry out their supervisory duties, the authorities mentioned above have the power to enter and inspect the office of any cooperative during its working hours and the persons are obliged to provide facilities or assistance or explanation to such persons as may be considered appropriate. The authorities stated that the Cooperative Auditing Department of the Ministry of Cooperatives performed several on-site inspections in cooperatives over recent years that covered AML/CFT. However, the focus of examiners was only on the reporting obligation and not CDD measures. No failures were detected according to the authorities.

926. As of March 2007, around 6,000 cooperatives are registered and 1,348 thrift and credit cooperatives are engaged in financial business. Thrift and credit cooperatives are engaged in deposit taking and providing loans to the members, but they do not conduct remittance business.

### ***Pawnshops***

927. “Pawnshop” is defined as an establishment engaging as its usual business in lending money by taking objects as collateral for loans, each of which involves no more than 100,000 baht (\$2,640). It also means an establishment engaging as its usual business in buying objects by payment of money for the object, each of which involves no more than 100,000 baht (\$2,640), under an agreement or understanding, explicit or tacit, that the object will be redeemed later.

928. The licensing and supervisory regime of pawnshops is laid out in the Pawnshop Act B.E. 2505 according to which the Minister of Interior is the primary authority to grant licenses and monitor the profession. A Committee for the Control of Pawnshops, comprising the Permanent Secretary of the Interior as chairman,<sup>51</sup> is empowered to consider applications to set up pawnshops.

929. Pawnshops are not subject to the AMLA. However, some provisions in the Pawnshop Act B.E. 2505 are relevant to AML/CFT. As stipulated in section 18 (bi), in making a pawning deal, a pawnbroker shall clearly record data of the ID card of the pawning person on the stub of the pawning ticket. Where the pawning person does not need a citizen ID card, the pawnbroker shall record data of the paper stating the name and address of the person. On the other hand, where there are causes for suspicion that an object to be pawned was obtained through an act of crime, the pawnbroker shall notify the local administrative officer or police immediately (section 19). Along the same lines, a pawnbroker shall not allow pawned property to be redeemed if the pawnbroker has been informed by the administrative officer or police that the property has been obtained through an act of crime or the pawnbroker has grounds for suspicion that the property has been obtained through an act of crime. Under section 29, the Committee for the Control of Pawnshops has the power to suspend licenses or to revoke licenses.

930. The assessors are not able to assess the effectiveness of criteria 23.7 in respect of pawnshops, as they did not have the opportunity to meet with the representatives of the MOI.

### ***Guidelines for Financial Institutions (c. 25.1)***

931. The authorities have established some guidelines aimed at assisting FIs to implement and comply with their AML/CFT requirements.

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<sup>51</sup> And the Director-General of the Police Department, the Director-General of the Public Prosecutor Department, the Director-General of the Government Department and the Director-General of the Public Welfare Department as committee members and the Chief of the Registration Division, Police Department, as member and secretary.

**Banks**

932. Under the provisions of the CBA, the BOT has set the guidelines on AML/CFT as follows:
- a. The BOT has also issued the Circular (No.ThoPoTor.SorNorSor.(31) Wor.2725/2547) regarding Credit Documentation requiring a bank to have in place loan supplementary documents to have sufficient information for decision making, understanding objectives of borrowing and assessing customer's repayment capability. The authorities maintain that this requirement supports AML/CFT although the main purpose of this Circular is to create a customer credit risk profile.
  - b. On January 19, 2007, the BOT Policy Statement was issued. It is guidance on KYC/CDD measures applicable to all FIs.<sup>52</sup> This guidance is aimed at fostering the observance of AML/CFT requirements by all FIs. Basically, the document lays down (i) the board and senior management responsibilities, (ii) the customer acceptance policy, (iii) the customer identification and verification process, (iv) the ongoing monitoring of accounts and transactions, (v) the risk management device, and (vi) the training of staff policies.
  - c. The BOT Operational Risk Audit Manual (prepared by the Risk Management and Information System Examination Department, December 2003 and which does not impose enforceable obligations for the purposes of the FATF Recommendations) provides also, under the heading of operational risk, some guidance. As indicated in the document, "financial institutions should establish policies, rules and regulations with respect to the transactions it offers to its customers in order to prevent ML, in addition to installing a practice and control in accordance with notification, regulations and guidelines by the AMLO and the BOT such as the AMLO and the notification of the BOT on requiring the commercial banks to undertake regarding money deposit, dated December 24, 2001."
  - d. Furthermore, the BOT has conceived Guidelines for On-site Examination on AML/CFT Compliance. This document is used as guidance for BOT examiners in reviewing banks' AML/CFT policies, procedures, internal controls and compliance with laws and regulations. Such guidelines have been distributed to commercial banks for their self-assessment on AML/CFT compliance. They indicate that banks should have KYC/CDD policies and procedures, verification of customer's name against terrorist lists provided by competent authorities, and enhanced CDD measures for high-risk customers.
  - e. The BOT also issued a guideline in November 2006 for foreign exchange services provided by non-bank financial institutions (money changers, money transfer agents and businesses that provide travel cheques and baht payment service). The document titled "Policy Statement on AML/CFT Measures Re: KYC/CDD principles and practices for non-bank financial institutions" is aimed at providing a general framework for foreign exchange businesses regarding KYC/CDD, record keeping and reporting the suspicious transactions to the BOT.
933. The AMLO issued a policy statement on Compliance with the KYC and CDD for Financial Institutions and DNFBPs. This Policy statement, endorsed by the Cabinet on March 2007, is applicable to all FIs. It sets forth the requirements that FIs should apply in order to conform with KYC/CDD standards. For example, FIs should (i) not allow anonymous accounts or accounts in fictitious names, (ii) pay special

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<sup>52</sup> Meanwhile, Finance companies, Credit Foncier Companies, and Asset Management Companies shall adapt the policy statement to be commensurate with the business that they are permitted to undertake.

attention to unusually large or suspicious transactions, (iii) have appropriate and continuous policies in organizational management, personnel training, and an audit function to test the compliance system. The document also defines the concept of “specially attended customer,” which encompasses a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently comply with the FATF recommendations.

934. Additionally, there is a detailed guideline on AML/CFT formulated by the Joint-Working Group, which was set up by the TBA. The TBA guideline covers duties and responsibilities of banks’ board, senior management, and employees with respect to AML/CFT policy and KYC/CDD programs, customer acceptance policy, customer identification and verification, risk management and ongoing monitoring of high-risk accounts and transactions, investigation and reporting of suspicious transactions, records retention, and staff training. The contents of the TBA guideline have been reviewed and accepted by the Thai commercial banks as guidance for formulating internal policies and procedures regarding AML/CFT. In this respect, it should be mentioned that the financial industry associations, including the TBA, the ASCO, the AIMC, TLAA, and the General Insurance Association, have little role and function in the area of AML/CFT supervisory oversight among member firms.<sup>53</sup> Other than one letter, no guidelines have been issued in response to the regulations and notifications by the AMLO and by the financial sector supervisors relating to the AML/CFT compliance.<sup>54</sup> However, the industry association guidelines were all drawn up in close collaboration with the authorities and some (e.g., ASCO and AIMC) have been approved formally by their sector regulator.

935. On November 23, 2006 the MOF sent a letter to all SFIs ordering them to adopt a banking policy on AML/CFT and KYC/CDD Policy based on the TBA Guideline.

#### ***Guidelines Issued by SEC***

936. Most of the Notifications issued by the Office of the SEC on AML/CFT meet the FATF requirement of being laws, regulations or other enforceable means and their content has been analyzed in earlier sections of this report relating to the requirements that apply to the securities sector. The instruments that have been issued by the SEC that do not fit this description, and which fall into the category of guidelines, are as follows:

- SEC Notification No. Or Thor 21/2543, which requires securities firms to review customers’ trading limits;
- SEC Circular No. Thor.(Vor). 1896/2549 which indicates that all securities brokers should have put in place proper systems to monitor transactions of customers at least on a weekly basis to observe if there exists any irregularity in terms of volume and patterns of trading (i.e., concentration in particular stocks, excessive or over-speculative trading), and cut down customers’ trading limits accordingly; and
- SEC Guidelines No. OrThor/Nor/Khor/Yor 6/2548 and No. OrThor/Nor/Khor 11/2548 relating to the suitability of employees.

937. Collectively, these guidelines do provide some guidance to the securities industry about how to discharge their AML/CFT obligations in the AMLA and in the SEC Notifications, although the content of some of these is more generic than focused on specific AML/CFT requirements.

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<sup>53</sup> The TBA has informed the BOT to handle the matter accordingly.

<sup>54</sup> The only exception that was available to the mission is that the TBA issued a letter in 2000, following the letter from the AMLO to request banks to assign compliance officers responsible for AML, to ask all Thai banks to provide the names of 2–3 AML/CFT compliance officers to the AMLO.



938. More relevant is that the SEC has also assisted the two industry associations to produce detailed guidelines on the AML/CFT requirements that apply to the component parts of the industry. Those guidelines have been formally approved and endorsed by the SEC.

### *Insurance*

939. The DOI has issued 2 notifications, one on September 25, 2006, setting forth “Operational guidelines for compliance function of insurance company,” the other, dated February 13, 2007, informing life insurance companies to use “as their practical guidelines” the DOI Policy Statement containing “General Rules on Know Your Customer/Customer Due Diligence (KYC/CDD) for the Anti-Money Laundering and Combating the Financing of Terrorism: AML/CFT.” In addition, the TLAA has issued its own guidelines for AML/CFT. The content of the guidelines is comprehensive even though they have no enforcement status.

### *Comments*

940. Although the issuance of the guidelines mentioned above is an important step forward, the assessors consider that several improvements need to be made as follows:

- a. The BOT and the AMLO guidelines have been issued very recently, while the AMLA has been passed in 1999. The FIs have been left without guidance on how to implement the requirements under the AMLA or the Notifications that have been in place from the authorities for more than 7 years. The TBA, along with FBA, acknowledged that they had worked together to develop guidelines for the Thai banks which lacked internal AML/CFT procedures. This situation illustrates that the AML/CFT requirements may not have been properly implemented in the financial industry since 1999.
- b. The AMLO Policy statement is descriptive and does not clearly describe what steps FIs should follow to conform to the AMLA. For example, the Policy statement states that “FIs should pay special attention to unusually large or suspicious transactions” but does not provide examples of what could be considered as unusual or suspicious operations. The banking industry stated several times the need for the authorities to issue typologies of ML. The AMLO Policy statement also does not provide any indication on how to assess the “customer’s risk level.” As for the “Specially Attended Customers”, the AMLO Policy statement does not specify the type of enhanced CDD measures that FIs should conceive and implement.
- c. The AMLO and BOT policy statements are incomplete inasmuch as they do not cover critical issues as recommended by the FATF. For example, the documents do not contain any reference to the obligation to identify beneficial owners or take reasonable measures to verify the identity of beneficial owners such that the FI is satisfied that it knows who the beneficial owner is. In this regard, the Guidelines issued by the TBA and by the FBA are much more detailed and cover more issues (requirements for new account opening, KYC for different types of customers, general exemption for KYC, warning list). Besides, these guidelines provide precise indications on how banks should conduct risk assessment to find out what risk category their customer belongs to.
- d. The assessors found several inconsistencies in some guidelines that may cause some confusion among FIs. For example, the AMLO policy statement refers to the concept of “Specially Attended Customers” which encompasses a customer relating to politics, or any person having relationship with such a customer, or a customer coming from a country that does not comply or insufficiently comply with the FATF recommendations,

while, the BOT guidelines for foreign exchange business refers to the concept of PEPs that are “individuals holding important positions in Government or public sectors.” In the BOT guideline, foreign exchange businesses are required to “keep the record of the customer ID valued at \$10,000 or more,” while the AMLO policy statement does not specify any threshold. Furthermore, foreign exchange businesses as well as insurance companies are required to “know their employees,”<sup>55</sup> while the AMLO Policy Statement does not require banks to screen the background of their staff. On the other hand, the BOT policy statement for non-bank FIs stipulates that suspicious transactions are to be reported to the BOT (and not to the AMLO).

- e. The level of detail varies from one guideline to another, which might generate information asymmetry, different practices and therefore a lack of uniformity in the dissemination of KYC/CDD standards throughout the industry. For example, the BOT Policy statement is more detailed and accurate on the KYC procedures than the AMLO Policy Statement on the same issue. The BOT statement as well as the DOI Policy Statement for insurance companies also give examples of “red flags,” while the AMLO guidelines are silent on suspicious activity indicators. A better collaboration between the AMLO and the BOT on one hand and between the different departments within the BOT on the other would ensure stronger consistency in the policy framework.
- f. It appears from the discussions with banks that there is a need for further guidance. As an example of this is the lack of description of ML and TF techniques and methods in both the AMLO’s and the BOT’s guidelines. Banks stated that they need support from the authorities on how to better detect suspicious transactions. Some private sector representatives insisted on the fact that “they had to learn by themselves” and that further assistance from the AMLO and the BOT would be most helpful, notably on how to comply with the reporting obligations. The same concerns were expressed by the financial industry associations that would prefer to receive more guidance from the AMLO regarding how to detect suspicious transactions as well as typologies of ML/FT. They also wish to receive feedback from the AMLO on the reports that they submit. The assessors noted from its meetings with FIs that excessive numbers of STRs may be filed due to a lack of clear guidance from the AMLO and a lack of effective internal controls for AML/CFT compliance, particularly for STRs, leading to STRs being filed with only a slight suspicion by FI staff and possible defensive filing by the FIs.
- g. Along the same lines, the financial industry associations also would like more guidance/guidelines issued by each financial sector supervisor that might help each firm to establish internal controls for AML/CFT. Such guidelines could also be useful for each firm to explain to customers about requirements for AML/CFT, in particular CDD requirements. The lack of awareness among the public is an important obstacle that hampers the identification process. In addition, the industry associations noted the need to upgrade awareness of AML/CFT among firms, in particular for senior management of each firm.

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<sup>55</sup> See the Policy statement for Money Exchange Businesses and section 15.4 of the TLAA policy statement on KYC/CPC.

***Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)***

***Financial Institutions***

941. The BOT is vested by virtue of the CBA, with the power to monitor and ensure compliance by FIs with prudential requirements. It is not clear, however, whether the BOT is also competent to conduct oversight of AML/CFT compliance in FIs. Both the BOT Act and the CBA are silent on this issue. The AMLA, although not entirely clear, seems to give the primary monitoring and compliance responsibility to the AMLO. The AMLA also gives power to the AMLO to delegate its responsibility to the BOT for on-site inspection purposes. Indeed, on occasions, examination staff of the BOT are appointed as a “competent authority” under the AMLA in order to carry out compliance monitoring for the AMLO (a formal accreditation is required in such circumstances as stipulated in section 38).

***Specialized Financial Institutions***

942. Although SFIs should be regarded as a significant part of the financial system, they are regulated under separate laws different from those for commercial banks, e.g., they need not formally be supervised by BOT and on the same supervisory standards as applying to commercial banks. In practice, the MOF has delegated to BOT the responsibility to conduct the examination of the SFIs, and the supervision is performed in accordance with the same standards as those for commercial banks. Nonetheless, the MOF retains in practice its supervisory powers, e.g., to take or omit to take supervisory action against an SFI. Any recommendation to issue orders to SFIs for taking corrective action must thus be submitted by BOT to the MOF for the latter to act on. (In practice, MOF has generally acted as recommended).

***Money changers***

943. Under the Foreign Exchange Act B.E. 2485, the Ministry of Finance is empowered to supervise money changer businesses. In practice however, this power has been delegated to the BOT. As stated in section 7, the MOF “is empowered to appoint the Competent officers and determine their power and duties, particularly as regards the demand for submission of relevant books, accounts and documents”. Furthermore, section 7 bis of the Act stipulates that the MOF “has entrusted the BOT with the execution of this Act, the Governor of the BOT shall be empowered to appoint the officers of the Bank to be the Competent Officers under this Act.” The BOT has, therefore, full power to act on behalf of the MOF and monitor compliance for money exchanges and for money transfer agents when they remit abroad.

***Securities***

944. As described above, the SEC has adequate powers to monitor and ensure compliance by securities firms with their AML/CFT requirements. The SEC has full powers to conduct surveillance, inspections and investigations. Typically, the SEC conducts annually 12–15 routine inspections, 3–4 “for cause” inspections and 1–2 “thematic” inspections. A risk-based approach is used to select firms for inspection and to determine which areas to inspect. Routine inspections focus on four key areas – prudential risk, operational risk, risk to client, and IT risks. SEC staff estimates that a routine exam will require 3–4 staff working on-site for two weeks. The SEC staff estimates that all securities firms are inspected on a four-year cycle. During the past three years, the inspection staff referred 64 inspection reports from these routine inspections to the enforcement staff for further investigation, resulting in 18 administrative sanctions against securities firms. This indicates that compliance monitoring with the OSEC Notification is likely to be effectively carried out once it commences.

***Insurance***

945. The DOI maintains that it has no powers to monitor insurance companies for compliance with the AML/CFT requirements in the AMLA

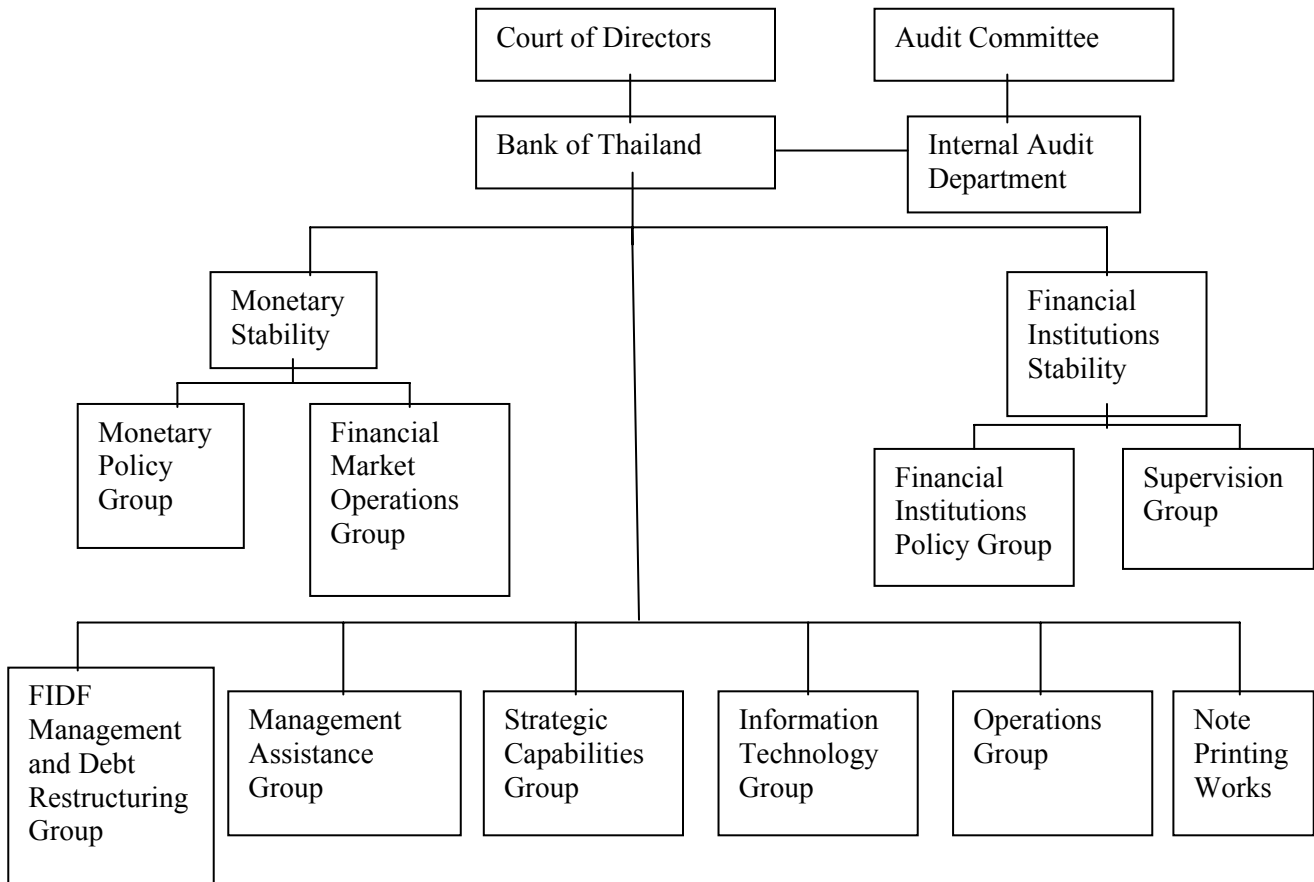
***Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2)***

***Supervision of FIs under BOT oversight***

946. As indicated by the authorities, the BOT is responsible for examining, analyzing, and supervising the operations and risk management systems of commercial banks including foreign bank branches, finance companies, and credit foncier companies under the provision of the CBA and the Act on the Undertaking of Finance Business and Credit Foncier Business to ensure the overall prudence of FIs, which includes AML/CFT issues. The supervision scope also covers money changers and money remitters, AMC, and non-bank activities (e.g., credit cards, personal loans, and E-money).

947. The supervisory device is part of the BOT's structure as shown below:

**Figure 7. Supervisory Device of the BOT**



948. Ten departments are dealing with the core functions of the Central Bank. AML/CFT issues are addressed at different levels. In terms of policy, the Financial Markets Operations Group conducts monetary and foreign exchange policies related to both the domestic and international money markets. This department drafted and issued in November 2006 the Policy Statement on AML/CFT Measures re: KYC and CDD principles and practices for non-Bank Financial Institutions (also called Handbook for Non-bank Financial Institutions) which provides general framework for non-bank FIs regarding KYC/CDD, record keeping, and reporting STRs. This Group also enforces the ECA.

949. The Financial Institutions Policy Group studies, plans, and formulates the regulatory policies related to financial institutions on a macro level and determines, evaluates and amends regulations and policy measures in supervision.

950. The Supervision Group is the Unit in charge of supervision as such, including AML/CFT. It examines, analyzes, and supervises the operations and risk management system of commercial banks, financial companies and credit foncier companies, and asset management companies on consolidated basis. It also supervises the operations of non-banks' credit card businesses and credit bureau in accordance with the related FI laws.

951. According to authorities, the BOT's approach to banking supervision is based on a risk-based philosophy and AML/CFT is part of this approach. Under the risk-based supervisory framework, the BOT conducts annual on-site examinations in order to assess a FI's financial position, risk management and information technology operations as well as AML/CFT compliance. During the on-site examination phase, the BOT examiners must perform sufficient work to determine an institution's overall consolidated, risk profile. As stated by BOT, an on-site examination requires examiners to hold discussions with operational and executive management of FIs; evaluate the appropriateness of FI policies; analyze key reports; and perform sufficient transaction testing—including for AML/CFT purposes—in order to verify the integrity of an institution's overall risk management systems and practices. The results of these activities are summarized in a report of examination—using a uniform risk rating methodology—that is communicated to the FI's top management and board of directors.

952. In addition to on-site supervision, the BOT carries out off-site monitoring. The off-site examination function is an integral part of the overall supervision process. To ensure a continuous monitoring and analysis of the development in the financial condition and performance of FIs, the supervisory review approach which forms the basis of off-site examination is used in combination with the regulatory review approach. The focus of the off-site function is mainly on the stability of FIs both current and prospective but not really on AML/CFT. According to BOT, the off-site supervision of AML/CFT mainly consists in (i) exchanging information with the AMLO, notably before carrying out an on-site inspection, (ii) holding meetings with the top management of the FIs to discuss, at least once a year, issues of common concern, including ML/TF risks, (iii) meeting with the external auditors and (iv) being alerted by the AMLO when something important in a particular bank deserve supervisor attention.

953. According to the BOT, supervision of FI's is a continuous process. Movements in financial conditions, performance and risk levels of any FI are monitored through the BOT's Data Management System (DMS) during the off-site supervisory cycle. The system allows BOT examiners to identify banks with higher risk characteristics and to take preventive measures based on institution specific circumstances. Collectively, the BOT's use of its DMS information, together with its contextual understanding of an institution's risk management practices, forms the basis of an early warning system that helps the examination staff better detect and resolve emerging risks in both individual banks and the system as a whole.

954. The scope of the on-site Examination is as follows: The BOT examiners assess the level and quality of management, based on five risk categories, namely: strategic risk, credit risk, market risk, liquidity risk, and operational risk (including AML/CFT). Moreover, on-site examiners also assess compliance with laws or the BOT's regulations and corporate governance practices.

955. The BOT's Supervision Group does not perform targeted AML/CFT inspections as a general practice. However, AML/CFT compliance is included in the strategic risk and operational risk assessment by evaluating whether policies or measures and operating procedures pertaining to AML/CFT of FIs are adequate and compliant with international standard and regulatory rules, and assessing whether FI's

internal control system regarding AML/CFT is equipped with restricted control, continuous review for regulation adherence and an independent inspection unit for operation of staff. Also, as stated by BOT, examiners assess the adequacy of each FI's computer system for identifying transactions to report for carrying out the customer identification process and for transmitting transaction reports to the AMLO. In their on-site process, the examiners randomly inspect a variety of transactions especially those they identify as potentially suspicious or involving a large amount of money. They also interview the FI's compliance officer to further assess compliance with the reporting requirements in the AMLA.

956. For the purpose of their AML/CFT on-site inspections, the BOT has designed a methodology called Guidelines for On-site Examination on AML/CFT Compliance. These guidelines state that bank examiners should verify if an FI has developed KYC standards in compliance with both domestic and international laws and regulations and also rules of home country (where applicable).

957. In general, the frequency of the on-site examination will be scheduled based on the composite rating from previous on-site visit as follows:

**Table 30. Composite Rating**

| <b>Composite Rating</b> | <b>Frequency of On-Site Examination</b>                                  |
|-------------------------|--|
| 1                       | Once a year  |
| 2                       | Once a year  |
| 3                       | Once a year  |
| 4                       | Once a year with close monitoring of financial condition and performance |
| 5                       | Intervention with continuous examination                                 |

(Source: BOT)

958. According to the BOT, the AML/CFT issue has been included in the scope of examination since the issuance of the BOT Notification on Accepting Deposits in 2001. The table below summarizes the number of on-site inspections covering AML/CFT matters.

**Table 31. Number of On-site Inspections Covering AML/CFT Matters**

| <b>Financial Institutions</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Commercial banks              | 14          | 12          | 13          | 14          | 12          | 14          |
| Foreign Bank branches         | 26          | 16          | 8           | 21          | 8           | 9           |
| Finance Companies             | 14          | 14          | 14          | 15          | 3           | 4           |
| Credit Foncier companies      | 7           | 7           | 5           | 5           | 1           | 2           |
| SFIs                          | 7           | 7           | 6           | 8           | 9           | 9           |
| <b>Total</b>                  | <b>68</b>   | <b>56</b>   | <b>46</b>   | <b>63</b>   | <b>33</b>   | <b>38</b>   |

959. The assessors were provided with detailed information about the outcomes of several on-site inspections carried out over the last few years in both commercial banks and SFIs. The most prominent and recurrent breaches identified by BOT examiners relate, among other things, to the lack of proper customer identification, the inadequacy of monitoring and control in operation of branches in foreign countries, the absence of STRs in several cases. The BOT has established a strict follow-up procedure mechanism according to which each bank that has been required to address the deficiencies detected by the inspection has to report the progress within 30 days, starting from the date of the letter informing of the examination result. Besides, the letter sent to the bank management instructing the bank to take prompt corrective measures has to be transmitted to the board for information. The assessors examined a large sample of follow-up letters sent to banks since 2004 instructing them to address AML/CFT issues. In several occasions, banks were instructed to report without delay to the AMLO suspicious activities identified by BOT inspectors and that had not been reported to the FIU.

960. The assessors consider that AML/CFT on-site and off-site supervision of banks has improved since the enactment of the AMLA, especially in recent years. However, the assessors have some concerns about supervision of money changers. The BOT has set up a special team of six examiners dedicated to monitor AML/CFT compliance in 558 authorized exchange bureaus and 2 money transfer networks comprising respectively 1,146 and 59 branches (Thailand Post Co. Ltd and Central Department Store Ltd). The mission concludes that the Unit is understaffed to deal with that number of entities and that the effectiveness of AML/CFT supervision of money exchange businesses might be affected. No sanctions or corrective measures have been taken against such businesses.

961. The importance given by the BOT to the off-site and on-site oversight of AML/CFT has evolved since 2001. The audit examinations have been more concentrated on the risks from 2004. As stated by the Deputy Governor of BOT, “the BOT has reoriented its focus on supervisory framework away from solo-basis transaction-testing analysis, towards risk-based supervision on a consolidated basis.”<sup>56</sup> To fulfill this objective, the BOT has undertaken internal reform and capacity building. On AML/CFT, as shown above, the BOT examiners have built their expertise progressively. It should be recalled that the Guidelines for On-site Examination on AML/CFT conceived by the BOT has been issued on December 26, 2005 only. These guidelines are very detailed and give examiners precise information and guidance on how to conduct on-site visits. The spectrum of activities that BOT examiners are asked to cover is quite extensive: policy established by the FI, KYC and CCD procedures, organizational structure, rules and manuals, front-line operating procedures, training program, internal control and monitoring systems, IT system and infrastructure, system for transactions reporting to the AMLO and record-keeping. The banking industry representatives also confirmed that AML/CFT oversight “is very high on the BOT agenda.”

### ***Discussion***

962. Questions are still pending as to whether BOT inspectors are legally empowered to assess compliance with the AML/CFT requirements set forth in the AMLA, as any other type of prudential risks. According to the BOT, bank inspectors are vested with the authority to visit banks to verify if they comply with all AML/CFT obligations not only those contained within notifications issued by the BOT. This assertion is more based on interpretation than on concrete regulatory provisions. The CBA does not address AML/CFT specifically. Moreover, as highlighted in the FSAP report on BCP (January 2007, page 17), the legal support for BOT supervision is currently, to some extent, not explicit.

963. In several cases, the supervisory actions of BOT are not based on explicit provisions in legislation but on interpretation and delegation from the MOF. New legislation for banking and banking supervision, notably the Financial Institutions Business Act (FIBA), an amended BOT Act, and a Deposit Insurance Act, have been drafted and are now in the legislative process but none of them have yet been passed. FIBA will supersede and add to the CBA, which will be abrogated. When passed and implemented, as currently drafted, FIBA will rectify the situation mentioned above. FIBA will make many of the powers of the BOT explicit and it will also give the BOT sole responsibility for some supervisory tasks which have so far been vested with the MOF but which have in practice been delegated partly or wholly to the BOT.<sup>57</sup>

### ***Supervision of other FIs (Cooperatives and Pawnshops)***

964. It is not possible to assess the effectiveness of supervision that the MOI is supposed to exercise over the pawnshop industry as the mission did not have a chance to meet with the MOI. The authorities

<sup>56</sup> Dr. Tarisa Watanagase, “What Do Regulators Really Want: Thailand’s perspective”, Retail Finance Asia-Pacific 2004, March 18, 2004.

<sup>57</sup> See FSAP Thailand, Basel Core Principles of Effective Banking Supervision, January 2007, page 7.

stated that the Cooperative Auditing Department of the Ministry of Cooperative performed several on-site inspections in cooperatives over the last few years that covered AML/CFT issues. However, the focus of examiners was only on the reporting obligation and not on KYC and CDD measures. No failure has been detected according to the authorities.

### ***Supervision of Securities***

965. Under section 264 of the SEA and section 103 of the DA, the SEC competent officers are equipped with a number of powers, including conducting on-site inspections of securities companies and those licensed to operate derivatives businesses, either on a routine basis or for the purpose of gathering documents or evidence in response to particular enquiries, even in the absence of suspected misconduct (section 264(1) of the SEA and section 103(1) of the DA). The SEC staff has 27 staff involved in supervising brokers and 13 supervising the funds management industry. A risk-based approach is taken. All securities firms are subject to on-site inspection at least every three years, some annually. Where major violations are found, firms are subject to 6-monthly on-site visits until the violations are resolved. The SEC also conducts themed or targeted onsite visits. However, the only inspection for AML/CFT compliance has been a themed inspection in early 2007 that focused primarily on whether firms had adopted policies and procedures. There has not been any inspections focusing on whether those policies and procedures are being effectively implemented. Moreover, it is too soon for there to have been any compliance monitoring in respect of the OSEC Notification as it was only issued during the on-site mission. The SEC shared with the assessment team a self-assessment questionnaire that it intends to use for its off-site inspection of securities firms.

### ***Supervision of Insurance***

966. The DOI claims that it has no authority to supervise compliance with the AMLA for life insurance companies. However, as mentioned earlier, it is considering setting up a unit to monitor compliance in advance of its legislation for supervising insurance companies being altered.

### ***Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)***

967. Under section 35 of the CBA, the BOT inspectors have power to enter into business premises of a commercial bank or into places which are used for collecting or analyzing the data of the commercial bank either by employing the use of computers or other instruments, in the working hours of such places in order to examine the affairs, assets and liabilities of the commercial bank, including documents, materials, or information. To this end, the BOT inspector may “order any director, officer, employee or auditor of a bank to testify or to deliver copies of or produce the actual books of accounts, documents or other evidence concerning the affairs, assets and liabilities of the commercial bank.” Persons concerned shall reasonably facilitate the inspector or competent officer in the performance of their duties (CBA section 35, (1, 2 and 3)). In addition to that, section 46 quinqué of CBA stipulates that whoever violates the order of the inspector, or obstruct such inspector in examination of the affairs and assets of the bank, or produces books of account, documents or other evidences relating to the affairs and assets of the banks which are false, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 100,000 baht (\$2,640) or both.

968. The BOT inspector—or a competent officer—once entrusted by the S-G of the AMLO to perform on-site visits, needs special clearance to obtain access to all records pertaining to any account of a FI’s customer. As stipulated in section 46 of the AMLA, the competent official may file an ex parte application with the Civil Court for an order permitting the inspector—or the competent official—to have access to the account, communicated data or computer data, for the acquisition thereof. Besides, the access is permitted only in the case where there is reasonable grounds to believe that the account is used or probably used in the commission of an offense of ML (section 46, 1st paragraph). In other words, the access to accounts and other records pertaining to customers is restricted to particular circumstances and



require formal judicial approval. As a result, it does not seem possible to compel production of records, just for monitoring compliance with CDD/KYC/record keeping and STRs requirements under the AMLA.

969. The assessors had thorough discussions with the authorities about the ability of BOT examiners to have full access to all kinds of information when they carry out their on-site inspections. From the BOT standpoint, there is no legal obstacle and bank inspectors can obtain without restriction any information pertaining to customers, including bank statements.

### ***Securities***

970. Under section 264 of the SEA and section 103 of the DA, the SEC competent officers are equipped with a number of powers, including:

- conducting on-site inspections of securities companies and those licensed to operate derivatives businesses, either on a routine basis or for the purpose of gathering documents or evidence in response to particular enquiries, even in the absence of suspected misconduct (section 264(1) of the SEA and section 103(1) of the DA);
- entering into other FIs to collect evidence or documents (section 264(3) of the SEA and section 103 (2) of the DA);
- searching any premise involved in the wrongdoings (section 264(3) of the SEA and section 103 (3) of the DA);
- seizure of documents or evidence relating to the offense (section 264(4) of the SEA and section 103 (4) of the DA);
- ordering securities companies, those licensed to operate derivatives businesses, including their management and staffs, to deliver documents or evidence, or to make statements (section 264 (5) of the SEA and section 103 (5) of the DA); and
- ordering customers or any person deemed necessary for the SEC investigation to deliver documents or evidence, or to make statements (section 264 (6) and (7) of the SEA and section 103 (6) and (7) of the DA).

971. Under section 109 of the SEA and section 19 of the DA, the SEC may request regulated entities to submit reports or present any documents for any period or from time to time, or to provide an explanation to elaborate or clarify such report or document in accordance with the rules and within the period as specified in the OSEC Notification.

### ***Insurance***

972. Under section 45 of the Life Insurance Act and section 49 of the Non-Life Insurance Act, the Insurance Commissioner has the power to order a company to submit reports and documents. The Insurance Commissioner may order the company to explain or clarify the contents of the said report or documents. However, the DOI maintains that these powers cannot be used in relation to AML/CFT compliance.

### ***Powers of Enforcement & Sanction (c. 29.4)***

#### ***Enforcement powers under AMLA***

973. The AMLA contains several provisions on sanctions. Section 62 relates specifically to certain obligations that banks—and other entities subject to the law— should comply with. It is stated that any person who violates or does not comply with STR requirements (section 13, 14 and 16 of AMLA), CDD measures (section 20), and record keeping obligations (section 22) shall be liable to a fine not exceeding three hundred thousand baht (\$7,920). Section 63 stipulates that any person who reports information to the AMLO by representing a false statement of fact or concealing the facts required to be revealed to the

competent official shall be liable to imprisonment for a term not exceeding two years or to a fine of 50,000 to 500,000 baht (\$1,320–13,200) or to both. In addition to that, as set forth in section 64 of the AMLA, any person who fails to give statement or to furnish written explanations, account, documents or evidence shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding 20,000 baht (\$ 528) or to both. Lastly, under section 10 of the AMLA, any person responsible for the operation of a FI who commits an offense of ML shall be liable to twice as much penalty as that provided for such offense.

***Enforcement powers under the CBA and other regulations from MOF and BOT***

974. When a bank breaches the CBA provisions, the MOF and the BOT may order it to rectify the problem and may also impose penalties and sanctions on the bank. The BOT is empowered by the CBA to define and identify conditions that threaten the stability and soundness of a bank in addition to having large degree of flexibility to order remedial actions and problem bank resolution. The BOT can also apply sanctions and penalties for non-compliance with its regulation and orders. In addition to supervisory measures, other measures may be applied, e.g., to rectify limited weaknesses and problems in a bank. Such measures may be the result of on-site examinations, off-site monitoring or other information.<sup>58</sup> BOT's penalties may be applied to a non-complying bank but also, or alternatively, to its directors. For instance, the BOT may remove directors found responsible for a bank being in a condition which may cause damage to the public interest, or responsible for operations of a bank which do not comply with BOT orders.

975. BOT off-site and on-site processes also include follow-up procedures. The BOT will monitor and verify that the ordered action is undertaken without undue delay and will gradually increase the “pressure” on the bank if no or insufficient action is taken.

976. The sanctioning regime as set out in the CBA raises several questions with regard AML. It is noteworthy that none of the sanctions listed relate specifically to ML/TF failures. Indeed, there is no indication in the CBA that sanctions as mentioned in sections 20, 21, 22, 24 ter and 25 are applicable to the situation where a bank failed to comply with AML/CFT obligations. For example, as set out in section 20, revocation of the license or closure of a branch are strictly limited to specific circumstances (where a bank or a branch is operating without permission –sections 5, 7 and 7-). Also, section 25 allows the MOF to withdraw the license or place the bank under control when “after having received an examination report from an inspector, the Minister is of the opinion that the condition or operation of commercial bank is such that serious damage may be caused to the public interest.” This does not seem, at first glance, to be applicable for breaching AML/CFT obligations. Similarly, as stipulated in section 20, the MOF is empowered to prohibit a bank from distributing or disposing of the whole or any part of its profits only when the bank failed to comply with the minimum capital ratio requirements. Along the same lines, suspension of operations entirely, partially or for a temporary period of time are only applicable for the purpose of rectifying the condition or operation of a commercial bank or for the protection of the financial stability of FI system (section 17 bis), but not apparently for serious violation of AML/CFT obligations.

977. As for the BOT, the situation is similar. The BOT can impose penalties in very strict circumstances as stipulated in section 44 (when a bank violates the liquidity assets ratio obligation- (section 22 (2)). The fine provided for in section 44 does not apply for instance to a bank that violates or fails to comply with the prescriptions prescribed by the BOT (section 22 (9)), –that may include AML. In that particular case, it seems that BOT is only allowed to order the bank to rectify the acts but not to apply more coercive actions. The authorities acknowledged that the BOT does not have direct power to impose sanctions for failure to implement AML/CFT measures. However, the authorities have indicated that if

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<sup>58</sup> See FSAP report, BCP assessment, page 61.

BOT examiners find an FI breaching provisions of the AMLA, they shall inform the AMLO so that banks are liable to sanctions under the AMLA.

978. To date, with the exception of corrective measures imposed by the BOT, no enforcement action has been imposed by the BOT or the MOF for breaches of AML/CFT requirements. The AMLO has also not taken any action to initiate procedures to impose sanctions under the AMLA. All things considered, it seems that the sanctioning arsenal as described in the CBA has been conceived to address failures to comply with prudential requirements, not to enforce also AML/CFT obligations. However, while the BOT does not have direct power, in practice, its moral suasion has been stressed as effective by many persons spoken to by the assessors.

#### *Enforcement under Securities Act*

979. In order to maintain economic stability or protect the interest of the public, under section 91 of the SEA and section 10 of the DA, the SEC Board may impose additional terms and conditions for securities companies or those licensed to operate derivatives businesses in doing their businesses.

980. The SEC staff has the authority to investigate possible violations of the securities and derivatives laws by any person or entity. Its authority to demand documents or compel testimony is not limited to registered persons or entities. However, it may impose administrative sanctions only against any entity or person registered with the SEC. These sanctions include a reprimand, suspension, license revocation or imposition of a limitation on business activities.

981. If the SEC staff determine that an administrative sanction is warranted, it must submit the recommendation for review by an industry advisory panel appointed by the OSEC and then to the SEC enforcement committee.

982. Following this review, the recommendation is submitted for action to the SEC Secretary-General who has full authority to impose a sanction. Defendants may submit a written statement to the Secretary-General for reconsideration following notification of the decision. The subject of the action may then appeal to the SEC Board for review, which must act within 30 days of the appeal.

983. Finally, the defendant may request a review by the Administrative Law court. While a money fine may be imposed administratively under the Derivative Act, it is not authorized under the SEA.

984. Any sanction against a registered entity stronger than the administrative sanctions identified above and any sanction against a non-registered person or entity requires criminal prosecution. However, for certain offenses mentioned in section 317 of the SEA including violation of SEC Notifications on AML/CFT, the SEC may either choose to impose fines before the settlement committee or refer requests for criminal action to the RTP or the DSI (which then refers the matter to the Public Prosecutor).

985. When the Secretary-General approves a referral for criminal action, the staff must notify the party to be charged and provide them with the option of submitting the matter to a Settlement Committee (section 317 of the SEA). The Settlement Committee is comprised of three persons appointed by the Minister of Finance. One member must be from the RTP, one from the BOT, and one from the MOF.

986. The Committee reviews the written recommendation of the SEC staff and may impose a fine consistent with its written guidelines. The final action is a consent decree on a “neither admit nor deny” basis with no finding of guilt. This process is not available for charges of other violations not mentioned in section 317 of the SEA, i.e., fraudulent conduct. Reference to the Settlement Committee is the process that the SEC would normally use for a section 317 breach of an AML/CFT Notification.

987. When a matter is referred for criminal action, it must be reviewed by either the RTP or the DSI. Under Thai law, one of the offices must review the investigative file and, if sworn testimony has been taken, it must be retaken by an investigative officer. SEC staff estimates that this review takes one year or longer typically and approximately 20 percent of SEC criminal referrals are dropped at this stage by the police or the DSI. If criminal action is appropriate, it is referred for action to the Public Prosecutor for trial. Completion of the trial and entry of a final judgment typically requires one or more years.

988. Sanctions in a criminal action may include a money fine or imprisonment. There is no remedy requiring a violator to reimburse or make restitution to injured investors. All money fines are paid to the government.

989. While the time period between SEC referral and final disposition may be more than two years, it is the policy of the SEC to publicly announce the action when the referral to the DSI is made.

990. To date, no enforcement action has been taken by the SEC for AML/CFT breaches. The authorities indicated that a breach of AML/CFT requirements would be treated as a deficiency of a firm's internal control systems and demonstrated that the SEC has successfully imposed sanctions for that type of breach in other circumstances. The assessors believe that it would be premature to conclude, in the absence of the successful imposition of sanctions and a track record to assess the level of sanctions imposed for breaches of AML/CFT requirements, that such sanctions can be effectively applied given the legal and administrative process that must be followed to impose sanctions as described above.

#### ***Enforcement for life insurance***

991. The DOI has no powers of sanction against insurance companies and their directors for failure to comply with AML/CFT requirements.

#### ***Availability of Effective, Proportionate, & Deterrent Sanctions (c. 17.1)***

992. Failure to comply with the requirements set forth in the AMLA carries criminal sanctions in the form of imprisonment and/or a fine under sections 62 to 66 of the AMLA. Respective penalties are as outlined below:

- Section 62: For noncompliance to the obligation set forth under section 13 (threshold and STR), under section 14 (obligation to report additional information subsequent to reporting of transactions), under section 16 (STR by non-financial trader/consultant), under section 20 (customer identification requirements for transactions subject to reporting), under section 21 (obligation to report in the case of customer's refusal to record transaction facts), under section 22 (record-keeping requirements for transactions subject to reporting), under section 35 and 36 (violation of a restraint order of a transaction issued by the TC) the penalty is a fine not exceeding 300,000 baht (\$7,920).
- Section 63: For making false report or notification under section 13, section 14, section 16, or section 21, the penalty is imprisonment not exceeding 2 years, and/or fine of 50,000 to 500,000 baht (\$1,320 to \$13,200).
- Section 64: For failure to cooperate under section 38(1) or (2) [written inquiry or summons] or causing obstruction or failure to assist under section 38 (3) [search, seizure or attachment of property or evidence on reasonable ground], imprisonment not exceeding one year, and/or fine not exceeding 20,000 baht (\$528);
- Section 66: For disclosure of official secret, imprisonment not exceeding 5 years, and/or fine not exceeding 100,000 baht (\$2,640).

993. The CBA and the SEA also set forth various ranges of sanctions (criminal and administrative) for failure to comply with the relevant obligations established under these acts. With regard to the BOT

Notification on Accepting Deposits, as it was issued by virtue of the provision of section 13 Quater of the CBA, failure to comply to such provision triggers a fine not exceeding 300,000 baht (\$7,920).

994. While sanctions provided for by the AMLA and other relevant legislation would appear to be proportionate in principle, it is difficult to establish whether they are effective or dissuasive, as no sanctions have ever been issued under the AMLA or other legislation against an FI for AML/CFT matters, despite the supervisory authorities reported to have encountered violations of some of the provisions in the exercise of their supervisory responsibilities. For example, during an on-site visit, the BOT examiners discovered that a bank did not completely report to the AMLO the transactions of mortgage and sales of assets worth more than 5 million baht (\$132,000). As a result, the board of directors and audit committee of the bank were required to monitor the bank operations and to report such transactions to the FIU in addition to report the progress to the BOT within 30 days; but the BOT was unable to explain to the assessors why steps were not taken to report the breach to the appropriate authority for the imposition of criminal action against the bank. In another example, BOT examiners found out that many transactions requiring reporting to the AMLO had been undertaken by the same party in a single day but the BOT took no steps to ensure that criminal action against the FI was pursued.

995. It is also not clear the extent to which sanctions have been applied pursuant to the relevant industry's legislation.

996. As of March 2007, no fines or coercive measures, such as imposing restrictions on a banking license, had been applied to banks because, according to the BOT, no major failures had been identified. However, the BOT has instructed banks in writing to take prompt corrective measures when breaches with AML/CFT requirements have been detected. The mission concludes that criteria 17.1 of R.17 is partially met. In some circumstances, where serious deficiencies have been identified, the action taken by the BOT does not appear sufficient and commensurate to the seriousness of the failure and shows to some extent a kind of unwillingness to impose sanctions. An example of this is the case mentioned above where a BOT random examination revealed that a customer carried out the deposit-withdrawal transactions within one day, worth 1.8-1.9 million baht per transaction (just below the regulatory threshold of 2 million baht - \$52,800), totaling 401 transactions that accounted for 753 million baht (\$19.9 million). The BOT requested the bank to report the suspicious operations to the AMLO and to circulate the examination report along with the Governor letter to its board of directors. This serious situation should have required further action from the authorities.

997. Banks are also obliged to update the BOT's off-site department on actions that have been taken to address supervisor's concerns. In addition to that, follow-up missions can also take place—and take place in practice—to gauge the effectiveness of the corrective measures. If the bank does not remedy the problems within the given period of time, the authorities stated that the BOT might consider taking further action, such as impeding the bank from opening new branches or offering new products. Representatives of the banking industry indicated that the moral suasion of the BOT is real. The banking industry representatives admitted that breaching BOT instructions is a very serious matter<sup>59</sup> that may impact the BOT's risk-rating of the bank. In this respect, it should be noted that the BOT has conceived an internal rating system which allows the supervisor to classify FIs in different groups, depending on their respective risk exposure. AML/CFT compliance is one of the indicators that is used to determine the risk exposure. The internal rating is, however, not publicly disclosed.

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<sup>59</sup> A bank representative stated that “the BOT will make our life so difficult that we need to comply with its regulations.”

### ***Insurance***

998. There are no sanctions available to the DOI under the Life Insurance Act for breaches of AML/CFT requirements by life insurance firms.

### ***Designation of Authority to Impose Sanctions (c. 17.2)***

999. As the sanctions set forth under the AMLA are of criminal nature, it would appear that there is not a designated authority empowered to impose these sanctions. Section 25.5 of the AMLA indicates that a responsibility of the AMLB is to “monitor and evaluate the effectiveness of the enforcement” of the AMLA; but given the penal nature of the sanctions it would be unlikely, nor have the authorities ever referred to, that the AMLB can be responsible for issuing such sanctions. However, the authorities did not provide clear answers to explain how the penal sanctions provided for by the AMLA would be applied in practice. Given their criminal nature, one could assume that they are issued by a court upon conviction of the offender; but it is not clear who would initiate the criminal procedure and if there is a legal obligation on the supervisory authority in their capacity as a public official to file a denunciation under the CPC in the case where they would detect a violation of the AMLA in the exercise of their supervisory responsibilities. Nonetheless, one could reasonably expect that the AMLO would play a key role in ensuring compliance with the AMLA and initiating action to enforce identified compliance deficiencies.

1000. Different authorities are vested with the power to impose administrative sanctions or corrective measures under the respective laws (i.e., the MOF, BOT, SEC).

1001. The DOI has no sanction powers against insurance companies and their directors for failure to comply with AML/CFT requirements. The DOI claims that the AMLO is responsible for monitoring compliance with the AMLA.

### ***Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3)***

1002. As the penalties set forth by the AMLA apply to the “person” violating the relevant provision, it is unclear whether sanctions for failure to comply with the relevant obligations apply to the person materially responsible for the violation or if this triggers a responsibility of directors and senior management as well. Considering the criminal nature of the sanctions under the AMLA, the latter case would appear remote.

1003. According to the CBA, the BOT is empowered to apply sanctions and penalties depending on the severity of the problem. Penalties may apply to bank’s directors as an alternative or in addition to other sanctions taken against the non-complying bank. As set forth in section 24, “Where there is evidence that the condition or operation of any commercial bank is such that damage may be caused to the public interest, or where the directors or persons responsible for the operation of any commercial bank fail to comply with the order of the BOT (...), the BOT shall have power to order such commercial bank to remove such directors or persons responsible for its operation who having cause such condition or operation of the company.” The BOT is, therefore, vested with the power to dismiss senior managers and ask the bank to appoint other persons to replace the persons so removed. The CBA also contains a set of deterrent sanctions and penalties, including imprisonment, applicable to directors or senior management in the extreme cases where the responsible persons failed to comply with specific prescriptions of the CBA, e.g., undertaking the business of commercial bank without permission (section 40), reducing a bank’s capital without an authorization or accepting its own shares as security (section 42).

1004. There is no indication, however, as to whether this set of sanctions may apply for failure to comply with or properly implement AML/CFT requirements. The sanctions mentioned above are more related to failures to comply with prudential regulations and not to AML/CFT obligations. Regarding the

enabling Act of all SFIs, the authorities maintain that the MOF could sanction SFIs for prudential matters and other aspects including AML/CFT, but this is not spelled out directly in the Acts.

***Securities***

1005. Under the SEA, there are two types of sanctions the SEC may take, criminal and disciplinary, on both FIs and the company's management, depending on the legislation or types of business involved.

***Insurance***

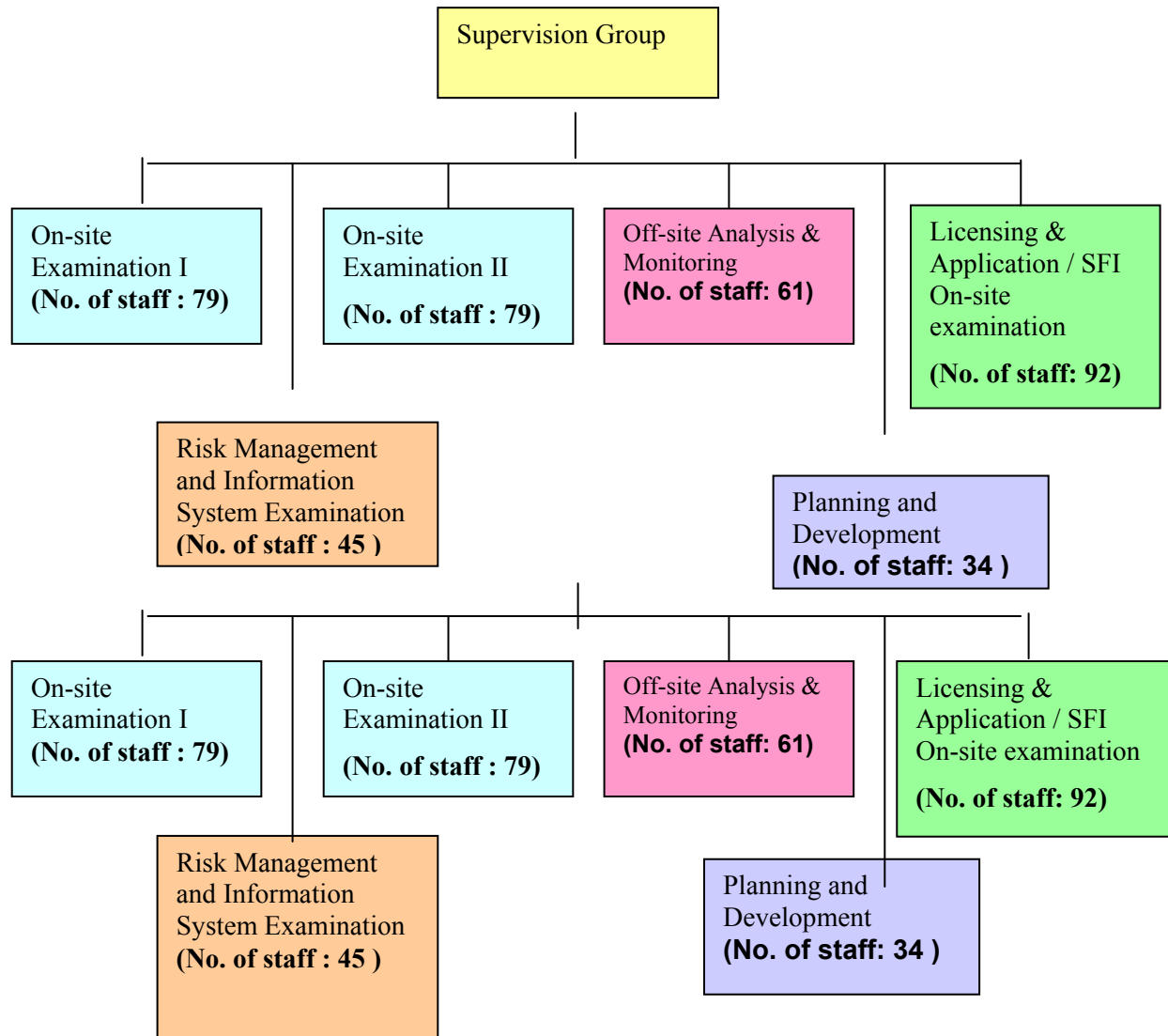
1006. The DOI has no sanction powers against insurance companies and their directors for failure to comply with AML/CFT requirements.

***Range of Sanctions – Scope and Proportionality (c. 17.4):***

1007. Under the SEA, the SEC has the authority to impose a range of sanctions for breach of AML/CFT requirements within its jurisdiction according to the severity of situation which is considered by size, impact and intensity of the situation, whether or not the securities company or its management has wrongdoing records, the determination in rectifying the issues, etc. The sanctions vary from orders to undertake certain action, rectify or refrain from taking certain action, to disqualification of directors or CEO of any securities company/derivatives business operator, to order a removal of directors of a failed securities company/derivatives business operator from office, fine and imprisonment, etc. (See sections 103 -104, 141-145, 282 -283 and 285 bis. of the SEA and sections 23 -24, 50, 111, 114, 119 of the DA). However, while sanctions have been successfully imposed for deficiencies in firms' internal control systems and a breach of AML/CFT requirements would fall into that category, no specific sanctions have been imposed for a breach of AML/CFT requirements.

***Insurance***

1008. No sanctions for AML/CFT are available to the DOI.

**Figure 8. Adequacy of Resources for Competent Authorities (c. 30.1):**

1009. As indicated in the FSAP report, the number and skills of supervisory staff are adequate relative to their present duties<sup>60</sup>, except perhaps for foreign exchange and money remitters supervision. The BOT is self-financed with revenues from interest income and gains from foreign exchange among others. The supervision function is fully integrated into the BOT and uses the same financial sources as the rest of the BOT. This financial independence has allowed the BOT to make all necessary investment in human resources, IT systems, and other needed infrastructure. The number of supervisory staff is around 400.

<sup>60</sup> See Basel Core Principles Assessment Program, Detailed Assessment of Observance (page 16, January 2007).



**Table 32. Duration and Human Resource Allocation**

| Types of FIs   | Working Days          |               |                            | Number of Examiners |
|--|-----------------------|---------------|----------------------------|---------------------|
|  | Pre-Examination Phase | On-Site Phase | Report Authorization Phase |                     |
| Commercial Banks Incorporated in the Country                                       |                       |               |                            |                     |
| Commercial Banks   |                       |               |                            |                     |
| - Large<br>(Total Assets > 10 % of Total Assets of all Thai Commercial Banks)      | 20                    | 40-45         | 20                         | 18-20               |
| - Medium<br>(3% < Total Assets < 10% of Total Assets of all Thai Commercial Banks) | 15                    | 30-35         | 20                         | 12-14               |
| - Small<br>(Total Assets < 3% of Total Assets of all Thai Commercial Banks )       | 10                    | 20-25         | 20                         | 10-12               |
| Retail Banks   | 10                    | 10-15         | 20                         | 8-10                |
| Subsidiaries of Foreign bank   | 10                    | 10-15         | 20                         | 8-10                |
| Foreign Bank Branches  |                       |               |                            |                     |
| - Complicated Business   | 15                    | 20-25         | 20                         | 8-10                |
| - Non-Complicated Business   | 10                    | 15-20         | 20                         | 8-10                |
| Finance Companies and Credit Foncier Companies                                     | 10                    | 10-15         | 20                         | 8-10                |
| Specialized Financial Institutions (SFIs)  | 10                    | 15-40         | 20                         | 6-8                 |
| Assets Management Companies (AMC)  | 10                    | 20-30         | 20                         | 3-6                 |
| Non-Banks  | 10                    | 15-25         | 20                         | 3-4                 |

Source: BOT

### *Securities*

1010. The SEC has a broad range of legal authority under the SEA consistent with its responsibilities. It has full control over its financial budget, with funds generated from industry fees it sets and collects, supplemented by a special governmental fund to provide funds to cover any budgetary shortfall. Salaries are set by the Board based upon prevailing private sector salaries for comparable positions. These salaries are usually higher than the salaries of other governmental workers. There are currently 421 employees of the SEC and over 50 percent have advanced degrees. The SEC has adequate powers to monitor and ensure compliance by securities firms with their AML/CFT requirements. The SEC has full powers to conduct surveillance, inspections, and investigations. The SEC has a staff of 25 responsible for inspection of securities firms and a staff of 13 responsible for inspection of mutual funds and investment advisers. Typically, the SEC conducts annually 12–15 routine inspections, 3–4 “for cause” inspections and 1–2 “thematic” inspections. A risk-based approach is used to select firms for inspection and to determine which areas to inspect. SEC staff estimates that a routine exam will require 3–4 staff working on-site for 2 weeks. The SEC staff estimates that all securities firms are inspected on a 4–year cycle. During the past 3 years, the inspection staff referred 64 cases to be criminally fined before the Settlement Committee under Section 317 of the SEA, and since the SEA came into effect imposed 18 administrative sanctions against securities firms’ senior management.

### *Insurance*

1011. The DOI does not dedicate staff to AML/CFT matters.

***Integrity of Competent Authorities (c. 30.2):******Banks***

1012. The BOT examiners are subject to screening rules, which are equipped with qualification and attribute checking, test of knowledge, understanding and competency. The school of examiners has been established to deliver essential courses for examiners.

***Securities***

1013. To ensure that high professional standards are maintained, the SEC approach to recruitment includes the following:

- There must be a written job description for each vacancy;
- Generally staff are required to have a Bachelor or Master degrees in relevant areas;
- Staff must have had relevant work experience in financial services or related industries;
- Staff must have functional competence including impeccable integrity;
- All staff go through a general interview and technical test;
- The SEC, with assistance from the RTP, examines the applicants under consideration to ensure that they do not have any previous criminal records or records in relation to fraud; and
- Staff undergo a psychology test, aptitude test and IQ test.

1014. In addition, the SEC Board has adopted an employee code of conduct that covers confidentiality of information, personal stock trading by employees, negotiations for future employment and conflicts of interest. Employees are not permitted to purchase individual company stocks, but they may invest in mutual funds and government debt. All investments must be reported to the SEC within 3 days although there is no routine practice of monitoring compliance. Spouses and minor children are not prohibited from purchasing stocks but these transactions must be reported by the employee. The SEC internal auditor has the authority to investigate employee misconduct, including prohibited investments.

***Insurance***

1015. The DOI does not dedicate staff to AML/CFT matters. Accordingly, the procedures to ensure integrity of DOI staff are not relevant to this report.

***Training for Competent Authorities (c. 30.3):******Training of BOT staff***

1016. The training policy conceived by the BOT on AML/CFT has been implemented progressively over the last few years. According to the statistics provided by the CB, only one examiner has been trained on AML/CFT in 2001. From 2001 to 2003, three examiners only attended a course on AML/CFT.<sup>61</sup> In 2004, a significant effort was made to strengthen BOT staff skills: 100 examiners received training on the AMLA from the BOT Institute (see below). The training effort has slowed down again from 2004 to 2006. At the end of 2006, 20 examiners were trained on the OCC regulations. The Guidelines for on-site examination on AML/CFT compliance were clarified to 40 supervisors in January 2006. In 2007, efforts have been concentrated on examination of AML/CFT compliance.

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<sup>61</sup> Delivered by the IMF, the OCC, and the ADB.

1017. It is noteworthy that the BOT has established the School for Examiners in 1999 to train examiners and FIs' policy personnel. It also regularly sends officers to participate in training programs held by the South East Asian Central Banks Research and Training Center (SEACEN), World Bank, US Federal Reserve, and the IMF. For example, in April 2007, the BOT sent several inspectors to attend the regional AML/CFT workshop for supervisors jointly organized by SEACEN and the World Bank and hosted by Malaysia. The BOT has also received substantial technical assistance from the IMF on AML/CFT. In addition, the AMLO has appointed some BOT examiners as examining officials under its Act, and they perform examinations on behalf of the AMLO, which promotes skill permeation. As of March 2007, about 42 examiners have gained a good command on AML/CFT.

#### ***Training of SEC staff***

1018. In the initial stage, AML/CFT training has been provided to SEC's staff whose roles involve supervision of securities companies. Such training includes in-house and external seminars/workshops. In-house training focuses mainly on the OSEC Notification to ensure staff's understanding on the AML/CFT requirements. External training, including seminars/workshops, is also arranged for SEC's staff occasionally with speakers from, for example, the ADB. The SEC also attempts to keep its staff informed of AML/CFT techniques and trends through involvement in international meetings or forums. The SEC indicated that, since AML/CFT is rather new in the securities and futures industry, it would like assistance from the AMLO and international organizations, regarding ongoing training for SEC staff over matters such as new developments and techniques used in ML and TF and how to identify suspicious transactions in the securities sector.

#### ***Training of DOI staff***

1019. The DOI plans to conduct training for its staff on AML/CFT in the future.

#### ***Training of Minister of Interior***

1020. The team was not able to meet with the MOI to discuss supervision of pawnshops. As a result, it is impossible to cover criteria 30.3 for this part of the financial industry.

#### ***Statistics (applying R.32):***

1021. Because the BOT and the MOF have not imposed any sanctions for breaches of AML/CFT, no statistics exist in this area. However, the BOT provided detailed information on the number of on-site missions carried out since 2001 and covering AML/CFT issues and the main findings, the number of follow-up letters sent to FIs instructing them to address AML/CFT issues. Likewise, while the SEC has not imposed any sanctions or conducted any in-depth AML/CFT off- or on-site inspections, it was able to share with the assessment team comprehensive statistics about how many securities firms had put in place AML/CFT policies and procedures based on the themed inspection that it carried out early in 2007. It also provided statistics showing the enforcement actions it had taken against securities firms for breaches of requirements other than AML/CFT.

### **3.10.2 Recommendations and Comments**

1022. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Impose appropriate sanctions against FIs found to be in breach of the AMLA and other AML/CFT requirements;
- Arrange for the authorities to conduct a risk assessment of the financial sector to determine what AML/CFT risks exist to help determine whether some FIs could be exempted from AML/CFT

requirements and to help with implementing Thailand's risk-based approach to AML/CFT supervision;

- Amend the AMLA and other laws to ensure that all FIs that carry out financial activities without a proven low risk of ML or TF are effectively regulated for AML/CFT and have a competent authority designated to monitor their compliance with the requirements, including:
  - giving the AMLO an explicit power for conducting compliance examinations of FIs that are subject to the AMLA;
  - address the gaps and lack of clarity for those FIs where the MOF has delegated large parts of supervision to BOT but not the corresponding powers to take corrective actions or to set legally binding regulations in all relevant areas, including AML, without Ministerial approval;
  - to permit the AMLO to give regulators full access to copies of STRs filed by FIs that they supervise to enhance their supervision; and,
  - ensuring that the competent authorities are able to effectively impose appropriate sanctions for non-compliance;
- Strengthen AML/CFT supervision and monitoring through:
  - Clearly delineating the roles of the AMLO and the financial supervisors for monitoring compliance with AML/CFT requirements, requiring them to enter into MOUs relating to coordinating their efforts and information sharing, and requiring them to carry out their responsibilities effectively;
  - Directing the AMLO to share information with each of the supervisory authorities about the quantity and quality of the STRs received from the FIs;
  - Requiring the ONCB (and other LEAs if they maintain them) to share with supervisory agencies its annual statistics relating to assets seized in FIs;<sup>62</sup>
- Enhance effective implementation by FIs of their obligations by:
  - Requiring the competent authorities in the financial sector in conjunction with the AMLO, to provide guidance to the private sector on patterns of suspicious transactions that require special attention and enhanced due diligence; and
  - Require the competent authorities to revise their existing policy statements and other AML/CFT related guidelines to ensure that they comprehensively cover all requirements and are consistent with one another;
- Strengthen regulation, supervision, and enforcement of remittance activity, including:
  - Promulgate the cross-border currency control regulations that are currently pending in the Office of Secretary of the Cabinet;
  - Enforce the existing licensing and registration requirements for all those known to provide underground banking or informal remittance service;
  - Ensure that remitters, such as the 7-Eleven convenience store chain, are regulated for AML/CFT; and,
  - Amend laws and regulations and administrative practices to ensure that there are sufficient measures in place to ensure that criminals are prevented from being beneficial owners of FIs.

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<sup>62</sup> The mission learned that assets related to narcotics activities have been seized in all banks operating in the country, including cooperatives (209 million baht (\$5.5 million) have been seized in 2006 in deposit banks and 1,600 million baht (\$42 million) have been seized by the authorities since 1992. For BOT activity, it would also be useful to have these statistics broken down by type of Banks (Commercial banks, Credit Foncier, SFIs, Cooperatives) so that the BOT can monitor risks specifically related to narcotics.

### 3.10.3 Compliance with Recommendations 17, 23, 25 & 29

|      | Rating | Summary of factors relevant to s.3.10 underlying overall rating   |
|------|--------|---|
| R.17 | PC     | <ul style="list-style-type: none"> <li>• It is difficult to establish whether the sanctions provided for in the AMLA are effective or dissuasive as no sanctions have ever been imposed.</li> <li>• The assessors were not satisfied that all of the FIs identified in the FATF definition of financial institutions that operate in Thailand had a corresponding competent authority designated to impose sanctions for non-compliance with AML/CFT requirements (e.g., cooperatives, pawnshops, and agricultural futures brokers)</li> <li>• The assessors were not satisfied that an effective sanctioning regime existed for the SFIs or, if it does exist, that it is effectively applied.</li> <li>• The assessors were not satisfied that the sanctions available to the authorities were being or were capable of being effectively utilized: <ul style="list-style-type: none"> <li>• There were no statistics available to the assessors showing how many sanctions had been imposed;</li> <li>• No criminal sanctions for breaching the AMLA have been applied, despite the existence of known serious breaches;</li> <li>• Some of the financial supervisors do not consider it their duty to report serious breaches of the AMLA to appropriate competent authorities;</li> </ul> </li> <li>• And,</li> <li>• Some criminal charges referred to the competent LEAs by the SEC may not be pursued.</li> </ul> |
| R.23 | PC     | <ul style="list-style-type: none"> <li>• The assessors are not satisfied that there has been a clear designation of which competent authorities are responsible for ensuring that FIs comply with the AMLA.</li> <li>• There are insufficient measures in place to ensure that criminals are prevented from being beneficial owners of FIs.</li> <li>• While insurance companies are subject to the AMLA, they are not subject to any effective compliance monitoring for AML/CFT.</li> <li>• Regulation and supervision of remittance activity seems inadequate –the competent authorities do not seem to be taking effective steps to suppress remittance activity in the large informal sector.</li> <li>• The 7-Eleven convenience store chain is able to operate as a money remitter without licensing, registration and effective compliance monitoring.</li> <li>• The assessors are not satisfied that all FIs that fall within the definition of financial activity within the FATF Recommendations are subject to supervision or oversight for compliance with requirements (e.g., cooperatives, pawnshops, agricultural futures brokers)</li> <li>• It is premature to conclude that AML/CFT regulation and supervision is effectively carried out as many of the requirements applicable to FIs had only just been established when the assessment took place.</li> </ul>                                     |
| R.25 | PC     | <p>Section-specific rating would be: <b>PC</b></p> <ul style="list-style-type: none"> <li>• The guidelines issued by the relevant competent authorities need to contain more detailed assistance for complying with AML/CFT requirements including descriptions of ML and TF techniques and methods.</li> </ul>   |
| R.29 | PC     | <ul style="list-style-type: none"> <li>• It was not established to the satisfaction of the assessors that there were supervisors with appropriate powers to monitor and ensure compliance for all of the FIs covered in the definition of financial activity in the glossary to the FATF 40+9 (e.g., pawnshops, agricultural futures brokers).</li> <li>• The DOI does not exercise its powers of supervision in relation to</li> </ul>   |

|  |  |  |
|--|--|--|
|  |  | <p>AML/CFT for life insurance.</p> <ul style="list-style-type: none"> <li>It is premature to determine whether the available powers are effectively utilized as many of the AML/CFT requirements applicable to FIs had only just been established when the assessment took place.</li> </ul> |
|--|--|--|

### 3.11 Money or value transfer services (SR.VI)

#### 3.11.1 Description and Analysis (summary)

1023. The activity of money transfer or value transfer services is governed by the ECA. According to BOT statistics, two authorized money transfer agents are operating in the country. The Central Department Store Ltd has 59 branches while the Thailand Post Co. Ltd operates through a network of 1,146 branches.

1024. There is a serious concern with respect to the underground remittances. Some high profile cases of informal remittances came to light in 2001, involving huge quantities of remittances totaling billions of baht. The main facts can be described briefly as follows:

- Three companies involved: Ratanakosin International Ltd., Tanasap Tawi Ltd., and Eastern Petro Power Ltd.
- Amounts remitted: Ratanakosin International Ltd (\$37.81 million); Tanasap Tawi Ltd. plus Eastern Petro Power Ltd. (7,496 million baht - \$198 million)
- Number of remittances: 109
- Number of people involved: 20
- Jurisdictions remitted to: Hong Kong, U.S.A., and Singapore

1025. The authorities have tried to tackle illegal remittances using different measures. For example, the amount of registered capital that money changers must have has been reduced to encourage them to license their business. Thailand is also engaged in a number of programs to educate formal institutions on legal issues and examine the practices of informal agents to combat illegal activities.

#### *Designation of Registration or Licensing Authority (c. VI.1):*

1026. A person who operates as a money transfer agent must obtain a license. The Ministry of Finance is authorized to issue such licenses while the BOT processes applications and makes recommendations. In addition to maintaining a list of authorized money transfer agents, the BOT, appointed as the Competent Officer under section 7 bis of the ECA, sets principles regarding the applicants' qualifications and requirements for business operation as well as ensures compliance with the requirements by monitoring money transfer agents through examination of their transaction records and reports and inspection of operations at their authorized offices.

1027. To perform as a money transfer agent, an SFI must obtain a license from the Ministry of Finance through the BOT. This requirement is governed under the notification of the Ministry of Finance and the notice of Competent Officer issued under the ECA.

1028. It is noteworthy that the 7-Eleven stores, the country's largest convenience store network, also provide money or value transfer services to their customers but currently do not need to be licensed or registered and no regulations apply to the remittance services offered. The transfers are domestic only and use 7-Eleven's own network and system.

1029. The BOT does not have legal power to oversee and request data from the company. However, a draft Royal Decree, derived from the Electronic Transactions Act, B.E. 2544 (2001), which is expected to

be enacted during 2007-2008 will authorize the BOT to regulate this business and others relating to electronic payment services.

1030. The BOT considers that the service operated by the 7-Eleven stores presents a low risk of ML and TF since it operates on a very limited basis (i.e., customers are not permitted to transfer more than 10,000 baht (\$264) per card a day). Moreover, the BOT notes that both originators and beneficiaries have to purchase chip cards and register them at the 7-Eleven stores before transferring money and that customers' address, ID card and telephone number are required for registration of the cards.

1031. The assessors note, however, that there has been no effective monitoring of whether the 7-Eleven store network has been effectively applying its own customer identification rules and that it remains a fact that 7-Eleven is operating as an unregulated money remitter.

***Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):***

1032. Authorized money transfer agents are not subject to the AMLA. However, a number of measures have been taken to ensure that authorized money transfer agents comply with the applicable FATF Recommendations. Recently, the Notice of the Competent Officer on Rules and Practices regarding the Undertaking of the Authorized Money Transfer Agents (No.2) dated August 1, 2006 has been issued to amend regulations regarding maintenance of records on transactions and related documents. Under the notice, authorized money transfer agents are required to maintain such records and documents for inspection by the Competent Officer for at least five years.

1033. Additionally, the BOT intends to issue a new circular to accord with the AMLO Policy Statement by the end of 2007 to require authorized money transfer agents to follow newly-issued guidelines regarding prevention of ML and TF. The guidelines contain practices and procedures for KYC/CDD and reporting suspicious transactions including to assist agents to detect such transactions.

1034. Apart from issuance of the circular and guidelines, the authorities have arranged meetings with authorized money transfer agents to clarify and ensure understanding of the practices and procedures required in the guidelines as well.

1035. As mentioned above no measures currently apply to the 7-Eleven store network.

***Monitoring of Value Transfer Service Operators (c. VI.3):***

1036. Several organizations monitor and restrict illegal remittances activities- among them the BOT, the AMLO, the MOF and the RTP.

1037. Under section 7 of the ECA, BOT examiners are empowered to demand submission of books, accounts and documents relating to foreign transactions. The Competent Officer monitors the agents to ensure their compliance with all requirements that apply through approaches set out in the BOT guideline. The approaches include pre-approval inspection at the business sites to ensure businesses only operate from premises and post-approval examinations. Such examinations include off-site inspections where the agents' reports are analyzed and on-site inspections to examine whether agents comply with the principles of KYC/CDD –the Competent Officer can request submission of transaction-related documents and ask the agents to maintain them for the specified period; scrutiny of details on reports of suspicious transactions; and evaluation of the agents.

1038. As indicated by the BOT, on-site inspections have been carried out over the last years in the MVT sector. No major failures with regard AML/CFT obligations have been reported.

1039. The BOT advises it has no powers to formally monitor the money transfer service activities of the 7-Eleven store network.

***List of Agents (c. VI.4):***

1040. At present, a money transfer license is specifically granted to each branch or agent of a money transfer operator, enabling the Competent Officer to maintain a current and complete list of all money transfer operators including their branches or agents at all times. However, as mentioned above, many illegal remittances are operating throughout the country. The assessors were also informed that some authorized money changers act as illegal remitters.

***Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):***

1041. In theory, the sanctioning arsenal looks broad and adequate. As stipulated in section 8 of the ECA, authorized money transfer agents who do not comply with the requirements under the ECA are liable to a fine or imprisonment not exceeding three years or both. Under article 5 of the Ministerial Regulations No. 13 and section 9 of the ECA, the Minister may cancel a money transfer license if the holder of the license violates the exchange control laws, rules, regulations, directions, and notices or endangers the exchange system or the public in economic matters.

1042. Clause 9 of the Competent Officer Notice, provides that the Competent Officer may recommend that the Minister revoke or not renew a money transfer license.

1043. Penalties under section 8 of the ECA can also be applied to both natural and legal persons. These sanctions can be applied by courts following prosecution by the BOT, as the Competent Officer under the Act. The Ministry of Finance has the authority to apply the sanction in article 5 of the Ministerial Regulations No.13 B.E. 2497 and the BOT, as the Competent Officer, can apply the sanction in clause 9 of the Notice of the Competent Officer as described above. Directors and senior management are subject to sanctions in section 8 of the ECA depending on the courts' ruling.

1044. The money transfer licenses are currently granted only to legal persons. Should there be an amendment to allow natural persons to operate as a money transfer agent, such sanctions would cover those persons as well. According to the BOT, there has not been any major issue identified in this sector with regard AML/CFT compliance and consequently, no sanction has been applied.

1045. Persons or legal entities that carry out services illegally are subject to criminal sanctions.

1046. The authorities could not provide any information about the nature of sanctions, if any, that have been imposed for the cases of illegal remittances that have been detected.

***Additional Element – Applying Best Practices Paper for SR VI (c. VI.6):***

1047. Thailand has yet to amend section 5 of the AMLA and implement the measures set out in the FATF Best Practice Paper for SR.VI

***Assessment of Effectiveness***

1048. There are systems in place to ensure that regulated MSBs comply with the limited AML/CFT requirements that apply to them. However, some remitters are able to operate without the need for any licensing or registration and many others operate illegally.



### 3.11.2 Recommendations and Comments

1049. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Make money transfer agents subject to the full range of FATF Recommendations applicable to them, namely CDD, transaction monitoring, and internal control requirements;
- Require the 7-Eleven remittance network to be licensed or be registered and otherwise be subject to the AML/CFT requirements;
- Take further efforts to suppress illegal remittance activities and to encourage remitters to operate in the formal sector; and,
- Investigate the nature and magnitude of the illegal remittance flows to determine what further improvements are needed to the legal and regulatory framework governing remittance businesses.

### 3.11.3 Compliance with Special Recommendation VI

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| SR.VI | PC     | <ul style="list-style-type: none"> <li>• Authorized money transfer agents are not subject to the AMLA but are subject to limited CDD and record-keeping obligations; otherwise, they are not currently subject to enforceable CDD, transaction monitoring or internal control requirements.</li> <li>• The legal requirements for operating as an authorized money transfer agent are not as effectively enforced as they could be, enabling large numbers of unregulated operators to offer their services in the informal sector.</li> </ul> |

## 4 PREVENTIVE MEASURES – DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

1050. Five of FATF designated non financial businesses and professions operate officially: (i) dealers in precious metals, (ii) dealers in precious stones, (iii) real estate agents, (iv) accountants, and (v) lawyers. Around 10,000 dealers in precious metals and stones are operating in the country. Respectively, 51, 203 lawyers and 13,996 accountants and auditors are registered nationwide. There is a concern, however, about the high number of unlicensed “lawyers” that provide legal advice, including in real estate transactions. On the other hand, there are three FATF’s DNFBPs that do not operate: i.e., notaries, trust, and casinos. Casinos are strictly forbidden although many casinos operate illegally. Thai laws do not permit the establishment or registration of trusts and TCSPs do not perform any of the functions in the FATF definition. Moreover, there was no evidence that trust creation or administration services are offered in Thailand.

1051. Dealers in precious metals and stones are lightly organized and regulated and poorly supervised. Around 10,000 businesses are operating in Thailand, generating \$3 billion of exports annually as stated by the authorities. Six main associations represent the profession but none of them plays the role of an SRO. The Thai Chamber of Commerce has set up an arbitration commission to deal with disputes between members and should soon be in charge of the company registration system. However, none of the associations or the Chamber have any specific AML/CFT role. The dealers in precious metals and stones are not subject to any AML/CFT requirements, monitoring, or oversight. The authorities stated their intention to subject these professions to AML/CFT requirements.

1052. The real estate agents are not strongly organized nor properly supervised, although the real estate activity is quite important and widespread in Thailand. Buying and selling of property is subject to registration with government land offices which are reporting entities under section 15 of AMLA and Ministerial regulation No. 3 (2000). Real estate agents themselves are not subject to reporting obligations

nor to any KYC/CDD measures. The real estate profession did not show any interest in meeting with the assessors despite an invitation. As a result, the assessors could not collect sufficient information about the magnitude of the real estate activity, the number of agents licensed and unlicensed, the registration process, nor discuss ML/TF related issues.

1053. Accountants, auditors, and bookmakers are governed by the Accounting Act BE 2543 (2000) and the Accounting Profession Act BE 2547 (2004). There are 6,752 auditors, 6,005 accountants, and 1,239 accounting businesses operating. These professions belong to the Federation of Accounting Professions (FAP) which is an SRO. The FAP has prescribed mandatory ethical and professional standards for its members. The FAP has internal disciplinary procedures to handle complaints about members. FAP members are required to comply with a code of professional conduct and complete continuing professional education. However, the FAP does not have any specific AML/CFT role. No specific AML/CFT provisions apply to auditors and accountants.

1054. Lawyers are regulated by the Lawyer Act of B.E. 2528 creating the Lawyers' Council of Thailand, the lawyers' SRO. As of February 2007, 51, 203 lawyers are licensed nationwide. A license is granted only after the applicant has successfully completed training in professional ethics, the basic principles of advocacy and the legal profession. No specific AML/CFT provisions apply to lawyers. There is a concern, however, about the high number of unlicensed "lawyers" that provide legal advice, including in real estate transactions. There is currently no legal enforcement power to sanction "illegal lawyers."

1055. Trusts are not able to be established or registered under Thai law and TCSPs do not perform any of the functions in the FATF definition—they can act as agents for company registration purposes, but they cannot provide a registered office or a mailing address or act as nominee directors, secretary, or shareholder of a company.

1056. Casinos are illegal in Thailand. However, many illegal casinos operate.

**Table 33. Statistics about DNFBPs in Thailand**

| Category of DNFBP                                     | Registered       | Unregistered                       | Regulatory requirements   |
|---|------------------|------------------------------------|---|
| Lawyers   | 51, 203          | ?                                  | Lawyers Act B.E. 2528   |
| Accountants and Auditors (including juristic persons) | 13,996           | ?                                  | Accounting Act BE 2543 (2000) and Accounting profession Act BE 2547 (2004)  |
| Dealers in precious metal and stones                  | 200              | 9,800                              | No specific regulation  |
| Real Estate Agents                                    | ?                | ?                                  | ?   |
| Casinos   | N/A (Prohibited) | "...illegal casinos are operating" |   |
| Trust and Company Service Providers                   | ?                |                                    | No specific regulation and N/A for AML/CFT purposes- these do not carry out any of the functions in the FATF definition |

1057. The AMLA does not contain any specific AML/CFT obligation for DNFBPs. As for KYC and CDD measures, none of the professions under the DNFBPs category are required to have in place KYC and CDD procedures. In terms of reporting obligations, section 16 of the AMLA stipulates that "a person

who is engaged in a business of operating, or advising to engage in investment transactions, or the movement of capital has a duty to report to the AMLO when there is probable cause to believe that such transaction may relate to asset involved in a commission of offense or in a suspicious transaction.” One could infer from this provision that the reporting obligation also applies to lawyers and accountants when these professions provide advice for investment transactions and real estate operations. However, section 16 of AMLA conflicts with the professional secrecy obligations that apply to these professions according to which any breach of the confidentiality obligation leads to criminal sanctions under the PC.

1058. The AMLO Policy Statement refers explicitly to the DNFBPs. These professions are defined as:

- Any person or juristic person trading in precious stones or metal, such as gold and jewelry;
- Any person or juristic person trading or undertaking a hire-purchase business in motor vehicles;
- Any person or juristic person undertaking personal loan businesses under the supervision of the BOT on non-financial businesses; and,
- Any person or juristic person undertaking electronic cash card businesses under the supervision of the BOT.

1059. The last paragraph of the AMLO policy statement states that the DNFBPs listed above should apply the Policy, including STRs obligations “insofar as it does not conflict with the normal business practice and have customers identified before conducting a cash transaction of one million baht (\$26,400) or more, unless there has been an earlier identification prior to this transaction, and report to the AMLO any suspicious transaction, even it is not a cash transaction.” This provision is very vague and to a large extent confusing. Besides, the threshold appears excessive.

1060. Moreover, the AMLO Policy Statement does not have any legal effect on the DNFBPs for three reasons: (i) it is not legally binding, (ii) it conflicts with the legal provision on professional secrecy that applies to lawyers and accountants, and (iii) the policy statement itself contains a provision which stipulates that DNFBPs should apply the KYC/CDD policy “insofar as it does not conflict with the normal business practice...”.

1061. As far as licensing supervision and enforcement procedures are concerned, law and accounting professions appear to be well organized under their respective regulations while the real estate sector appear to be less structured and organized. The precious stones dealers and jewelers profession are not well organized either. Only a few members are licensed. It seems, however, that according to the discussion held with their representatives, the profession has shown a fair level of awareness with regard ML and TF issues.

1062. Lastly, it should be pointed out that the authorities are in the process of reforming the AMLA in order to include DNFBPs into the scope of professions subject to AML/CFT obligations. The authorities are still to determine which DNFBPs will come under the expanded scope of the AMLA and the extent of the obligations that they will be subject to.

#### **4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, and 8 to 11)**

##### **4.1.1 Description and Analysis**

###### ***CDD Measures for DNFBPs in set circumstances (applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):***

1063. There are no CDD or record-keeping requirements in force for DNFBPs that operate in Thailand.

1064. The Lawyers' Society considers that regulation might be needed in order to have guidance in this area for lawyers, even though it seems extremely reluctant to support the disclosure of information in STRs. The Lawyers' Society acknowledges that risks exist in Thailand for lawyers to be used by criminal organizations and that guidelines could usefully be issued on this issue by the Board or bylaws by the Minister of Justice.

1065. For the Jewelers and Diamond/Gold Association, although there is no legally binding obligation to apply KYC/CDD measures, the profession stated that their members verify the identity of their customers, as a general practice. Besides, the Gem dealers association organized several seminars for their members on the risk of ML in cooperation with the Thai Chamber of Commerce. Some announcements on AML/CFT have also been posted in the profession "newsletter" to raise awareness. The Gem dealer's representatives also stated that they informed their members on the necessity to apply KYC measures as set out in the AMLO Policy Statement. However, they acknowledged that the AMLO Policy Statement is not binding.

1066. It is also noteworthy that these efforts developed by the associations of jewelers, gem and gold dealers to apply some basic KYC procedures have a very limited impact inasmuch as their members represent a very small percentage of the industry. Thai Gem and Jewelry Traders Association, for example, has only 200 registered members while 4,000 operators remain unlicensed.

1067. The assessors are not able to make any comment about the real estate sector, due to the lack of interest displayed by the profession in meeting with the assessment team.

***CDD Measures for DNFBPs in set circumstances (applying criteria under R. 6 & 8–11 to DNFBP) (c.12.2):***

1068. As indicated above, the DNFBPs sector is not bound by the AML/CFT requirements as set out in AMLA and in other relevant regulations or policy statements. Therefore, criteria under R. 6 and R. 8–11 are not met for this sector.

***Assessment of Effectiveness***

1069. There is no effective implementation of any requirements.

**4.1.2 Recommendations and Comments**

1070. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Conduct an assessment of the ML and TF risks that apply in each of the DNFBPs;
- Determine a policy on how to apply AML/CFT requirements to each of the DNFBPs and then make necessary amendments to the AMLA and other laws, including:
  - Determine how to deal with the issue of legal professional secrecy for lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals;
  - Determine whether lawyers, notaries, other independent legal professionals, and accountants should be permitted to send their STRs to their appropriate self-regulatory organizations rather than to the AMLO; and,
  - Determine the mechanics of an effective regulatory and supervisory framework for DNFBPs including whether monitoring should be undertaken by the authorities or industry organization(s).
- Consider applying the FATF recommendations to business and professions, other than DNFBPs that pose a specific ML/FT risk as requested by R.20; and
- Carry out awareness raising with each of the DNFBPs.

#### 4.1.3 Compliance with Recommendation 12

|      | Rating | Summary of factors relevant to s.4.1 underlying overall rating   |
|------|--------|--|
| R.12 | NC     | <ul style="list-style-type: none"> <li>• There are no legally-enforceable requirements in place in relation to any categories of the DNFBPs that operate legally in Thailand.</li> <li>• Illegal casinos operate throughout Thailand.</li> </ul> |

#### 4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

##### 4.2.1 Description and Analysis

1071. *Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 & IV.1 to DNFBPs):*

1072. There are no specific obligations on DNFBPs to report suspicious transactions to the AMLO.

1073. The closest thing to an obligation is section 16 of the AMLA as described above. However, as mentioned, the provision is vague, not specific for DNFBPs, does not cover the non-financial transactions for some of the DNFBPs such as lawyers and it cannot be enforced against lawyers and accountants as it conflicts with the professional secrecy obligations that apply to those professions. The AMLO could not provide information on the number of reports received on the basis of section 16 of AMLA.

1074. Despite section 16 of the AMLA, lawyers can not report any STR to the AMLO concerning the behavior of a client because, under section 323 of the PC, this will be a breach of secrecy. This section stipulates that, “Whoever knows or acquires a private secret of another person by reason of [their] functions as a competent official or [their] profession as a medical practitioner, pharmacist, druggist, midwife, nursing attendant, priest, advocate, lawyer or auditor, or by reason of being an assistant in such profession, and then discloses such private secret in a manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht (\$26), or both. A person undergoing training and instruction in the profession mentioned in the first paragraph has known or acquired the private secret of another person in the training and instruction in such profession, and discloses such private secret in a manner likely to cause injury to any person, shall be liable to the same punishment.”. The only obligation they have is to provide information if they receive a court order.

1075. Accountants are in the same situation as lawyers. They are subject to section 323 of the PC and appear unable to disclose STRs. The Code of Accounting Profession Ethics is also very strict in terms of confidentiality obligation as stated in chapter 7 of the Accounting Profession Act B.E. 2547 (2004).

1076. As far as the precious stones and precious metals dealers, there are no specific STR requirements. The Chamber of Commerce has been engaged in discussions with the AMLO since 2005 to clarify the specific requirements precious stones and metals dealers will be subject to. During initial talks, the parties have agreed on a reporting threshold of one million baht (\$26,400). However, it is not clear if this will apply to cash transactions only or to all transactions.

1077. Similarly, as mentioned above, government land offices, but not real estate agents, are required to report to the AMLO in respect of property transactions:

- (1) involving cash payments of two million baht or more (\$52,800);
- (2) involving real property valued at five million baht or more (\$132,000); or

(3) being made in connection with a suspicious transaction.

1078. None of the of the following requirements currently apply to DNFBPs in Thailand:

- STRs related to terrorism and its financing (applying c. 13.2 to DNFBPs);
- Reporting threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs);
- Making of ML and TF STRs regardless of possible involvement of fiscal matters (applying c. 13.4 and c. IV.2 to DNFBPs);
- Additional Element - reporting of all criminal acts (applying c. 13.5 to DNFBPs);
- Protection for making STRs (applying c. 14.1 to DNFBPs);
- Prohibition against tipping-off (applying c. 14.2 to DNFBPs);
- Confidentiality of reporting staff (applying c. 14.3 to DNFBPs);
- Establish and maintain internal controls to prevent ML and TF (applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPs);
- Independent audit of internal controls to prevent ML and TF (applying c. 15.2 to DNFBPs);
- Ongoing employee training on AML/CFT matters (applying c. 15.3 to DNFBPs);
- Employee screening procedures (applying c. 15.4 to DNFBPs);
- Independence of compliance officer (applying c. 15.5 to DNFBPs);
- Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1);
- Examinations of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c. 21.2); and,
- Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 21.3).

#### *Assessment of Effectiveness*

1079. There is no effective implementation of any requirements. The AMLO could not provide information about reporting of STRs pursuant to section 16 of the AMLA.

#### **4.2.2 Recommendations and Comments**

1080. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the AMLA so that:
  - DNFBPs are required to report STRs;
  - DNFBPs, their directors, officers, and employees are protected from liability for reporting STRs;
  - DNFBPs, their directors, officers, and employees are prohibited from tipping off that an STR has been made;
  - DNFBPs are required to develop programs against ML and TF; and,
  - DNFBPs are required to give special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF Recommendations as required by R.21.

### 4.2.3 Compliance with Recommendation 16

|      | Rating | Summary of factors relevant to s.4.2 underlying overall rating  |
|------|--------|---|
| R.16 | NC     | <ul style="list-style-type: none"> <li>• There are no obligations to report suspicious transactions by any category of DNFBP, nor related protections from liability nor prohibitions on tipping off that an STR has been made.</li> <li>• DNFBPs are not required to develop programs against ML and TF.</li> <li>• DNFBPs are not required to give special attention to business relationships and transactions with countries that do not, or insufficiently apply, the FATF Recommendations as required by R.21.</li> </ul> |

## 4.3 Regulation, supervision and monitoring (R.24-25)

### 4.3.1 Description and Analysis

#### *Legal Framework:*

1081. Lawyers are regulated by the Lawyer Act of B.E. 2528 creating the Lawyers' Society of Thailand, the lawyers' SRO. According to the Act, a "Lawyer" means a person who has been registered as a lawyer and who has been issued a license by the Lawyers' Society. A license is granted only after the applicant has successfully completed training in professional ethics, the basic principles of advocacy and the legal profession. Lawyers should also be members of the Lawyers' Society of Thailand. A breach of the code of ethics formulated by the Society is subject to sanctions. Sanctions are effectively imposed on lawyers. The sanctions range from warnings to license revocation. The Minister of Justice is responsible for administering the Act and has the power to issue Ministerial Regulations. The Lawyers' Society is headed by a board of Governors comprising elected lawyers, a representative of the Ministry of Justice and a representative of the Thai Bar Association. The Thai Bar Association covers the membership of the judges and public prosecutors and is mainly driven towards education –it has no supervisory powers.

1082. The Lawyers' association expressed concerns with regards to the high number of people who provide legal advice without getting a lawyer license but who claim to be a "lawyers." There is indeed in the country an "underground" legal advice activity carried out by people who graduated from the law school but who did not pass the lawyer exam. The profession is in the process of discussing with the authorities an amendment to the Lawyer Act so that the Lawyers' Society of Thailand is able to supervise the legal advisor activity and enforce sanctions against "illegal" lawyers.

1083. As of January 2007, 6,752 auditors and 6,005 accountants were registered, in addition to 1,239 juristic persons registered to carry out business as auditors or accountants. As mentioned above, the SRO for lawyers is the FAP. The FAP has the authority to license, suspend, and revoke individual accounting licenses; register all accounting services firms; establish auditing, accounting or other relevant standards; and establish code of conduct rules. A supervisory committee on accounting professions has been set up to regulate the activities of the FAP, to endorse Thai Accounting Standards and rules issued by the FAP, and to consider appeal regarding the FAP's orders. The BOT and the SEC are represented on the supervisory committee. There is also a committee on professional ethics, which can sanction accountants for not complying with the rules on professional ethics. Accountants are regulated by the Accounting Profession Act, B.E. 2547 (2004). The Minister of Commerce administers this Act and has the power to issue Ministerial Regulations and to supervise compliance with the Act. Auditors are regulated by the Auditor Act, B.E. 2505 (1962). In this Act, "Authorized Auditor" means a person who has been granted license to act as an auditor under this Act, and which license has not yet expired or has not been suspended or revoked.

1084. Dealers in precious metals and stones are lightly organized and not effectively regulated for AML/CFT.

1085. The real estate agents are not strongly organized. Two industry associations are members of the FIABCI (the International Real Estate Federation): The Property Management Association of Thailand and the Thai Appraisal Foundation. Other important associations of the sector are the Thai Real Estate Association, the Real Estate Broker Association and the National Association of Realtors. A committee of the Thai Chamber of Commerce, including those associations, addresses the issue of real estate. Every real estate transaction has to be registered with the Department of Land.

1086. The awareness of this sector with regard ML/TF risks is close to zero. The assessors stress that the real estate profession was the only independent profession which did not express any interest in meeting with them despite an invitation. The assessors had very open and productive meetings with lawyers, accountants, jewelers and gem traders but no talk at all with real estate representatives.

***Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):***

1087. Casinos are prohibited from operating in Thailand. However, many illegal casinos and gambling dens operate throughout Thailand. The authorities could take firmer action to suppress illegal casinos.

***Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):***

***Guidelines for DNFBPs ( applying c. 25.1):***

1088. No guidelines have been issued for DNFBPs as none of them are subject to AML/CFT requirements. The nearest relevant instrument is the AMLO Policy Statement. However, that is more in the nature of a statement of political intent regarding the cabinet's and the AMLO's desire to, among other things, apply AML/CFT measures to certain DNFBPs. It does not set out guidelines on how to apply AML/CFT requirements for DNFBPs as there are no requirements that exist.

***Assessment of Effectiveness***

1089. There is no effective implementation of any requirements. Moreover, illegal casinos are able to operate throughout Thailand.

**4.3.2 Recommendations and Comments**

1090. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Introduce a regulatory and supervisory framework for DNFBPs.

**4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

|             | <b>Rating</b> | <b>Summary of factors relevant to s.4.3 underlying overall rating</b>   |
|-------------|---------------|---|
| <b>R.24</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• Illegal casinos operate throughout Thailand.</li> <li>• No categories of DNFBP are subject to AML/CFT requirements and therefore no supervision regime exists.</li> </ul>  |
| <b>R.25</b> | <b>PC</b>     | <p>Section-specific rating would be: <b>NC</b></p> <ul style="list-style-type: none"> <li>• The only guideline applicable to the DNFBPs is the AMLO policy statement and this document does not contain specific guidance instead it just establishes high level principles. Besides, it refers only to CDD.</li> </ul> |

**4.4 Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)**



#### 4.4.1 Description and Analysis

##### *Legal Framework:*

##### *Other Vulnerable DNFBCs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):*

1091. According to the authorities, the RTG has announced its intention to make Pawnshops subject to the AMLA. However, the assessors were not provided with anything that confirmed this. Note that, Pawnshops, are technically FIs in Thailand as they offer lending services.

1092. There may be other vulnerable businesses and professions operating in Thailand, particularly given the Thai preference for using cash to conduct their affairs. The authorities are encouraged to assess what ML and TF risks exist in Thailand and encouraged to amend the AMLA, if necessary, to apply appropriate AML/CFT requirements to any vulnerable businesses and professions that pose specific risks.

##### *Modernization of Conduct of Financial Transactions (c. 20.2):*

1093. The authorities do not appear to be taking sufficient measures to reduce the use of cash in Thailand or to encourage more activity to come within the formal sector.

#### 4.4.2 Recommendations and Comments

1094. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Strengthen its efforts to encourage more financial activity to come within the formal sector; and
- Encourage less use of cash and more use of non-cash payment methods.

#### 4.4.3 Compliance with Recommendation 20

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.20 | PC     | <ul style="list-style-type: none"> <li>• The authorities do not appear to be taking sufficient measures to reduce the use of cash in Thailand or to encourage more activity to come within the formal sector.</li> </ul> |

## 5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

### 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

#### 5.1.1 Description and Analysis

1095. Under Thai law, a juristic person refers to an organization created and registered according to the law. Juristic persons under Thai law include governmental ministries, monasteries, private and public limited companies, limited partnerships, registered ordinary partnerships, associations, and authorized foundations. A juristic person enjoys the same rights and is subject to the same duties as a natural person, except those which by reason of their nature, may be enjoyed or incurred only by a natural person.

1096. The main type of juristic persons used for doing business are partnerships, limited companies and public limited companies. There are two types of partnerships: ordinary registered partnerships and limited partnerships.

1097. As of January 31, 2007 there were 521,519 registered businesses: limited companies (288,040 firms, including 832 public limited companies), limited partnerships (229,021), and ordinary partnerships

(4,458). In the 12 months to January 31, 2007 there were 1,584 new firms registered in Bangkok and 2,261 new firms in the provinces. The two main sectors for new firms were construction (297) and real estate (136).

1098. Foreign businesses have been issued 1,700 licenses and 1,197 certificates under the Foreign Business Act 1999. 357 licenses were issued to firms operating in construction, engineering services and project management services with government or state enterprise, 646 to firms that operate representative offices or regional offices, 42 to firms that operate accounting or legal service businesses, and 92 to firms that operate broker or agent businesses, retailing, wholesaling or other services. The three countries with the highest number of licenses issued were: Japan (641), Singapore (253), and Germany (109). 539 certificates were issued to firms operating in the services business, 332 in the retailing and wholesaling services, 124 in the engineering and construction service, 76 in the broker and agent business, and 29 in the accounting service and legal service business.

1099. The following sections only make reference to these type of juristic persons as examples to describe formation and registration requirements in Thailand.

### *Partnerships*

1100. In accordance with section 1064 of the CCC, ordinary partnerships may register with the Ministry of Commerce. Upon registration, they become juristic persons called ordinary registered partnerships. In accordance with Section 1078 of the CCC, a limited partnership must also register with the Ministry of Commerce, upon which it becomes a juristic person. The main difference between an ordinary registered partnership and a limited partnership is that the latter one has two separate groups of partners: (i) one or more partners whose liability for partnership's obligations is limited to capital contributed, and (ii) one or more partners who are jointly and without limit liable for all of the partnership's obligations. Contributions from unlimited partners may be in the form of cash, property or services, but those from limited partners must be in the form of cash or property. Only limited partners may transfer their shares without the consent of other partners.

1101. The formation of a partnership must be done by the following stages:

- (1) As to establishment of a partnership, a managing partner may request to inspect and reserve whether the name to be used is duplicated with the name of an existing registered partnership or not. After reservation, the partnership must be registered within 30 days.
- (2) To buy an application form from the Department of Business Development or the Office of Business Registration Service or the Office of Provincial Business Development.
- (3) To fill in the application form and all supporting documents and then submit them to the Registrar for consideration. The entry in the register must contain the following particulars:
  - The firm name of the partnership;
  - The address of the principal business office and of all branch offices;
  - Its objectives;
  - The partners;
  - The managing partner;
  - The restrictions on the powers of the managing partner;
  - The seal or seals which are binding on the partnership; and,
  - Any other particulars which the parties may deem expedient to make known to the public;
- (4) To pay a fee according to an order of the Registrar.

1102. If the partners desire to have a certificate of registration, they may file an application and pay a fee to the Registrar. Then a certificate of registration will be delivered to the partnership.

1103. A limited partnership or an ordinary registered partnership registered under the provision of the CCC have the duty to prepare a yearly balance-sheet to submit to the Office of Business Information Administration, the Department of Business Development or the Office of Provincial Business Registration within five months after 'Accounts Closed'. Even though it has not yet begun undertaking any commercial transactions, failure to comply with such requirement is punished with a fine not exceeding fifty thousand baht (\$1,320).

#### *Private Limited Companies*

1104. In accordance with sections 67 and 70 of the CCC, a private limited company is a juristic person distinct from its shareholders. The capital of private limited companies is divided into equal shares of a designated nominal amount (par value). Shares may be common or preferred and the nature and extent of preferred rights must be established at a shareholders' meeting. Share certificates are issued to each shareholder for the shares it holds. Upon formation of the company, capital shares must be totally subscribed and at least 25 percent of the registered capital must be paid in. Private limited companies may not offer their shares to the public. Shares are freely transferable unless a restraint has been placed on their transfer and entered into the name certificate pursuant to the companies regulations. Bearer shares may be issued and they are transferable by the mere delivery of the certificate.

1105. The formation of a limited company is carried out briefly as follows:

- (1) Any seven or more promoters subscribe their names to a memorandum for registration.
- (2) After the memorandum has been registered, the whole number of shares must be subscribed.
- (3) Afterwards, the promoters must, without delay, arrange a general meeting of subscribers by forwarding to them a notification at least seven days before the day on which the meeting is to be held.
- (4) After the meeting is held, the promoters shall hand over the business to the directors.
- (5) The directors shall ask the promoters and subscribers to pay at least twenty-five per cent forthwith for each share. (The capital can be divided into any unit of shares but the value shall not be less than five baht per unit - \$0.13.).
- (6) Even though full payment of allocated shares has not been received, the company has to be registered within three months after the incorporation meeting.

1106. The formation of a company must have the following documents:

- (1) An application form specified by the government department concerned.
- (2) A copy of the company notification.
- (3) A copy of the company incorporation report.
- (4) A copy of the company's internal regulations (if existing).
- (5) Any evidences in respect of share payment:
  - (a) a company statement issued or guaranteed by a bank,
  - (b) a certificate of share payment,
  - (c) written confiscation of payment and maintenance of the company.
- (6) Two printed copies of the memorandums. (Three copies for provinces).
- (7) Two printed copies of the regulations. (Three copies for provinces).
- (8) Copies of the identification cards of directors whose signatures are in the application.

- (9) Copies of a lawyer license or a certificate of membership of the Lawyers Council of Thailand. (If existing).
- (10) Two copies of SorSorChor.1 Form. (Three for provinces).
- (11) A power of attorney (if existing).

1107. The rules governing private limited companies state the following:

- (1) A limited company must at least once make a balance-sheet in every twelve months. The balance-sheet must be examined by one or more auditors and submitted for adoption to an ordinary general meeting within four months after the account closure. At the same time, the balance-sheet must be submitted to the Office of Business Information Service, the Department of Business Development or the Office of Provincial Business Development within one month after it has been adopted by the ordinary general meeting. Even though the company has not yet begun undertaking any commercial transactions, it must submit a balance-sheet. Otherwise, the directors shall be punished with a fine not exceeding fifty thousand baht (\$1,320).
- (2) The register of shareholders made at the ordinary general meeting must be forwarded to the Office of Company Registration of Bangkok Metropolitan or the Office of Provincial Company Registration within fourteen days after the meeting. Otherwise the directors shall be punished with a fine not exceeding ten thousand baht (\$264).
- (3) The ordinary general meeting must be arranged within six months after registration and the next meeting must take place at least once in every twelve months.
- (4) A certificate of shares must be delivered to each shareholder, otherwise the directors shall be punished with a fine not exceeding twenty thousand baht (\$528).

#### ***Public Limited Companies***

1108. A public limited company is designed for a wide public shareholding and it is governed by the Limited Public Company Act B.E. 2535 (1992). It is established for purposes of issuing shares for sale to the public and their liability is limited to the amount paid on shares. Offering shares for sale to the public requires the prior permission of the SEC. A public limited company becomes a juristic person once the registrar accepts its registration. The shares in a public limited company are equal in value and indivisible. All shares issued must be paid up. The transfer of shares is effected by the delivery of the certificate endorsed by the signatures of the transferor and transferee with the name of the transferee stated therein. Such transfer binds the company upon receipt of requests for registration thereof and it binds third parties once registration has been effected. In accordance with the Limited Public Company Act, B.E.2535 (1992), the structure of a limited public company is defined as follows:

- (1) The number of shareholders must be fifteen or more;
- (2) The minimum registered capital is not fixed;
- (3) Each of the shares must be equal in nominal value and there shall be a one-off payment for the whole nominal value; and
- (4) The number of directors must not be less than five persons and at least one half of the total number of directors must have domiciles in Thailand.

1109. The formation of public limited company can be briefly described as follows:

- (1) Any fifteen or more natural persons will initiate the process of incorporation by subscribing their names to a memorandum for registration and then making the prospectus, notice, advertisement or invitation advising the public to buy shares. If all the shares have been subscribed, the promoters must without delay hold a general meeting. After the meeting is held, the promoters will hand over the whole business to the directors in order to apply for the registration of the company.
- (2) A limited company may be transformed to a limited public company by special resolution under the CCC.
- (3) The registration of a limited public company is similar to a partnership and a limited company generally. But there are some additional registration related to shares such as:
  - The registration for increasing its capital.
  - The registration for increasing the capital which have been paid or the shares that may be offered.
  - The registration for reducing its capital by special resolution.
  - The registration for reducing the capital by lowering the amount of the shares that may not be offered or allotted.
  - The registration for reducing the capital by lowering the amount of the shares or its nominal value.
  - The registration for transformation of the preference shares into the ordinary shares.
  - The registration for appointing or removing the directors.
  - The registration for power of the directors.
  - The registration for amalgamation of company.
  - The registration for changing the amount of shares.
- (4) As to the amalgamation of companies, two or more limited public companies or any limited company with another limited public company may be amalgamated to a limited public company by special resolution. The shareholders of each company in the meeting by a majority of not less than three-fourths of the votes must have a special resolution under the provisions of the CCC.

1110. The rules governing public limited companies further state the following:

- (1) The company must send to the Registrar a register of shareholders within one month after the ordinary meeting.
- (2) The company must submit to the Registrar an annual report, a copy of balance-sheet, a copy of the meeting report concerning the balance-sheet and the distribution of dividend within one month after such balance-sheet has been adopted by the meeting and must be published at least one day in a newspaper.
- (3) A signboard must be provided and put in front of the principal business office and all branch offices.
- (4) The company's name, address, and number of registration must be declared in a notification, an order for delivery and a receipt.
- (5) A certificate shall be delivered to each shareholder within two months after the limited public company has been registered or after the whole amount of every share has been paid and registered for increasing the capital.
- (6) The company must carry on making a register of shareholders, a register of directors, a report of directors' meeting and a report of shareholders' meeting to be kept in the principal office, or with any other persons declared to the Registrar.
- (7) A balance-sheet examined by the auditor must be kept and submitted to the shareholders' meeting for consideration.

- (8) An annual report and a balance-sheet examined by the auditor along with a notification of an ordinary general meeting must be given to the shareholders.
- (9) It shall be the duty of the company to publish the following notifications in a newspaper:
- Requisition of the statutory meeting.
  - Requisition of shareholders meeting.
  - Dividend payment.
  - Balance-sheet.
  - Increase and reduction of capital after registration.

1111. Both the private and public limited companies must carry a shareholders book, which contains the following information:

- (1) name, address and occupation of a shareholder;
- (2) registration date of becoming a shareholder;
- (3) expiry date from being a shareholder;
- (4) number and date fixed in a share certificate issued for a shareholder and share number fixed in a share certificate;
- (5) date crossed out of a share certificate typed with a specific name or issued for a shareholder. A shareholder book shall be kept at the office of the company and can be examined by a shareholder.

1112. Companies established abroad can operate in Thailand in accordance with the existing commercial laws. The types of business organizations are: (1) regional office, (2) branch office, and (3) representative office.

1113. Regional offices and representative offices cannot earn any income because the objectives of their operations are limited and specific. Branch offices, on the other hand, are entitled to earn income from business in Thailand. A formal registration process under the Foreign Business Act has to be followed for registration of such entities. Companies registered under the Foreign Business Act do not need to register under the CCC.

***Legal Framework:***

***Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):***

1114. Thailand has a central registration system for legal (juristic) persons where a national registry records ownership and control details for all companies and other legal persons registered in that country. Every legal person has to apply for registration with the Company and Partnership Registration Office of the Commercial Development Department at the Ministry of Commerce. Essential details described in the previous section have to be declared up front in the prescribed forms and furnished to the Registration Office. Once accepted and approved, these details are recorded in the Registration Office and become public documents, which can be examined by a third party. The following paragraphs in this section only refer to the case of private limited companies to illustrate the nature of the corporate registry system that operates. It should be noted that, for purposes of assessing compliance with the Recommendations, the assessors analyzed all of the different types of juristic persons in existence against each of the essential criteria.

1115. The CCC does not allow nominee directors or shareholders. Appointment, removal or voting rights of directors and voting rights of shareholders as well as management of the company must be done in accordance with the laws. Shareholders are required to come in person to the company to buy and fully pay up shares. A certificate or certificates are delivered to each shareholder for the shares it holds.

1116. Under Thai legal practice, legal persons issue mostly “name certificates”, each signed by the authorized director bearing the following descriptions: (1) Company name and seal; (2) Number of shares; (3) Amount of each share; (4) If the shares are not fully paid up, the amount paid on each share;(5) Name of shareholder or statement that the certificate is to bearer.

1117. In accordance with section 1129 of the CCC, “shares are transferable without the assent of the company unless, in case of shares entered in a name certificate, or unless it is otherwise provided in the regulations of the company. The transfer of shares entered in a name certificate is void unless made in writing and signed by the transferor and the transferee whose signatures are certified at least by one witness. The instrument must state the number of shares to which it refers. Such transfer is invalid against the company and third parties until entered in the registry of shareholders together with the name and address of the transferee.” There is no time requirement to enter the transfer. However, as explained below, a current list of shareholders must be reported to the Registrar at least once a year.

1118. Section 1139 of the CCC provides that the register of shareholders commencing from the date of registration of the company shall be kept at the registered office of the company and gratuitously opened to inspection by shareholders, during the business hours, subject to such reasonable restrictions as the directors may impose, but not less than two hours a day.

1119. Section 1139 also provides that it shall be the duty of the directors to send to the Registrar, at least once a year and not later than on the fourteenth day after the ordinary meeting, a copy of the list of all persons who are shareholders at the time of such meeting and of those who have ceased to be shareholders since the date of the last ordinary meeting. Such list shall include: (i) the names and addresses, and the occupations, if any, of the shareholders, a statement of the shares held by each shareholder, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each shareholder; (ii) the date at which each person was entered in the register as a shareholder; (iii) the numbers and date of certificates issued to bearer and the respective numbers of the shares entered in each such certificate; and, (iv) the date of cancellation of any name certificate or certificate to bearer.

1120. The CCC entitles any shareholder to require a copy of such register or of any part thereof to be delivered to her or him. It also sets forth that the register of shareholders is presumed to be correct evidence of any matters directed or authorized by law to be inserted therein.

***Access to Information on Beneficial Owners of Legal Persons (c. 33.2):***

1121. Competent authorities can have access in a timely fashion to current information on the direct ownership and control of legal persons. However, such information may fall short of meeting the adequacy and accuracy standards as the law does not require legal persons to disclose beneficial ownership information.

1122. The mechanisms for accessing beneficial ownership information are also unclear, particularly the beneficial ownership behind the corporate ownership.

1123. Officially-filed information is retained at the Registrar’s Office and at the company. In principle, anyone, competent authority or private citizen, wishing to have information about that legal person can formally apply for a certified copy of a document which contains information on the company’s ownership and other relevant information, including the company’s audited financial statements. Some data can also be obtained online. The information is updated at least once a year following the company’s annual general meeting.

1124. However, only the company has access to the shareholders registry book. Accordingly, unless the company voluntarily permits a third party to examine its registry access by a third party, adequate, accurate and current shareholder information may be difficult to obtain.

1125. The interested third party could apply for a certified copy of the list of shareholders at the Commercial Development Department. However, it should be noted that the list of shareholders held at the registrar will only reflect the information reported by the company at the time of its last annual general meeting. As a result, any transfer of shares carried out in between annual general meetings would not be available from the registrar's public records. In addition, since there are no requirements for companies to report beneficial ownership information, third parties could not obtain such information from the registrar either.

1126. In accordance with section 1219 of the CCC, the Ministry of Commerce's Commercial Development Department can request to access the company's shareholders registry book at any time in exercising its inspection powers. The directors, employees, and agents of the company are bound to produce to the inspectors all books and documents in their custody or power. Furthermore, any inspector may examine upon oath the directors, employees, and agents of the company in relation to its business. However, since there are no requirements for companies to report or hold beneficial ownership information, it is also unclear how competent authorities could access this type of information.

1127. In addition to the inspection powers, as explained under the analysis of R.3, the CPC contains provisions related to the search of property in the context of gathering evidence for criminal investigations. Such provisions would allow an inquiry official to search for articles the possession of which constitutes an offense, or which are obtained through an offense or used or suspected of having been used for the commission of an offense, or which may be used as evidence.

1128. Section 38 of the AMLA entitles a member of the TC, the S-G and the competent official entrusted in writing by the S-G with the powers: 1) to address a written inquiry towards or summon a FI, government agency, state organization or agency or state enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document, or evidence for examination or consideration; 2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document, or evidence for examination or consideration; 3) to enter any dwelling place, place, or vehicle reasonably suspected to have the property connected with the commission of an offense or evidence connected with the commission of an offense of ML hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing, or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed, or converted from its original state.

1129. Furthermore, section 40 of the AMLA provides the AMLO with powers and duties to gather evidence for the purpose of taking legal proceedings against offenders under AMLA.

1130. The Narcotics Suppression Act also contains these type of provisions:

- In accordance with section 25 of this Act, the members of the PEC, the Sub-Committee and the Secretary-General are granted powers to issue a letter of inquiry requesting or issue an order requiring any person concerned to give statements or give explanations in writing, or to submit any account, document, or evidence for examination or supplementing the consideration which also includes the examination by the banks, the Securities Exchange and the FIs, and to enter, during day time and between sunrise and sunset, any dwelling place, premise or conveyance where there is a reasonable ground to suspect that an offense relating to narcotics is committed or the properties believed to be connected with the offense are hidden therein, for the purposes of searching or examining, seizing or



attaching the properties. In the case where there is reasonable ground to believe that if a prompt action is not taken, the properties are likely to be removed, the entry may be made during night time.

- Section 24 of the Special Case Investigation Act (2004) further empowers a special case inquiry official at the DSI to search any person or conveyance carried out with a reasonable ground for suspecting that it contains a property the possession of which is considered an offense, or which is acquired by committing an offense, or which is used or will be used in committing a special case offense or may be used as evidence. ML offenses under the AMLA and terrorist related offenses under the PC fall under the definition of special case offenses provided under the act.

1131. There are no secrecy laws that would limit access to beneficial ownership information. However, since there are no legal requirements to report or hold beneficial ownership information, it remains unclear how the competent authorities could access such information in Thailand.

***Prevention of Misuse of Bearer Shares (c. 33.3):***

1132. In accordance with section 1134 of the CCC, bearer shares may be issued by any private limited company provided that the company's regulations allow it and the shares are fully paid up.

1133. The authorities stated that no companies have issued bearer shares so far in Thailand. The authorities would know whether bearer shares had been issued because companies have a duty to report this to the registrar at least every year. According to the authorities, the reasons that may explain why no company have issued bearer shares may be that (i) under the Foreign Business Act, the shares of a limited company represented by share certificates that are issued to bearer are deemed as shares of foreigners, subjecting the company to application of the Foreign Business Act, which entails a number of significant limitations and requirements; (ii) that it would be much more difficult for the company to comply with the notification requirements under the law, including the requirement to notify and invite all shareholders to the celebration of shareholders' meetings, if bearer shares are issued, and; (iii) that the CCC requires that shares that are issued to bearer be fully paid up.

1134. Nevertheless, section 1134 of the CCC states: "Certificates to bearer may be issued only if authorized by the regulations of the company and for shares which are fully paid up. In such case the holder of a name certificate is entitled to receive certificate to bearer on surrendering the name certificate for cancellation."

1135. The CCC permits private limited companies to issue bearer certificates, but the Public Limited Companies Act 1992 is silent on this issue. It, therefore, remains unclear whether public limited companies could eventually issue bearer shares.

1136. The type of bearer shares that CCC refers to is a pure bearer share. Transfer of bearer shares is effected by the mere delivery of the bearer certificate.

1137. Although no company has issued bearer shares, presumably for the reasons explained above, there are no measures in place to ensure that bearer shares are not used for ML. In particular, there are no mechanisms to identify the beneficial owner of bearer shares.

***Additional Element - Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):***

1138. As any other third party, FIs can apply to the Registrar for a certified copy of a document which contains ownership information. There are no other measures in place to facilitate access by FIs specifically, so the same limitations described above for any third party would also apply for FIs.

### *Assessment of Effectiveness*

1139. Thailand has a national system to record and make available useful information on the ownership of its juristic persons. The use of nominee directors and shareholders is not permitted. However, there is no specific requirement to disclose or maintain available beneficial ownership information. General information on juristic persons is publicly available at the registrar and any third party can request from the registry relevant information on a company's ownership. However, since there is no requirement to report beneficial ownership information, it would be difficult for a third party to access accurate and adequate information on the beneficial ownership and control. The competent authorities, including LEAs and the AMLO, also have powers to obtain information directly from the juristic person on its ownership and control. However, here again, since there is no legal requirement for a juristic person to disclose or maintain beneficial ownership information, it may also be difficult for the competent authorities to access accurate and adequate information on beneficial ownership as well. Accordingly, Thailand should consider broadening its requirements on beneficial ownership so that information on ownership/control is more readily available in a more adequate and timely manner. Furthermore, while no company has issued bearer shares, there are no measures in place to ensure that bearer shares are not used for ML, nor any mechanisms to identify the beneficial owner of bearer shares.

#### **5.1.2 Recommendations and Comments**

1140. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Broaden its requirements on beneficial ownership so that information on ownership/control is more readily available in a more adequate and timely manner, for example, by obliging legal persons to record the information on beneficial ownership in a register.
- Introduce appropriate measures to ensure that bearer shares are not misused for ML. In particular, there should be mechanisms put in place to identify the beneficial owner of bearer shares.

#### **5.1.3 Compliance with Recommendations 33**

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.33</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Access to beneficial ownership information on juristic persons is not available in an accurate, adequate, and timely fashion.</li> <li>• Although no company has issued bearer shares in Thailand, there are no mechanisms in place to identify the beneficial owner of bearer shares should companies decide to issue them.</li> </ul> |

## **5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)**

### **5.2.1 Description and Analysis**

1141. Thailand is a jurisdiction under which domestic trusts cannot be established. Thailand is not a signatory to The Hague Convention and foreign trusts can not be registered under domestic law.

1142. While trusts cannot be established under Thai law, the authorities do not exclude in the MEQ that there might be accounts opened in the name of trustees of foreign trusts. The authorities and the banks that were interviewed, however, were not aware of such phenomenon. Moreover, the assessors made independent enquiries and were unable to find services being advertised for trust creation or administration services for people in Thailand. Thailand does not appear to be a jurisdiction that is a substantial provider of trust-related services or which holds unique information about trusts.

## 5.2.2 Recommendations and Comments

1143. The assessors consider that R.34 should be considered not applicable.

## 5.2.3 Compliance with Recommendations 34

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.34 | NA     | <ul style="list-style-type: none"> <li>Recommendation 34 is not applicable in the Thai context.</li> </ul> |

## 5.3 Non-profit organizations (SR.VIII)

### 5.3.1 Description and Analysis

1144. Non-profit organizations are juristic persons carrying out the work without intending to gain a personal benefit. They are foundations, associations, religious organizations, and private organizations.

1145. The most common types of NPOs in Thailand which are subject to registration are foundations and associations.

#### *Foundations*

1146. 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. A foundation is registered under the provisions of the CCC. There are approximately 9,733 registered foundations in existence (2,534 of these are registered in Bangkok).

1147. Pursuant to the CCC, the by-laws of a foundation shall contain at least the following particulars: (1) name of the foundation, (2) objectives of the foundation, (3) addresses of the principal office and all branches, (4) property of the foundation at the time of its founding, (5) provisions concerning the committee of the foundation with respect to the number, the appointment, the tenure, and the termination of membership of its members as well as its meetings, (6) provisions concerning the management of the foundation, and (7) provisions concerning the administering of its property and accounts.

1148. In applying for registration of a foundation, the founder must submit a written application to the Registrar of the area where the main office of the foundation is to be situated. In Bangkok, the application shall be submitted at the district (BKK metropolitan) office. In other provinces, the application accompanied with all documents shall be submitted at the administrative office.

#### *Associations*

1149. An association is a juristic person established to conduct non-profit activities, sharing the same interest. The association must have its own by-laws and be registered under the provisions of the CCC. Thailand has approximately 10,780 registered associations (4,120 registered in Bangkok).

1150. The by-laws must specify at least: (1) name of the association, (2) its objectives, (3) addresses of the principal office and all branches, (4) provisions for the admission and termination of members, (5) subscription, (6) provisions concerning the committee of the association with respect to the number, the appointment, the tenure, and the termination of directorship as well as its meeting, (7) provisions for the management of, the accounts and the assets of the association, and, (8) provisions for the general meeting.

1151. In Bangkok, the application for registration of an association may be submitted to one of the following three departments: (1) the City Police Department, (2) the Office of City Police, and (3) the Office of National Police. For other provinces, the application shall be submitted to the Registration Office of the district. The application shall be accompanied with the by-laws, names, addresses, occupations, identification cards, or any other cards issued by the department or agencies.

### ***Religious Organization***

1152. A religious organization refers to the administrative organization for the existence of a religion within Thailand.

1153. An organization for religion refers to a religious unit established by the religion's followers in a particular purpose to support the activities of such religion, or an organization that carries on the work of religious publicizing and ritual, together with taking care of places where the religion's followers go to worship such as a church, a mosque, a temple, a shrine including doctrine and any other sects as well.

1154. The application for registration shall be submitted by the chief of such religious organization and it shall be accompanied by its supporting documents showing: (a) objectives and proceeding methods, (b) any binding promises with a foreign country, (c) lists of the committee and the higher authority in the organization, (d) allocations of the organization's branches, religious sites and schools of religion, and (e) any other list of items required by the Department of Religious Affairs.

1155. A religious organization is under the supervision of the Department of Religious Affairs, the former Ministry of Culture.

### ***Public Organization***

1156. There are a variety of organizations using the name "private organization." For example, a volunteer private organization, a non-profit volunteer organization, a public organization, a private development organization, a public benefit organization, etc. But in conclusion, they are similar in the 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 promoting social development, and (4) an organization that may or may not be a juristic person.

1157. Private organizations consist of (1) 9,209 foundations, (2) 9,816 associations; altogether 19,025 organizations. (Sources: Department of Provincial Administration, August B.E.2546)

1158. There are 7,355 private organizations carrying out the work for social welfare. And these are divided into 6,897 registered organizations and 458 non-registered organizations.<sup>63</sup>

1159. Approximately 30,000 private organizations carry out the work of social development. There are 7,300 organizations continuously working in the social fields and being in the group supported by the Ministry of Social Development and Human Security. At present, there are about 9.7 million volunteers working in the social fields. There are 2.4 million volunteers supported by government service and 7.2 million volunteers supported by private individuals (6.7 million village scouts are included).<sup>64</sup>

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<sup>63</sup> Source: The Office of the National Commission of Social Welfare of the Office of Permanent Secretary of the Ministry of Social Development and Human Security, September B.E.2546.

<sup>64</sup> Source: The Ministry of Social Development and Human Security of data dated 8th February B.E.2549.

1160. The Ministry of Social Development and Human Security has been encouraging private organizations to set up a fund-raising unit at both the national and provincial levels for the purposes of social development.

### ***Trading Organization***

1161. A trading association is a juristic institution incorporated by professional enterprises for a particular purpose of promoting the work of an enterprise other than that of sharing profits or income.

1162. An association shall be incorporated by the following stages:

- (1) Three or more promoters who carry out the same or related enterprises incorporating as an association for strengthening the work of such enterprise.
- (2) The three promoters shall finish the whole contents in an application form (Sor.Kor.Kor1). And the application shall be accompanied by the following particulars:
  - Copies of the identification cards;
  - Copies of the household registrations;
  - Sample of the regulations of trading association applying for incorporation;
  - Certificates of enterprise i.e., partnership or company or trading certificate or any other certification paper issued by the government departments;
  - Written evidence of property i.e., a title deed for a piece of land;
  - Personal and behavioral record i.e., a testimonial (Sor.Kor.Kor.7); and,
  - Written permission from the owner of the property used for a principal business office and sketch map of its establishment.
- (3) The promoters must submit three copies of all the documents mentioned above to the Office of Business Registration of the Department of Business Development and the promoters in provinces may submit to the Provincial Offices of Business Development.
- (4) After the Office of Business Registration has examined all the documents, it will make inspection at the business office of that trading association.
- (5) After both documents and addresses of business office have been examined, a certificate of trading association will be issued by the Registrar of Trading Association within nine official days. The promoters must receive a certificate when they pay a fee at the Office of Business Registration of the Department of Business Development.
- (6) The Department of Business Development shall further carry out the work of notifying the issuance of certificates in the Government Gazette.

1163. The procedures governing Trading Associations set forth that:

- (1) If the trading association has been registered, the registration of members shall be made according to law and its copy shall be submitted to the Registrar of trading association within ninety days from the date of permission.
- (2) The first committee of a trading association shall be selected by the first ordinary general meeting within ninety days or 120 days from the date of permission depending on the regulations of such association.
- (3) The committee registration and the general meeting report shall be submitted to the Registrar of trading associations within thirty days from the date of the general meeting.
- (4) An ordinary general meeting must be held annually for approval of financial statements together with submitting an annual report to the members within 120 days after the end of financial year or the month fixed in the regulation.
- (5) After the financial and the annual report have been adopted by the general meeting, they must be submitted to the Registrar of trading associations within thirty days from the date of annual ordinary general meeting.

- (6) For every ordinary general meeting, a notice should be delivered to the Office of Business Registration for arranging an officer to observe the meeting.
- (7) The association may be dissolved by the Minister of Commerce if it cannot carry on the business and remains out of contact with the Office of Business Registration exceeding two years. The dissolution of a trading association must be notified to the Registrar within fifteen days from the date causing dissolution.

### *Chamber of Commerce*

1164. A chamber of commerce is an institution incorporated by a group of people who work for promoting trade, industry, agriculture, finance, or the 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).

1165. The chamber of commerce shall be incorporated by the following stages:

- (1) The chamber of commerce shall be incorporated by five or more promoters.
- (2) The promoters shall enter the required content in an application form for chamber of commerce incorporation (Hor.Gor.Kor.1). The application shall be accompanied by the following documents:
  - Copies of the identification cards or the certificate of alien's identification of the co-promoter;
  - Copies of the household registrations of every promoter;
  - Sample of the regulations of chamber of commerce applying for incorporation;
  - Certificates of the promoters' enterprises i.e., partnership or company or trade certificate or any other certification paper issued by the government department;
  - Written evidence of property i.e., a title deed for a piece of land;
  - Personal and behavioral record i.e., a testimonial (Hor.Gor.Kor.7); and,
  - Written permission from the owner of the property used for an office of chamber of commerce and a sketch of its establishment.
- (3) The promoters must submit three copies of all the documents mentioned above to the Office of Business Registration of the Department of Business Development, and at provinces the promoters may submit them to the Provincial Offices of Business Development.
- (4) After the Office of Business Registration has examined all the documents, it will make inspection at the business office of the chamber of commerce.
- (5) If both documents and addresses of business office have been examined, a certificate of chamber of commerce will be issued by the Registrar within nine official days. The promoters must receive a certificate when they pay a fee at the Office of Business Registration of The Department of Business Development.
- (6) The Department of Business Development shall further carry out the work for notifying the issuance of certificates in the Government Gazette.

1166. The procedures governing chambers of commerce set forth that:

- (1) If the trading association has been registered, the registration of membership shall be made according to law and its copy shall be submitted to the Chamber of Commerce within ninety days from the date of permission.
- (2) The first chamber of commerce shall be selected by the first ordinary general meeting within ninety days or 120 days from the date of permission depending on the regulations of such association.

- (3) The committee registration and the general meeting report shall be filed with the Registrar within thirty days from the date of general meeting.
- (4) An ordinary general meeting must be arranged every year for adopting a balance-sheet financial statement of such chamber of commerce and submitting an annual report to the members within 120 days after the end of financial year or the month fixed in the regulation.
- (5) After the balance-sheet and the annual report have been adopted by the general meeting, they must be submitted to the Registrar of trading associations within thirty days from the date of annual ordinary general meeting.
- (6) For every ordinary general meeting, a notice should be delivered to the Office of Business Registration for arranging an officer to observe the meeting.
- (7) The chamber of commerce may be dissolved by the Minister of Commerce if it cannot carry on the business and remains out of contact with the Office of Business Registration exceeding two years. The dissolution of chamber of commerce must be notified to the Registrar within fifteen days from the date causing dissolution.

***Other non-profit organizations***

1167. The following are also other non-profit organizations that are not incorporated for sharing benefits or income are as follows:

- A labor union, which is an association or committee incorporated for purposes of seeking out and promoting the interest of employees.
- A labor union of the government enterprise is a union of governmental organizations incorporated for purposes of giving assistance and protection to the officials and encouragement of good relationship between officials and an administrative party.
- A political party is a group of persons whose job is concerned with political activities such as giving assistance to the elections, promoting a candidate, publicizing information together with fund raising in order to carry out political activities.
- An international organization is an organization involved in giving assistance to both agencies and people in Thailand.

1168. All associations and foundations are required to register with the Ministry of Interior in accordance with the Act of National Culture 1942 (amended 1944) and the CCC. In Bangkok, the registering authority is the Department of Provincial Administration (which is under the Ministry of Interior). Receipt and initial assessment of applications is considered by the Bangkok Metropolitan Office. In other provinces, the governor of the respective province is the registering authority, with the district office accepting applications for initial assessment of information. As of July 2006 the registered number stood at 9,733 foundations and 10,780 associations, each receiving a certificate of registration with a registered number.

1169. The registration process involves completion of the specified application form, required documentation and initial scrutiny by the local authorities concerned before finally being approved by the Ministry of Interior or provincial governors. The responsible office for registration consults with other government departments and agencies such as the Ministry of Foreign Affairs, the National Security Council, the RTP, the Ministry of Culture, and the Department of Religious Affairs.

1170. There are certain NGOs registered with the Office of National Culture Commission under the Ministry of Culture over which the Office exercises some powers in its own right, including the power to deregister NGOs.

1171. Under the Social Welfare Promotion Act BE 2546, social welfare organizations are required to register as public benefit organizations with the Ministry of Social Welfare and Human Security.

1172. The Act defines “Public Benefit Organization” (PBO) as an organization which provides social welfare functions. Those that achieve PBO status become eligible for training, advice, and financial support from the Social Welfare Promotion Foundation.

1173. The matter relating to promotion, support and supervision of social welfare organizations is under the direction of the National Social Welfare Promotion Commission (NSWPC), which oversees the Social Welfare Promotion Found and the Provincial Social Welfare Promotion Councils (PSWPC).

1174. In addition to local NGOs, there also are quite a number of foreign NGOs operating in Thailand, which are subject to permission given by a committee (FPO Committee) set up under the Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate in Thailand (1988) and the Rule of Committee on Consideration of the Entry of Foreign Private Organizations (2000). The FPO Committee has a secretariat at the Department of Employment in the Ministry of Labour and Social Welfare.

1175. Foreign NPOs can be divided into three categories: (1) those that operate exclusively in Thailand (numbering about 30 currently); (2) those that are based in Thailand but operate in neighboring countries; and (3) those that are based in Thailand and operate both in Thailand and outside Thailand. One group of NGOs is exempted from the regulations of FPOs. NGOs that come under category two but receive backing from their home governments can receive approval directly from the Cabinet following application to the Ministry of Foreign Affairs. Successful applicants must sign an MOU with the Ministry of Foreign Affairs. Employees of these NGOs are exempted from tax and immigration requirements. Currently, 12 NGOs have this status.

1176. Generally, NGOs are subject to taxation. However, depending on the status, the rates may differ. Unregistered NGOs (usually called ‘groups’ and ‘clubs’) get no tax benefits, while NGOs registered with the Ministry of Interior are regarded as corporate tax payers; as such, they pay 10 percent income tax on the gross income they receive. Foundations registered with the Ministry of Interior which meet certain criteria may also register with the Ministry of Finance as a ‘Public Charitable Institution’ to benefit from complete exemption from income tax.

1177. Initial scrutiny of applications of local associations and foundations is meant to ensure that the objectives and governance procedures are legal, while the main purpose of the registering authority’s consultation with other government departments and agencies is to scrutinize the purposes of the NGO and the background of NGO officials.

***Legal Framework:***

***Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):***

1178. Thailand has not yet completed a full review of the adequacy of laws and regulations that relate to non-profit organizations that can be abused for FT. The first step towards such a review is already underway with the assistance of the U.K. Charity Commission’s International Programme. The Commission visited Thailand in July 2006, held meetings with the agencies concerned, and drafted a report of analysis and recommendations on NGO regulation in Thailand. The report was written at the



request of the AMLO. The information contained within is based on information provided to the International Programme from a number of engagements. These include a self assessment report in February 2006, at a government seminar on March 20–21st 2006, at regional workshops in Manila (February 2006) and Hong Kong (September 2006) and meetings with government officials and NGOs in Bangkok and Phuket Province in June and December 2006, respectively. The report provides an overview of the current situation with regard to NGO regulation, outlines key strengths and weaknesses within the system, and concludes with some recommendations for improvements. These recommendations include the need to undertake a strategic review of the NGO sector and its regulation, establishing a clear strategy for the regulation of NGOs in Thailand, review current practice, and make recommendations for improvements. The assessment team was not provided with any information about the status of implementing these recommendations.

1179. Thailand has not used all available resources of information to undertake domestic reviews of or does not have the capacity to obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the features and types of NPOs that are at risk of being misused for TF by virtue of their activities or characteristics.

1180. Under the existing laws and regulations, NGOs are subject to initial scrutiny before registration or permission to operate and to repetition of the same process whenever changes are made to the objectives or committee members. They are also required to file annual reports and audited financial statements (bi-annual reports in the case of approved foreign NGOs), and subject to criminal punishment for failure to register.

***Outreach with NPOs (c. VIII.2):***

1181. No effective outreach to NPOs has been undertaken yet with a view to protecting the sector from TF abuse. Apart from isolated references in annual seminars conducted by some government authorities, no outreach has been practiced in terms of (i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; or (ii) promoting transparency, accountability, integrity and public confidence in the administration and management of all NPOs.

***Supervision of NPOs (c. VIII.3) and Investigation and information gathering for NPOs (c. VIII.4):***

1182. The authorities do not conduct an effective supervision or monitoring of such NPOs which have a significant portion of the financial resources under control of the sector.

1183. However, all NGOs are subjected to regulatory oversight in terms of monitoring, accountability, and reporting in compliance with applicable laws and regulations. When required, the authorities may exercise their power to have full access to information on the administration and management of a particular NPO.

1184. For promotion, support, and supervision of social welfare organizations, there is the NSWPC set up under the Social Welfare Promotion Act 2003. This is a senior body chaired by the Prime Minister which also includes representatives from government and social welfare organizations. It has a strategic and advisory role, which includes laying down rules for and overseeing the Social Welfare Promotion Fund. These rules establish procedures and policies for the assessment and inspection of organizations which receive money from the fund.

1185. In the case of foreign NPOs, their operations in Thailand are monitored by the government under the Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate in Thailand B.E.2541 and the Rule of Committee on Consideration of the Entry of Foreign Private Organization governing the principles for consideration and instructions on the entry of foreign

private organizations to operate in Thailand and the establishment of regional office in Thailand B.E.2543. These rules set forth measures such as the government's ability to verify whether the funds are being used as planned, or the submission of an operations performance report every six months. In addition, the committee considering the operations of foreign private organizations has the duty to visit the operations area and beneficial target group of such organizations to assess the project's outcome. The Rule of Committee on Consideration of the Entry of Foreign Private Organization Governing principle for consideration and instructions on the entry of foreign private organizations to operate in Thailand and the establishment of regional office in Thailand B.E.2543 specifies that any foreign private organization wishing to apply for entry to operate has to file documents concerning their management, their administration, and their policies to monitor their operations. When applying for a permission to operate in Thailand, a foreign private organization has to identify its objective, policy project or work plan and operation plan, budget operation area, and staff who will perform the duty in Thailand.

1186. Under the existing laws and regulations relating to NPOs, all NPOs are required to maintain and furnish essential information including (i) the purpose and objectives of their stated activities and (ii) the identity of those who control or direct their activities. This information is publicly accessible.

1187. Sanctions for violations of any rules by NPOs are available under several laws including: (1) The Civil and Commercial Code; (2) The PC; (3) The Act of National Culture 1942 (as amended 1944); (4) The Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organization to operate in Thailand (1988) and the Rule of Committee on Consideration of the Entry of Foreign Private Organizations (2000); (5) The Social Welfare Promotion Act 2003; (6) The Senior Citizens Act 2003, and; (7) The Special Case Investigation Act 2004.

1188. Sanctions range from fine, dissolution, or de-registration to imprisonment of NPO officials. The application of such rules does not preclude parallel civil, administrative, or criminal proceedings.

1189. All NPOs are required to register in accordance with applicable laws. There is, however, only one exception for certain foreign NPOs that receive backing from their home government and that can receive approval directly from the Cabinet following application to the Ministry of Foreign Affairs as well as for certain international bodies. Information on registered NPOs is publicly available.

1190. NPOs are not required to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. NPOs are not covered by the AMLA for AML/CFT reporting purposes as yet. Assessors were not satisfied that there is effective cooperation, coordination, and information sharing among all levels of appropriate authorities or organizations that hold relevant information on NPOs.

1191. While LEAs have general investigative powers, Thailand has not implemented specific measures to ensure that it can effectively investigate and gather information on NPOs. No measures have been taken to ensure effective domestic cooperation, coordination, and information sharing among all levels of appropriate authorities or organizations that hold relevant information on NPOs of potential terrorist concerns. While there is in Thailand investigative expertise and capabilities to examine those NPOs that are suspected of being exploited by or actively supporting terrorist activities or terrorist organizations, Thailand has not developed any mechanisms for the prompt sharing of information among all relevant competent authorities in order to take preventive or investigative action when such suspicion arises.

1192. It should be recognized, however, that the DSI has significant powers to search any premises, to summon any agency or organization for information or evidence for examination and clarification, and to

seize properties. The DSI has a special interest in tracing money flows in the three separatist southern provinces and its powers in this regard also apply to NPOs.

1193. In all matters relating to ML and FT, the AMLO's IAC is the main contact point designated under the Ministerial Regulation, dated October 9,2002, issued by the Minister of Justice.

1194. For international cooperation on any other criminal and civil matters, there are central authorities such as the Attorney General and Ministry of Foreign Affairs designated under respective acts or treaties. However, no contact points have been identified for dealing specifically with international requests for information about NPOs.

### *Assessment of Effectiveness*

1195. NPOs play a vital role in Thailand's economy and social system but they may also be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions. They are focused in geographic regions where the need for humanitarian assistance is high but which may also be within or near those areas that are most exposed to terrorist activity.

1196. The assessment team observed that little has been done by Thailand in terms of working collaboratively with the NPO sector to promote transparency, integrity, and public confidence in the administration and management of NPOs. Thailand did not demonstrate that it has undertaken outreach programs to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse. No work has been done with the NPO sector to develop and refine best practices to address TF risks and vulnerabilities and thus protect the sector from terrorist abuse.

1197. Given the threat level posed by ongoing terrorist activity in the south of the country, it is of concern that Thailand has not yet undertaken measures to mitigate the FT risks that NPOs may be posing.

### **5.3.2 Recommendations and Comments**

1198. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Undertake a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for FT;  
 Carry out outreach with the NPO sector with a view to protecting the sector from TF abuse;  
 Take effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector;  
 Enact measures requiring NPOs to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization;  
 Establish effective mechanisms to ensure domestic cooperation, coordination, or information sharing;  
 and,  
 Designate an official contact point to deal with international requests for information on NPOs.

### 5.3.3 Compliance with Special Recommendation VIII

|         | Rating | Summary of factors underlying rating   |
|---------|--------|--|
| SR.VIII | NC     | <ul style="list-style-type: none"> <li>• Thailand has not yet undertaken a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.</li> <li>• No outreach has been undertaken with the NPO sector with a view to protect the sector from TF abuse.</li> <li>• The authorities could not demonstrate that they have taken effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector.</li> <li>• NPOs are not required to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.</li> <li>• While legal authority may exist to investigate the affairs of NPOs, there are no effective mechanisms in place to ensure domestic cooperation, coordination, or information sharing.</li> <li>• No contact points have been identified for dealing with international requests for information about NPOs.</li> <li>• The authorities did not demonstrate that the measures in place were sufficient to mitigate the potential terrorism risks in Thailand via the NPO sector.</li> </ul> |

## 6 NATIONAL AND INTERNATIONAL COOPERATION

### 6.1 National cooperation and coordination (R.31)

#### 6.1.1 Description and Analysis

##### *Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):*

##### *Overall cooperation and coordination:*

1199. The primary mechanism is the AMLB, described previously starting at paragraph 323. However, it was not clear to the assessors that the AMLB acted as a driver of the overall AML/CFT regime in Thailand. The authorities seemed to have difficulty clearly articulating which part of government was responsible for initiating policy matters on AML/CFT and for monitoring overall effectiveness of the system. Moreover, some agencies that play a key role in AML/CFT are not represented at the AMLB (e.g., no agency from the DNFBP sector is represented, none of the NIA, NSC, NCATTC, or NCCC are represented).

##### *LEA and AMLO cooperation and coordination:*

1200. 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 offenses which is confirmed by the lack of ML prosecutions and convictions for non drug-related cases. A related issue is that the AMLO’s

investigative mandate is limited to pursuing only civil vesting of assets in the State in ML and TF cases. Collectively, it was not clear to the assessors that the LEA and the AMLO had a cooperative and coordinated approach to tackling ML and TF.

### ***Cooperation Between Supervisory Agencies***

#### ***Domestic Supervisory Agencies***

1201. In order to improve the effectiveness of supervision, the BOT and other regulatory agencies such as the MOF, the MOC, the SEC, the AMLO, and the SET, work in close cooperation to exchange supervisory information. 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 aforementioned authorities, as directors. In addition to establishing close cooperation among domestic regulatory authorities, the BOT has also developed a forum to routinely exchange information with banks' external auditors.

#### ***Foreign Supervisory Agencies***

1202. To ensure that supervision of both the Thai FIs operating overseas and foreign bank branches operating in Thailand is efficient and in line with the rules and regulations imposed by other foreign supervisory agencies, the BOT regularly exchanges knowledge, experience, and material information with relevant foreign supervisory authorities. The BOT's emphasis on forging close links with relevant foreign supervisory authorities not only facilitates the implementation of global, consolidated supervision, but it also provides a sound basis to exchange relevant information that will be needed to validate risk models under the Basel II capital framework.

#### ***BOT also a member of the CTTC-NCC committee***

1203. Private sector financial industry associations have taken a proactive role to ensure member firm's AML/CFT compliance. The TBA requirement asks FIs to maintain a risk classification for each of their clients. Institutions usually classify their clients by reference to a 2-point (low and high) or 3-point scale (low, medium or high). Each category has different CDD requirements. The same requirements apply across all the banks/FIs so there is normally no opportunity for customers to migrate to other institutions to avoid the requirements. The TBA policy guidelines set out some detailed guidance about how to carry out this classification based on various factors (e.g., occupation, geographical location, etc.). Enhanced due diligence must be carried out for all high-risk customers (e.g. certain transactions by high-risk customers need senior management approval). BOT examiners check that the classification system adopted by each FI is robust and being followed. FIs are also required to check that all transactions carried out by a customer are consistent with that customer's risk profile. Where they are not, the FI must file an STR and also revise the client's risk profile. This would appear to amount to a system of ongoing monitoring of transactions; at least for those institutions that follow such a system. Similar risk classification systems exist in the guidelines of the ASCO, AIMC, and the TLAA.

1204. Cooperation between the authorities and the financial industry is growing. Hence, the IT task force of the AML/CFT working group has been having meetings with the chief information officers of banks about what software banks will need to develop to deal with the new CDD requirements. The AMLO uses IT for receiving reports and wants reporting entities to be able to file reports electronically. The banks have been asking for grace period of three years for implementing the need to carry out CDD on all existing customers. The assessors consider that this grace period could be justified under FATF R.5 so long as the institutions have an obligation during that period to carry out CDD on existing customers in circumstances such as when: (a) a transaction of significance takes place, (b) customer documentation standards change substantially, (c) there is a material change in the way that the account is operated or, (d) the institution becomes aware that it lacks sufficient information about an existing customer. The

original plan was for banks to have their new systems in place by October 2006. The software has been developed but the assessors were not able to establish when it would be operational.

1205. Moreover, the TBA AML/CFT Policy has been used as the basis for the new CDD Regulation to be issued by the AMLO under the AMLA. It has also been used to develop industry policy in the securities sector. The assessors encourage the authorities to continue working with industry in the development of AML/CFT policy. They caution, however, that the authorities must ensure that policy adopted is robust and geared at meeting the international standards.

1206. The awareness of non-financial business and profession's associations is raising. The process for developing the DNFBP policy has been based around holding discussions with the industry associations in the DNFBPs task force of the AML/CFT working group. In parallel, talks have been held bilaterally. Hence, the Gems and Jewelry Committee of the Chamber of Commerce has been engaged in discussions with the AMLO since last year and meetings and awareness-raising seminars have been held.

1207. The BOT shares information, which includes AML/CFT information, with domestic financial sector supervisory authorities, namely, SEC and DOI via an arrangement of MOU concerning exchange of information. BOT shares information related to AML/CFT with foreign financial sector supervisory authorities indirectly through the AMLO. In addition to the fact that the BOT Governor sits in AMLB, the AMLO has the authority, by virtue of section 38 of the AMLA, to inquire information from the BOT in order to undertake its duty under the AMLA. However, thus far, the information exchange is more on a case-by-case basis and mostly for prosecution purposes. The AMLO and the BOT have signed an MOU concerning exchange of information on a more continuous basis and for supervisory purposes.

1208. In practice, all entities, including supervisors, cooperate with LEAs and the AMLO in any investigation, prosecution, or proceeding relating to a serious offense, ML, or FT. The AMLO and the BOT are in the process of drafting an MOU concerning exchange of information for the purpose of more effective investigation and prosecution.

***Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):***

1209. The TBA, for example, participates in the AMLB. The AMLO is often asked to participate in private sector initiatives on AML/CFT. The assessors are satisfied that mechanisms are in place to enable consultation to take place between the authorities and industry.

***Statistics (applying R.32):***

1210. No relevant statistics were provided.

**6.1.2 Recommendations and Comments**

1211. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Clearly designate which agency has responsibility for developing Thailand's overall AML/CFT policies;
- Review which agencies are represented at the AMLB and, if necessary, amend the AMLA to ensure that there is appropriate coverage (e.g., no agency from the DNFBP sector is represented, none of the NIA, NSC, NCATTC or NCCC are represented); and,
- Encourage the authorities to share more information among themselves concerning compliance by FIs of their AML/CFT responsibilities.

### 6.1.3 Compliance with Recommendation 31

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.31 | PC     | <ul style="list-style-type: none"> <li>• The formal coordination and cooperation mechanism in the AMLB does not operate as effectively as it should.</li> <li>• Financial regulators and the FIU do not share sufficient information regarding compliance in the financial sector.</li> <li>• Regulators and the AMLO have not agreed on monitoring and supervisory responsibilities for all FIs.</li> <li>• The existence of inconsistencies in the contents of guidelines and policy statements issued or endorsed by competent authorities may lead to inconsistent implementation of AML/CFT requirements.</li> <li>• The assessors were concerned that the AMLO, as the central agency with responsibility for implementing the AMLA, did not hold and also had difficulty obtaining key information and statistics about Thailand's overall AML/CFT regime.</li> <li>• Effective mechanisms are not in place to coordinate and cooperate policies and action on TF.</li> <li>• There are no effective mechanisms operating for developing and implementing Thailand's overall AML/CFT policy.</li> </ul> |

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

#### *Ratification of AML Related UN Conventions (c. 35.1) :*

1212. Thailand has signed the Vienna Convention which was ratified by Parliament on August 1, 2002 and the United Nations International Convention for the Suppression of the Financing of Terrorism which was ratified on September 24, 2004. The Palermo Convention was signed by Thailand on December 13, 2000 and it is still subject to ratification by Parliament. The authorities explained that the Palermo Convention cannot be ratified until all of its requirements are incorporated into domestic legislation. Legislation to this end has been prepared and it is expected that it will soon be submitted to Parliament for consideration and approval.

#### *Ratification of CFT Related UN Conventions (c. I.1):*

1213. Thailand has already become a party to the following anti-terrorist conventions: 1) the convention on offenses and certain other acts committed on board aircrafts, Tokyo September 14, 1963, which Thailand acceded to on March 6, 1972 and which became effective on June 4, 1972; 2) the convention for the suppression of unlawful seizure of aircraft, The Hague, December 16, 1970, which Thailand signed on that same day and ratified on May 16, 1978; 3) the convention for the suppression of unlawful acts against the safety of civil aviation, Montreal, September 23, 1971, which Thailand acceded to on May 16, 1978, and which became effective on June 15, 1978; and, 4) the protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation, February 24, 1988, which Thailand acceded to on May 14, 1996 and which became effective on June 13, 1996.

1214. Upon the issuance of UNSCR 1373, Thailand also became a party to the following anti-terrorist conventions: 1) the convention for the suppression of the financing of terrorism, New York, December 9, 1999, which Thailand signed on December 18, 2001 and ratified on September 24, 2004 and which became effective on October 24, 2004, and 2) the convention on the marking of plastic explosives for the

purpose of detection, 1991, which Thailand acceded to on January 25, 2006, and which became effective on March 26, 2006.

1215. On February 23, 2007, Thailand deposited the instrument of accession to the convention on the prevention and punishment of crimes against internationally-protected persons, including diplomatic agents, 1973, which will become effective on March 25, 2007.

1216. The remaining anti-terrorist conventions that Thailand is still not a party to are the following: 1) The Convention on the Physical Protection of Nuclear Material, 1979; 2) The International Convention against the Taking of Hostages, 1979; 3) The International Convention for the Suppression of Terrorist Bombings, 1997; 4) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; 5) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; 6) The International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (signed on September 14, 2005), and; 7) The ASEAN Convention on Counter- Terrorism, 2007 (signed on January 13, 2007).

***Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):***

1217. According to the authorities, articles 3, 4, and 5 of the Vienna Convention were addressed through the PC, the AMLA, the Narcotics Act 1979,<sup>65</sup> the Psychotropic Substances Act 1975, and the Narcotics Suppression Act. Articles 6 and 7 were addressed by the Extradition Act 1929, the Act on Mutual Assistance in Criminal Matters 1992, and Ministerial Regulation No. 2 BE 2537. Other articles were implemented through other laws or court decisions.

1218. As stated in the analysis of R.1, the acquisition, possession, or use of property in Thailand's ML offense is conditioned to specific purposes that go beyond the requirements of the Vienna Convention.

1219. Article 3(10) of the Vienna Convention states that mutual legal assistance shall not be refused on the ground that the offenses covered by the convention are claimed to be political offenses or are otherwise considered to be political offenses by the requested State. The Act on Mutual Assistance in Criminal Matters is not consistent with this provision. Accordingly, Thailand should amend such Act to provide that where Thailand is a State party to a convention that requires that a specified offense shall not be considered to be a political offense for the purposes of mutual assistance obligations, the requirement contained in section 9(3) of the Act relating to political offenses shall not apply.

***Implementation of CFT Convention (Articles 2-18, c. 35.1 & c. 1.1):***

1220. Articles 2, 4, and 5 of the Terrorist Financing Convention were addressed by sections 135/1, 135/2, 135/3, and 135/4 of the PC. Other articles of the Terrorist Financing Convention were implemented through other pieces of legislation, such as the AMLA, the Extradition Act 1929, and the Act on Mutual Assistance in Criminal Matters 1992.

1221. Thailand signed the convention for the suppression of the financing of terrorism, New York, December 9, 1999, on December 18, 2001 and ratified it on September 24, 2004. The treaty became effective on October 24, 2004. In ratifying this convention, Thailand declared to the United Nations that "pursuant to article 2 para. 2(a), in the application of this convention, the following treaties, which Thailand is not a party to shall not be included in the annex of this convention: 1) the convention on the prevention and punishment of crimes against internationally-protected persons, including diplomatic agents, 1973; 2) The International Convention against the Taking of Hostages, 1979; 3) The Convention on the Physical Protection of Nuclear Material, 1979; 4) The Convention for the Suppression of Unlawful

<sup>65</sup> The assessors were only provided with a copy of the Narcotics Act 1979, so cannot verify the authorities' statement.



Acts against the Safety of Maritime Navigation, 1988; 5) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, and; 6) The International Convention for the Suppression of Terrorist Bombings, 1997. Thailand also declared, pursuant to article 24 para. 2 of the convention, that it did not consider itself bound by article 24 para 1.

1222. Thailand, therefore, considered the following treaties to be included in the annex of the convention for the suppression of the financing of terrorism: 1) the convention for the suppression of unlawful seizure of aircraft, The Hague, December 16, 1970, which Thailand signed on that same day and ratified on May 16, 1978; 2) the convention for the suppression of unlawful acts against the safety of civil aviation, Montreal, September 23, 1971, which Thailand acceded to on May 16, 1978, and which became effective on June 15, 1978, and; 3) the protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation, February 24, 1988, which Thailand acceded to on May 14, 1996, and which became effective on June 13, 1996.

1223. In order to fully comply with the Terrorist Financing Convention, the TF conduct under Thai legislation should, therefore, also extend the financing to the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand's obligations under SR.II.

1224. The PC requires that the TF conduct be done with a specific purpose that limits the coverage required by the Convention (i.e., it does not allow coverage of the provision of property for purposes solely of supporting the terrorist or terrorist organization, as section 135/2 of the PC requires that the provision or compilation of property be done "for the purpose of committing a terrorist act or any offense which is part of a terrorist plan").

1225. As previously stated in the analysis of the TF offense, Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization.

***Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):***

1226. Thailand has not yet ratified the Palermo Convention because many of the requirements of the convention have not been incorporated into domestic legislation. The following are examples of requirements of the Palermo Convention that have not yet been incorporated into domestic legislation:

- The predicate offenses to ML, as set forth under section 5 of the AMLA, do not cover all of the serious offenses under Thai law as required by the Palermo Convention, nor the complete list of designated categories of offenses under the standards.
- Article 6(2)(c) of the Palermo Convention requires that predicate offenses include both domestic and extraterritorial offenses. However, not all of the predicate offenses for ML extend to conducts that occurred in another country, which constitute an offense in that country, and would have constituted a predicate offense had they occurred in Thailand.
- Article 12(1) of the Palermo Convention requires countries to have laws that enable confiscation of proceeds of crime derived from offenses covered by the convention or property, the value of which corresponds to that of such proceeds.

1227. There a number of additional requirements of the Palermo Convention that still need to be incorporated into domestic legislation.

***Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2)***

1228. Resolution UNSCR 1267(1999) and UNSCR 1373(2001) have been implemented through the Act on Mutual Assistance in Criminal Matters 1992 and a number of bilateral and multilateral treaties on the issue which authorize the forfeiture and seizure of property.

1229. The authorities claimed that the mechanisms outlined in the AMLA, the PC, and the CPC could be applied to give effect to the requirements of these resolutions. However, despite the numerous provisions described in the analysis of SR III, assessors are not satisfied that a legal mechanism exists to ensure that terrorist properties related with UNSCRs 1267 and 1373 may be subject to freezing without delay.

1230. It is unclear what obligations FIs have to take action under the freezing mechanisms. The process for communicating freezing actions to the financial sector is weak. The financial sector is not notified of designations and freezing orders and no guidance is being provided to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations (if any) in taking action under the freezing mechanisms. The lists of designated terrorists/terrorist organizations are not currently being forwarded to FIs by the AMLO, the BOT or any other control entity and there is no legal basis in place to circulate these lists to the authorities and FIs. Furthermore, there is no authority designated to monitor compliance with relevant legislation, rules, or regulations concerning the freezing and confiscation of terrorist property.

1231. There are no specific administrative procedures for recognizing freezing orders or giving effect to out-of-court freezing orders from other jurisdictions.

***Additional Element - Ratification or Implementation of Other relevant international conventions (c. 35.2):***

1232. No other relevant conventions have been signed.

**6.2.2 Recommendations and Comments**

1233. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Ratify the Palermo Convention as soon as possible; and
- To fully comply with the Vienna Convention:
  - Amend the Act on Mutual Assistance in Criminal Matters to provide that, where Thailand is a State party to a convention that requires that a specified offense shall not be considered to be a political offense for the purposes of mutual assistance obligations, the requirement contained in section 9(3) of the Act relating to political offenses shall not apply;
  - Extend the TF conduct in section 135/2 of the PC to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the Terrorist Financing Convention, consistent with Thailand's obligations under SR.II; and,
  - Enact specific laws or procedures to freeze terrorist funds or other assets of persons designated by the UNSCRs 1267 or 1373 without delay.

**6.2.3 Compliance with Recommendation 35 and Special Recommendation I**

|             | Rating    | Summary of factors underlying rating   |
|-------------|-----------|--|
| <b>R.35</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Thailand has not ratified the Palermo Convention.</li> <li>• Thailand has not fully implemented the Vienna Convention and the UN</li> </ul> |

|             |           |   |
|-------------|-----------|---|
|             |           | Terrorist Financing Convention.   |
| <b>SR.I</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Thailand has not fully implemented the UN Terrorist Financing Convention.</li> <li>• The assessors are not satisfied that Thailand has fully effective mechanisms in place to implement UNSCRs 1267 and 1373.</li> </ul> |

### 6.3 Mutual Legal Assistance (R.36-38, SR.V)

#### 6.3.1 Description and Analysis

1234. The RTP are the competent authority designated to handle mutual legal assistance requests from a policing perspective. The AG administrates the execution of the request and seeks the RTP's assistance to collect the evidence or conduct investigations requested pursuant to the MLAT.

1235. The following is the table of MLAT requests received by the Competent Authority (AG) from foreign jurisdictions:

**Table 34. MLAT requests**

| MLAT Requests Received from Foreign Jurisdictions |            |
|---|------------|
| Year  | # of Cases |
| 2001-2002   | 41         |
| 2002-2003   | 40         |
| 2003-2004   | 54         |
| 2004-2005   | 62         |
| 2005-2006   | 80         |
| Total   | 277        |

1236. The authorities stated that Thailand provided assistance in all of these requests.

1237. During the past year, the RTP handled MLAT requests received from the AG pertaining to AML cases: 51 fraud cases, of which 8 were ML and 3 were requesting seizure of criminal assets. Further information relating to the types of assistance these requests entailed was requested but not provided. The authorities stated that some of the cases involved assistance providing banking records, witness statements, and other financial-related evidence.

#### ***Legal Framework for MLAT (1992)***

1238. 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 AG or the person designated by the AG 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, OAG. 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.

1239. The following are important aspects of the Act for Thai authorities to consider for facilitating and expediting the process of considering a request for assistance:

- 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 the similar manner when requested (section 9(1));
- The act which is the cause of the request must be an offence punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty which otherwise specifies (section 9(2));
- 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);
- If the Central Authority considers the request eligible for assistance and it has gone through the correct procedure, the request will be transmitted to the Competent Authority, i.e., the Commissioner of the RTP, the Director-General of the Criminal Litigation, the OAG, Director-General of the Corrections Department, depending on the nature of the request (section 12);
- If the request is not made in Thai or the 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); and,
- 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).

1240. 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).

1241. Moreover, the assistance may be postponed if its execution would interfere with the inquiry, investigation, prosecution, or other criminal proceedings pending in Thailand.

***Widest Possible Range of Mutual Assistance (c. 36.1):***

1242. Under the Act on Mutual Assistance in Criminal Matters 1992, Thailand can provide assistance for the following:

- taking the testimony and statement of persons;
- providing documents, records, and evidence;
- serving documents;
- searches and seizures;
- transferring persons in custody for the testimonial purposes;
- locating persons; and
- forfeiting assets.

***Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):***

1243. There is no specific provision on this but if a request contains sufficient details and information, accompanied by relevant documents and is made in the prescribed language, assistance is generally granted. Moreover, conditions for giving assistance are liberally construed. For example, in practice, dual criminality is met without the need for the offense to have the same denomination: fraud under a specific legislation of the requesting State may be considered general fraud under the PC, even if there is no similar legislation under Thai laws. Further, whether dual criminality is met would be considered at the time of the request, not when the offense was committed. A Mutual Legal Assistance Treaty is not

required; reciprocity is sufficient for assistance to be given. Political offense is simply a discretionary refusal ground; assistance may be given in exceptional cases.

***No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance(c. 36.2):***

1244. The request may be refused in the following circumstances (section 9):

- where execution would affect national sovereignty or security, or other crucial public interests, related to a political offense or related to a military offense; and
- in the absence of the treaty:
  - where the offense is not punishable under Thai laws; or
  - where the requesting State does not reciprocate.

1245. Moreover, the assistance may be postponed if execution would interfere with the inquiry, investigation, prosecution, or other criminal proceedings pending the handling in Thailand. In such case, the Central Authority may postpone the execution of the request or may execute it under certain conditions and notify the requesting State accordingly (section 11).

***Efficiency of Processes (c. 36.3):***

1246. In the absence of the treaty, upon receipt of the request for assistance from a foreign State, the Central Authority shall consider and determine whether such request is eligible for assistance under the Act on Mutual Assistance in Criminal Matters 1992, has gone through the correct procedure, and is accompanied by all appropriate supporting documents (section 11).

1247. In general, a request for assistance from a foreign State shall contain, at a minimum, the following details (article 5 of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1994):

- the name of the authorities of the requesting State which seeks assistance;
- the matter of the request, including details and other information which may be useful for the execution of the request;
- the purpose of and necessity for seeking assistance; and
- other details as required for each category of the requests as specified in the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1994.

1248. If such request is eligible for assistance, has gone through the correct procedure, and is accompanied by all appropriate supporting documents, the Central Authority shall transmit it to the following Competent Authority for further actions (section 11):

- the request for taking statement of persons, providing documents, articles, and evidence out of Court, serving documents, searching, seizing documents or articles and locating persons shall be transmitted to the Commissioner of the RTP;
- the request for taking the testimony of persons and witnesses or adducing document and evidence in the Court and the request for forfeiture or seizure of property shall be transmitted to the Director-General of the Criminal Litigation, the OAG;
- the request for transferring persons in custody for testimonial purposes shall be transmitted to the Director-General of the Corrections Department; and
- the request RTP and the Director-General of the Criminal Litigation, the OAG.

1249. Upon receipt of the request for assistance from the Central Authority, the Competent Authority shall execute such request and, after completion, submit the execution result and all documents and articles concerned to the Central Authority (section 13). Authorities state that this is done in an expedient

manner and they indicated that most requests take, on average, three to six months to be completed, depending on the complexity of the request.

1250. Moreover, as a matter of practice, the International Affairs Department which is the processing unit for the AG, the Central Authority, has a policy which requires the regular following up on the execution of the request once the request has been sent to the Competent Authorities for execution.

1251. After receiving the execution result, the Central Authority will deliver all the documents and articles collected to the requesting State (section 14).

***Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):***

1252. The request may only be refused in the circumstances provided in section 9 of the Act on Mutual Assistance in Criminal Matters 1992 prescribed above. Fiscal offense is not a refusal ground. Pursuant to the MLAT, matters relating to tax cases can be received and acted upon by Thai authorities.

***Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):/Availability of Powers of Competent Authorities (applying R.28, c. 36.6):***

1253. Section 15 of the Mutual Assistance in Criminal Matters Act 1992 provides for the Competent Authority (Police Commissioner) to direct the inquiry official to execute the request. Paragraph 2 of this section instructs the inquiry official to refer to the CPC in executing the request for interrogation or evidence collection. Under the CPC, the inquiry official has, for the purpose of inquiry, the powers as follows:

- to examine the injured person with [that person's] consent or the accused, or anything or place which may be used as evidence;
- to search for articles of which possession constitutes an offense or which are obtained through an offense or used or suspected of having been used for the commission of an offense or which may be used as evidence;
- to issue a summons to a person who possesses any article which may be used as evidence; and
- to detain all the articles found or produced as provided in sub-sections (2), (3), and (4).

1254. Although these provisions do not address specifically whether financial confidentiality can be raised against the exercise of the above powers, it is certainly the case that financial confidentiality is not an obstacle for criminal investigation. In fact, section 46 of the CBA explicitly prescribes criminal investigation as an exception for financial secrecy. It reads: "Whoever, in the performance of [their] duty under the authority prescribed by this Act, having acquired knowledge of the affairs of a commercial bank which, in normal banking business, is to be held in confidence, reveals such knowledge, except in the performance of [their] duty or for the purpose of investigation or trial, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 100,000 baht (\$2,640) or both."

1255. Note also that the assessors found Thailand to be fully compliant with Recommendation 4.

***Avoiding Conflicts of Jurisdiction (c. 36.7):***

1256. Assistance may be postponed if any inquiry, investigation, prosecution, or other criminal proceeding has already been initiated in Thailand before the receipt of a request for assistance (section 11).

***Additional Element – Availability of Powers of Competent Authorities Required under R28 (c. 36.8):***

1257. The powers of competent authorities required under R.28 are not available for use when there is a direct request from foreign judicial or law enforcement authorities to their Thai counterparts.

***Dual Criminality and Mutual Assistance: (c. 37.1 & 37.2):***

1258. One of the conditions for assistance is that the offense to which the request relates must be punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty otherwise specified. Note that no minimum punishment for the offense is required for this condition to be fulfilled (section 9).

***International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):***

1259. One of the conditions for assistance is that the offence to which the request relates must be punishable under Thai laws, except when Thailand and the requesting State have a mutual assistance treaty that otherwise specifies. Note that no minimum punishment for offense is required for this condition to be fulfilled (Section 9).

1260. Double criminality is judged on the basis of the conduct. According to the authorities, the fact that the requesting State and Thailand categorize the conduct into different denominations does not matter as long as it is criminal in both countries. There is, however, an impediment in rendering mutual legal assistance where the requesting State cannot reciprocate because the offense to which the request relates carries possible capital punishment. Since reciprocity is a legal requirement in the context of mutual legal assistance in section 9, its absence would result in assistance being refused. In the extradition context, reciprocity is not legally mandated and, thus, Thailand can do extradition even if reciprocity is not obtained from the requesting State.

1261. Thailand having TF as predicate offense allows cooperation to be provided under the provisions of the MLAT. However, the deficiencies in the TF offense identified in part 2 of this report restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite.

***Timeliness to Requests for Provisional Measures including Confiscation: (c. 38.1):***

1262. The time taken to process MLAT requests does not appear to be an issue as the process is in place for handling requests and judicial authority exists to allow requests to be processed in reasonable periods of time. No feedback was received from other countries indicating that there were any issues with the amount of time Thai authorities took to respond. This confirms the experience of one of the assessors who has conducted an MLAT request with Thailand.

***Search or Seizure***

1263. Upon receipt of the request for assistance from a foreign State to search or seize and deliver an article, the Competent Authority shall have the power to issue a search warrant, conduct search and seizure of the article, if there is a reasonable ground to do so under Thai laws (section 23). The requests are administered by the AG who seeks the assistance of the RTP to execute the requests. The RTP have dedicated resources in their Foreign Affairs Division who seek the assistance from other units within the RTP (commercial crime) to collect the evidence which is eventually provided back to the AG for distribution to the requesting country. If court orders are required to allow the police to obtain evidence, the AG will assist with obtaining those orders.

1264. A request shall describe facts or evidence for issuing a search warrant for, conducting the search of, or carrying out the seizure of the article, and the identity and location of the article or the habitation of the person having it in possession in detail sufficient for being acted upon, including the purpose for which the said article will be used (article 9 of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters 1994).

***Forfeiture or Seizure of Property***

1265. Upon receipt of the request for assistance from a foreign State to forfeit or seize property located in Thailand, the Competent Authority shall apply the Court having jurisdiction over the location of the property for the judgment of its forfeiture or the order of its seizure (section 32).

1266. A request shall provide the description of the property and its location or the habitation of the person having it in possession, in detail sufficient to be acted upon (article 13 paragraph one of the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters (1994)).

1267. 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).

***Property of Corresponding Value (c. 38.2):***

1268. For execution of the request for seizure or forfeiture, the Mutual Assistance in Criminal Matter Act 1992 requires that property to which the request relates must be seizeable or forfeitable under Thai laws. However, seizure or forfeiture under Thai laws is property-based. In other words, property must be somehow connected with the offense or it must be tainted property, whether instrumentality used or intended for use in the commission of an offense, or proceeds from an offense. Thus, the seizure or forfeiture of property of corresponding value cannot be made. It follows that assistance in relation to property of corresponding value cannot be given.

1269. Thailand can not provide assistance unless the property to be seized or forfeited is “tainted” property connected with the commission of the offense and thus they may not be able to offer assistance on corresponding value.

***Coordination of Seizure and Confiscation Actions (c. 38.3):/International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):/Asset Forfeiture Fund (c. 38.4):***

1270. Thailand does not have any arrangements for coordinating seizure and confiscation actions with other countries.

1271. Section 34 of the Narcotics Suppression Act set up the Fund for the Prevention and Suppression of Narcotics. As the name of the Fund suggests, all assets of the Fund will be used for preventing and suppressing narcotics-related offences. Note that part of the assets in this Fund comes from property connected with narcotics related offenses which have been forfeited under this Act.

1272. Property forfeited under the PC and the AMLA is vested in the Kingdom of Thailand. There are no other Funds similar to the Fund for the Prevention and Suppression of Narcotics.

***Sharing of Confiscated Assets (c. 38.5):***

1273. Thailand executes foreign forfeiture orders on certain conditions. Apart from general conditions for executing foreign request for assistance, foreign forfeiture orders must be final and the property concerned must be forfeitable under Thai laws. If these are not met, execution will be refused. The Mutual Assistance in Criminal Matters Act does not allow for asset sharing. Property forfeited pursuant to foreign requests will be vested in Thailand.



1274. Section 35 of the Act on Mutual Assistance in Criminal Matters 1992 provides for property pursuant to a foreign request to become property of the Kingdom of Thailand. The sharing of confiscated assets with other countries is not currently authorized. However, Thailand has taken into account the importance of the sharing of confiscated proceeds and is now considering implementing it in the future.

***Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6) / International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2): / Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):***

1275. Insufficient information obtained to assess. However, the deficiencies in the TF offense identified in part 2 of this report restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite.

***Statistics (applying R.32):***

1276. There was a lack of statistics provided about the number of cases, value of seizures, and orders executed under the MLAT.

***Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):***

1277. The position is uncertain and it has not been tested in court yet.

***Assessment of Effectiveness***

1278. Evaluation of the full effectiveness could not be completed due to lack of statistics provided that demonstrates the number of cases, value of seizure and orders executed under the MLAT. It should be noted, however, that enquiries made prior to the assessment mission of APG and FATF members raised no concerns regarding the effectiveness of Thailand's efforts to provide mutual legal assistance in relation to ML and TF matters.

### **6.3.2 Recommendations and Comments**

1279. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Expand the list of predicate offenses for ML to increase the situations where the requirement for dual criminality can be met;
- Amend the law to enable the rendering of assistance where the request relates to property of corresponding value;
- Amend the deficiencies in Thailand's TF offense previously identified in this report; and
- Require the authorities to maintain, and be able to make available, comprehensive statistics on MLAT requests, seizures, and types of offenses involved.

### **6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V**

|             | <b>Rating</b> | <b>Summary of factors relevant to s.6.3 underlying overall rating</b>  |
|-------------|---------------|--|
| <b>R.36</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• The narrow range of predicate offenses for ML in Thailand impedes the rendering of MLA.</li> <li>• Effectiveness could not be evaluated due to a lack of statistics about the number of cases, value of seizure, and orders executed under the MLAT.</li> </ul> |
| <b>R.37</b> | <b>PC</b>     | Section-specific rating would be: <b>PC</b> <ul style="list-style-type: none"> <li>• Dual criminality is a requirement of Thai law for all forms of MLA.</li> <li>• Effectiveness could not be evaluated due to a lack of statistics about the</li> </ul>  |

|             |           |  |
|-------------|-----------|--|
|             |           | number of cases, value of seizure, and orders executed under the MLAT.   |
| <b>R.38</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The narrow range of predicate offenses for ML in Thailand impedes the rendering of MLA.</li> <li>• Thailand can not provide assistance where the request relates to property of corresponding value.</li> <li>• The lack of statistics means that effectiveness could not be assessed.</li> </ul> |
| <b>SR.V</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The deficiencies in the TF offense restrict the circumstances in which Thailand is able to provide mutual legal assistance or extradite.</li> </ul>   |

## 6.4 Extradition (R.37, 39, SR.V)

### 6.4.1 Description and Analysis

1280. Thailand considers extradition requests on the basis of the 1929 Extradition Act and bilateral extradition treaties. The Act governs extradition in Thailand insofar as it is not inconsistent with any extradition treaty to which Thailand is a party (section 3). The authorities were unable to provide a list of jurisdictions with which Thailand has extradition treaties.

1281. The following are important aspects of the 1929 Extradition Act:

- In the absence of an extradition treaty, extradition may be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one year under Thai laws (section 4) and so long as it is not related with a political offense (section 12);
- Reciprocity is generally required but it is not a legal requirement. This allows Thailand to extradite even if reciprocity is not fully obtained, i.e., in case the requesting State cannot commit reciprocity because the offense to which extradition relates carries death penalty under Thai laws;
- 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);
- Under the current law, Thai nationality is not an absolute bar for extradition;
- An extradition request shall be sent through the diplomatic channel (section 6) and it shall contain the conviction and the warrant of arrest for the requested person, together with the related evidence (section 7); and,
- In case of a request for provisional arrest, the nature of the offense and the arrest warrant of the requesting Court shall be submitted. Provisional arrest pending the arrival of a formal request for surrender is permitted. The public prosecutor will apply to the Court for the issuance of a provisional arrest warrant. The extradition request shall be submitted to the Court within two months from the date of the order for detention (section 10).

#### ***Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):***

1282. In principle, Thailand does not have any legal or practical impediment to extradite. Dual criminality is judged on the basis of conduct. The fact that the requesting State and Thailand categorize the conduct into different denominations does not matter as long as it is criminal in both countries.

1283. Reciprocity is not legally mandated in the extradition context. According to the Office of the AG, citing Thai case law, Thailand can extradite even if reciprocity is not obtained from the requesting State. Extradition in this scenario is often granted for reasons related with the better administration of justice and prevention of crime.

#### ***Money Laundering as Extraditable Offense (c. 39.1):***

1284. ML is an extraditable offense. In the absence of an extradition treaty, extradition may be granted when the offense for which extradition is sought is punishable with imprisonment of not less than one

year under Thai law (section 4). The offense of ML is punished in Thailand with imprisonment for a term of one to ten years, or a fine of twenty thousand to two hundred thousand baht (\$528 to \$5,280), or both (section 60 of AMLA) so it is considered to be an extraditable offense in Thailand. However, the dual criminality requirement restricts the scope of extraditions related to ML only to offenses that would also be considered to be ML in Thailand (i.e., only ML derived from one of the eight categories of predicate offenses prescribed under the AMLA).

***Extradition of Nationals (c. 39.2):***

1285. Although extradition of Thai nationals is legally permitted, the Thai government adopted a resolution dated 4 March 4, 1997, supplemented by the Cabinet's resolution dated October 26, 1999, regarding procedure for the consideration of a request for extradition of Thai nationals and conditioning it to cases where:

- a. It is permissible under the extradition treaty between Thailand and the requesting State or, otherwise, the requesting State commits to reciprocity with Thailand; and,
- b. Thailand does not have jurisdiction over the act upon which the extradition request is based and such Thai national is not being charged or prosecuted in any case pending in Thailand.

1286. As noted in the analysis of the ML offense, the extent of Thailand's criminal jurisdiction is not entirely clear. Nevertheless, it should be stated that Thailand does not assert criminal jurisdiction based solely on the nationality of the offender.

1287. The law provides for a consultation mechanism between the Court handling the extradition case and the Minister of Justice only in the case when the court is of the opinion that extradition of a Thai national shall not be granted (section 16). Under such mechanism, the Court must inform the Minister of Justice that the Court is of the opinion that extradition of a Thai shall not be granted. If the Minister shares the Court's opinion, extradition is denied. However, should the Minister disagree with the Court, the extradition of the Thai national will proceed. This consultation is not required when the Court decides to extradite the Thai national directly.

1288. In practice, competent authorities have developed a policy that Thailand shall not extradite any Thai national to be prosecuted by any requesting country, but rather prosecute the case in Thailand, if the injured person or the government of the country where the crime is committed has duly requested punishment. However, this policy has been relaxed by bilateral treaties that Thailand has entered into with different countries.

1289. The Court of Appeals, which is the final Court for extradition cases, confirmed the permission to extradite Thai nationals in a number of cases. For example, according to the authorities, in Red No. 2965/2538 1995 the Court of Appeals decided to issue an extradition order for a Thai national accused of drug trafficking to stand trial in the United States of America as requested. So far, the Court of Appeals has never refused the extradition of Thai nationals.

1290. If a case falls within the circumstances under which the requested Thai national could not be extradited, the relevant competent authorities may proceed with the prosecution of such person, whether under their own initiative or in response to a foreign request to initiate a criminal proceeding in accordance with section 31 of the Act on Mutual Assistance in Criminal Matters 1992. There is no requirement in the law that the case be submitted to the prosecutors without delay. There is also no requirement for the competent authorities to conduct their proceedings in the same manner as in the case of any other offense of a serious nature under the domestic law of that country. It should in fact be noted that prosecution is not compulsory and it may proceed only if the offense is within Thailand's criminal jurisdiction and if the foreign country has jurisdiction over the case. The AG is the authority in charge of

determining whether these conditions have been met. If there are no other grounds for refusal or postponement, the request will be executed and the AG may refer the case to the RTP for further action. The authorities did not provide information on cases where Thailand has successfully prosecuted a Thai national for the criminal conduct set forth in an extradition request where extradition had been denied based upon Thai nationality.

***Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):***

1291. Thailand can cooperate with another country, in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution. This cooperation would take place under the mechanisms provided by the Act on Mutual Assistance in Criminal Matters 1992 and the relevant treaties on Mutual Assistance in Criminal Matters.

***Efficiency of Extradition Process (c. 39.4):***

1292. Thailand has adopted measures that would allow an extradition request to be handled without undue delay. Under the Extradition Act 1929, an extradition request may be made either in a normal or an urgent case.

1293. In a normal case, upon receipt of an extradition request, the Minister of Foreign Affairs, acting on behalf of the Thai government, will immediately communicate the extradition request to the Minister of Interior and the OAG so as to ensure that the person sought can be arrested. Once arrested, Section 11 requires that the person be brought to the Court without unnecessary delay. As a matter of practice, the prosecutor would file an extradition case with the Court on the day of the arrest.

1294. In an urgent case, section 10 allows the request for provisional arrest which would enable the arrest of the person before the arrival of a formal extradition request. Once arrested, the person must be brought before the Court as soon as possible and their detention may be granted pending the arrival of the formal request, which must come to the Court within two months from the date of the order for detention.

1295. Proceedings relating to ML are considered separately from the extradition request. The fact that extradition relating to a ML case is pending does not bar the initiation of other proceedings relating to ML. Both may proceed concurrently.

***Additional Element (R.39) – Existence of Simplified Procedures relating to Extradition (c. 39.5):***

1296. In the absence of extradition treaties, simplified procedures of extradition by allowing direct transmission of extradition requests between appropriate Ministries are not allowed under Thai laws.

1297. However, when the person sought is brought before the Court, the extradition hearing may be expedited when such person accepts to be the person sought and the extradition is not legally prohibited. Under such circumstances, the Court can give a judgment on the case at once provided that the following requirements are satisfied (section 12):

- (1) that the identity of the person sought is established;
- (2) that there is sufficient evidence against the person sought to commit such person for trial, if the offense had been committed in Thailand; and,
- (3) that the offense is extraditable and is not one of a political character.

1298. Furthermore, the Court only needs to hear evidence for the person sought in their defense on the following issues (section 13):

- (1) that the person is not the person sought;

- (2) that the offense is not extraditable or is of a political character;
- (3) that extradition is in fact being asked for with a view to punishing the person for an offense of a political character; and
- (4) the nationality.

***Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)***

1299. The 1929 Extradition Act applies to extradition in relation to terrorism and TF. As terrorism and TF are criminal offences under the PC and the prescribed punishment is death or life imprisonment or three to twenty years' imprisonment, they are also extraditable offences under the Extradition Act 1929. The general principles described in this section and the simplified procedures for extradition apply equally to the extradition in relation to terrorism and TF.

***Statistics (applying R.32):***

1300. Thailand has provided the assessment team with the following statistics on extraditions that have occurred as a result of requests in the period 2002-2006.

**Table 35. Extradition Statistics**

| <b>Year</b>  | <b>Thai Requests</b> | <b>Foreign Requests</b> |
|--------------|----------------------|-------------------------|
| 2002         | 5                    | 15                      |
| 2003         | 5                    | 13                      |
| 2004         | 8                    | 11                      |
| 2005         | 4                    | 9                       |
| 2006         | 4                    | 13                      |
| <b>TOTAL</b> | 26                   | 61                      |

1301. The authorities did not provide statistics on the number of extradition requests denied, the nature of the requests (offenses), the countries involved, the disposition (whether granted or denied), whether Thai nationals were involved or whether the transfer of prosecution had occurred, and the time taken to deal with requests. The assessors therefore, cannot determine whether the process is effective.

***Assessment of Effectiveness***

1302. The narrow range of predicate offenses vis-à-vis the standards restricts Thailand's capacity to execute extradition requests related to ML to limited circumstances. Given the dual criminality requirement, Thailand is only capable of extraditing in cases related to ML derived from one of the eight categories of predicate offenses listed in the AMLA. If the request for extradition is related to ML derived from an offense that is not a predicate offense in Thailand, the offense under consideration would not be considered to be a ML offense in Thailand and the dual criminality requirement would therefore not be met, so extradition in such cases would not be possible. Moreover, if the offense is not considered an offense in Thailand, the person sought could not be prosecuted for ML in Thailand either.

1303. The deficiencies of the TF offense (described in the analysis of SR II) also restrict the circumstances in which Thailand may execute extradition requests related to terrorism financing. Given the dual criminality requirement, Thailand is only capable of extraditing in cases related to the financing of the acts of terrorism defined in the PC. For instance, if the request for extradition is related to the financing of an offense within the scope of, and as defined in the treaties that Thailand considered to be included in the annex of the UN TF Convention, Thailand would not be able to extradite. Also, if the request for extradition is related to the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist Thailand would not be able to extradite.

1304. Given the lack of statistics on the number of extradition requests denied, the nature of extradition requests (offenses), the countries involved, the disposition (whether granted or denied), whether Thai nationals were involved, the transfer of prosecution occurred, and time that the whole process took, the assessment team was not able to assess the effectiveness of the implementation of these provisions.

#### 6.4.2 Recommendations and Comments

1305. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Amend the AMLA, to add to the list of predicate offenses, all serious offenses or all of the remaining designated categories of offenses provided for under the FATF 40+9.  
Amend the Extradition Act to provide that, when extradition of Thai nationals is denied, the case shall be submitted to the prosecution authorities with no delay and the proceedings shall be conducted in the same manner as in the case of any other offense of a serious nature under domestic law.  
Amend the PC to (a) extend the TF conduct to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention consistent with Thailand's obligations under SR.II (b) extend the TF offense to the provision or collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered; (c) remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offense which is part of a terrorist plan; and, (d) fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist.

#### 6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

|             | Rating    | Summary of factors relevant to s.6.4 underlying overall rating   |
|-------------|-----------|--|
| <b>R.39</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The narrow range of predicate offenses for ML in Thailand restricts the circumstances in which Thailand is able to extradite.</li> <li>• Extradition of Thai nationals may be denied, and there are no legal requirements in such circumstances to submit the case to the prosecutors without delay or to conduct proceedings in the same manner as in the case of any other offense of a serious nature under the domestic law.</li> <li>• Given the lack of statistics, the assessment team was not able to satisfy itself that the regime is being effectively implemented.</li> </ul> |
| <b>R.37</b> | <b>PC</b> | Section-specific rating would be: <b>C</b> <ul style="list-style-type: none"> <li>• The Recommendation is fully met.</li> </ul>  |
| <b>SR.V</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The deficiencies in the TF offense restrict the circumstances in which Thailand is able to extradite.</li> </ul>  |

### 6.5 Other Forms of International Cooperation (R.40 & SR.V)

#### 6.5.1 Description and Analysis

1306. Other forms of international cooperation such as sharing or exchanging of information is done by agreements, memorandums of understanding between competent authorities and their foreign counterparts, such as MOUs between the AMLO and other foreign FIUs.

#### *Widest Range of International Cooperation (c. 40.1)*

1307. Mechanisms to provide assistance exist in Thailand. Channels of communication are – (1) through the Ministry of Foreign Affairs under the Extradition Act 1929, (2) through the OAG under the

Act on Mutual Assistance in Criminal Matters 1992, and (3) through the OAG under the ASEAN regional MLA treaty 2004. These channels are generally known as “Central Authority.”

1308. In addition, there exists direct ongoing informal communication between foreign counterpart agencies with domestic agencies. Domestic authorities who provide assistance such as the AMLO, the RTP Foreign Affairs Department, the ONCB and the DSI work frequently with foreign LEAs and FIU authorities. Authorities stated that these informal channels of “police to police” or “FIU to FIU” for seeking assistance are frequently used and Thai authorities respond by providing assistance which has in some instances required them to share evidence and testify in foreign jurisdictions.

1309. A number of foreign LEAs have liaison officers (LOs) who are located in Bangkok. Discussions with some of these LOs indicated that, in their view, the focus of Thai authorities has been narcotics over the past three or four years where they have received good cooperation from the local authorities, but as a result of this focus the LO’s have had problems obtaining assistance for frauds or other ML predicate offenses not related to drugs. The LO’s agreed that the reason for these problems was the lack of expertise and resources allocated within the police to investigate these types of cases.

1310. The Customs Department also indicated that it can and does cooperate with its foreign counterparts.

1311. As for international cooperation between financial supervisors, Thai authorities have taken several initiatives. The BOT may provide confidential information to another supervisory agency in accordance with section 46 Septem of the CBA. Confidentiality is assured by conditions stipulated in MOUs and good faith compliance with international standards and codes. Section 46 states that the BOT has the duty to deny any requests for confidential supervisory information, except in the line of duty for legal investigation, trial or where otherwise required by law. In this respect, the BOT has exchanged letters on information sharing with the Financial Services Agency of Japan and also signed an MOU with the MAS and the China Banking Regulatory Commission for effective cross-border banking supervision. The BOT plans to sign more MOUs with other countries whose banks have significant overseas operations in Thailand. As for on-site supervision of foreign bank branches operating in Thailand, these banks are required to submit the BOT’s examination result report to their head offices, which in turn are expected by BOT to submit the reports to their home country supervisor. When home country supervisors wish to conduct on-site examinations of their branches in Thailand, BOT examiners would participate in such examination. The final report shall be sent to the BOT.

1312. The SEC and the DOI also confirmed that they can and do exchange information with their foreign counterparts. It must be noted though that, given that the DOI does not play a role in the regulation and supervision of insurance companies for AML/CFT, the assessors are not satisfied that it could usefully deal AML/CFT-related requests.

***Provision of Assistance in Timely, Constructive, and Effective Manner (c. 40.1.1):***

1313. The assessors were not provided with any information or statistics to determine whether assistance is provided in a timely, constructive, or effective manner.

***Clear and Effective Gateways for Exchange of Information (c. 40.2):***

1314. In the case of the FIU, the AMLO’s exchange of information with foreign counterparts can be effectively done directly or through the Egmont Group of FIUs or through Interpol, etc. The AMLO has signed MOUs on exchange of information with 26 foreign counterparts so far. The AMLO also shares information through informal means outside of MOU when requested from a foreign FIU.

1315. The Customs Department also indicated that it was able to cooperate with its foreign counterparts.

***Spontaneous Exchange of Information (c. 40.3):***

1316. Exchange of information is possible (a) upon request and (b) in relation to both ML and underlying predicate offenses. The Ministerial Regulation on Organization of Work Units under the AMLO 2002, dated October 9, 2002, designates the AMLO's IAC as the center for exchange of information on Thailand's AML/CFT activities and authorizes the AMLO's Law Enforcement Policy Division to act as a center for seeking of assistance from and cooperation with foreign countries and international organizations on AML matters.

1317. Insufficient information was provided to indicate whether other authorities could exchange information with their counterparts spontaneously.

***Making Inquiries or Investigations on Behalf of Foreign Counterparts (c. 40.4 & 40.5):***

1318. Where there are grounds for making enquiries or conducting enquiries under Thai laws, the authorities can do the same on behalf of their foreign counterparts. For example, if ML is suspected, the S-G of the AMLO can exercise the power under section 38 of AMLA to search or seize property or evidence. Note that a foreign counterpart request is not a ground for exercising the power under Thai laws. What it means, for instance, is that the powers can be exercised where an offense is suspected of having been committed in Thailand or there is property forfeitable under Thai laws located in Thailand.

***FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):***

1319. The AMLO claimed that it uses its own powers in the AMLA to make inquiries on behalf of foreign counterparts. However, there is no explicit authorization in the AMLA for this practice.

1320. Other LEA including RTP, DSI and Customs stated that on a frequent basis they provide assistance to foreign LEAs in either "police to police" or MLAT requests capacities. Thailand has over 25 foreign LEAs who have representatives that are located in Thailand. Interviews conducted with these foreign law enforcement representatives confirmed that Thai authorities need to improve their capacity for responding to financial crime or ML-related requests especially on non-narcotic offenses. No other feedback was received from APG members indicating issues with the international assistance provided by Thailand. No information or statistics relating to requests received, nature or scope of requests, time required to complete etc. were provided by authorities making it difficult to fully assess this requirement.

***No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):***

1321. The authorities indicated that exchanges of information are not made subject to disproportionate or unduly restrictive conditions.

***Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):***

1322. The authorities stated that requests for cooperation are not refused solely because the request involves fiscal matters.

***Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):***

1323. The authorities stated that requests to obtain information in circumstances where laws impose secrecy or confidentiality requirements from FIs or DNFBPs may need to be made through mutual legal assistance channels under the Act on Mutual Assistance in Criminal Matters 1992 to avoid the application of the confidentiality or secrecy requirements.



***Safeguards in Use of Exchanged Information (c. 40.9):***

1324. The authorities stated that information received would be protected in the same manner as information already held by the receiving competent authority.

***Additional Element -Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):***

1325. Insufficient information provided to assess this.

***Additional Element –Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)***

1326. The AMLO, as the national FIU, can obtain from local competent authorities or other persons relevant information requested by a foreign FIU on the basis of the MOU and/or the powers granted under AMLA. This also applies to information requested by countries with whom the AMLO has not signed an MOU.

***International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5)/ Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):***

1327. The authorities stated that the same level of cooperation can be provided in relation to the financing of terrorism, terrorist acts, and terrorist organizations. They also noted Thailand's track record of such cooperation—including taking quick actions that led to the arrest and handing over of the Islamic terrorist known as Hanbali. It should be noted, however, that the deficiencies in the TF offense may restrict the circumstances in which Thailand is able cooperate.

***Statistics (applying R.32):***

1328. The authorities have provided limited statistics.

1329. The following is the table of MLAT requests received from and responded to foreign FIU counterparts for the years 2001–2002 to 2005–2006:

**Table 36. MLAT Requests Received from Foreign FIU**

| Year      | Requests Received from & Responded to FIU Counterparts |               |
|-----------|--|---------------|
|           | Received   | Cases Replied |
| 2001-2002 | 7  | 5             |
| 2002-2003 | 54   | 31            |
| 2003-2004 | 51   | 31            |
| 2004-2005 | 124  | 123           |
| 2005-2006 | 41   | 41            |
| Total     | 277  | 231           |

***Assessment of Effectiveness***

1330. Insufficient information was provided to assess overall effectiveness. However, the assessors note that, as part of the preparation for this assessment, inquiries were made and no adverse comments were received from APG or FATF members concerning Thailand's cooperation with other jurisdictions. As mentioned above, Thailand has shown its willingness to cooperate internationally to help arrest an international terrorist.

### 6.5.2 Recommendations and Comments

1331. The assessors recommend that, if Thailand wishes to comply with the Recommendations in this part of the report, it should:

- Demonstrate through the use of statistics and other evidence that its mechanisms for international cooperation are fully effective.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

|             | Rating    | Summary of factors relevant to s.6.5 underlying overall rating   |
|-------------|-----------|--|
| <b>R.40</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• Given the lack of statistical data, the evaluation team was not able to determine that the mechanisms for international cooperation are fully effective.</li> </ul> |
| <b>SR.V</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The deficiencies in the TF offense restrict the circumstances in which Thailand is able cooperate.</li> </ul>   |

## 7 OTHER ISSUES

### 7.1 Resources and statistics

|             | Rating    | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating   |
|-------------|-----------|--|
| <b>R.30</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• The AMLO does not allocate sufficient resources to properly analyze STRs.</li> <li>• The AMLO does not appear to be adequately structured or resourced to discharge its obligations to provide guidelines, feedback, and public awareness.</li> <li>• The AMLO does not have any resources dedicated to monitoring compliance with the AMLA.</li> <li>• LEAs do not have specialized staff or staff dedicated to carry out ML or TF investigations.</li> <li>• There is limited training provided in relation to the conduct of ML and TF investigations.</li> <li>• Prosecutors and LEAs outside of Bangkok appear not to have received extensive training in ML and TF issues.</li> <li>• The assessors were concerned that many officials appeared to have a lack of knowledge about ML trends and methods not involving narcotics using cash.</li> <li>• Other than the BOT and the SEC, other supervisory agencies do not appear to have allocated sufficient staff resources or training efforts to AML/CFT.</li> <li>• There does not appear to be sufficient resources to monitor the activities of money changers.</li> <li>• There are insufficient resources dedicated to AML/CTF in the customs service.</li> </ul> |
| <b>R.32</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• Thailand does not have effective systems in place to review the effectiveness of its system for combating ML and FT.</li> <li>• Other than STR related statistics maintained by the AMLO, there is a general lack of comprehensive national statistics on AML/CFT.</li> </ul>   |

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations are made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

These ratings are based only on the essential criteria set out in the Methodology, and defined as follows:

|                                 |  |
|---------------------------------|--|
| <b>Compliant (C)</b>            | The Recommendation is fully observed with respect to all essential criteria.   |
| <b>Largely compliant (LC)</b>   | There are only minor shortcomings, with a large majority of the essential criteria being fully met.  |
| <b>Partially compliant (PC)</b> | The country has taken some substantive action and complies with some of the essential criteria.  |
| <b>Non-compliant (NC)</b>       | There are major shortcomings, with a large majority of the essential criteria not being met.   |
| <b>Not applicable (NA)</b>      | A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country. |

| <b>Forty Recommendations</b> | <b>Rating</b> | <b>Summary of factors underlying rating<sup>66</sup></b>  |
|------------------------------|---------------|---|
| <b>Legal systems</b>         |               |   |
| 1. ML offense                | <b>PC</b>     | <ul style="list-style-type: none"> <li>• The list of domestic predicate offenses does not cover all serious offenses and it does not fully cover 14 out of the 20 designated categories of offenses.</li> <li>• Thailand's criminal jurisdiction does not, in all instances, extend to all predicate offences that occurred in another country, which constitutes an offense in that country, and would have constituted a predicate offense had they occurred in Thailand.</li> <li>• The acquisition, possession or use of property is conditioned to specific purposes that go beyond the requirements of the Vienna Convention.</li> <li>• The assessment team was not able to satisfy itself that the regime is being effectively implemented: <ul style="list-style-type: none"> <li>• on average only 3 ML convictions are obtained each year;</li> <li>• the vast majority of prosecutions and convictions relate to drug ML and not other</li> </ul> </li> </ul> |

<sup>66</sup> These factors are only required to be set out when the rating is less than Compliant.

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|  |    | <p>predicate offenses; and,</p> <ul style="list-style-type: none"> <li>• The AMLO's poor record for disseminating information to authorities and its focus on pursuing civil processing to seize assets may impede the pursuit of criminal prosecutions for ML.</li> </ul>   |
| 2. ML offense—mental element and corporate liability | LC | <ul style="list-style-type: none"> <li>• No statistics were provided to assess whether the sanctions imposed are effective or dissuasive.</li> </ul>   |
| 3. Confiscation and provisional measures             | LC | <ul style="list-style-type: none"> <li>• The powers to identify and trace property that is or may become subject to confiscation in the context of criminal procedures for offenses not relating to narcotics are not sufficient.</li> <li>• The forfeiture provisions of the Penal Code do not deal with property derived from the proceeds of crime.</li> <li>• There are no provisions permitting the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice.</li> <li>• The authorities could not demonstrate that they could take steps to void actions taken to prejudice the ability of the authorities to recover property subject to confiscation.</li> <li>• Thailand has a successful record of making provisional asset seizures using criminal and civil processes.</li> <li>• The assessors remain concerned that not all the measures are effectively implemented because: <ul style="list-style-type: none"> <li>• They were not provided with a full set of statistics;</li> <li>• Very few assets are seized for offences other than narcotics;</li> <li>• Assets forfeited are low compared to assets seized and there is a large backlog of the AMLO's civil cases presently before the courts; and,</li> <li>• There may be too much focus on the civil based provisional seizures in the AMLA due to the incentives that the AMLO rewards system creates and not enough focus on completing confiscation procedures – civil or criminal.</li> </ul> </li> </ul> |
| <b>Preventive measures</b>                           |    |  |
| 4. Secrecy laws consistent with the Recommendations  | C  | <ul style="list-style-type: none"> <li>• The Recommendation is fully met.</li> </ul>   |
| 5. Customer due diligence                            | NC | <ul style="list-style-type: none"> <li>• There are a large number of FIs that carry out financial activities in Thailand as defined in the glossary to the FATF 40+9 that are not subject to AML/CFT requirements under the AMLA (The</li> </ul>   |

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|  |  | <p>Small Business Credit Guarantee Corporation, Agricultural Cooperatives, Personal Loan Business Companies, Pawnshops, Hire Purchase Companies, Authorized Money Transfer Agents, The Postal Office, Credit Card Companies, Companies Authorized to issue travelers cheques, E-Money companies, Agriculture Futures Brokers and Derivatives Business Operators).</p> <ul style="list-style-type: none"> <li>• Although in practice some FIs, particularly in the banking sector, have been implementing measures and guidelines issued by the regulators and industry, there are only limited CDD requirements under the AMLA which means that there are no effective requirements in place for FIs covered by the AMLA whose financial supervisor has not issued regulations or other enforceable means (e.g. life insurance companies).</li> <li>• The assessors were not satisfied that comprehensive measures have been put in place to prohibit the use of anonymous accounts for accounts opened prior to 2001 and in relation to deposit taking entities not subject to the BOT notification relating to the acceptance of deposits.</li> <li>• There are no requirements in law or regulation relating to undertaking CDD when: <ul style="list-style-type: none"> <li>• establishing business relations with the exception of the banking and securities sectors;</li> <li>• carrying out occasional transactions above \$15,000 or that are wire transfers under SR VII; and,</li> <li>• where the FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> </li> <li>• The threshold for occasional transactions is in excess of the amount established in the standard.</li> <li>• The only requirements in law or regulation requiring FIs to identify customers (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information relate to: <ul style="list-style-type: none"> <li>• Transactions reportable to the AMLO;</li> <li>• The opening of deposit accounts by banks (but not by SFIs); and,</li> <li>• The securities sector (excluding agricultural</li> </ul> </li> </ul> |
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|  |  | <p>futures brokers).</p> <ul style="list-style-type: none"> <li>• The existing obligations requiring FIs, in relation to legal persons and legal arrangements, to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person cover only some elements of the Recommendation and do not apply to all FIs.</li> <li>• The requirements in law or regulation requiring FIs to identify beneficial owners apply only to parts of the securities industry.</li> <li>• There is no general requirement in law or regulation requiring FIs to conduct ongoing due diligence of the business relationship.</li> <li>• 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.</li> <li>• 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.</li> <li>• The exemptions for certain transactions from the requirements of the AMLA do not appear to be based on a assessment of the risks of ML or TF.</li> <li>• 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.</li> <li>• Some banks are conducting reduced CDD measures on a risk sensitive basis even though this is not authorized and for which no guidance has been issued.</li> <li>• There are no obligations imposed on FIs who cannot complete CDD requirements to not open accounts, commence business relations or perform transactions or consider making a suspicious transaction reports except in limited circumstances for securities companies.</li> <li>• The fragmented nature of the laws, regulations and notifications poses an obstacle to the effective implementation of the regulated sector by making it challenging for the FIs to know with certainty what their obligations are.</li> <li>• The assessors were not satisfied that all the measures that are in place are effectively implemented because many have only recently been introduced, the FIs are still in the process of implementing them and there is a lack of</li> </ul> |
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|   |    | guidance issued by the authorities.   |
| 6. Politically exposed persons                  | NC | <ul style="list-style-type: none"> <li>The only requirements that apply are in the securities sector (excluding agricultural futures brokers).</li> </ul>   |
| 7. Correspondent banking                        | NC | <ul style="list-style-type: none"> <li>In the absence of any enforceable correspondent obligations for the banking sector it is a concern that banks have operated correspondent relationships with jurisdictions considered to be at risk of ML without any guidance from the authorities.</li> </ul>  |
| 8. New technologies & non face-to-face business | NC | <ul style="list-style-type: none"> <li>There is no general enforceable requirement applying to all FIs that addresses risks from new technologies or doing business with non-face to face business relationships.</li> <li>The securities sector (excluding agricultural futures brokers) is the only one with requirements but these are not yet fully implemented.</li> </ul>   |
| 9. Third parties and introducers                | NC | <ul style="list-style-type: none"> <li>The only requirements regulating the use of third party introducers apply in the securities sector (excluding agricultural futures brokers).</li> </ul>  |
| 10. Record-keeping                              | PC | <ul style="list-style-type: none"> <li>Other than some securities firms FIs are not required by law or regulation to keep transaction records or identification data except in relation to transactions that have been reported to the AMLO under the AMLA.</li> <li>The identification data retention requirements in law or regulation that apply only to banks do not extend to business correspondence and account files.</li> <li>There are no other identification data retention requirements in law or regulation for other FIs.</li> </ul> |
| 11. Unusual transactions                        | PC | <ul style="list-style-type: none"> <li>The obligation in the AMLA for FIs to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose does not extend to the FIs that are not subject to the AMLA.</li> <li>Other than when making STRs, there is no requirement in the AMLA that FIs should set forth their findings in writing nor retain those findings.</li> </ul>  |
| 12. DNFBP–R.5, 6, 8–11                          | NC | <ul style="list-style-type: none"> <li>There are no legally enforceable requirements in place in relation to any categories of the DNFBPs that operate legally in Thailand.</li> <li>Illegal casinos operate throughout Thailand.</li> </ul>  |
| 13. Suspicious transaction reporting            | PC | <ul style="list-style-type: none"> <li>FIs outside of the definition in the AMLA are not required to report suspicious transactions.</li> <li>The reporting obligation does not cover all of the predicate offences for ML under the FATF Recommendations.</li> </ul>   |

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|   |           | <ul style="list-style-type: none"> <li>• There is no requirement to report attempted transactions.</li> <li>• There is no evaluation of ML risk in relation to the transaction that are exempted from the reporting obligation (e.g., transactions to which the government is a party given the risk of corruption that exists in Thailand).</li> <li>• The assessors are not satisfied that the requirements are effectively implemented even though a very large number of reports are received: <ul style="list-style-type: none"> <li>• There is negligible reporting of STRs by FIs that are not banks;</li> <li>• There is no guidance issued by the authorities to help FIs identify suspicious transactions;</li> <li>• There may be poor quality reporting as the obligation to report includes for “unusual” transactions and very few reports result in ML or TF investigations or convictions; and,</li> <li>• There may be defensive filing of STRs by banks.</li> </ul> </li> </ul> |
| 14. Protection & no tipping-off           | <b>PC</b> | <ul style="list-style-type: none"> <li>• The law does not prohibit “tipping off”.</li> <li>• Section 21 of the AMLA, which requires FIs to obtain a statement from a customer for whom they are considering making an STR, appears to have the effect of tipping off the customer.</li> </ul>   |
| 15. Internal controls, compliance & audit | <b>PC</b> | <ul style="list-style-type: none"> <li>• The only enforceable requirement for FIs to develop appropriate compliance management arrangements apply to the securities sector (excluding agricultural futures brokers).</li> <li>• Although in practice many FIs carry out extensive AML/CFT training for their staff, there is no enforceable requirement for FIs to establish ongoing employee training related to ML and TF.</li> <li>• There is no requirement applying to all FIs to screen potential employees.</li> <li>• The OSEC Notification does not require that the AML/CFT officer be at management level.</li> </ul>  |
| 16. DNFBP–R.13–15 & 21                    | <b>NC</b> | <ul style="list-style-type: none"> <li>• There are no obligations to report suspicious transactions by any category of DNFBP, nor related protections from liability nor prohibitions on tipping off that an STR has been made.</li> <li>• DNFBPs are not required to develop programs against ML and TF.</li> <li>• DNFBPs are not required to give special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF Recommendations</li> </ul>  |



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|   |           | as required by R.21.   |
| 17. Sanctions                                   | <b>PC</b> | <ul style="list-style-type: none"> <li>• It is difficult to establish whether the sanctions provided for in the AMLA are effective or dissuasive as no sanctions have ever been imposed.</li> <li>• The assessors were not satisfied that all of the FIs identified in the FATF definition of financial institution that operate in Thailand had a corresponding competent authority designated to impose sanctions for non-compliance with AML/CFT requirements (e.g., cooperatives, pawnshops, and agricultural futures brokers).</li> <li>• The assessors were not satisfied that an effective sanctioning regime existed for the SFIs or, if it does exist, that it is effectively applied.</li> <li>• The assessors were not satisfied that the sanctions available to the authorities were being or were capable of being effectively utilized: <ul style="list-style-type: none"> <li>• There were no statistics available to the assessors showing how many sanctions had been imposed;</li> <li>• No criminal sanctions for breaching the AMLA have been applied, despite the existence of known serious breaches;</li> <li>• Some of the financial supervisors do not consider it their duty to report serious breaches of the AMLA to appropriate competent authorities; and,</li> <li>• Some criminal charges referred to the competent LEAs by the SEC may not be pursued.</li> </ul> </li> </ul> |
| 18. Shell banks                                 | <b>PC</b> | <ul style="list-style-type: none"> <li>• There is no requirement prohibiting FIs from having correspondent banking relationships with shell banks.</li> <li>• FIs are not required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>   |
| 19. Other forms of reporting                    | <b>C</b>  | <ul style="list-style-type: none"> <li>• The Recommendation is fully met.</li> </ul>   |
| 20. Other NFBP & secure transaction techniques  | <b>PC</b> | <ul style="list-style-type: none"> <li>• The authorities do not appear to be taking sufficient measures to reduce the use of cash in Thailand or to encourage more activity to come within the formal sector.</li> </ul>   |
| 21. Special attention for higher risk countries | <b>NC</b> | <ul style="list-style-type: none"> <li>• The only requirement that FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is in the securities sector (excluding agricultural futures brokers) and these do not require that findings be recorded in writing.</li> </ul>  |

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|  |           | <ul style="list-style-type: none"> <li>Thailand does not have a mechanism to apply counter-measures against countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>  |
| 22. Foreign branches & subsidiaries              | <b>NC</b> | <ul style="list-style-type: none"> <li>There are no requirements in place.</li> </ul>   |
| 23. Regulation, supervision and monitoring       | <b>PC</b> | <ul style="list-style-type: none"> <li>The assessors are not satisfied that there has been a clear designation of which competent authorities are responsible for ensuring FIs comply with the AMLA.</li> <li>There are insufficient measures in place to ensure that criminals are prevented from being beneficial owners of FIs.</li> <li>While insurance companies are subject to the AMLA, they are not subject to any effective compliance monitoring for AML/CFT.</li> <li>Regulation and supervision of remittance activity seems inadequate - the competent authorities do not seem to be taking effective steps to suppress remittance activity in the large informal sector.</li> <li>The 7-Eleven convenience store chain is able to operate as a money remitter without licensing, registration and effective compliance monitoring.</li> <li>The assessors are not satisfied that all FIs that fall within the definition of financial activity within the FATF Recommendations are subject to supervision or oversight for compliance with requirements (e.g. cooperatives, pawnshops, agricultural futures brokers).</li> <li>It is premature to conclude that AML/CFT regulation and supervision is effectively carried out as many of the requirements applicable to FIs had only just been established when the assessment took place.</li> </ul> |
| 24. DNFBP—regulation, supervision and monitoring | <b>NC</b> | <ul style="list-style-type: none"> <li>Illegal casinos operate throughout Thailand.</li> <li>No categories of DNFBP are subject to AML/CFT requirements and therefore no supervision regime exists.</li> </ul>  |
| 25. Guidelines & Feedback                        | <b>PC</b> | <ul style="list-style-type: none"> <li>The guidelines issued by the relevant competent authorities need to contain more detailed assistance for complying with AML/CFT requirements including descriptions of ML and TF techniques and methods.</li> <li>The guidelines that have been issued by competent authorities to FIs which deal with STR and other reporting are not comprehensive.</li> <li>The AMLO provides limited specific and general feedback to FIs.</li> <li>The only guideline applicable to the DNFBPs is the AMLO policy statement and this document does not contain specific guidance instead it just</li> </ul>   |

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|   |           | establishes high level principles. Besides, it refers only to CDD.   |
| <b>Institutional and other measures</b> |           |  |
| 26. The FIU                             | <b>PC</b> | <ul style="list-style-type: none"> <li>• The FIU does not give adequate guidance to reporting institutions on STR reporting.</li> <li>• The AMLO does not publish periodic reports containing ML/FT typologies and trends.</li> <li>• The AMLO's effectiveness as an FIU is compromised by: <ul style="list-style-type: none"> <li>• Focusing too much attention on seizing assets using the civil vesting processes;</li> <li>• Disseminating hardly any pro-active STR generated cases for LEAs;</li> <li>• Having insufficient resources or expertise to perform strategic analysis, including in relation to TF;</li> <li>• Its inability to produce consistent and accurate statistics on AML/CFT; and,</li> <li>• The existence of a "rewards" system with may encourage some of these outcomes and also harm the AMLO's integrity.</li> </ul> </li> </ul>   |
| 27. Law enforcement authorities         | <b>PC</b> | <ul style="list-style-type: none"> <li>• There are no comprehensive statistics, and none beyond narcotic cases, on ML and TF investigations to assess the effectiveness of the investigative effort.</li> <li>• Investigations focus predominantly on drug ML not other predicate offences.</li> <li>• LEAs seem reluctant to enter into complex investigations into ML and more willing to investigate self laundering connected mainly with drug related predicate offences.</li> <li>• The LEAs prefer to hand cases to the AMLO to handle under the civil vesting procedure instead of properly investigating ML.</li> <li>• The effectiveness of LEA investigation of ML and TF is hampered by them not receiving proactive financial intelligence from the AMLO.</li> <li>• The effectiveness of the investigative effort appears to be compromised by the lack of specialized dedicated resources who have expertise in investigating ML offences.</li> <li>• The assessors were not satisfied that investigating TF was being utilized as a tool to deal with domestic terrorism.</li> </ul> |
| 28. Powers of competent authorities     | <b>LC</b> | <ul style="list-style-type: none"> <li>• The only LEA that effectively pursues criminal investigations of ML and TF is the ONCB who only deal with narcotic cases.</li> </ul>  |
| 29. Supervisors                         | <b>PC</b> | <ul style="list-style-type: none"> <li>• It was not established to the satisfaction of the assessors that there were supervisors with appropriate powers to monitor and ensure compliance for all of the FIs covered in the</li> </ul>   |

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|  |           | <p>definition of financial activity in the glossary to the FATF 40+9 (e.g., pawnshops, agricultural futures brokers).</p> <ul style="list-style-type: none"> <li>• The DOI does not exercising its powers of supervision in relation to AML/CFT for life insurance.</li> <li>• It is premature to determine whether the available powers are effectively utilized as many of the AML/CFT requirements applicable to FIs had only just been established when the assessment took place.</li> </ul>   |
| 30. Resources, integrity, and training | <b>PC</b> | <ul style="list-style-type: none"> <li>• The AMLO does not allocate sufficient resources to properly analyze STRs.</li> <li>• The AMLO does not appear to be adequately structured or resourced to discharge its obligations to provide guidelines, feedback, and public awareness.</li> <li>• The AMLO does not have any resources dedicated to monitoring compliance with the AMLA.</li> <li>• LEAs do not have specialized staff or staff dedicated to carry out ML or TF investigations.</li> <li>• There is limited training provided in relation to the conduct of ML and TF investigations.</li> <li>• Prosecutors and law enforcement outside of Bangkok appear not to have received extensive training in ML and TF issues.</li> <li>• The assessors were concerned that many officials appeared to have a lack of knowledge about ML trends and methods not involving narcotics using cash.</li> <li>• Other than the BOT and the SEC, other supervisory agencies do not appear to have allocated sufficient staff resources or training efforts to AML/CFT.</li> <li>• There does not appear to be sufficient resources to monitor the activities of money changers.</li> <li>• There are insufficient resources dedicated to AML/CTF in the customs service.</li> </ul> |
| 31. National co-operation              | <b>PC</b> | <ul style="list-style-type: none"> <li>• The formal coordination and cooperation mechanism in the AMLB does not operate as effectively as it should.</li> <li>• Financial regulators and the FIU do not share sufficient information regarding compliance in the financial sector.</li> <li>• Regulators and the AMLO have not agreed monitoring and supervisory responsibilities for all FIs.</li> <li>• The existence of inconsistencies in the contents of guidelines and policy statements issued or endorsed by competent authorities may lead to</li> </ul>   |

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|  |           | <p>inconsistent implementation of AML/CFT requirements.</p> <ul style="list-style-type: none"> <li>• The assessors were concerned that the AMLO, as the central agency with responsibility for implementing the AMLA, did not hold and also had difficulty obtaining key information and statistics about Thailand's overall AML/CFT regime.</li> <li>• Effective mechanisms are not in place to coordinate and cooperate policies and action on TF.</li> <li>• There are no effective mechanisms operating for developing and implementing Thailand's overall AML/CFT policy.</li> </ul> |
| 32. Statistics                             | <b>PC</b> | <ul style="list-style-type: none"> <li>• Thailand does not have effective systems in place to review the effectiveness of its system for combating ML and FT.</li> <li>• Other than STR related statistics maintained by the AMLO, there is a general lack of comprehensive national statistics on AML/CFT.</li> </ul>  |
| 33. Legal persons–beneficial owners        | <b>PC</b> | <ul style="list-style-type: none"> <li>• Access to beneficial ownership information on juristic persons is not available in an accurate, adequate and timely fashion.</li> <li>• Although no company has issued bearer shares in Thailand, there are no mechanisms in place to identify the beneficial owner of bearer shares should companies decide to issue them.</li> </ul>   |
| 34. Legal arrangements – beneficial owners | <b>NA</b> | <ul style="list-style-type: none"> <li>• R.34 is not applicable in the Thailand context.</li> </ul>   |
| <b>International Cooperation</b>           |           |   |
| 35. Conventions                            | <b>PC</b> | <ul style="list-style-type: none"> <li>• Thailand has not ratified the Palermo Convention.</li> <li>• Thailand has not fully implemented the Vienna Convention and the UN Terrorist Financing Convention.</li> </ul>  |
| 36. Mutual legal assistance (MLA)          | <b>PC</b> | <ul style="list-style-type: none"> <li>• The narrow range of predicate offences for ML in Thailand impedes the rendering of MLA</li> <li>• Effectiveness could not be evaluated due to a lack of statistics about the number of cases, value of seizure, and orders executed under the MLAT.</li> </ul>   |
| 37. Dual criminality                       | <b>PC</b> | <ul style="list-style-type: none"> <li>• Dual criminality is a requirement of Thai law for all forms of MLA.</li> <li>• Effectiveness could not be evaluated due to a lack of statistics about the number of cases, value of seizure, and orders executed under the MLAT.</li> </ul>  |
| 38. MLA on confiscation and freezing       | <b>PC</b> | <ul style="list-style-type: none"> <li>• The narrow range of predicate offences for ML in Thailand impedes the rendering of MLA.</li> <li>• Thailand can not provide assistance where the request relates to property of corresponding</li> </ul>   |

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|                                       |           | <p>value.</p> <ul style="list-style-type: none"> <li>The lack of statistics means that effectiveness could not be assessed.</li> </ul>   |
| 39. Extradition                       | <b>PC</b> | <ul style="list-style-type: none"> <li>The narrow range of predicate offences for ML in Thailand restricts the circumstances in which Thailand is able to extradite.</li> <li>Extradition of Thai nationals may be denied, and there are no legal requirements in such circumstances to submit the case to the prosecutors without delay or to conduct proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law.</li> <li>Given the lack of statistics, the assessment team was not able to satisfy itself that the regime is being effectively implemented.</li> </ul>   |
| 40. Other forms of co-operation       | <b>LC</b> | <ul style="list-style-type: none"> <li>Given the lack of statistical data, the evaluation team was not able to determine that the mechanisms for international cooperation are fully effective.</li> </ul>   |
| <b>Nine Special Recommendations</b>   |           |  |
| SR.I Implement UN instruments         | <b>PC</b> | <ul style="list-style-type: none"> <li>Thailand has not fully implemented the UN Terrorist Financing Convention.</li> <li>The assessors are not satisfied that Thailand has fully effective mechanisms in place to implement UNSCRs 1267 and 1373.</li> </ul>  |
| SR.II Criminalize terrorist financing | <b>PC</b> | <ul style="list-style-type: none"> <li>TF has not been criminalized consistent with SR.II because the FT offence does not extend to the financing of the acts set forth in the treaties in the annex of the UN TF Convention.</li> <li>Thai law does not criminalize in all situations the provision or collection of funds for an individual terrorist or a terrorist organization.</li> <li>The TF offense does not extend to the unlisted individual terrorist or terrorist organization.</li> <li>The mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist is not an offense.</li> <li>The mental element of the TF offence is narrower than the standard as section 135/2 of the Penal Code requires that the provision or collection of property be done for the specific purpose of committing a terrorist act.</li> <li>The sanctions for legal persons committing TF are not proportionate or dissuasive.</li> <li>The Recommendation is not effectively implemented - despite a significant domestic terrorism situation, there have been no TF cases taken so far.</li> </ul> |

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| <p>SR.III Freeze and confiscate terrorist assets</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• There is no comprehensive legal mechanism to ensure that terrorist property can be frozen without delay as required under UNSCR 1267 and UNSCR 1373.</li> <li>• There is only a limited mechanism for communicating freezing actions to the FIs.</li> <li>• There are no clear obligations of FIs to take action under the freezing mechanisms.</li> <li>• Little guidance has been given to FIs concerning their obligations in taking action under the freezing mechanisms.</li> <li>• There are no procedures in Thailand for recognizing freezing orders or giving effect to out-of-court freezing orders from other jurisdictions.</li> <li>• There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities.</li> <li>• There is no process for authorizing access to funds seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses.</li> <li>• There is no effective monitoring process to monitor compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property.</li> </ul> |
| <p>SR.IV Suspicious transaction reporting</p>        | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• FIs outside of the definition in the AMLA are not required to report suspicious transactions related to TF.</li> <li>• TF in the Penal Code has not been criminalized consistent with SR.II which narrows the scope of the reporting obligation.</li> <li>• Reporting does not extend to attempted transactions.</li> <li>• The assessors are not satisfied that the requirements are effectively implemented: <ul style="list-style-type: none"> <li>• There are no statistics to assess the effectiveness of this recommendation;</li> <li>• There is no guidance issued by the authorities to help FIs identify suspicious TF transactions; and,</li> <li>• The existence of a high CTR threshold may influence FIs to not pay sufficient attention to low value transactions typically associated with TF.</li> </ul> </li> </ul>   |
| <p>SR.V International cooperation</p>                | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• The deficiencies in the TF offense restrict the circumstances in which Thailand is able to</li> </ul>   |

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|  |           | <p>provide mutual legal assistance or extradite.</p> <ul style="list-style-type: none"> <li>The deficiencies in the TF offense restrict the circumstances in which Thailand is able cooperate.</li> </ul>   |
| SR.VI AML/CFT requirements for money/value transfer services | <b>PC</b> | <ul style="list-style-type: none"> <li>Authorized money transfer agents are not subject to the AMLA but are subject to limited CDD and record-keeping obligations - otherwise they are not currently subject to enforceable CDD, transaction monitoring or internal control requirements.</li> <li>The legal requirements for operating as an authorized money transfer agent are not as effectively enforced as they could be, enabling large numbers of unregulated operators to offer their services in the informal sector.</li> </ul>  |
| SR.VII Wire transfer rules                                   | <b>NC</b> | <ul style="list-style-type: none"> <li>There is no existing law, regulation or other enforceable means regulating wire transfers other than operational rules for the BAHTNET system which do not comprehensively address the requirements of SR. VII.</li> <li>Customer identification information is only obtained for wires that are cash transactions in excess of 2 million baht (\$52,800) and non-cash transactions exceeding 5 million baht (\$132,000).</li> <li>Full originator information is not required to be transmitted with wires.</li> <li>No obligation placed on receiving institutions to adopt risk-based procedures for handling wire transfers lacking originator information.</li> </ul>   |
| SR.VIII Nonprofit organizations                              | <b>NC</b> | <ul style="list-style-type: none"> <li>Thailand has not yet undertaken a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.</li> <li>No outreach has been undertaken with the NPO sector with a view to protecting the sector from TF abuse.</li> <li>The authorities could not demonstrate that they have taken effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector.</li> <li>NPOs are not required to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.</li> <li>While legal authority may exist to investigate the affairs of NPOs there are no effective</li> </ul> |



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|  |    | <p>mechanisms in place to ensure domestic co-operation, co-ordination or information sharing.</p> <ul style="list-style-type: none"> <li>• No contact points have been identified for dealing with international requests for information about NPOs.</li> <li>• The authorities did not demonstrate that the measures in place were sufficient to mitigate the potential terrorism risks in Thailand via the NPO sector.</li> </ul>  |
| SR.IX Cash Border Declaration & Disclosure | NC | <ul style="list-style-type: none"> <li>• There are no cross border declaration or disclosure requirements applying to the import or export of foreign currency, bearer instruments or the import of domestic currency.</li> <li>• There is no authority to stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity.</li> <li>• Declarations that are disclosed are not made available to the FIU.</li> <li>• There is no ability to seize, freeze and confiscate proceeds of crime and funds related to TF.</li> <li>• There are no sanctions available for cross border physical transportation of currency for purposes of ML or TF.</li> <li>• There does not appear to be any consideration given to reporting to foreign authorities when unusual cross-border movements of gold, precious metals or precious stones are discovered.</li> <li>• There are no effective systems in place to analyze the cross-border information that they collect from a ML or TF perspective.</li> <li>• The assessor are not satisfied that the cross border declaration or disclosure framework is effective to mitigate the known cross border risks that exist.</li> </ul> |

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

| <i>FATF 40+9 Recommendations</i>   | <i>Recommended Action (in order of priority within each section)</i>  |
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| <i>1. General</i>  |   |
| <i>2. Legal System and Related Institutional Measures</i>                    |   |
| <b><i>Criminalization of Money Laundering (R.1, 2)</i></b>                   | <ul style="list-style-type: none"> <li>• Amend the AMLA to add to the list of predicate offences all serious offences or all of the remaining designated categories of offences provided for under the FATF 40+9.</li> <li>• Amend the AMLA to make it absolutely clear that the offence of ML can be committed when any of the predicate offences take place outside of Thailand.</li> <li>• Amend the AMLA to remove the specific purposes described in section 5 in connection with the acquisition, possession or use of property derived from an offence.</li> </ul>   |
| <b><i>Criminalization of Terrorist Financing (SR.II)</i></b>                 | <ul style="list-style-type: none"> <li>• Amend the Penal Code to: <ul style="list-style-type: none"> <li>• extend the TF conduct in section 135/2 to the financing of the acts that constitute an offence within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand’s obligations under SR.II;</li> <li>• extend the TF offence to the provision or collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered;</li> <li>• remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offence which is part of a terrorist plan;</li> <li>• fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist;</li> <li>• increase the sanctions for legal persons committing TF so as to make them proportionate and dissuasive.</li> </ul> </li> </ul> |
| <b><i>Confiscation, freezing, and seizing of proceeds of crime (R.3)</i></b> | <ul style="list-style-type: none"> <li>• Amend the powers under the Criminal Procedures Code to enable the identification and tracing of property that is or may become subject to confiscation, beyond the context of gathering evidence.</li> <li>• Expand the forfeiture provisions of the Penal Code to deal also with property derived from the proceeds of crime.</li> <li>• Amend the AMLA, or other relevant laws, to give to the appropriate authority power to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</li> <li>• Approve legislation to effectively abolish the AMLO “rewards system” such that staff investigating cases no longer have a direct financial interest in the outcome of the investigations</li> </ul>  |

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|   | <p>that they participate in.</p> <ul style="list-style-type: none"> <li>• Undertake criminal investigations and prosecutions for ML and TF cases wherever possible in preference to using civil processes to seize assets and secure forfeiture or vesting in the state.</li> <li>• Require the RTP, the DSI, the AMLO and the ONCB in narcotic cases, to develop closer relationships and a structured consultation process to ensure that proper decisions are being reached as to when cases or asset seizures should be pursued civilly or criminally. This will assist ensuring that cases that meet the criminal test will be pursued and also avoid the AMLO and the ONCB independently pursuing the same case without each others knowledge.</li> <li>• More rigorously pursue the obtaining of final forfeiture and vesting orders (which will help ensure that quality seizures are occurring).</li> </ul>   |
| <p><b><i>Freezing of funds used for terrorist financing (SR.III)</i></b></p>  | <ul style="list-style-type: none"> <li>• Amend the current legislation and/or procedures or, alternatively, enact new legislation and/or procedures to enable the freezing of terrorist funds or other assets of persons designated under UNSCRs 1267 and 1373 without delay.</li> <li>• Clarify the obligations of financial entities to take action under the freezing mechanisms.</li> <li>• Establish a specific and effective system for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action.</li> <li>• Have the authorities provide clear guidance to FIs and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms. In particular, the lists of designated terrorists/terrorist organizations should be forwarded to the financial sector without delay.</li> <li>• Establish effective and publicly known procedures for considering de-listing requests and unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international standards, or for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism.</li> <li>• Establish appropriate procedures for authorizing access to property seized or attached pursuant to UNSCR 1267 and that have been determined necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for ordinary expenses.</li> <li>• Establish appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations concerning the freezing and confiscation of terrorist property.</li> </ul> |
| <p><b><i>The Financial Intelligence Unit and its functions (R.26)</i></b></p> | <ul style="list-style-type: none"> <li>• Amend AMLA to provide the AMLO with specific authority to, and a duty to, disseminate financial analysis to domestic competent authorities for investigation.</li> <li>• Pass as soon as possible legislation to effectively abolish the “rewards system” in the AMLO and other competent authorities, such that staff investigating cases do not have a</li> </ul>   |

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|  | <p>direct financial interest in the outcome of the investigations.</p> <ul style="list-style-type: none"> <li>• Require the AMLO to issue comprehensive guidelines to reporting entities regarding reporting STRs and other reports.</li> <li>• Require the AMLO to develop and implement a communication strategy for publishing ML trends and typologies and annual reports in a more timely manner in order that they can be shared with reporting entities and other AML/CFT partners.</li> <li>• Ensure that the FIU part of the AMLO focuses on producing more “pro-active” unsolicited STR analytical products for dissemination to other domestic competent authorities for investigation or other action where there are grounds to suspect ML or TF.</li> <li>• Require the AMLO to establish a separate unit to deal with any compliance related responsibilities the AMLO takes on or is given rather than having the IAC undertake those.</li> <li>• Require the AMLO to review its production of statistics on AML/CFT matters to ensure the integrity of those statistics.</li> <li>• Provide additional budgetary resources for the AMLO including for it to develop dedicated capacity to analyze STRs, including those related to TF cases, to carry out compliance monitoring of and outreach with reporting entities.</li> <li>• Consider creating an asset forfeiture fund (or similar) to contribute additional resources to the operation of the FIU, through enhanced program budgets, not through individual rewards.</li> <li>• Require the AMLO to consider recruiting staff with financial sector specific expertise.</li> </ul> |
| <p><b><i>Law enforcement, prosecution and other competent authorities (R.27, 28)</i></b></p> | <ul style="list-style-type: none"> <li>• Require each LEA to commit resources to ensure that ML financial investigations are undertaken during ML predicate offence cases, including ensuring that: <ul style="list-style-type: none"> <li>• investigators are aware of and committed to seeking evidence to pursue ML charges;</li> <li>• LEA management support the carrying out of criminal ML investigations; and,</li> <li>• necessary training is provided on how to secure evidence to pursue ML charges.</li> </ul> </li> <li>• Require that the RTP establish a dedicated unit for investigating ML offences other than narcotics.</li> <li>• Consider establishing dedicated units within the RTP and the ONCB in each of the major centers or regions outside of Bangkok for investigating ML offences alongside units investigating the predicate offences.</li> <li>• Require that each LEA establishes ML financial investigation training programs for predicate investigating units across all of Thailand (not just Bangkok).</li> <li>• Provide training to prosecutors across the country on ML and financial investigations with a focus on how to prepare cases for criminal proceedings.</li> <li>• Require the NCCC to dedicate resources or create special units to conduct ML and TF investigations.</li> </ul>   |

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|   | <ul style="list-style-type: none"> <li>• Have its LEAs seek more assistance from, and develop closer relationships with, the AMLO to increase the sharing of financial intelligence in criminal ML and TF investigations.</li> <li>• Ensure that its competent authorities, including the DSI, obtain training for investigating TF cases.</li> <li>• Have the DSI consider locating some of its TF trained investigators in the south of Thailand to work closer with officials investigating terrorism incidents.</li> <li>• Require its competent authorities to work together to develop trends and typologies relating to ML and TF cases for distribution to other AML/CFT partners and the general public.</li> </ul>   |
| <p><b><i>Cross Border Declaration or disclosure (SR IX)</i></b></p>                         | <ul style="list-style-type: none"> <li>• Expand the declaration/disclosure requirements to all circumstances set forth by SRIX and extend it also to “bearer negotiable instruments” as defined by the international standard.</li> <li>• Provide the Customs authorities with the power to stop/restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF activity.</li> <li>• Make available to the AMLO the information obtained through the process of declaration/disclosure.</li> <li>• Enhance cooperation and exchange of information between Customs and the AMLO beyond the area of customs-related offences, when there is a suspicion of ML or FT.</li> <li>• Provide Customs authorities with the power to freeze and confiscate proceeds of crime and funds related to TF.</li> <li>• Establish sanctions in the case of cross-border physical transportation of currency for purposes of ML or TF.</li> <li>• When originating from other countries, consider reporting to authorities of these countries the discovery of unusual cross-border movements of gold, precious metals or precious stones.</li> </ul> |
| <p><b><i>3. Preventive Measures–Financial Institutions</i></b></p>                          |  |
| <p><b><i>Customer due diligence, including enhanced or reduced measures (R.5–8)</i></b></p> | <ul style="list-style-type: none"> <li>• Amend the AMLA to make all FIs that carry out financial activities in Thailand as defined in the glossary to the FATF 40+9, subject to AML/CFT requirements under the AMLA unless their exclusion can be justified on the basis of a robust risk assessment relating to their activities.</li> <li>• Amend the AMLA to fully incorporate CDD requirements and, in particular: <ul style="list-style-type: none"> <li>• Require identification and verification of clients and beneficial owners in the circumstances set forth by a), b), c) and e);</li> <li>• Lower the threshold triggering the identification requirement in the case of occasional transactions to at least below \$15,000;</li> <li>• Lower the threshold triggering identification requirement in the case of occasional transactions that are wire transfer to at least below \$1,000;</li> <li>• Require FIs to verify customer’s identity using reliable, independent source documents, data or information;</li> </ul> </li> </ul>   |

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|   | <ul style="list-style-type: none"> <li>• Require FIs, in the case of customers that are legal persons, to verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</li> <li>• Require FIs to determine whether the customer is acting on behalf of another customer; and,</li> <li>• Require FIs to conduct ongoing due diligence of the business relationship.</li> <li>• Introduce enforceable requirements for FIs (other than securities) prescribing enhanced due diligence for higher risk categories of customer, business relationship or transaction.</li> <li>• Introduce an enforceable requirement for FIs to obtain information on the purpose and intended nature of the business relationship.</li> <li>• Conduct a ML/FT risk assessment for the categories of transactions exempted from the requirements set forth in the AMLA.</li> <li>• Introduce for FIs other than securities enforceable requirements in relation to the timing of verification.</li> <li>• Introduce enforceable obligations for FIs who cannot complete CDD requirements to not open accounts, commence business relations or perform transactions.</li> <li>• Introduce enforceable obligations for FIs (other than the securities sector) requiring them to undertake enhanced due diligence for PEPs.</li> <li>• Redraft existing guidelines and policy statements concerning PEPs to use common terminology.</li> <li>• Introduce enforceable obligations for FIs (other than the securities sector) requiring them to put policies and procedures in place to addresses risks from new technologies or doing business with non-face to face business.</li> </ul> |
| <p><b><i>Third parties and introduced business (R.9)</i></b></p>                  | <ul style="list-style-type: none"> <li>• Amend the regulatory framework for FIs to clarify whether the use of third party introducers is permitted or prohibited.</li> <li>• Issue enforceable obligations consistent with R.9 for circumstances where the use of third party introducers is permitted.</li> <li>• Have the SEC amend the OSEC Notification so that it imposes an obligation to immediately obtain information from the third party so that it clearly establishes that the ultimate responsibility for CDD remains with the FI relying on the third party.</li> </ul>  |
| <p><b><i>Record keeping and wire transfer rules (R.10 &amp; SR.VII)</i></b></p>   | <ul style="list-style-type: none"> <li>• Amend the AMLA to require all FIs to keep transaction records and identification data beyond the case of transactions subject to mandatory reporting consistent with the requirements of R.10.</li> <li>• Introduce a law, regulation or other enforceable means to regulate wire transfers in accordance with the requirements of SR.VII.</li> </ul>  |
| <p><b><i>Monitoring of transactions and relationships (R.11 &amp; 21)</i></b></p> | <ul style="list-style-type: none"> <li>• Introduce an obligation for FIs to set forth their findings in writing with reference to unusual, complex transactions and retain those findings.</li> </ul>   |

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|   | <ul style="list-style-type: none"> <li>• Extend to the FIs that are not subject to the AMLA, the obligation to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.</li> <li>• Introduce an enforceable obligation requiring FIs to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>• Introduce a mechanism to be able to apply counter-measures against countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>  |
| <p><b><i>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</i></b></p>   | <ul style="list-style-type: none"> <li>• Expand reporting requirements to all FIs as defined by the FATF Glossary.</li> <li>• Introduce an obligation to report attempted transactions.</li> <li>• Conduct an evaluation of the ML/FT risk for the transactions which are exempted by the reporting requirements.</li> <li>• Provide more guidance to FIs on how to detect suspicious transactions.</li> <li>• Prohibit “tipping off” and modify or delete section 21 of the AMLA as it appears to have the effect of tipping off the customer.</li> <li>• Require the AMLO to give more feedback to FIs about the STRs that have been reported.</li> </ul>  |
| <p><b><i>Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</i></b></p>  | <ul style="list-style-type: none"> <li>• Ensure that the financial sector supervisory agencies (BOT, DOI, and CPD), in collaboration with the AMLO: <ul style="list-style-type: none"> <li>• introduce enforceable requirements that FIs must develop programs against ML and TF, including the development of internal policies, procedures and controls, and adequate screening procedures to ensure high standards when hiring employees, an ongoing employee training program, and an audit function to test the system;</li> <li>• consult with, and raise awareness among, industry about these matters; and,</li> <li>• introduce enforceable obligations for FIs requiring them to apply AML/CFT measures to foreign branches and subsidiaries consistent with R.22.</li> </ul> </li> </ul>  |
| <p><b><i>Shell banks (R.18)</i></b></p>   | <ul style="list-style-type: none"> <li>• Introduce enforceable obligations to prohibit Thai FIs from dealing with shell banks.</li> </ul>  |
| <p><b><i>The supervisory and oversight system—competent authorities and SROs</i></b><br/><b><i>Role, functions, duties and powers (including sanctions) (R.17,23, 25, 29)</i></b></p> | <ul style="list-style-type: none"> <li>• Impose appropriate sanctions against FIs found to be in breach of the AMLA and other AML/CFT requirements.</li> <li>• Arrange for the authorities to conduct a risk assessment of the financial sector to determine what AML/CFT risks exist to help determine whether some FIs could be exempted from AML/CFT requirements and to help with implementing Thailand’s risk-based approach to AML/CFT supervision.</li> <li>• Amend the AMLA and other laws to ensure that all FIs that carry out financial activities without a proven low risk of ML or TF are effectively regulated for AML/CFT and have a competent authority designated to monitor their compliance with the requirements, including: <ul style="list-style-type: none"> <li>• giving the AMLO an explicit power for conducting</li> </ul> </li> </ul> |

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|  | <p>compliance examinations of FIs that are subject to the AMLA;</p> <ul style="list-style-type: none"> <li>• address the gaps and lack of clarity for those FIs where the MOF has delegated large parts of supervision to BOT but not the corresponding powers to take corrective actions or to set legally binding regulations in all relevant areas, including AML, without Ministerial approval;</li> <li>• to permit the AMLO to give regulators full access to copies of STRs filed by FIs that they supervise to enhance their supervision; and,</li> <li>• ensuring that the competent authorities are able to effectively impose appropriate sanctions for non-compliance.</li> </ul> <ul style="list-style-type: none"> <li>• Strengthen AML/CFT supervision and monitoring through: <ul style="list-style-type: none"> <li>• Clearly delineating the roles of the AMLO and the financial supervisors for monitoring compliance with AML/CFT requirements, requiring them to enter into MOUs relating to coordinating their efforts and information sharing, and requiring them to carry out their responsibilities effectively;</li> <li>• Directing the AMLO to share information with each of the supervisory authorities about the quantity and quality of the STRs received from the FIs;</li> <li>• Requiring the ONCB (and other LEAs if they maintain them) to share with supervisory agencies its annual statistics relating to assets seized in FIs;</li> </ul> </li> <li>• Enhance effective implementation by FIs of their obligations by: <ul style="list-style-type: none"> <li>• Requiring the competent authorities in the financial sector in conjunction with the AMLO, to provide guidance to the private sector on patterns of suspicious transactions that require special attention and enhanced due diligence; and,</li> <li>• Require the competent authorities to revise their existing policy statements and other AML/CFT related guidelines to ensure that they comprehensively cover all requirements and are consistent with one another.</li> </ul> </li> <li>• Strengthen regulation, supervision and enforcement of remittance activity, including: <ul style="list-style-type: none"> <li>• Promulgate the cross-border currency control regulations that are currently pending in the Office of Secretary of the Cabinet;</li> <li>• Enforce the existing licensing and registration requirements for all those known to provide underground banking or informal remittance service;</li> <li>• Ensure that remitters such as the 7-Eleven convenience store chain are regulated for AML/CFT; and,</li> <li>• Amend laws and regulations and administrative practices</li> </ul> </li> </ul> |
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|  | to ensure that there are sufficient measures in place to ensure that criminals are prevented from being beneficial owners of FIs.  |
| <b><i>Money value transfer services (SR.VI)</i></b>                          | <ul style="list-style-type: none"> <li>• Make money transfer agents subject to the full range of FATF Recommendations applicable to them, namely CDD, transaction monitoring and internal control requirements.</li> <li>• Require the 7-Eleven remittance network to be licensed or be registered and otherwise be subject to the AML/CFT requirements.</li> <li>• Take further efforts to suppress illegal remittance activities and to encourage remitters to operate in the formal sector.</li> <li>• Investigate the nature and magnitude of the illegal remittance flows to determine what further improvements are needed to the legal and regulatory framework governing remittance businesses.</li> </ul>   |
| <b><i>4.Preventive Measures–Non-financial Businesses and Professions</i></b> |  |
| <b><i>Customer due diligence and record-keeping (R.12)</i></b>               | <ul style="list-style-type: none"> <li>• Conduct an assessment of the ML and TF risks that apply in each of the DNFBPs.</li> <li>• Determine a policy on how to apply AML/CFT requirements to each of the DNFBPs and then make necessary amendments to the AMLA and other laws, including: <ul style="list-style-type: none"> <li>• Determine how to deal with the issue of legal professional secrecy for lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals;</li> <li>• Determine whether lawyers, notaries, other independent legal professionals and accountants should be permitted to send their STRs to their appropriate self-regulatory organizations rather than to the AMLO; and,</li> <li>• Determine the mechanics of an effective regulatory and supervisory framework for DNFBPs including whether monitoring should be undertaken by the authorities or industry organization(s).</li> </ul> </li> <li>• Consider applying the FATF recommendations to business and professions, other than DNFBPs, that pose a specific ML/FT risk as requested by R.20.</li> <li>• Carry out awareness raising with each of the DNFBPs.</li> </ul> |
| <b><i>Suspicious transaction reporting (R.16)</i></b>                        | <ul style="list-style-type: none"> <li>• Amend the AMLA so that: <ul style="list-style-type: none"> <li>• DNFBPs are required to report STRs;</li> <li>• DNFBPs, their directors, officers, and employees are protected from liability for reporting STRs;</li> <li>• DNFBPs, their directors, officers, and employees are prohibited from tipping off that an STR has been made;</li> <li>• DNFBPs are required to develop programs against ML and TF; and,</li> <li>• DNFBPs are required to give special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF Recommendations as</li> </ul> </li> </ul>   |

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|   | required by R.21  |
| <b><i>Regulation, supervision, monitoring, and sanctions (R.24, &amp; 25)</i></b>         | <ul style="list-style-type: none"> <li>• Introduce a regulatory and supervisory framework for DNFBPs.</li> </ul>  |
| <b><i>Other designated non-financial businesses and professions (R.20)</i></b>            | <ul style="list-style-type: none"> <li>• Strengthen Thailand's efforts to encourage more financial activity to within the formal sector.</li> <li>• Encourage less use of cash and more use of non-cash payment methods.</li> </ul>   |
| <b><i>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</i></b>             |   |
| <b><i>Legal Persons—Access to beneficial ownership and control information (R.33)</i></b> | <ul style="list-style-type: none"> <li>• Broaden requirements on beneficial ownership so that information on ownership/control is more readily available in a more adequate and timely manner, for example, by obliging legal persons to record the information on beneficial ownership in a register.</li> <li>• Introduce appropriate measures to ensure that bearer shares are not misused for ML. In particular, there should be mechanisms put in place to identify the beneficial owner of bearer shares.</li> </ul>  |
| <b><i>Nonprofit organizations (SR.VIII)</i></b>   | <ul style="list-style-type: none"> <li>• Undertake a review of the adequacy of existing laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.</li> <li>• Carry out outreach with the NPO sector with a view to protecting the sector from TF abuse.</li> <li>• Take effective steps to promote supervision and monitoring of those NPOs which account for a significant portion of the financial resources under the control of the sector.</li> <li>• Enact measures requiring NPOs to maintain and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.</li> <li>• Establish effective mechanisms to ensure domestic co-operation, co-ordination, or information sharing.</li> <li>• Designate an official contact point to deal with international requests for information on NPOs.</li> </ul> |
| <b><i>6. National and International Cooperation</i></b>                                   |   |
| <b><i>National cooperation and coordination (R.31)</i></b>                                | <ul style="list-style-type: none"> <li>• Clearly designate which agency has responsibility for developing Thailand's overall AML/CFT policies.</li> <li>• Review which agencies are represented at the AMLB and, if necessary, amend the AMLA to ensure that there is appropriate coverage (e.g., no agency from the DNFBP sector is represented, none of the NIA, NSC, NCATTC or NCCC are represented).</li> <li>• Encourage the authorities to share more information amongst themselves concerning compliance by FIs of their AML/CFT responsibilities.</li> </ul>   |
| <b><i>The Conventions and UN</i></b>  | <ul style="list-style-type: none"> <li>• Ratify the Palermo Convention as soon as possible.</li> </ul>  |

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| <p><b><i>Special Resolutions (R.35 &amp; SR.I)</i></b></p>        | <ul style="list-style-type: none"> <li>• To fully comply with the Vienna Convention: <ul style="list-style-type: none"> <li>• Amend the Act on Mutual Assistance in Criminal Matters to provide that, where Thailand is a State party to a convention that requires that a specified offense shall not be considered to be a political offense for the purposes of mutual assistance obligations, the requirement contained in section 9(3) of the Act relating to political offenses shall not apply;</li> <li>• Extend the TF conduct in section 135/2 of the Penal Code to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the Terrorist Financing Convention, consistent with Thailand’s obligations under SR.II; and,</li> <li>• Enact specific laws or procedures to freeze terrorist funds or other assets of persons designated under UNSCRs 1267 or 1373 without delay.</li> </ul> </li> </ul>  |
| <p><b><i>Mutual Legal Assistance (R.36, 37, 38, SR.V)</i></b></p> | <ul style="list-style-type: none"> <li>• Expand the predicate offences for ML to increase the situations where dual criminality can be met.</li> <li>• Amend the law to enable the rendering of assistance where the request relates to property of corresponding value.</li> <li>• Amend the deficiencies in Thailand’s TF offense previously identified in this report.</li> </ul>  |
| <p><b><i>Extradition (R. 39, 37, SR.V)</i></b></p>                | <ul style="list-style-type: none"> <li>• Amend the AMLA to add to the list of predicate offenses all serious offenses or all of the remaining designated categories of offenses provided for under the FATF 40+9.</li> <li>• Amend the Extradition Act to provide that, when extradition of Thai nationals is denied, the case shall be submitted to the prosecution authorities with no delay and the proceedings shall be conducted in the same manner as in the case of any other offense of a serious nature under domestic law.</li> <li>• Amend the Penal Code to (a) extend the TF conduct to the financing of the acts that constitute an offense within the scope of, and as defined in, the treaties listed in the annex of the UN Convention, consistent with Thailand’s obligations under SR.II (b) extend the TF offense to the provision or collection of funds for individual terrorists or terrorist organizations beyond those situations that might now be covered; (c) remove the requirement that the provision or collection of funds be done with the purpose of committing a terrorist act or any offense which is part of a terrorist plan; and, (d) fully cover the mere provision or collection of property with the unlawful intention that it should be used or in the knowledge that it is to be used by a terrorist organization, or by an individual terrorist.</li> </ul> |
| <p><b><i>Other Forms of Cooperation (R. 40, SR.V)</i></b></p>     | <ul style="list-style-type: none"> <li>• Demonstrate through the use of statistics and other evidence that its mechanisms for international cooperation are fully effective.</li> </ul>   |
| <p><b><i>7. Other Issues</i></b></p>                              |   |
| <p><b><i>Resources and Statistics</i></b></p>                     | <ul style="list-style-type: none"> <li>• Require the relevant authorities to maintain and update</li> </ul>   |

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| <i>(R.30 &amp; 32)</i> | <p>comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on ML investigations, prosecutions and convictions, information on sentences imposed, predicate offences involved and type of defendant (legal or natural person).</p> <ul style="list-style-type: none"><li>• Require relevant authorities to maintain and update comprehensive statistics on matters relevant to the effectiveness and efficiency of its system, including statistics on TF investigations.</li><li>• Require competent authorities including LEAs, prosecutors and other agencies involved in ML or TF investigations to keep up-to-date statistics on charges for ML predicate offences, seizure of assets and forfeitures.</li><li>• Require the authorities to maintain, and be able to make available, comprehensive statistics on MLAT requests, seizures and types of offences involved.</li></ul> |
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**Table 3. Authorities' Response to the Assessment**

**Thailand's Country Response  
to the Detailed Assessment Report (DAR) at the APG 2007 Annual Meeting  
25<sup>th</sup> July, 2007 in Perth, Australia**

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1. The DAR, submitted to the APG Plenary on 25<sup>th</sup> July 2007, contains an assessment that largely reflects the situation existing in Thailand's AML/CFT system. The assessment as a whole is reasonable to the extent that the underlying factors are derived from the information—both factual and legal—provided by Thai authorities.
2. The effort expended by the IMF mission to produce such a comprehensive assessment is truly commendable and Thai authorities are fully appreciative of the excellent work done to that effect.
3. While the overall assessment in the DAR is found to be acceptable, there are some crucial areas where Thai authorities could not fully share the IMF mission's views. In this regard, Thailand has already submitted its points of view to the IMF mission on three previous occasions directly and through the APG Plenary.
4. With regard to **Legal System and Related Institutional Measures**, Thailand, in good faith and seeking to comply with the FATF standards, has listed 8 predicate offenses of money laundering in section 3 of the anti-money laundering law, or the AMLA. The authorities are in the legislation process to extend the list to include 8 additional categories of offenses. And the additional predicate offenses proposed will extend the coverage by Thailand of the suggested list of categories. Taking into account the aforesaid, Thai law already covers many of the issues listed in the glossary to the FATF 40 Recommendations.
5. The Anti-Money Laundering Office (AMLO) was established in 1999 under the AMLA to carry out the financial intelligence unit (FIU) and other functions. The Office seeks information and disseminates financial intelligence through the operation of Section 40 of the AMLA and the Ministerial Regulation issued by the Minister of Justice on 9 October 2002, pursuant to the Bureaucratic Restructuring Act 2002, which provides the AMLO with the power to act, amongst others, as the exchange center of information concerning money laundering and related offenses. While this Ministerial Regulation was not made under the AMLA, subsection 40 (6) of the AMLA allows the AMLO to have the "power to carry out other functions in accordance with the provisions of this Act or other laws."
6. The AMLO, unlike many other FIUs, has the responsibility to undertake action directly relevant to the ultimate issue of forfeiture orders by the courts; that is, it has express powers in relation to the proceeds of crime. It is conceded that in the past the AMLO tended to focus on its proceeds of crime activities rather than its role as a body which collects, analyzes, and disseminates financial intelligence. As important as the function relating to the proceeds of crime is, the AMLO is well aware that it may not lose sight of its core role as an FIU.
7. There is no doubt that the Thai authorities' overall performance has not been slowed down even with the Government's present policy of abolishing the reward system. When the reward system is abolished, an Asset Fund will be set up to make available resources in support of the AMLO's functions and AML/CFT activities.

8. With the above facts, it is evident that Thailand has:

- (1) an AML/CFT law already enacted;
- (2) an AML/CFT regime already in place and functioning;
- (3) a national FIU active and energetic in its performance of duties;
- (4) a mechanism already in place and rendering legal assistance to foreign counterparts;
- (5) an asset forfeiture regime already in place and functioning ;
- (6) a regulatory / supervisory regime already in place and functioning; and
- (7) a track record of an active combatant against ML and TF in the international arena.

9. With regard to **Preventive Measures Related to Financial Institutions**, the DAR's findings in respect especially of the following issues are found to be contentious, susceptible to negative impression on Thailand's AML/CFT regime:

- (i) that supervisory authorities do not have power to issue secondary legislation under the AMLA (DAR, para 541 );
- (ii) that the AMLA and the Ministerial Regulations issued pursuant to the AMLA constitute the only set of legally enforceable AML/CFT provisions which are applicable across a broad range of FIs (DAR, para 542); and
- (iii) that the AMLA contains identification and record keeping requirements for transactions which are subject to reporting to the AMLO (threshold-based or suspicious). (DAR 543)

10. These issues all come under Section 3 "Preventive Measures—Financial Institutions" of the DAR. Preventive measures are key elements in an effective regulatory and supervisory system and any major shortcomings will undoubtedly make the system ineffective. Thailand's AML/CFT system already contains these key elements which are reflected in its AML laws and regulations.

11. However, the DAR's aforesaid findings would certainly cast an unfavorable light inasmuch as they are concerned too much with legal technicalities vis-à-vis factual realities.

12. Regarding the first and the second points, by virtue of the AMLA 1999 and the other enabling law, i.e. the Bureaucratic Restructuring Act 2002, and the Prime Minister Office Regulation of 15-2-2001 and the Ministerial Regulation dated 9-10-2002 of the Minister of Justice, the AMLO and the other competent authorities have power -- directly or indirectly -- to issue guidance, guidelines, notifications or regulations that are legally binding on regulated institutions.

13. With regard to the third point, the finding may not quite capture the right point due to misinterpretation of the provisions contained in Sections 13, 20 read with Ministerial Regulation No. 6 (2000), and Section 22 of the AMLA. As a matter of fact –

Section 13 mentions mandatory reporting to the AMLO only threshold-based transactions and any suspicious transaction;

Section 20 requires all FIs to have their customers identified in the course of conducting any transaction; and

Section 22 imposes obligations on all FIs to maintain records of customer identification under Section 20 and information under Section 21 for 5 years.

14. If the Interpretative Notes are any guidance, then Thailand's AMLA is largely in compliance, if not fully, with the FATF Recommendations. For, the text in item 2 reads : *"The basic obligations under Recommendations 5, 10 and 13 should be set out in law or regulation, while more detailed elements in those Recommendations, as well as obligations under other Recommendations, could be required either by law or regulation or by other enforceable means issued by a competent authority."*

15. Strictly in line with this guidance, the AMLA's Chapter 2 (Reporting and Identification), in Sections 13 to 23, covers the basic obligations of Recommendations 5 (CDD), 10 (recordkeeping) and 13 (STR). Besides, more detailed elements of these Recommendations, as well as those under other Recommendations, are stipulated in such instruments as regulations, notifications, guidelines, policy statements, etc. issued by the AMLO, the BoT, the SEC, etc. that are competent authorities in matters relating to AML/CFT. Admittedly, these instruments assume a mixture of legal status as some carry direct authority from the enabling law whereas some derive authority indirectly. In other words, Thailand's regulatory and supervisory authority is a combination of laws, regulations and other enforceable means (OEMs). In most cases, they are fragmented but do form an integral part of the AML/CFT regime. And in most cases, authority is derived indirectly, yet they are enforceable.

16. With regard to **National and International Cooperation**, effectively tackling the problem of serious predicate offenses and associated money laundering requires cooperation and mutual legal assistance nationally, regionally, and internationally. Thailand is a member of the Egmont Group. The AMLO has now entered into MOUs with 30 foreign FIUs concerning cooperation in the exchange of financial intelligence related to money laundering and is developing arrangements with other remaining countries. Thailand actively provides cooperation upon receiving requests from other countries where money laundering investigations are involved. Thailand has also entered into a number of MOUs with other countries, which extend beyond criminal matters to defense and intelligence cooperation.

17. On the domestic front, the AMLO has entered into MOUs with LEAs and other agencies, for instance, the Revenue Department, the Department of Lands, in relation to the investigation of money laundering, the seizure and forfeiture of assets, the prosecution of money laundering, and the conduct of civil forfeiture cases by prosecutors from the Attorney General's Office.

18. The Thai Government amended the AMLA and the Penal Code in August 2003 to deal with terrorist financing by criminalizing terrorist acts, including terrorist financing, in the Penal Code and making them as predicate offenses for the purposes of the AMLA. It is the well-founded view of the DAR that it would be in Thailand's long-term interests to consider bringing the laws into line with the requirements of the Palermo Convention because to do so would ensure that Thailand is in a position to grant the widest possible range of assistance needed to combat money laundering and terrorist financing.

19. In the Executive Summary of the DAR, the terms "*outdated legislation*", "*inadequate and outdated laws*" are used to refer to the AMLA and the related legislation. On this, if temporal factors are taken into account, Thai legislation is not outdated. The AMLA came into force in August 1999, while the FATF 40 Recommendations on ML were first drawn up in 1990, revised in 1996 and expanded to include 9 Special Recommendations on TF in October 2001. TF-related Special Recommendations thus came over 2 years after the AMLA. Similarly, the UNSC Resolutions No. 1267 of October 1999 and No. 1373 of September 2001 were passed after the AMLA. The same is true for the FATF Methodology—it first came out in October 2002, with revisions in February 2004, February 2005, June 2006, and February 2007. As regards UN conventions, only the Vienna Convention (1988) preceded the AMLA by 11 years whereas the Palermo Convention (1999) and the FoT Convention (2000) followed the promulgation of the AMLA.

20. Any conclusions in the DAR that Thai laws criminalizing ML and TF are not fully consistent with the UN conventions, or that the KYC/CDD measures are inadequate and do not meet the essential criteria stated in the Methodology, or that Thailand lacks an effective mechanism for meeting international cooperation requirements could not be reflective of the true situation. On Thailand's part, issuing of notifications or regulations or directives has become a standard procedure to meet the post-AMLA requirements and developments in ML and TF matters. Thailand can assure the world community that (1) Thailand has an AML/CFT regime for almost 8 years now, functioning effectively, (2) Thailand's mutual legal assistance and international cooperation record is a matter of high praise by the foreign counterparts,

(3) Thailand's asset forfeiture regime is operating to the benefit of the State, and (4) Thailand's enthusiasm for bringing about a more effective and efficient AML/CFT system is truly appreciated by the world community.

21. It should be reiterated that each country has a distinct legal system deemed to be best suited to their socio-political conditions. Some countries have mechanisms whereby legal amendment processes are very conveniently carried out, while in some countries, the same facilitating processes cannot be found so. As for Thailand, except for very urgent matters, a draft law usually undergoes various stages ranging from the drafting committee at the ministerial level to the Cabinet, to the Council of State, to the Parliament and to His Majesty the King. Law making in general, and making of AML/CFT law in particular, takes time due to the fact that it usually contains some provisions that restrict individual rights and liberties and naturally is subject to extensive scrutiny.

22. Notwithstanding, fully realizing that Thailand's AML/CFT system still has some distance to go for perfection, the Thai authorities concerned have already taken appropriate measures to amend the AMLA. Thailand appreciated that the AML/CFT assessments have opened up new vistas for the country, prompting a review of the legal, institutional and administrative frameworks related to AML/CFT activities and to take appropriate measures aimed at a more efficient and effective legal regime.

**Anti-Money Laundering Office  
August 2007**

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**Annex 1: Details of all bodies met on the on-site mission  
- Ministries, other government authorities or bodies, private sector institutions  
and others.**

Anti-Money Laundering Office

Bank of Thailand

Office of the Permanent Secretary and Fiscal Policy Office, Ministry of Finance

Department of Treaties and Legal Affairs,  
Ministry of Foreign Affairs

Office of the National Counter Corruption Commission

Office of the National Security and National Coordinating Center  
for Combating Terrorism and Transnational Crimes

Office of the Attorney General

Royal Thai Police and Foreign Affairs Division (Coordinator for Interpol)

Central Co. Ltd. (money remitter) and Siam Exchange Ltd. (money changer)

The Royal Thai Customs, Ministry of Finance

Office of the Narcotics Control Board

Department of Insurance, Ministry of Commerce

Office of the Securities and Exchange Commission

Thai Chamber of Commerce, Gold Traders Association of Thailand,  
Diamond and Gold Association, Jewelry and Ornament Association, and  
Real Estate Sales and Marketing Association

Department of Special Investigation, Ministry of Justice

Cooperative Auditing Department, and Cooperative Promotion  
Department, Ministry of Agriculture and Cooperatives

Association of Securities Companies (ASC)

Association of Investment Management Companies (AIMC)

Department of Provincial Administration

Bangkok Metropolitan Administration City Hall

Department of Employment , Ministry of Labour

Office of the National Culture Commission, Ministry of Culture

Office of the Permanent Secretary, Ministry of Social Development and Human Security

Thai Bankers' Association

The Foreign Banks' Association

CitiBank N.A.

Bangkok Bank

Thai Life Assurance Association and Muang Thai Life Assurance Co., Ltd.

Lawyers Council of Thailand and Federation of Accounting Professions

Habitat for Humanity (Thailand)

Islamic Bank of Thailand

Siam Commercial Bank

**Annex 2: List of all laws, regulations and other material received**

Anti Money Laundering Act (AMLA)

Bank of Thailand Act

Commercial Banking Act

The Securities Exchange Act B.E. 2535 (1992) (SEA)

Criminal Procedure Code

Commercial Code

Civil Code

Government Savings Bank Act

Government Housing Bank Act

Islamic Bank Act

Small and Medium Enterprise Act

Cooperative Act

Pawn shops Act

Act on the Undertaking of Finance Business and Credit

Fonicer Business

Derivatives Act B.E. 2546 (2003)

Official Information Act B.E. 2540

Life Insurance Act

Non-life Insurance Act

Penal Code

AFTC Act

Stock Exchange of Thailand (SET), which is regulated by the SEC.

The SET was established by a specific law in 1974

Ministerial Regulation No. 2 & 6 (B.E. 2543) (CDD)

Ministerial Regulation No. 4 (FIU)

Ministerial Regulations No.5 (2000)

Ministerial Regulation No.10 (on seizing)

Ministerial Regulation No. 15 (B.E. 2543) Promulgated under the Securities and Exchange Act B.E. 2535

Draft Ministerial Regulation concerning Customer Due Diligence (CDD), the AMLO's Policy Statement on "Compliance with the "Know Your Customer and Customer Due Diligence for Financial Institutions and Designated Non-Financial Businesses and Professions" (*issued as an interim measure before the amended Anti-Money Laundering Act, B.E. 2542*)

Ministerial Regulation Concerning Approval on Undertaking of Securities Business in the Category of

Mutual Fund Management B.E. 2545

Bureaucratic Restructuring Part (for FIU)

Notification no. NR0805/18010 1 April 2548 (SRIX – Customs)

BOT circular 2725/2544 12 December 2001 (CDD)

BOT Circular 419/2549 24 March 2006 (Principles of Credit and Contingent Liabilities review)

BOT Guidelines for on-site AML/CFT examinations

BOT Notification regarding requirement for commercial banks on the practice in accepting deposits dated Dec 24, 2001

Draft Notification of the Office of the Securities and Exchange Commission on “Prevention of Money Laundering and Terrorist Financing in Securities Business”

SEC, Notification No. Kor Thor. 42/2543

SEC, Notification No. Kor Thor. 65/2547

SEC, Notification No. Or Thor 21/2543

SEC Circular No. Thor.(Vor). 1896/2549

SEC Notification No. Sor Khor./Nor. 4/2549

SEC Notification No. Kor Nor. 30/2547

SEC, Notification No. Sor Khor. 43/2543

The Association of Investment Management Companies Notification No. SorJorGor.Ror. 2/2546

The Association of Investment Management Companies Notification No. SorJorGor.SorBor. 1/2543

SEC Notification on “Prevention of Money Laundering and Terrorist Financing in Securities Business”

Notification GorNor 2/2548 re Principles, Procedures, and Conditions of Futures Business Operation in the Category of Futures Broker: Appendix B (“Notification GorNor 2/2548”)

SEC Notifications No.KorThor 43/2543

AFET’s Notification no. TorGorKor 7/2549 re Standard and Procedures for Trading Through Internet Facilities

SEC, Notification No. Or Khor./Nor. 5/2549

SEC Notification No. Sor Thor. 2/2549

Notification of the Ministry of Finance re: Prescription of Conditions for Securities Company to Apply for Approval of Person to be Major Shareholder

“ASCO’s Guideline on KYC/CDD” refers to the Guideline on KYC/CDD issued by the Association of Securities Companies

“AIMC’s Guideline on KYC/CDD” refers to the Guideline on KYC/CDD issued by the Association of Investment Management Companies

AFET’s Circular Letter No. TorSorLor./02/(Wor.) 801/2547, dated September 24, 2004