

EFFECTIVE COUNTERMEASURES AGAINST MONEY LAUNDERING IN THAILAND

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I. FOREWORD

The Government of the Kingdom of Thailand has taken important steps to address the threat that the laundering of criminal proceeds poses to our financial stability and national security. The Thai Government has therefore demonstrated its serious commitment to combat money laundering through its enactment of the Anti-Money Laundering Act of B.E. 2542 (1999). The Act creates for the first time a single law enforcement agency called the Anti-Money Laundering Office or AMLO with unprecedented investigatory powers. This law also criminalizes money laundering and related conspiracy and creates a civil forfeiture system for confiscating assets involved in a laundering offence.

The AMLO is Thailand's anti-money laundering regulatory agency. It is an independent agency empowered to authorize the search of places and vehicles as well as the restraint and seizure of assets. It has also been given the authority to seek court approval for law enforcement to conduct electronic surveillance where there is evidence of a money laundering offence. The AMLO may pursue the forfeiture of assets through civil proceedings, and has the responsibility for the custody, management, and disposal of seized and forfeited property.

II. ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)**

The Anti-Money Laundering Act 1999 came into force on 19 August 1999 as a result of the Royal Thai Government's intent to accede to the United Nations Convention Against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention 1988).

The Vienna Convention had been drafted among more than 100 UN member countries with the view to strengthen law enforcement on drug trafficking by prosecuting financiers or cutting off their funds. The Convention was resolved on 19 December 1988, at which time 71 countries ratified it.

The Office of the Narcotics Control Board (ONCB), the Thai coordinating body on drug matters, realized the importance of being a party to the Convention. The Office thus set up an ad hoc committee comprising representatives from concerned government agencies which resolved on 16 May 1990 that Thailand should accede to the Convention subject to the completion of certain legislative measures compliant with obligations addressed in the Convention. Two years later, a working group, chaired by a representative from the Office of the Attorney-General, was set up with the mandate to consider whether Thailand had domestic legislative and administrative measures to comply with the Convention.

At that time, the working group was of the view that with the absence of domestic law concerning money-laundering control, Thailand may not be ready to be a party to the Convention. Consequently, the ONCB and relevant government agencies took initiatives to draft the Anti-Money Laundering Bill and forwarded it to the Cabinet and the Parliament for consideration. The Bill passed the Parliament on 19 March 1999, before being gazetted on 21 April 1999 and coming into force on 19 August 1999.

The Anti-Money Laundering Act B.E. 2542 (1999) contains 66 sections with 7 Chapters as follows:

Chapter 1: General Provisions in sections 5-12

Chapter 2: Duties to Report the Required Information in sections 13-23

Chapter 3: Anti-Money Laundering Board in sections 24-31

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** Note: An unofficial translation of the Anti-Money Laundering Act of B.E. 2542 by Pol. Maj. Gen. Peeraphan Prempooti, can be found in UNAFEI's Resource Material Series 65, March 2005.

Chapter 4: Transaction Committee in sections 32-39
Chapter 5: Anti-Money Laundering Office (AMLO) in sections 40-47
Chapter 6: Actions on Assets in sections 48-59
Chapter 7: Penalties in sections 60-66

A. Section 3

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

- (1) Narcotics;
- (2) Trafficking in or sexual exploitation of children and women in order to gratify the sexual desire of another person;
- (3) Cheating and fraud on the public;
- (4) Misappropriation or cheating and fraud under other commercial banks and financial legislation;
- (5) Malfeasance in office or judicial office;
- (6) Extortion and blackmail committed by organized criminal association or an unlawful secret society;
- (7) Customs evasion;
- (8) Terrorism.

Note

The Thai Government is in the process of amending the AML Act to include the following predicate offences.

- (1) Exploitation of natural resources
- (2) Money Exchange Control Act
- (3) Stock manipulation
- (4) Illegal gambling
- (5) Arms smuggling
- (6) Unfair practice in public procurement
- (7) Labour fraud
- (8) Offences relating to the Excise Law

The financial institutions having the legal obligation to report financial transactions to the AMLO consist of commercial banks; finance companies; securities companies; credit financiers; insurance and assurance companies; and saving cooperatives, etc. Section 3 also defines "Transaction" and "Suspicious Transaction" as the following:

"Transaction" means *any activity relating to a juristic act, contract, or any operation with other persons dealing with finance, business or involving properties.*

"Suspicious Transaction" means *a transaction that is more complicated than the norm by which that transaction is usually conducted, a transaction that lacks economic rationale; a transaction where there is probable cause to believe that it was conducted for the purpose of avoiding the compliance of this Act; or a transaction related to or possibly related to a commission of any predicate offence, whether the commission of such transaction is conducted once or more.*

B. Sections 5 - 9

These sections address the criminal offence of money laundering. In the past decades, it is evident that crimes have become increasingly complicated and sophisticated. Domestic crime has stepped up to transnational organized crime with a large amount of assets involved. The major characteristics of a transnational organized crime can be described as follows.

- (1) The division of labour: There are specialists, such as lawyers and accountants, involved in these illegal activities so that the criminals can use their expertise to technically conceal or distort money derived from an illegitimate source.
- (2) Committing several crimes: The transnational criminal tends to commit several crimes at one time that are jointly organized by criminal groups of both local and foreign origin. There is a cooperation and coordination network to support their group activities as well.
- (3) Maximizing profits: The main aim of any transnational organized crime is to maximize profits or benefits. Mostly money or benefits derived from illegal activities will be transformed for the purpose of concealing their illegitimate source of funds. This fund will be laundered into clean money and then used to support their illegal activities, thus becoming a vicious cycle.

Therefore, special measures are prescribed in these sections to enable more effective law enforcement in tackling transnational crimes. For example: (1) Transferring or transforming or disguising of properties related to an offence shall be deemed as a money laundering offence. (2) Whoever commits a money laundering offence, even if the crime was committed outside the Kingdom, shall receive the penalty within the Kingdom, if: (a) either the offender or co-offender is a Thai national or resides in the Kingdom; (b) the offender is an alien and has taken action to commit an offence in the Kingdom or is intended to have the consequence resulting therefrom in the Kingdom, or the Royal Thai Government is an injured party; or (c) the offender is an alien whose action is considered an offence in the State where the offence is committed under its jurisdiction, and if that individual appears in the Kingdom and is not extradited under the Extradition Act, Section 10 of the Penal Code shall apply *mutatis mutandis*.

C. Sections 13 - 23

These sections address transaction reporting and the Know Your Customer (KYC) measure. Presently, financial institutions and persons having legal transaction report obligations have to report the following three categories of transaction to the AMLO.

- (1) Any cash transaction worth Bt 2 million or more;
- (2) Any *property* transaction, including S.W.I.F.T. and Bahtnet transfers, worth Bt 5 million or more; (A Bahtnet transfer is a domestic money transfer between financial institutions)
- (3) Any *suspicious* transaction for which the KYC principle shall be applied. (An example of a suspicious transaction is any cash transaction worth slightly less than 2 million baht (in order to avoid reporting to the AMLO), being transacted several times a day using the same bank account, or different bank accounts owned by the same person, choosing to make the transactions at the bank closing hour.)

Exemptions to the requirement of transaction reporting are given to the following parties:

- (1) Members of the Royal family;
- (2) The public sector comprising the government, central government agencies, provincial and local government administrations; state enterprises and public organizations;
- (3) The Foundations belonging to members of the Royal family comprising (a) Chaipattana Foundation, (b) H.M. the Queen's Foundation for the Promotion of Supplementary Occupations and Related Techniques, and (c) Sai Jai Thai Foundation;
- (4) Transactions connected with property under the movable category being made with financial institutions except for: (a) transactions by domestic money transfer using the Bahtnet service under the Bank of Thailand rules governing the Bahtnet service or inter-bank cross-country money transfers using the service of the Society for Worldwide Interbank Financial Telecommunication, Limited Liability Co-operative Society (S.W.I.F.T. s.c.); (b) Transactions connected with ships, ships having tonnage from six tons or more, steam ships or motor boats having tonnage from five tons or more, including rafts; (c) Transactions connected with vehicles, instruments or any other mechanical equipment;
- (5) The execution of loss insurance contracts except for compensation under the loss insurance contracts expecting to make payments of ten million baht or more;
- (6) The registration of rights and juristic acts under the category of transfer to be public benefit land or the obtainment by possession or by prescription under Section 1382 or Section 1401 of the Civil and Commercial Code.

The transaction report forms:

- (1) AMLO 1-01: cash transactions reported by financial institutions;
- (2) AMLO 1-02: property transactions reported by financial institutions;
- (3) AMLO 1-03: suspicious transactions reported by financial institutions;
- (4) AMLO 1-04-1: cash transactions reported by insurance or assurance companies;
- (5) AMLO 1-04-2: property transactions reported by insurance or assurance companies;
- (6) AMLO 1-04-3: suspicious transactions reported by insurance or assurance companies;
- (7) AMLO 1-05: suspicious transactions reported by investment consultants.

Any cash or property transactions occurring during the first 15 days and the latter half of the month shall be reported to the AMLO during the periods of the 16th - 22nd day of that month and the 1st - 7th day of the following month, respectively. Any suspicious transaction shall be reported within seven days of having a reasonable suspicion.

Additionally, according to the Know Your Customer (KYC) measure, a citizen identification card or other

identification cards issued by any government agency are required for any transaction with a financial institution. All the above records have to be maintained for a period of five years from the date that the account was closed or the termination of relations with the customer, or from the date that such transaction occurred, whichever is longer, unless the competent official notifies the financial institution in writing to do otherwise.

D. Section 24

This section addresses the composition of the Anti-Money Laundering Board which acts as the policy maker on money laundering issues. The number of Board members shall not exceed 27 persons as listed below.

- (1) The Prime Minister (Chairman);
- (2) Minister of Finance (Vice-Chairman);
- (3) The Permanent Secretary of the Ministry of Justice;
- (4) The Attorney-General;
- (5) The Commissioner-General of the Royal Thai Police;
- (6) The Secretary-General of the Office of the Narcotics Control Board;
- (7) The Director-General of the Fiscal Policy Office;
- (8) The Director-General of the Department of Insurance;
- (9) The Director-General of the Department of Lands;
- (10) The Director-General of the Customs Department;
- (11) The Director-General of the Revenue Department;
- (12) The Director-General of the Department of Treaties and Legal Affairs;
- (13) The Governor of the Bank of Thailand;
- (14) The President of the Thai Banking Association;
- (15) The Secretary-General of the Securities Exchange Commission;
- (16)-(24) Nine qualified experts appointed by the Cabinet from those who have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act with the consent of the House of Representatives and the Senate respectively as a member of the Board;
- (25) The Secretary-General of the AMLO as the Secretary of the Board
- (26) - (27) Two AMLO officials as the Assistant Secretaries of the Board.

III. EXECUTIVE SUMMARY

Pursuant to the U.N. Security Council Resolutions 1267 (1999), 1269 (1999), 1333 (2001), and 1373 (2001), the Thai government issued instructions to all authorities concerned to comply with these U.N. resolutions, including the freezing of funds or financial resources belonging to the Taliban and the Al-Qaeda network. The relevant authorities and the Council of State have considered relevant domestic laws and regulations in order to make necessary amendments thereto in order to implement the Resolution in full.

In this regard, the amendments on the Penal Code and the Anti-Money Laundering Act, B.E. 2542 (1999) were initiated to empower the relevant authorities, particularly the Anti-Money Laundering Office (AMLO), in taking effective countermeasures against money laundering and other illegitimate financing. Moreover, the amendment of the Penal Code defines the scope of terrorism and prescribes the act of terrorism as a serious offence with severe punishment under the Thai criminal law. And, the amendment of the Anti-Money Laundering Act includes terrorism, as defined by the Criminal Code, as a predicate offence according to the Act. On 5 August 2003, the Thai Cabinet approved the amendments to the Penal Code and to the Anti-Money Laundering Act to criminalize financing of terrorism which became effective from 11 August 2003. The Parliament endorsed these two amendments on 9 April 2004.

In addition, the AMLO is now in the process of amending the Act to include an additional 8 predicate offences relating to 1) the exploitation of natural resources, 2) the Money Exchange Control Act, 3) stock manipulation, 4) illegal gambling, 5) arms smuggling, 6) unfair practice in public procurement, 7) labour fraud, and 8) offences relating to the Excise Law.

Meanwhile, the Bank of Thailand and the AMLO have requested all commercial banks and financial institutions to promptly report their suspicions of any transactions that may be linked, or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations.

Intelligence and security agencies in Thailand have been on high alert since the 11 September incident. The Thai intelligence agencies, both civilian and military/law enforcement, have placed a high priority on information sharing and networking with their foreign counterparts, especially the U.S. agencies. The AMLO of Thailand has been a member of the EGMONT Group since 2001. The membership has enabled the Office to have access to, and exchange information with 93 other members.

Thailand also has the Mutual Assistance in Criminal Matters Act (1992), which forms a broad basis for cooperation with other countries with regard to criminal matters i.e. taking testimony and statements of persons; providing documents, records and evidence for prosecution and search and forfeiture of property. The law is supplemented by Treaties of Mutual Assistance in Criminal Matters that Thailand has with six countries: namely, the United States, Canada, the United Kingdom, France, Norway and India.

In conclusion, Thailand has adopted a firm policy in condemning terrorism in all forms and manifestations. In practice, all authorities have done their utmost to ensure that Thailand will not be used as a base for the commission of any terrorist acts against any other country and that terrorists will never find a safe haven in Thailand.

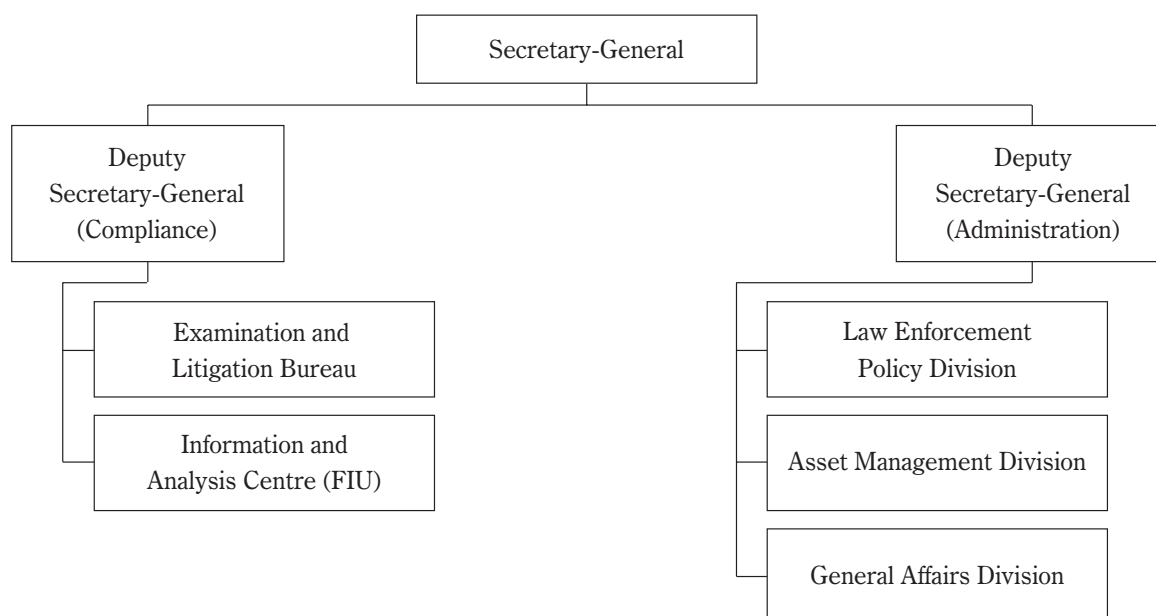
IV. ANTI-MONEY LAUNDERING OFFICE (AMLO): ORGANIZATION AND FUNCTIONS

The AMLO was set up under section 40 of the AML Act. The Office was initially under the Office of the Prime Minister. Following the public sector reform on 2 October 2002, the AMLO became an independent agency with the functions and responsibilities as follows:

- (1) Acting in accordance with the resolutions of the Board and the Transaction Committee, and carrying out other administrative functions;
- (2) Receiving transaction reports which are delivered in accordance with the requirements in chapter two, and issuing an acknowledgement of such reports;
- (3) Collecting, tracing, monitoring, studying, and analyzing reports or any other information related to financial transactions;
- (4) Collecting evidence in order to prosecute any violator under the provisions of this Act;
- (5) Launching an education programme 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 programmes; and
- (6) Carrying out other functions in accordance with the provisions of this Act or other laws.

The AMLO is divided into one Bureau and four Divisions as shown in the chart:

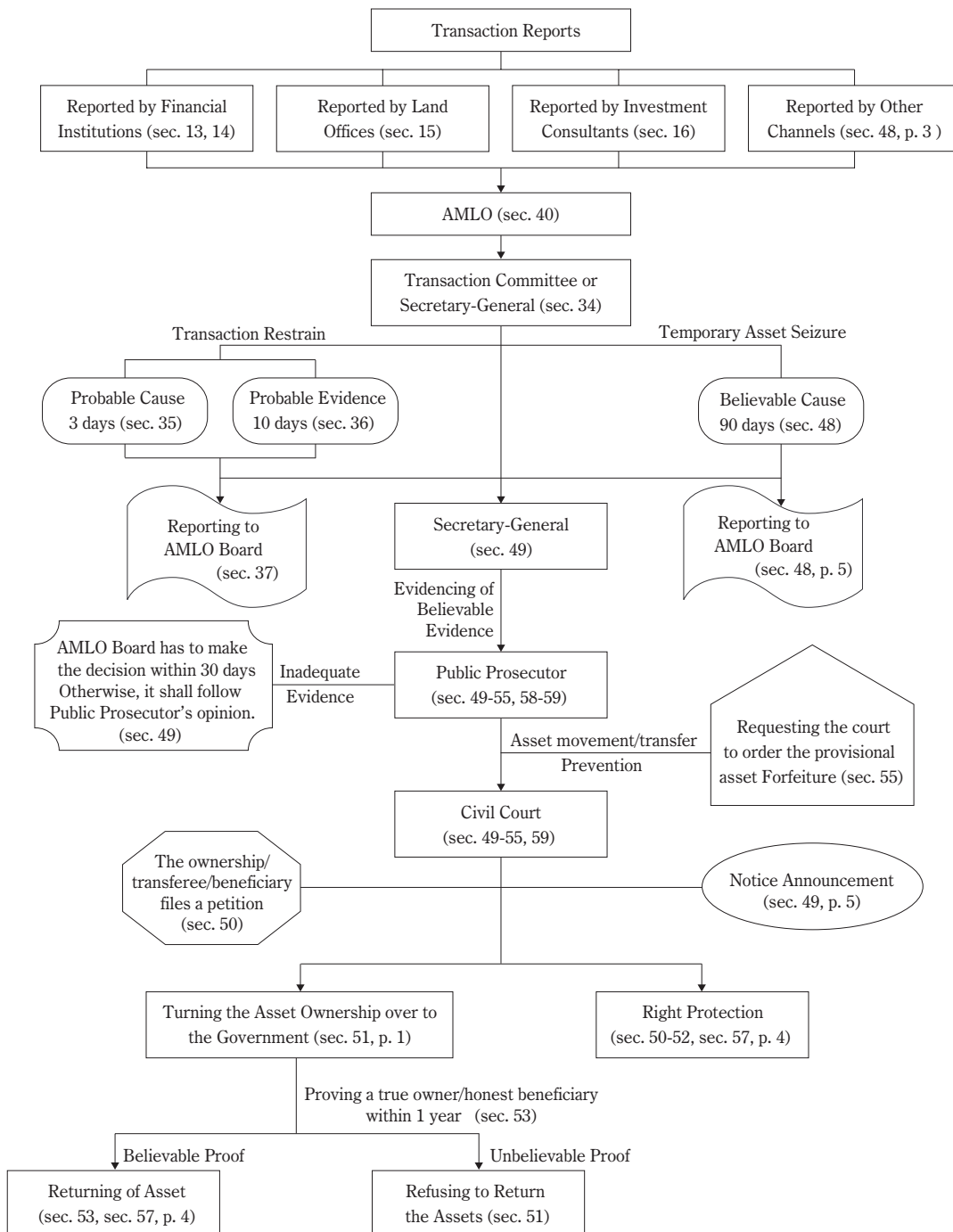
The head of the AMLO is the Secretary-General. There are two Deputy Secretary-Generals to assist the Secretary-General in supervising and administrating the AMLO's tasks. *The Examination and Litigation*



Bureau is responsible for investigation and civil legal proceedings. *The Information and Analysis Centre* acts as the AMLO's FIU responsible for transaction reports collection and analysis, including the arrangements for the signing of MOU on information exchange regarding money laundering with other foreign FIU counterparts. *The Law Enforcement Policy Division* is responsible for anti-money laundering policy, training, public relations and foreign affairs. *The Asset Management Division* is responsible for keeping, maintaining and disposing of seized asset. *The General Affairs Division* is responsible for personnel and budget management.

V. TRANSACTION REPORTS

Sections 48-59 of the AML Act B.E. 2542 address the process of report examination and procedures concerning assets. The flow chart, starting from obtaining transaction reports through money laundering prosecution, is shown below:



Upon receiving transaction reports, either from financial institutions, land offices, investment consultants, other government agencies or even complaint letters, the AMLO will examine and analyze the reports, followed by an investigation as necessary.

If there are reasonable grounds to believe that the transaction could possibly be related to any predicate offence or money laundering offence, the officer in charge will submit the matter to the Transaction Committee or the AMLO Secretary-General (in case of emergency) for consideration. If the Transaction Committee considers that the transaction may be engaged with predicate offences or money laundering, it has the power to restrain all transactions of involved suspected persons for 3 working days in case of having probable cause, and 10 working days in case of having probable evidence. Furthermore, if there is a believable reason that the asset related to an offence may be transferred, distributed, moved or be transformed, the Transaction Committee has the power to seize the asset for a period not exceeding 90 days. All transaction restraints and temporary asset seizures shall be reported to the AMLO Board.

If the asset seized by the order of the Transaction Committee or the Secretary-General is unsuitable to be kept in custody or burdensome to the Government rather than the utilization thereof for other purposes, the Secretary-General may do the following:

- order those who have a vested right in the asset to maintain and utilize the asset with bail or security;
- issue an order for a sale by auction and then keep cash in the bank account;
- issue an order to utilize such asset for official purposes

The above action is intended to prevent asset devaluation due to depreciation and inappropriate asset maintenance. If the court finally issues an order to return the asset to the owner or holder or the vested interest recipient of the asset in the belief that the person has owned the asset honestly and/or with compensation, this process would also reduce damage occurring to the person in good faith as well.

In case there is evidence to believe that the asset is related to an offence, the Secretary-General will forward the case to the public prosecutor to consider filing a petition to the court for the Government to take ownership of the asset. If the public prosecutor considers that there is insufficient evidence to file a petition to the court, the case will be returned to the Secretary-General upon which he would re-consider and then submit the case to the public prosecutor again. In case the public prosecutor maintains his view that there is not enough evidence, he will inform the AMLO Board via the Secretary-General for a decision. The AMLO Board has to consider the matter within 30 days from the date of receipt. Otherwise, the case shall be in line with the public prosecutor's opinion.

During processing the case to the court, if there is probable cause to believe that there may be a transfer, distribution or movement of any asset related to an offence, the Secretary-General could pass the subject to the public prosecutor to file the petition to the court for the provisional asset forfeiture.

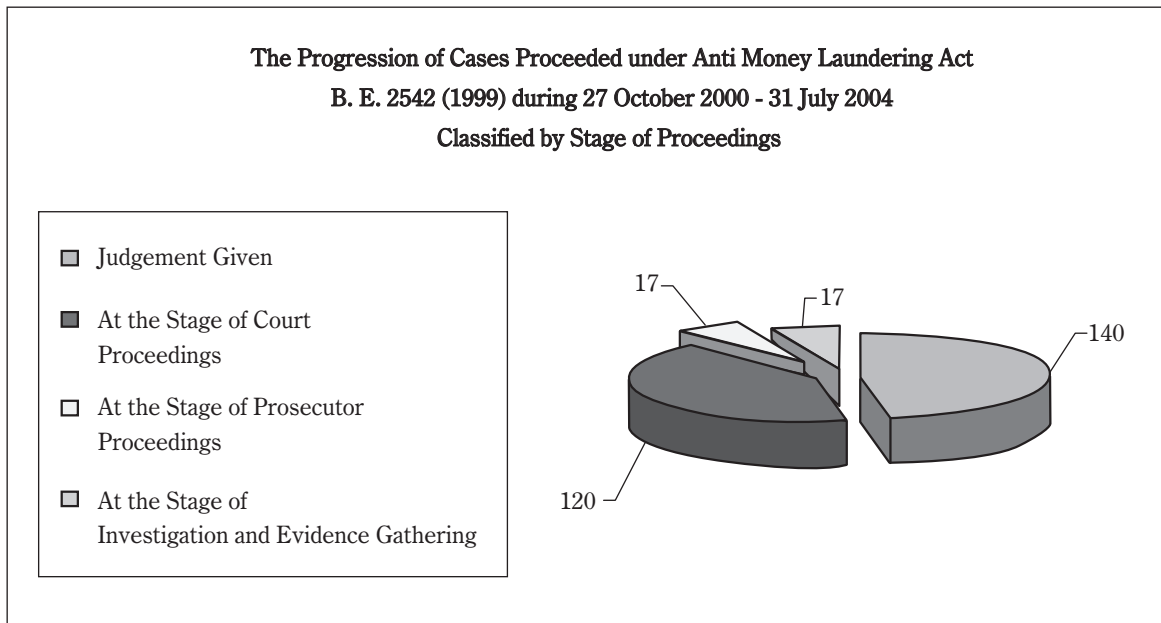
After receiving the petition to turn over the ownership of the asset to the Government from the public prosecutor, the court will order a notice be posted at the court and to publish in a local well-known newspaper for two consecutive days so that individuals who may claim ownership or have vested interest in the asset may file an objection to the petition to the court prior to the issuance of the court order. In case the court believes that the asset named in the petition is related to an offence and the petition of the claimant has no merit, the court will give the confiscation order to turn over the ownership of the asset to the Government. However, if the court believes that the petition of the claimant has merit, the court may issue an order to protect the rights of the recipient claimant with or without conditions.

The petition for asset return shall be filed with the court within one year from the date of the final court confiscation order. If the claimant does not file the petition within one year, he must prove that he honestly was not aware of the notification or written notice of the Secretary-General. In case an owner or holder or a vested interest recipient of the asset can establish the validity of the claim to the satisfaction of the court, the court may order the return of the asset or may set any condition for claimant rights' protection.

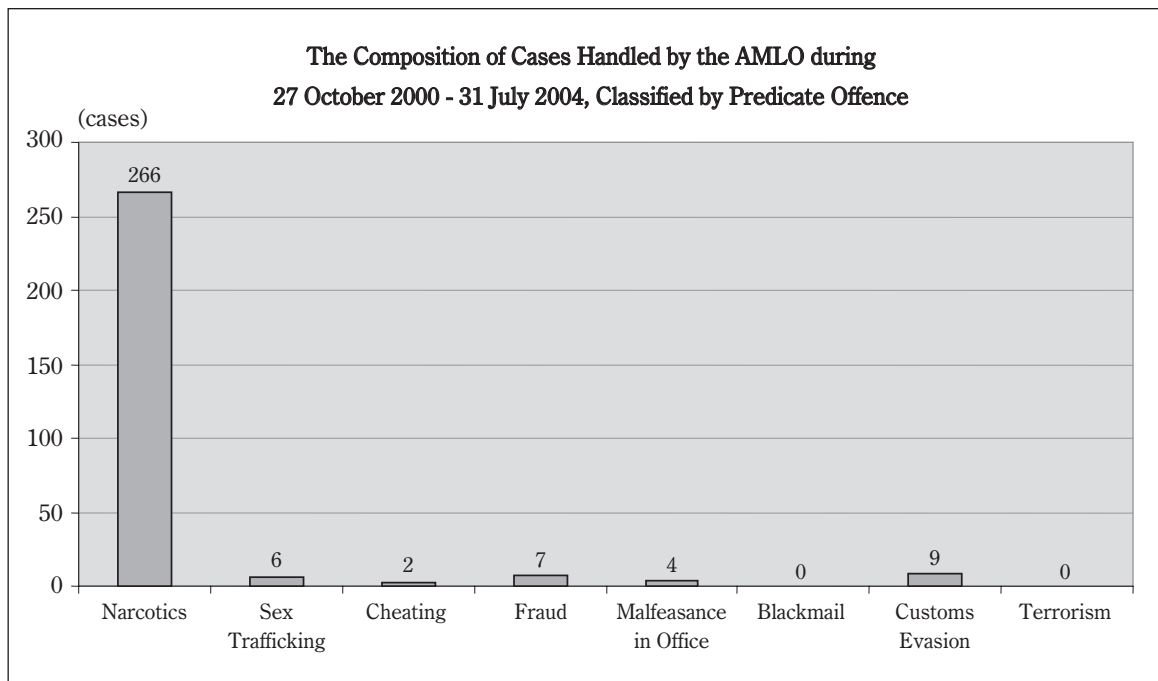
Although the Anti-Money Laundering Act B.E. 2542 (1999) has been effective since 19 August 1999, the

AMLO began its operations from 27 October 2000 onwards, pending the issuance of concerned Ministerial Regulations.

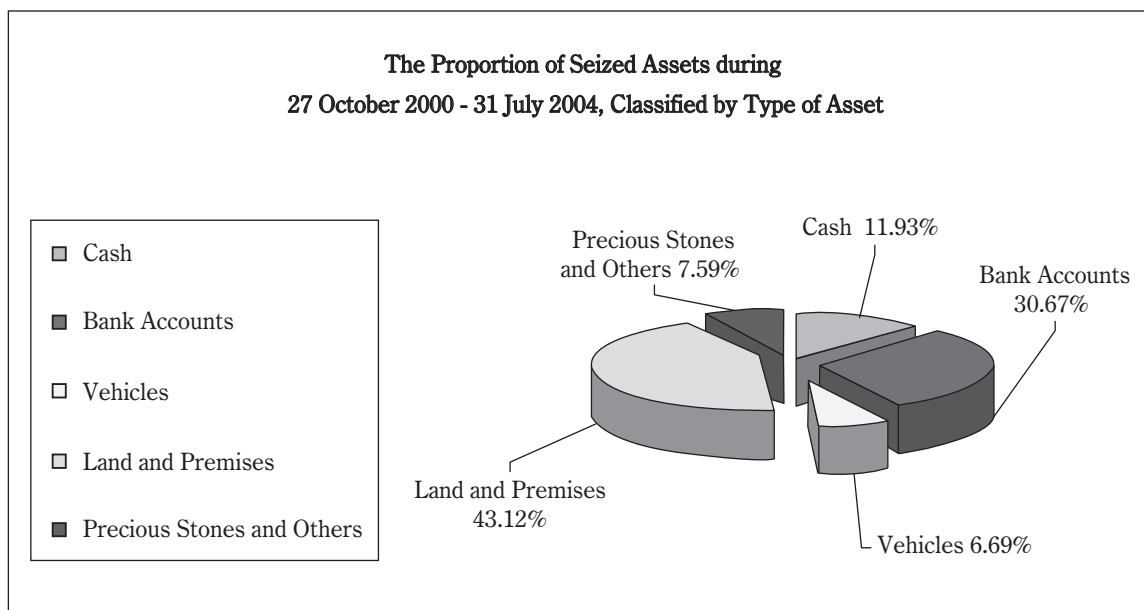
During the period of 27 October 2000 - 31 July 2004, the AMLO handled 294 cases, 140 of which have been ruled on by the court. The rest are being considered by the court. Details are shown in the following Figure.



Of the total 294 cases, 266 cases were drug offences, accounting for 90.48%. Customs evasion offences ranked second totalling 9 cases, accounting for 3.06%. At the time of this report, there are no cases concerning blackmail and terrorism. Details are illustrated in the following Figure.



During the period of 27 October 2000 - 31 July 2004, the AMLO seized assets pertaining to predicate offences and money laundering amounting to approximately Bt 3,575 million. According to the following Figure, most of the assets were land and premises accounting for 43.12%, followed by the attached bank accounts 30.67%.



VI. PENALTIES

The penalties imposed on those who violate or are non-compliant with the AML Act pursuant to sections 60-66 are summarized below:

- (1) Whoever is found guilty of money laundering activities will receive a jail term of 1-10 years and/or be fined from Bt 20,000 to Bt 200,000 (540 - 5,400 USD) in case of an individual; from Bt 200,000 to Bt 1 million (5,400 - 27,000 USD) in case of a juristic person;
- (2) If a person having a legal transaction reporting obligation fails to report, he/she will receive a jail term not exceeding 2 years and/or be fined from Bt 50,000 - Bt 500,000 (13,500 USD);
- (3) Whoever discloses any official secret concerning the proceedings according to the AML Act without authorized legal power will receive a jail term not exceeding 5 years and/or be fined not more than Bt 100,000 (2,700 USD).

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

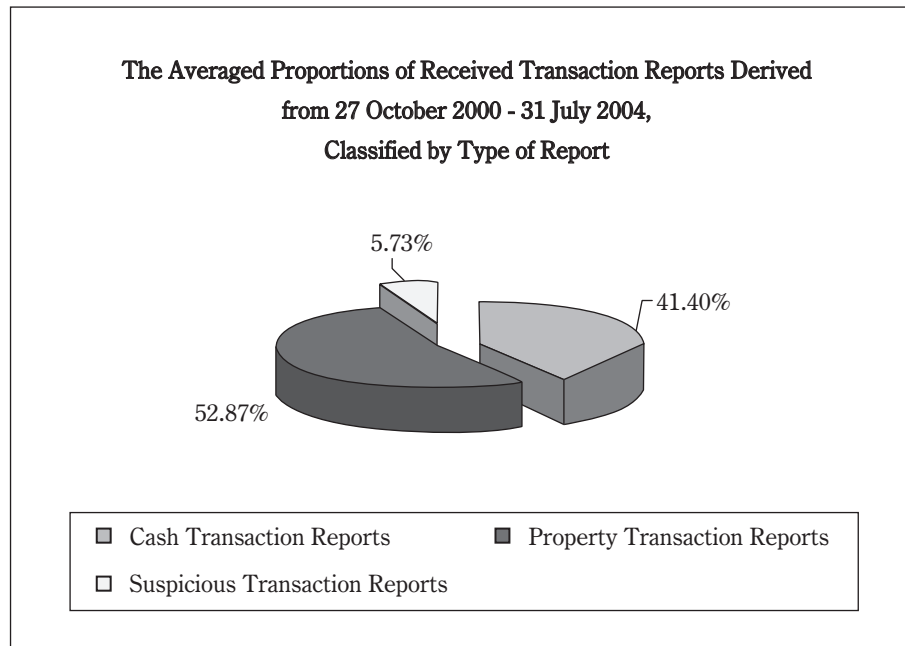
Penalties will be tripled for any member of the AMLO Board, member of the Sub-Committee Board, member of the Transaction Committee, AMLO Secretary-General, Deputy Secretary-General and competent public and judicial officials empowered to act in accordance with this Act, who commit any malfeasance in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

VII. FINANCIAL INTELLIGENCE UNIT (FIU)

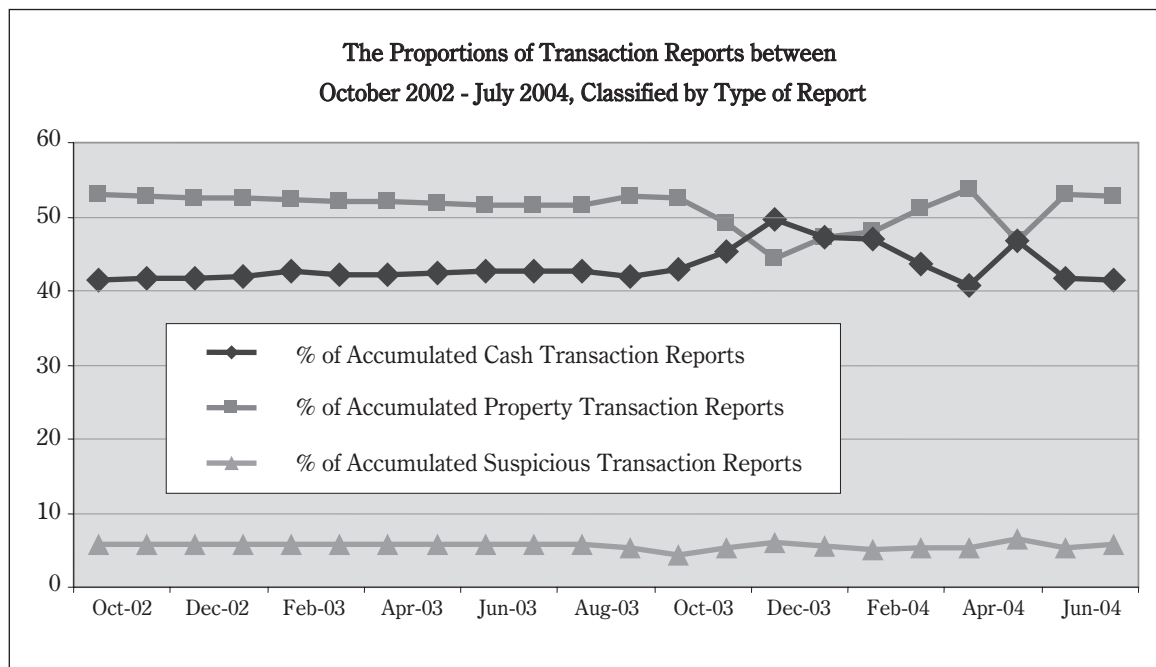
In Thailand, the Financial Intelligence Unit (FIU) is a part of the AMLO with the Information and Analysis Centre acting as the Thai FIU. Its main responsibilities can be described as the following:

- (1) To receive and to keep electronic transaction reports derived from financial institutions and other sources.
- (2) To preliminarily examine and analyze transaction reports, particularly suspicious transaction reports, and information concerned.
- (3) To act as the central authority of Thailand in exchanging of financial information, including signing the Memorandum of Understanding (MOU) on financial information exchange, with other foreign FIUs.

- (4) To set up and to maintain the AMLO database, computer and communication systems.



Most transaction reports are sent to the AMLO in the form of an electronic file. There were 2,045,131 reports from 27 October 2000 - 31 July 2004 accounting for about Bt 395 trillion. At the end of 31 July 2004, 52.87% of all reports dealt with property; 41.40% were cash reports; and 5.73% were suspicious transaction reports. As shown in the following Figure, the proportions remained steady. Only after November 2003, did the proportions of the cash transaction and property transaction reports moderately fluctuate.



Presently, the Information and Analysis Centre (Thailand FIU) has 22 staff that can be divided into two groups: the first group is responsible for financial transaction analysis and information exchange; the second for the installation and maintenance of a database and computer systems.

VIII. INTERNATIONAL COOPERATION

Thailand became a member of the APG (Asia/Pacific Group on Money Laundering) in 2001. The APG annual meeting provides a platform for discussing the practical issues associated with the implementation of money laundering and terrorist financing countermeasures. Thailand is also a member of the Egmont Group of Financial Intelligence Units, which is an informal group consisting of Financial Intelligence Units from 94 jurisdictions. Besides that, the AMLO has also communicated information to a corresponding authority of foreign states. The cabinet has given authority for the AMLO Secretary-General to enter into arrangements with the AMLO's corresponding authorities. To date, the AMLO has signed the "*Memorandum of Understanding Concerning Co-operation in the Exchange of Financial Intelligence Related to Money Laundering*" with 11 countries for the exchange of financial intelligence as listed below:

- | | |
|----------------------|--------------------------------|
| 1. Belgium | effective on 24 April 2002. |
| 2. Brazil | effective on 29 January 2003. |
| 3. Lebanon | effective on 25 February 2003. |
| 4. Indonesia | effective on 24 March 2003. |
| 5. Romania | effective on 24 March 2003. |
| 6. United Kingdom | effective on 11 June 2003. |
| 7. Finland | effective on 22 April 2004. |
| 8. Republic of Korea | effective on 16 June 2004. |
| 9. Australia | effective on 23 June 2004. |
| 10. Portugal | effective on 28 June 2004. |
| 11. Andorra | effective on 23 July 2004. |

In addition, several countries are in the stage of negotiation, namely Japan, the Philippines, Malaysia, and the Dominican Republic, etc. As for those countries that have not signed the MOU with the AMLO, an exchange of information is undertaken on a reciprocal basis.

APPENDIX A

AMENDMENTS TO THE PENAL CODE AND ANTI-MONEY LAUNDERING ACT

To comply with UN Resolution 1373, On August 5, 2003, Thailand passed two major Executive Decrees to amend the Penal Code and the Anti-Money Laundering Act being effective from August 11, 2003 onwards.

A. The Amendments to the Penal Code Section 135

Section 135/1

Any person, committing any of the criminal offences stated below:

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 telecommunication system, or an infrastructure facility of public use; or
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 a 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 the death penalty, life imprisonment, or imprisonment from three to twenty years. The person shall also pay a fine of 60,000 - 1,000,000 baht.

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

Section 135/2

Any person who:

1. threatens to commit a terrorist act and shows behaviour convincing enough to believe that the person will do as said;
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 offence 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; that person shall receive a sentence of imprisonment from two to ten years and shall pay a fine of 40,000 - 200,000 baht.

Section 135/3

Any person who is involved or collaborates with the offender as stated in 135/1 or 135/2 shall receive identical punishment.

Section 135/4

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; that person shall be deemed to have committed an act of terrorism. The person shall receive a sentence of imprisonment not exceeding seven years and shall pay a fine not exceeding 140,000 baht.

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

Section 3/8

Offences relating to terrorism under the Penal Code

Once the offences involving terrorist acts having been enacted, suspicious activity reporting [SAR] will automatically extend to this new offence.

APPENDIX B

COMPLIANCE WITH FATF'S (FINANCIAL ACTION TASK FORCE) EIGHT SPECIAL RECOMMENDATIONS

In addition to the International Convention for the suppression of the Financing of Terrorism 1999, the United Nations Security Council passed Resolution 1373, which requires all UN member States to prevent and suppress the financing of terrorist acts and to freeze all assets linked to terrorists. Moreover, on October 2001, an emergency meeting was convened by the Financial Action Task Force [FATF] in Washington, D.C. FATF is an independent international body comprised of 29 country members and 18 regional bodies and observer organizations, which has set the international standards for anti-money laundering efforts through its issuance of the 40 Recommendations. Thailand participates in FATF through its membership in the Asia Pacific Group [APG]. At this extraordinary meeting, the FATF considered what the worldwide response should be to combat terrorist financing. On October 31, 2001, the FATF announced a special set of 8 Recommendations on Terrorist Financing to supplement the existing 40 Recommendations.

The new framework announced by FATF to assist in detecting, preventing, and suppressing the financing of terrorism and terrorists acts, in which Thailand has completed the self-assessment against the FATF's 8 Special Recommendations above, is as follows:

I. SUMMARY

Pursuant to the U.N. Security Council Resolutions 1267 (1999), 1269 (1999), 1333 (2001), and 1373 (2001), the Thai government issued instructions to all authorities concerned to comply with these U.N. resolutions, including the freezing of funds or financial resources belonging to the Taliban and the Al-Qaida network. The relevant authorities and the Council of State have considered relevant domestic laws and regulations in order to make necessary amendments thereto in order to implement the Resolution in full.

On 5 August 2003, the Thai Cabinet approved the two draft amendments being effective 11 August 2003 onwards of the Penal Code and the Anti-Money Laundering Act to prescribe financing of terrorism as a serious offence under the Thai criminal law and to empower the AMLO to freeze terrorist funds as mandated by the UNSC Resolution 1373.

In effect, all financial institutions in accordance with the Anti-Money Laundering Act are required to promptly report their suspicions of any transactions that may be linked, or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations.

Intelligence and security agencies in Thailand have been on high alert since the 11 September incident. The Thai intelligence agencies, both civilian and military/law enforcement, have placed high priority on information sharing and networking with their foreign counterparts, especially the U.S. agencies. The Anti-Money Laundering Office of Thailand has become a member of the EGMONT Group since 2001. The membership has enabled the Office to have access to and exchange information with other members.

Thailand also has the Mutual Assistance in Criminal Matters Act (1992), which forms a broad basis for cooperation with other countries with regard to criminal matters i.e. taking testimony and statements of persons; providing documents, records and evidence for prosecution and search and forfeiture of property. The law is supplemented by Treaties of Mutual Assistance in Criminal Matters that Thailand has with six countries: namely, the United States, Canada, the United Kingdom, France, Norway and India.

In conclusion, Thailand has adopted a firm policy in condemning terrorism in all forms and manifestations. In practice, all authorities have done their utmost to ensure that Thailand will not be used as a base for the commission of any terrorist acts against any other country and that terrorists will never find a safe haven in Thailand.

II. THAILAND ASSESSMENT: EIGHT SPECIAL RECOMMENDATIONS

The framework announced by FATF to assist in detecting, preventing, and suppressing the financing of terrorism and terrorists acts in which Thailand has completed the self-assessment against the FATF's 8

Special Recommendations above is as follows:

A. Ratification and Implementation of UN Instruments

In complying with the related U.N. resolutions concerning actions taken on Taliban Groups in particular resolutions 1267/1999, 1269/1999, the Thai Cabinet issued an instruction on 21 December 1999 to all authorities concerned to comply with these U.N. resolutions, including the freezing of transfer funds or financial resources belonging to the Taliban.

On 5 August 2003, the Thai Cabinet approved the two draft amendments being effective 11 August 2003 onwards of the Penal Code and the Anti-Money Laundering Act to prescribe financing of terrorism as a serious offence under the Thai criminal law and to empower the AMLO to freeze terrorist funds as mandated by the UNSC Resolution 1373.

In effect, all financial institutions in accordance with the Anti-Money Laundering Act are required to promptly report their suspicions of any transactions that may be linked, or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations.

Thailand has been party to four conventions and a protocol relating to terrorism concluded in the framework of the International Civil Aviation Organization (ICAO); namely, the Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and 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 (1988).

The Minister of Foreign Affairs of Thailand signed the International Convention for the Suppression of the Financing of Terrorism on 18 December 2001. As for the other 7 conventions, the Cabinet resolved on 11 December 2001 to endorse, in principle, for Thailand to be a party to all the remaining conventions relating to terrorism pending the necessary amendments of domestic laws to enable full compliance with each convention.

On 25 February 2002, the Cabinet resolved to set up the National Committee on Consideration of Becoming a Party to International Conventions relating to Terrorism as proposed by the Ministry of Foreign Affairs. This National Committee is empowered: to consider details of the remaining 8 related international conventions and to enact or amend relevant domestic laws in order to implement all obligations under those conventions.

B. Criminalizing the Financing of Terrorism and Associated Money Laundering

In 1999, Thailand established the Anti-Money Laundering Office to take effective countermeasures against money laundering and other illegitimate financing. According to the resolution of the Cabinet on 2 October 2001, the Council of State proposed the two draft amendments of the Penal Code and the Money Laundering Act. The draft amendment of the Penal Code defines the scope of terrorism and prescribes the act of terrorism as a serious offence with severe punishments under the Thai criminal law.

On 5 August 2003, the Thai Cabinet approved the two draft amendments being effective 11 August 2003 onwards.

C. Freezing and Confiscating Terrorist Assets

At present, the existing domestic laws provide a legal basis for the Anti-Money Laundering Office, to freeze the transfer of funds or financial resources of persons or entities suspected of committing or facilitating the commission of terrorist acts. The amendments to the Penal Code and to the Money Laundering Act are to make terrorist acts under the Penal Code an offence under the Money Laundering Act. Accordingly, the laws empower the Anti-Money Laundering Office to freeze the transfer of funds or financial resources of alleged terrorists and their accomplices.

D. Reporting Suspicious Transactions related to Terrorism

All financial institutions in accordance with the Anti-Money Laundering Act are required to promptly

report their suspicions of any transactions that may be linked, or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations.

E. International Co-operation

Intelligence and security agencies in Thailand have been on high alert since the 11 September incident. Thai intelligence agencies, both civilian and military/law enforcement, have placed a high priority on information sharing and networking with their foreign counterparts, especially the U.S. agencies. The Anti-Money Laundering Office of Thailand has become a member of the EGMONT Group since 2001. The membership has enabled the Office to have access to and exchange information with other members on the memorandum of understanding (MOU) basis.

Thailand also has the Mutual Assistance in Criminal Matters Act (1992), which forms a broad basis for cooperation with other countries with regard to criminal matters i.e. taking testimony and statements of persons; and providing documents, records and evidence for prosecution and search and forfeiture of property. The law is supplemented by Treaties of Mutual Assistance in Criminal Matters that Thailand has with six countries: namely, the United States, Canada, the United Kingdom, France, Norway and India.

At the regional level, Thailand has strengthened its counter-terrorism cooperation within the framework of ASEAN in accordance with the ASEAN leaders' Declaration on Joint Action to Counter Terrorism of November 2001. The Terrorism component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime was adopted at the Special ASEAN Ministerial Meeting on Terrorism, held in Kuala Lumpur on 20-21 May 2002. In addition, Thailand has expressed its willingness to accede to the Trilateral Agreement on Information exchange and Establishment of Communication Procedures between Indonesia, Malaysia and the Philippines, which was signed on 7 May 2002.

F. Alternative Remittance

Under the Exchange Control Act, all person or legal entities that provide services for the transmission of money or value must be approved by the Minister of Finance under the recommendation of the Bank of Thailand. Any persons or legal entities that carry out this service illegally are subject to civil or criminal sanctions under this law. Commercial banks are required to report all outgoing foreign transfers within 3 days of the transaction date. Any suspicious ones will be reported to the Anti-Money Laundering Office. A number of laws and regulations have been enacted to curb informal activities. Education as well as measures such as a reduction of registered capital for money changers have been provided to encourage informal agents to enter the system.

In addition, as a countermeasure against alternative means of cash transactions by remittance agents, Thailand is to enact a Ministerial attach to the Exchange Control Act in regard to cash transactions of foreign currency equivalent to or over USD 10,000.

G. Wire Transfers

Under the current Anti Money Laundering Act B.E. 2542, any person or legal entity that has the approval to provide services for the transmission of money must require their customers to provide accurate and meaningful originator information. Furthermore, the Anti-Money Laundering Office imposes legal obligations for such persons or entities to report certain kinds of transactions namely: (1) a transaction involving cash in an amount equal to or exceeding two million baht (2) a transaction involving an asset equal to or exceeding five million baht; or (3) any suspicious transaction. If the money transmission service-providers fail to follow these instructions, they are subject to substantial penalty fines (Bt 300,000).

H. Non-Profit Organizations

The amendments to the Penal Code and the Anti-Money Laundering Act prevent the possible misuse of non-profit organizations by terrorists, and empower the relevant Thai authorities to effectively impede terrorist activities and financing.

The legal regime of entities, particularly non-profit organizations under the supervision of the Office of the National Cultural Commission, Ministry of Culture, would be reviewed to prevent any misuse for terrorist financing purposes.