



1st Follow-Up Report

Mutual Evaluation of Thailand

September 2018





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Asia/Pacific Group
on Money Laundering

THAILAND: 1st ENHANCED FOLLOW-UP REPORT 2018

I. INTRODUCTION

1. The mutual evaluation report (MER) of Thailand was published in December 2017. This follow-up report analyses the progress of Thailand in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report does not analyse any progress Thailand has made to improve its effectiveness. Thailand's progress with effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of immediate outcomes at that time.

2. The 2018 assessment of Thailand's request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:

- Ms Carolyn Marsden, Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Mr David Shannon, APG Secretariat

3. The draft FUR was distributed to the global network for review on 15 June 2018 prior to its consideration by the APG Mutual Evaluation Committee on 22 July 2018 and adoption by the APG Plenary on 26 July 2018.

4. Section III of this report summarises the analysis of progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Thailand's current Technical Compliance ratings.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

5. The 2017 MER rated¹ Thailand as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Sub	Sub	Mod	Low	Low	Sub	Mod	Sub	Mod	Mod	Low

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	LC	LC	LC	NC	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	PC	LC	LC	PC	C	LC	PC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	NC	PC	PC	PC	PC	LC	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	PC	LC	LC	PC	LC	LC	C	LC	LC

¹ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

6. Given these results, Thailand was placed in enhanced follow-up².

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

3.1. Progress to address technical compliance deficiencies identified in the MER

7. Thailand has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendation 7 (was rated NC); and Recommendation 32 (was rated PC).

8. As a result of this progress, Thailand has been re-rated on Recommendations 7 and 32.

Recommendation 7 (Originally rated NC, re-rated to LC)

9. Thailand passed a new law to combat weapons of mass destruction (WMD) proliferation financing (PF) by state and non-state actors in October 2016 (the Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing (CTPF) Act). The CTPF Act includes provisions to implement targeted financial sanctions (TFS) pursuant to R.7. However, the CTPF Act had not entered into force by the end of the ME on-site and was not considered in the rating of technical compliance in the MER.

10. The CTPF Act came into effect on 31 December 2016 and provides for list-based TFS in keeping with R.7, including prohibiting the provision of funds and services and requiring the immediate freezing of assets owned or controlled by designated persons and entities and those acting on their behalf. As with the legal framework for Rec 6, Thailand has a mechanism for translation of UN sanctions into domestic legal obligations by way of a designation to be made by the Anti Money Laundering Office (AMLO). The mechanism at s.15 exactly mirrors the mechanism for UNSCR 1267 and successor resolutions (now set out at section 6 of the CTPF Act), which was assessed in the MER, with the analysis for criterion 6.4 finding that this mechanism allowed 'without delay' to be met. The Feb 2017 AMLO Board Notification clarifies (art.2) that the AMLO shall designate '...relying on the information given under the resolution or declaration of the United Nations Security Council...'.

11. The analysis for Rec 7 (based on confirmation from AMLO and checking the relevant Thai government website) has considered whether the designations (and the concurrent freezing obligations) have been implemented so as to ensure TFS are in place 'without delay'. Thailand, through the AMLO, has issued designation orders without delay each time the UN has made a change to the list of designated persons or entities pursuant to UNSCR 1718 and 2231 and passed them to all REs through the electronic CDD gateway and via secure email and published an updated consolidation of all designations on the AMLO website. This occurs on the next business day following a designation in New York.

12. The new law requires REs and all other natural and legal persons in Thailand to implement asset freezing obligations and prohibitions without delay as required under R.7.

13. The new CTPF Act goes beyond TFS obligations in R.7 to include a criminal offence of proliferation financing, which supports implementation of UNSCR 1540 (acts of financing WMD proliferation by non-state actors). Through this mechanism the regime includes PF as a predicate to ML and a subject of the STR reporting obligations.

14. Since the ME onsite Thailand has issued a number of statutory instruments which complement the TFS obligations in the CTPF. These instruments came into effect in March 2017 and include:

² There are three categories of follow-up based on mutual evaluation results: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

- The Ministerial Regulation Prescribing Rules and Procedures for the Composition of the Designation Committee and Considering the List of Designated Person Who Acting in Relation to Proliferation Financing of WMD (2017).
- AMLB Ordinance Prescribing Rules and Procedures for Making a Notification and Communicating the List of Designated Persons (2017).
- AMLB Notification Prescribing Rules and Procedures for designation and delisting of designated person under UNSC.
- AMLB Ordinance on Seizing and Freezing Assets and the Custody and Management of the Seized or Frozen Assets B.E. 2560 (2017).
- AMLB Notification Prescribing Rules and Procedures for Issuing Policy and Procedures for Assessment and Management of Risk Related to the Terrorism and PF (2017).

15. While the CTPF Act lacks an explicit obligation to report attempted transactions to provide funds to designated persons or entities, most elements of attempted transactions are covered through the broad definition of the PF offence (which is a predicate to ML) and the related STR reporting obligations for filing STRs on attempted transactions connected or possibly connected with predicate offences. The STR reporting obligation in Thailand's Anti Money Laundering Act (AMLA) includes the CTPF Act of 'proliferation financing' as a predicate offence. The STR obligation at section 3 of the AMA extends to 'transaction that connected or possibly connected with the predicate offenses including an attempt to conduct transaction'. The CTPF offence of proliferation financing at s. 25 includes a focus on providing funds to designated persons and entities and criminalises provision or collection of 'funds or conducting a financial or asset transaction in any way to proliferate WMD or with the knowledge that the beneficial person of that financial or asset transaction is a designated person or with the intention that the funds or asset are to be used in support of whatever activity of a designated person or a person, a group or an entity involved in the proliferation of WMD ...'

16. The CTPF Act (2016) and related mechanisms covers or goes further than the technical element of R.7 with only minor shortcomings. There are minor gaps in relation to the prohibition on providing funds expressly covering Thai nationals who may be outside of the jurisdiction; mechanisms to resolve false positives and detailed provisions in relation to access to funds; and a lack of Thailand informing designated persons or entities to petition the Focal Point directly (noting the Focal Point mechanisms under UNSCR 1730 to consider de-listing requests may be directly submitted to the Focal Point regardless of any information from Thai authorities).

17. On this basis, R.7 is re-rated to LC.

Recommendation 32 (Originally rated PC, re-rated to LC)

18. In its 3rd MER, Thailand was rated as PC with R.32. The main deficiencies related to: a lack of coverage of BNI; no reporting obligations for money entering Thailand from particular countries; and, reporting thresholds set above the specified threshold. There was also no requirement to declare Thai currency coming in to Thailand, gaps within powers to stop and restrain currency on the basis of suspicion of ML or predicate offences, and a lack of adequately dissuasive sanctions for false declarations.

19. Since the ME onsite visit Thailand has amended legislation (Exchange Control Act (No. 2) B.E. 2559 (2016)) and implemented a new declaration system that applies to incoming and outgoing cross-border movements of Thai currency (THB), foreign currency and BNIs. The definition of BNI in the amended Exchange Control Act is in keeping with the standards. The reporting threshold for declaration is THB 450,000 (approx. USD15,000) for Thai currency and Thai-issued BNIs, and USD 15,000 equivalent for all foreign currencies and foreign-issued BNIs (Article 1, Ministry of Finance

Notification Re: Exchange Control (No. 6)). Declarations must be made in writing via an approved form which was distributed to all Customs points in February 2017 and implemented from that time. The new declaration system addresses a number of scope issues identified in the MER for C32.5, C32.8. The new declaration system ensures Thailand’s ability to cooperate (formally and informally) to share information that is now retained on cash and BNI declarations when: (a) a declaration or disclosure which exceeds the prescribed threshold is made; or (b) there is a false declaration or false disclosure; or (c) there is a suspicion of ML/TF.. The Exchange Control Act (No. 2) B.E. 2559 (2016) also establishes a general power to seize currency or BNI on false declaration. The Customs Act provides powers to customs officers for seizure on suspicion of TF (regardless of a truthful declaration). The AMLA is available for restraining currency/BNI on suspicion of ML or predicates (regardless of a truthful declaration), however the practical processes for the Secretary General of the AMLO to issue an order which would then be exercised by Customs at the border does not support a timely stopping or restraining of currency/BNI at the border.

20. Section 8 bis of the Exchange Control Act deems that any attempt to import or export currency in violation of the law is deemed exportation or importation of restricted articles which is an offence under the Customs Law. The relevant offence can be found at section 27 of the Customs Act B.E. 2469 which deals with the exportation or importation of currency, foreign currency, foreign bank notes or Thai or foreign securities where no permit has been obtained or no declaration has been made or false declaration. The sanction for this offence is a fine of four times the amount not declared and imprisonment of up to 10 years, which the review team assesses to be dissuasive.

21. On this basis, R.32 is re-rated to LC.

IV. CONCLUSION

22. Thailand has made progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on two Recommendations. On the basis of progress made by Thailand, Recommendation 7 has been re-rated to LC and Recommendation 32 has been re-rated to LC.

23. Overall, in light of the progress made by Thailand since its MER was adopted, Thailand’s technical compliance with the FATF Recommendations is currently as follows:

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	LC	LC	LC	LC	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	PC	LC	LC	PC	C	LC	PC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	NC	PC	PC	PC	PC	LC	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	LC	LC	PC	LC	LC	C	LC	LC

24. At the 2018 APG Annual Meeting members adopted the Thailand FUR and decided that Thailand will remain in enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.

August 2018