



2nd Follow-Up Report

# Mutual Evaluation of Thailand

July 2021





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## *Thailand: 2nd ENHANCED FOLLOW-UP REPORT 2021*

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Thailand was published in December 2017. This FUR 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 also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: R.2, 15, 18, and 21.

2. This report does not analyse any progress Thailand has made to improve its effectiveness.

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

- *Mr. Gavin Cheung, Hong Kong Monetary Authority*
- *Detective Superintendent Timothy Underhill, Australian Federal Police*
- *Ms. Jennifer Wallis, US Department of Justice*
- *Ms. Erica Last and Ms. Melissa Sevil, APG Secretariat*

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

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT & EARLIER FOLLOW-UP

5. Thailand's MER ratings<sup>1</sup> and updated ratings based on earlier FUR are as follows:

R.	Rating	R.	Rating
1	PC (MER 2017)	21	LC (MER 2017)
2	LC (MER 2017)	22	NC (MER 2017)
3	LC (MER 2017)	23	PC (MER 2017)
4	LC (MER 2017)	24	PC (MER 2017)
5	LC (MER 2017)	25	PC (MER 2017)
6	LC (MER 2017)	26	PC (MER 2017)
7	NC (MER 2017) ↑ LC (FUR 2018)	27	LC (MER 2017)
8	PC (MER 2017)	28	PC (MER 2017)
9	LC (MER 2017)	29	LC (MER 2017)
10	LC (MER 2017)	30	C (MER 2017)
11	LC (MER 2017)	31	LC (MER 2017)

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

12	LC (MER 2017)	32	PC (MER 2017) ↑ LC (FUR 2018)
13	PC (MER 2017)	33	LC (MER 2017)
14	LC (MER 2017)	34	LC (MER 2017)
15	LC (MER 2017)	35	PC (MER 2017)
16	PC (MER 2017)	36	LC (MER 2017)
17	C (MER 2017)	37	LC (MER 2017)
18	LC (MER 2017)	38	C (MER 2017)
19	PC (MER 2017)	39	LC (MER 2017)
20	PC (MER 2017)	40	LC (MER 2017)

6. Given these results and the effectiveness ratings, Thailand was placed in enhanced follow-up<sup>2</sup>.

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. In keeping with the APG Mutual Evaluation Procedures, this FUR considers progress made up until 1 February 2021. This section summarises the progress made by Thailand to improve its technical compliance by:

- a) addressing the technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

#### 4.1. Progress to address technical compliance deficiencies identified in the MER

8. Thailand requested re-ratings of the following Recommendations: R. 13, 16, 19, 20, and 25 (which were rated PC).

9. The APG welcomes the steps that Thailand has taken to improve its technical compliance with R. 13, 16, 19, 20, and 25. As a result of this progress, Thailand has been re-rated on Recommendations: 13, 16, 19 and 20. However, insufficient progress has been made to justify a re-rating of Recommendation 25.

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

### *Recommendation 13 (Originally rated PC)*

10. Thailand was rated PC for R.13 in its 2017 MER. The MER found the required information to be collected from the respondent financial institutions (FIs) was not sufficient for risk assessment and the requirements for accepting a respondent FI to have payable through accounts were inconsistent with R.13.

11. Criterion 13.1 is *mostly met*.

12. Criterion 13.1(a) is *mostly met*. When entering into correspondent banking relationships, FIs are required to conduct due diligence on the institution and its beneficial owners and clearly understand the nature of business of the respondent FIs and verify the trustworthiness of the respondent FI based on reliable information sources, which are suitably defined (Article 42 of MR CDD (2020)). These obligations extend to understanding the reputation of the respondent FI. However, it is unclear if Thailand's requirements to "verify the trustworthiness of the respondent FI" extends to determining the quality of its supervision including whether it has been subject to any regulatory action.

13. Criterion 13.1(b) is *met*. Article 42(4) of the Ministerial Regulation on Customer Due Diligence (MR CDD 2020) requires a FI to assess the internal control measures relating to risk management of the respondent FI, which includes risk of ML and financing of terrorism or proliferation of weapons of mass destruction according to Article 3 of MR CDD (2020).

14. Criterion 13.1(c) is *met*. Article 42(6) of MR CDD (2020) requires a FI to obtain approval from senior management before establishing new business relationships with the respondent FI.

15. Criterion 13.1(d) is *met*. FIs are required to set out the respective AML/CFT responsibilities and liabilities of each institution under Article 42(5) of the MR CDD (2020).

16. Criterion 13.2 is *mostly met*. FIs are obliged to require the respondent bank perform CDD on its customers that have direct access to the correspondent bank account and is able to provide relevant CDD information upon request as per the requirements of Article 43 of the MR CDD (2020). However, there is no explicit obligation for FIs to satisfy themselves such obligations are performed by the respondent FIs.

17. Criterion 13.3 is *mostly met*. Article 45 of MR CDD (2020) sets out obligations on FIs consistent with the requirements of this criterion with the exception of there being no explicit obligation for correspondent FIs to satisfy themselves CDD and related obligations have been performed by the respondent FIs.

### *Weighting and conclusion*

18. The provisions included in the MR CDD (2020) largely address the deficiencies noted in the 2017 MER. Minor deficiencies remain in the processes for verifying the quality of supervision of respondent FIs, the assurance that respondent FIs have performed their CDD obligations and with an explicit obligation for correspondent FIs to satisfy themselves CDD and related obligations have been performed by the respondent FIs. ***Recommendation 13 is re-rated to Largely Compliant.***

### *Recommendation 16 (Originally rated PC)*

19. Thailand was rated PC for Recommendation 16 in its 2017 MER. The MER identified that there were no provisions for transactions below the *de minimis* threshold. Requirements to maintain originator and beneficiary information only apply to originators and beneficiaries who are customers of ordering or beneficiary FI respectively, and no specific provisions to require intermediary institutions to ensure this information is maintained for cross-border wire transfers. There was also no provision to

require FIs not to execute the transactions if there is suspicion of ML/TF risks or when wire transfers lack the required information.

20. Criterion 16.1 is *met*. Article 31 of MR CDD (2020) broadly mirrors the requirements for accurate originator and beneficiary information accompanying cross-border wire transfers.

21. Criterion 16.2 is *met*. The same provisions referred to in the 2017 MER have been carried over into the MR CDD (2020).

22. Criterion 16.3 is rated *met*. Explicit provisions for wire transfers below THB50,000 (USD1,000) are provided in Article 32 of the MR CDD (2020).

23. Criterion 16.4 is *met*. An explicit obligation has been placed on ordering FIs to verify the accuracy of originator's information before sending each wire transfer instruction to the beneficiary FI where the ordering FIs have reasonable cause to suspect that the transaction involves or may involve a predicate offense, ML, TF or proliferation of WMD (Article 32 paragraph 2 of MR CDD (2020)).

24. Criterion 16.5 is *met*. The domestic wire transfer requirements for accompanying information set out in Article 34 of MR CDD (2020) in are extended to cover transactions below THB 50,000. In addition, the AMLO can order the ordering FI to provide the remaining information within three working days.

25. Criterion 16.6 is *met*. Requirements to make information related to domestic wire transfers available to the beneficiary FI are set out in article 34(2) of MR CDD (2020). Access to this information by AMLO is set out in s. 40(3) of the Anti-Money Laundering Act (AMLA) and LEAs are able to compel production of records under various legislation related to their powers.

26. Criterion 16.7 is *met*. There is no change since the 2017 MER.

27. Criterion 16.8 is *met*. Article 35 of MR CDD (2020) prohibits sending the wire transfer instructions to the beneficiary FIs if compliance with Article 31, 32, 33 or 34 (covering c.16.1 to 16.6) cannot be met.

28. Criterion 16.9 is *mostly met*. Article 36 paragraph 1 of MR CDD (2020) requires intermediary FIs to retain all originator and beneficiary information with the wire transfer instruction received from ordering FIs. However, Article 36, paragraph 2 permits flexibility for this information to not be contained in a cross-border transfer should technical limitations exist.

29. Criterion 16.10 is *met*. Article 36 paragraph 2 of MR CDD (2020) provides that where technical limitations prevent all required originator or beneficiary information accompanying a wire transfer to be retained with a related wire transfer instruction received from ordering FI or another intermediary FI, the intermediary FI should keep such information for at least ten years from the date of receiving the wire transfer instruction.

30. Criterion 16.11 is *met*. Article 37 paragraph 1 of MR CDD (2020) requires intermediary FIs to take measures to identify wire transfers that lack required originator or beneficiary information.

31. Criterion 16.12 is *met*. Article 37 paragraph 2 of MR CDD (2020) requires intermediary FIs to have in place risk-based measures for determining that such wire transfer is to be executed or rejected or suspended where the required originator and beneficiary information is missing.

32. Criterion 16.13 is *met*. The same provisions referred to in the 2017 MER have been carried over into the MR CDD (2020).

33. Criterion 16.14 is *met*. Article 39 of MR CDD (2020) requires beneficiary FIs to verify the identity of the beneficiary before payout according to the wire transfer instruction unless the identity was previously verified and there is information of such beneficiary

34. Criterion 16.15 is *met*. Beneficiary FIs are required to have risk-based measures for determining the action to be taken when a received wire transfer lacks the required originator or beneficiary information and to take appropriate follow-up action (Article 40 of the MR CDD (2020)).

35. Criterion 16.16 is *met*. Money value transfer service (MVTS) providers are categorised as FIs under s.3 of AMLA and subject to the requirements for wire transfers under the MR CDD (2020). These requirements extend to the foreign agents of MVTS providers and foreign MVTS providers.

36. Criterion 16.17 is *partly met*. There are no specific requirements for a MVTS provider to take into account all the information from both the ordering and beneficiary sides when determining if an STR is to be filed. The provision referred to in the 2017 MER has not been carried over into the MR CDD (2020). In addition, MVTS providers are only required to file STR in Thailand, but not in any other country affected by the suspicious wire transfer.

37. Criterion 16.18 is *met*. All FIs are required to implement targeted financial sanctions (TFS), including in relation to wire transfers, under the CTPF Act. AMLO supervises FIs in relation to these requirements and has taken actions to support compliance.

#### *Weighting and conclusion*

38. Most deficiencies identified in the MER have been addressed, but minor shortcomings remain. These include the retention of originator and beneficiary information with all cross border wire transfers, and some deficiencies related to STRs relating to MVTS providers are newly identified. While MVTS providers face particular risks in the context of Thailand the newly identified deficiency is not weighed heavily against the range of improvements demonstrated. ***Recommendation 16 is re-rated to Largely Compliant.***

#### *Recommendation 19 (Originally rated PC)*

39. Thailand was rated PC with Recommendation 19 in its 2017 MER. The report found enhanced due diligence measures were not applied proportionate to the risk and there was a lack of other countermeasures that could be applied to mitigate the risk. The 2017 MER also noted Thailand did not have regular measures to ensure reporting entities (REs) are advised of concerns about weaknesses in the AML/CFT systems of other countries.

40. Criterion 19.1 is *met*. MR CDD (2020) Article 14 and Article 1 of the AMLO Notification Concerning High-risk Areas or Jurisdictions Subject to Application of Enhanced Due Diligence and Countermeasure (AMLON – high risk areas) require FIs in Thailand to apply enhanced CDD for higher risk countries that FATF called for. The MR CDD (2020) Article 12 sets out the minimum enhanced CDD measures to be applied to “high risk customers.” Article 3 of the MR CDD (2020) defines customer as “a natural person or a legal person ... who establishes a business relationship or conducts a transaction” with REs. When entering into a business relationship with FIs from high-risk jurisdictions, Article 44 of the MR CDD (2020) requires REs to “obtain information regarding policies and procedures for the risk management of the respondent financial institution; verify the trustworthiness of the respondent financial institution; take caution in conducting business relationship with the respondent financial institution; and regularly update information on the respondent financial institution.”. Article 11 of the MR CDD (2020) contemplates a re-classification of high-risk customers, consistent with the risk assessment and senior executives’ approval. In addition to Articles 12 and 44,

REs are required to take appropriate and proportionate measures to mitigate risks from high-risk jurisdictions.

41. Criterion 19.2 is *mostly met*. AMLON Article 2 imposes an obligation on REs to apply countermeasures to mitigate the risk associated with countries identified as high-risk areas, which are defined as those subject to a call for action by FATF or prescribed by the Secretary-General. However, the type of countermeasures to be applied is solely within REs' discretion. Without guidance to implement MR CDD, this may result in an application of various countermeasures by various REs. Thailand indicated that the CDD guidelines implementing MR CDD are at the stage of being finalised.

42. Criterion 19.3 is *met*. Thailand has improved the frequency in providing updates, and added additional channels for authorities to alert REs of concerns in other jurisdictions.

#### *Weighting and conclusion*

43. Given that the improvement in additional channels to advise FIs of concerns in AML/CFT system of other countries and guidance implementing MR CDD is in the finalizing stage, with only minor shortcomings remaining in R19. ***Recommendation 19 is re-rated to Largely Compliant.***

#### ***Recommendation 20 (Originally rated PC)***

44. Thailand was rated PC in its 2017 MER for R.20 due to the small gap in coverage of FIs required to submit STRs (leasing companies, pawn brokers and small cooperatives) as well as gaps with the coverage of three categories of predicate offences (smuggling of migrants, tax offences and unlawful trafficking in stolen goods). There were also STR exemptions for certain transactions involving state owned enterprises.

45. Criterion 20.1 is *mostly met*. Thailand has amended s. 3 of the AMLA to include the offence of illicit trafficking in stolen and other goods as a predicate offence. Thailand has also added tax offences as a predicate offence in the Act Amending Revenue Code (No. 45) B.E. 2560 (2017). The Ministerial Regulation No. 5 (2000) Article 1 appears to have largely mitigated the deficiencies on the STR reporting exemption identified in the MER as Article 1 excludes the exemption application to STR unless the transaction falls within Article 1 (1).

46. Minor gaps remain. STR obligations have not yet been extended to leasing companies. The TF related STR obligation does not extend to suspicion of contributing to the commission of one or more TF offences by a group of persons acting with a common purpose; or aiding, abetting and directing an attempted TF offence. STRs relating to the smuggling of migrants are still not covered, however Thailand indicated that the Immigration Act B.E. 2522 was in the process of being amended to address the gap arising from the smuggling of migrants.

47. Criterion 20.2 is *mostly met*. While STR obligations extend to attempted transactions and are not limited by any threshold amount, the obligations still do not extend to leasing companies. Thailand indicated that the AMLA was in the process of being amended to address the gap in coverage of FIs required to submit STRs (leasing companies and small cooperatives).

#### *Weighting and Conclusion*

48. Since the MER was adopted, Thailand has addressed the gaps with the coverage of two categories of predicate offences (tax offenses and unlawful trafficking in stolen goods). Thailand has also largely addressed the deficiencies on the STR reporting exemption identified in the MER. Gaps remain with the smuggling of migrants as a predicate offence, the scope of the TF-related STR obligation and the application of all STR obligations to leasing companies. ***Recommendation 20 is re-rated to Largely Compliant.***



### *Recommendation 25 (Originally rated PC)*

49. Thailand was rated PC with Recommendation 25 in its 2017 MER. The report noted the absence of measures to ensure foreign trustees disclose their status to FIs and DNFBPs, which was given some weight due to the presence of foreign trusts in the Thai economy. A lack of powers to obtain information from some DNFBPs was also cited as a deficiency.

50. Criteria 25.1(a) and (b) are *not applicable*.

51. Criterion 25.1(c) is *partly met*. The deficiency noted in the MER related to a coverage gap in CDD reporting requirements for lawyers and accountants remains unaddressed.

52. Criterion 25.2 is *partly met*. While there are requirements in MR CDD to keep information up to date, there is a lack of guidelines supporting implementation of MR CDD to keep the information accurate, current and updated at a timely basis. Due to the scope gap related to lawyers and accountants, the information targeted by R.25 may not be obtained, let alone kept accurate and current.

53. Criterion 25.3 is *mostly met*. Article 20 of the MR CDD (2020) requires FIs and some DNFBPs to arrange for the disclosure as possible trustees (or persons in equivalent positions) from the establishment of the business relationship or the conduct of occasional transactions. However, it is not clear that the enforceability extends to the customers who fail to truthfully declare their status as a trustee. Due to the DNFBPs coverage gap, the intended obligation may not be imposed on lawyers and accountants acting for foreign trustees. Thailand indicated that AMLA is being amended to capture lawyers and accounts acting for foreign trustees.

54. Criterion 25.4 is *met*. There is no change since the 2017 MER.

55. Criterion 25.5 is *partly met*. AMLO and other LEAs can obtain relevant information held by FIs and DNFBPs and can use legal process to compel such information. Access to information may be timely; however, the issue of DNFBP coverage gap remains.

56. Criterion 25.6 is *met*. There is no change since the 2017 MER.

57. Criterion 25.7 is *not met*. As a result of a gap in the DNFBP coverage, lawyers and accountants acting for foreign trustees are not subject to CDD reporting requirements and there are no legal obligations imposed, and therefore no legal liability arises as a result of non-compliance, nor proportionate application.

58. Criterion 25.8 is *met*. There is no change since the 2017 MER.

### *Weighting and conclusion*

59. While REs are required to arrange for their customers to disclose their status as possible trustees (or persons in equivalent positions) from the establishment of the business relationship or the conduct of occasional transactions, it is not clear that the enforceability extends to the customers who fail to truthfully declare their status as a trustee. The gap in the reporting entity coverage and the amendments of AMLA are not in force. ***Recommendation 25 remains Partially Compliant.***

## 4.2. Progress on Recommendations which have changed since adoption of the MER

61. Since the adoption of Thailand's MER, Recommendations 2, 15, 18, and 21 have been amended. This section considers Thailand's compliance with the new requirements.

### *Recommendation 2 (Originally rated LC)*

62. Thailand was rated LC in its 2017 MER due to not having updated its national AML/CFT strategies to take into account findings of the two NRAs and other assessments of risk. Since the MER was adopted R.2 has been amended to clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules.

63. Criterion 2.1 is *met*. Thailand has a robust framework for the development, implementation and review of AML/CFT policies through the National Coordinating Committee and the Sub-Committee. Thailand's 2017-2021 AML/CFT National Strategy incorporates the findings of the 2012 and 2016 NRAs and 2017 MER and the drafting of the 2022-2027 National Strategy has commenced and will incorporate the findings of the 2021 NRA.

64. Criterion 2.5 is *met*. Thailand has existing arrangements for coordinated information and intelligence exchange for AML/CFT purposes to ensure compatibility of AML/CFT requirements and data protection and privacy rules as the need arises. At present there do not appear to be any specific data protection and privacy obligations that impede AML/CFT requirements.

### *Weighting and Conclusion*

65. No deficiencies remain. ***Recommendation 2 is re-rated to Compliant.***

### *Recommendation 15 (Originally rated LC)*

66. In its 2017 MER, Thailand was rated LC with Recommendation 15. Since the MER was adopted R.15 has been amended to include requirements relating to virtual assets (VA) and virtual asset service providers (VASPs).

### *New technologies*

67. Criterion 15.1 is *partly met*. FIs are required to identify and assess ML/TF risks before the introduction of new products, services and technologies (Article 15 of MR CDD (2020)). However the comprehensiveness of Thailand's identification and assessment of ML/TF risks arising from new technologies was unclear to the Review Team. With respect to the minor gap from the MER, Thailand has reported more regular cooperation between AMLO and Bank of Thailand to assess the risks associated with new products and business practices, but it was unclear how robust these processes are.

68. Criterion 15.2 is *mostly met*. Article 15 of MR CDD (2020) requires the assessment of ML/TF risks by FIs before introducing new products, services or technologies. The minor shortcoming in the scope gap in FIs remains a deficiency.

### *Virtual assets and virtual asset service providers*

69. The VASP regulatory regime in Thailand does not cover a person solely engaging in "safekeeping and/or administration of VAs or instruments enabling controls over VAs" or "transfer of VAs" as described in the FATF definition of VASPs. Thailand notes that there is currently no operator who solely provides these digital asset custodial services. This minor scope gap of VASPs applies to criteria 15.3 to 15.11.

70. Criterion 15.3 is *partly met*:

71. Criterion 15.3(a) is *partly met*. Thailand identified and assessed the ML/TF emerging from VAs and VASP activities through the ML/TF risk assessment concerning Digital Asset in 2017. Inputs included open source research, as well as a survey issued to VASPs and interagency comments which were unsighted by the Review Team. As a result the Review Team had concerns about the reasonability of the inputs, analytical process and findings.

72. Criterion 15.3(b) is *partly met*. Thailand established its VASP regulatory regime through the Emergency Decree on Digital Assets Businesses (DDAB), which came into effect on 14 May 2018. However subsequent to the abovementioned concerns of the 2017 VA/VASP risk assessment in c.15.3(a), it was unclear whether the VASP regulatory regime was designed to address all the risks facing the VA/VASP sector.

73. Criterion 15.3(c) is *mostly met*. As REs captured under the Thai regulatory regime (Section 7, DDAB), in-scope VASPs are required to take appropriate steps to identify, assess, manage, and mitigate their money laundering and terrorist financing risks (Article 9, MR CDD (2020)). However there are minor gaps with respect to fulfilling c.1.10, with a lack of obligations to share risk assessments with AMLO (c.1.10(d)), as well as a lack of obligation for VASPs to apply enhanced measures when higher risks are identified (c.1.11(c)).

74. Criterion 15.4 is *mostly met*:

75. Criterion 15.4(a) is *mostly met*. In-scope VASPs are required to be licensed in Thailand (Sections 19 and 26, DDAB) or else be subject to imprisonment and/or fine (Section 66, DDAB), but pursuant to c.15.4(a)(ii) it is unclear whether a Thai incorporated company engaging in VA business solely in another country (i.e. no business conducted in Thailand) must be licensed in Thailand.

76. Criterion 15.4(b) is *mostly met*. Thailand has measures in place to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a VASP. Fit and proper tests include criminal records checks performed by the Royal Thai Police for directors, executives and controlling persons who hold more than 10% shareholding or voting rights, and there are obligations for SEC to ensure such personnel are qualified and appropriate (Sections 21 and 28, DDAB, in conjunction with notifications issued by SEC on prohibited characteristics).

77. Criterion 15.5 is *met*. The SEC takes actions to identify natural or legal persons that carry out unlicensed VASP activities, which is publicly reported on their website. SEC makes determinations of whether sanctions should be applied, which include imprisonment or a fine of at least THB 500,000 (approx. USD 16,000) or up to twice the price offered by an unlicensed digital token offerer, or THB 200 to 500,000 plus daily fines of up to THB 10,000 (approx. USD 320) until compliance (Sections 57 and 66 of DDAB).

78. Criterion 15.6 is *mostly met*:

79. Criterion 15.6(a) is *mostly met*. AMLO is designated to supervise those VASPs included in the regime for AML/CFT. The AMLO conducted off-site reviews in 2020, and in 2021 two on-site inspections were undertaken on the basis of identified higher risks. Minor gaps apply: it is unclear whether the AML/CFT supervision is fully determined on a risk basis given the new AML/CFT regime for VASPs and Thailand's risk understanding (see c.15.3(a)), and to a lesser degree gaps in AMLO supervision which was identified in the 2017 MER.

80. Criterion 15.6(b) is *mostly met*. AMLO is empowered to conduct AML/CFT supervision on VASPs (Sections 38 and 40, AMLA). However there is an insufficient spectrum of sanctions available, given the relevant provisions (Sections 62-4, 66 of AMLA) have not been amended since 2017, and so shortcomings for insufficient range of sanctions identified in the 2017 MER still applies. No civil or administrative sanctions can be applied by AMLO, and as per the 2017 MER, AMLO cannot revoke licenses or issue written warnings SEC—as the licensing authority—has a range of graduated sanctions including ordering corrections, temporarily suspending operations, and revoking licenses (Sections 35-37, DDAB; Clause 37(3) of the Notification of the SEC No. GorJor. 16/2561). However, it is unclear whether these powers will be applied in the case of non-compliance with AML/CFT requirements.

81. Criterion 15.7 is *mostly met*. AMLO has published guidance and provided feedback to assist FIs to comply with AML/CFT requirements including application of preventative measures and STR reporting. AMLO conducted virtual workshops with VASPs in early 2021 to advise on their obligations, though there are minor deficiencies with a lack of tailored guidance for sectoral issues such as implementation of wire transfer obligations in the VASP context.

82. Criterion 15.8 is *partly met*: The sanctions available for non-compliance with preventative measures—including customer identification, STR and record-keeping requirements are set out in s.62 of AMLA. The range of sanctions available to supervisors to apply to VASPs that fail to comply with AML/CFT requirements are not sufficiently dissuasive and there are limited pecuniary sanctions—to a maximum of THB 500,000 (approx. USD16,000). Besides, the available sanctions cannot extend to VASPs' directors and senior management.

83. Criterion 15.9 is *partly met*:

84. Criterion 15.9(a) is *partly met*. The occasional transaction threshold for FIs including VASPs to conduct CDD of THB 100,000 (approx. USD 3210) is higher than the threshold as set out in the Standards (Article 16(2)(a) MR CDD (2020)).

85. Criterion 15.9(b) is *partly met*.

86. Criterion 15.9(b)(i & ii) – The Review Team found there was a lack of clarity on the application of existing wire transfer requirements (Articles 31-33, Articles 38-40 of MR CDD (2020) for VA transfers, and whether the definition of wire transfers adequately covered VA transfers. There is no explicit requirement for all VA transfers to be treated as cross-border wire transfers, in line with footnote 51 of the FATF standards.

87. Criterion 15.9(b)(iii) – With respect to monitoring of the availability of information n, assessments in c.16.8, c.16.11 to 13, and c.16.15 apply. With respect to taking freezing actions and prohibiting dealing with designees, the assessment under c.16.18 applies.

88. Criterion 15.9(b)(iv) – The Review Team found it was unclear whether the same obligations apply to FIs when they send or receive VA transfers on a customer's behalf.

89. Criterion 15.10 is *mostly met*. As REs captured under Thailand's regulatory regime, in-scope VASPs are considered FIs and required to comply with the communication mechanisms, reporting obligations, and monitoring in relation to TFS with a minor gap in reporting attempted transactions. The analysis in the criteria referred to in c.15.10 stands, including a minor gap with reporting attempted transactions as identified in the 2017 MER and 2018 FUR<sup>3</sup>.

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<sup>3</sup> Though, in practice, the Review Team considered most elements of attempted transactions should be covered through existing STR reporting obligations on TF and PF.

90. Criterion 15.11 is *mostly met*. The MLA and extradition regime in Thailand can apply to international cooperation in relation to ML, predicate offences, and TF relating to virtual assets. There are no constraints on Thai authorities to rapidly provide assistance on such matters. However there is a minor gap in the ability of SEC to exchange regulatory or prudential information, as required by c.40.14.

#### *Weighting and Conclusion*

91. For VAs and VASPs, Thailand conducted a risk assessment in 2017 and, with moderate deficiencies on risk understanding. Thailand has implemented a licencing regime for most VASPs as defined in the FATF standards, including entry controls and appropriate sanctions for unlicensed VASPs. AMLO is responsible for the AML/CFT supervision of VASPs in Thailand. It is premature to conclude if the frequency and intensity of supervision are fully determined on a risk-based approach based on a number of observations. General guidance and feedback provided to FIs are equally applicable for VASPs but specific guidance for VASPs has not yet been developed. The deficiencies relating to sanctions identified in 2017 MER remained unaddressed and sanctions for non-compliance with preventative measures do not apply to VASPs' directors and senior management. The minor shortcomings for targeted financial sanctions and international cooperation identified in the 2017 MER and 2018 FUR also apply to VASPs.

92. The overall rating takes into account that fact that (i) Thailand was rated LC with R.15 in its 2017 MER and no major changes to its compliance with the requirements relating to new technologies have taken place subsequently; (ii) good efforts have been made to regulate most VASPs for AML/CFT; and (iii) Thailand was rated met or mostly met in six out of the nine new criteria (i.e. 15.3 to 15.11). The moderate deficiencies with the assessment of risks for VAs and VASPs were given moderate weight. The scope gap of VASPs is given little weight, taking into account the context of Thailand. Other gaps are given some weight taking into account the information available on Thailand's VA/VASP-related risk and context. The VASP sector remains relatively small and the deficiencies which remain have therefore been given some weight but not excessive weight. ***Recommendation 15 remains Largely Compliant.***

#### *Recommendation 18 (Originally rated [LC])*

93. Thailand was rated LC in its 2017 MER for R.18 due to minor scope gaps in relation to obligations for group wide audit and additional measures to be taken to manage the ML/TF risk in cases where concerns are identified with foreign branches or subsidiaries. Since the MER was adopted R.18 has been amended to clarify the requirements on sharing of information related to unusual or suspicious transactions within financial groups, and the interaction of these requirements with tipping-off provisions.

94. Criterion 18.1 is *mostly met*. Article 49 of the MR CDD (2020) include provisions such as compliance management arrangements, including the appointment of a compliance officer at the management level, screening and training procedures as well as an independent audit function. There is an overarching provision that these control policies and procedures should be commensurate with the risks and size of the business, which aligns the various limbs with the standard. However, the minor scope gap for covered FIs identified in the 2017 MER remains unaddressed.

95. Criterion 18.2 is *mostly met*. Article 51(3) of the MR CDD (2020) requires FIs to ensure that adequate safeguards on the confidentiality of the use of information exchanged are strictly followed and are prohibited from disclosing the fact or the act in any way that may lead to tipping-off. The MR CDD (2020) specifically addresses requirements for local or foreign branches or subsidiaries which are of the same business group to require that policies and procedures are in place for sharing information required for CDD and ML/TF risk management and that information used and exchanged should include account

and transaction information of the customers, analysis of transaction reports or suspicious activities including predicate offenses, ML or TF or proliferation of weapons of mass destruction or other information for the benefit of implementation of ML/TF risk management. However, it is not readily apparent that this information should be provided at group level compliance, audit, and/or AML/CFT functions as specifically detailed in c.18.2(b). The minor scope gap for covered FIs identified in the 2017 MER remains unaddressed.

96. Criterion 18.3 is *mostly met*. Article 52 of the MR CDD (2020) requires that where AML/CFT requirements in the host country differ from those of Thailand, foreign branches and subsidiaries should be required to implement the stricter of the requirements. Article 52 also requires FIs to apply appropriate additional measures to manage risks and inform the AMLO. However, the minor scope gap for covered FIs identified in the 2017 MER remains unaddressed.

#### *Weighting and Conclusion*

97. There are minor shortcomings on the lack of specific reference to the provision, at group level compliance, audit, and/or AML/CFT functions as well as the minor scope gaps for covered FIs identified in the 2017 MER. ***The rating of Recommendation 18 remains Largely Compliant.***

#### *Recommendation 21 (Originally rated LC)*

98. Thailand was rated LC in its 2017 MER for R.21 due to a minor shortcoming that safe harbour provisions do not clearly extend to protection from civil liability. Since the MER was adopted R.21 has been amended to clarify the requirements on sharing of information related to unusual or suspicious transactions within financial groups, and the interaction of these requirements with tipping-off provisions.

99. Criterion 21.1 is *mostly met*. Section 19 of the AMLA states that in the case where the report Under Sections 13, 14, 15 and 16 have been made in good faith by the RE, if the report causes injury to any person, the RE shall not be responsible therefore but it does not include the directors of FIs. However, whilst this constitutes protection from financial liability as to damage caused, it is not clear that this protects against civil liability.

100. Criterion 21.2 is *met*. Section 21/1 of the AMLA prohibits REs from revealing or acting in any way that may cause a customer or a third party to know of the conduct of CDD or the reporting of transactions or the dissemination of any other information to AMLO. The prohibition does not inhibit the information exchange required under R.18 as Section 21/1 of AMLA carved out an exception for non-disclosure. Disclosure is permitted in accordance with law, a court order, or the information sharing between head offices and branches of a reporting entity. Majority-owned subsidiaries of a reporting entity are not specified under this Section.

#### *Weighting and Conclusion*

101. The minor shortcoming remains that safe harbour provisions do not clearly extend to protection from civil liability. ***The rating of Recommendation 21 remains Largely Compliant.***

#### 4.3. Brief overview of progress on other recommendations rated NC/PC

102. **Recommendation 1 (rated PC)** – Thailand conducted sectoral risk assessments on FIs and DNFBPs in 2017 and disseminated the findings to relevant agencies. Thailand reported that amendments are planned to the AMLA to increase coverage of REs.

103. **Recommendation 8 (rated PC)** – Thailand conducted a TF risk assessment for the NPO sector in 2019 and disseminated the findings to relevant agencies. The Office of the Prime Minister Order No. 1/2563 was issued on 25 May 2020, to set up the Sub – Committee on NPO Law Revision, tasked with the revision of relevant laws in order to rectify deficiencies identified in MER and align with FATF standards.

104. **Recommendation 22 (rated NC)** - Thailand reported that amendments are planned to the AMLA to increase coverage of REs to include lawyers and accountants. The MR CDD (2020) also imposes similar obligations for preventative measures for both FIs and DNFBPs.

105. **Recommendation 23 (rated PC)** - Thailand reported that amendments are planned to the AMLA to increase coverage of REs to include lawyers and accountants.

106. **Recommendation 24 (rated PC)** - The Office of the Prime Minister Order 1/2563 was issued on 25 May 2020 to set up the Sub – Committee on Beneficial Owner of legal persons and legal arrangement. This Sub-Committee is tasked with drafting the Beneficial Ownership Information Bill, with the assistance by Asian Development Bank.

107. **Recommendation 26 (rated PC)** – Thailand reported that amendments have been made to the Ministry of Finance Notifications Re: Business Subject to Approval According to Section 5 of the Revolutionary Council Decree No. 58, which came into force on 31 July 2020. The Notifications regulate the fit and proper of directors, persons with power of management, major shareholders of non-banks under Bank of Thailand’s supervision. Amendments are also being drafted for regulations on fit and proper for money changing and cross-border money transfer businesses, insurance and non-life insurance business group under supervision, savings and credit union cooperatives, and other financial service providers not regulated by the government and entrepreneurs in the leasing business.

108. **Recommendation 28 (rated PC)** - Thailand reported that amendments are planned to the AMLA to increase coverage of REs to include lawyers and accountants and to provide for proportionate and dissuasive sanctions.

109. **Recommendation 35 (rated PC)** – Thailand reported that amendments are planned to the AMLA to prescribing administrative sanction further to existing civil and criminal sanctions.

#### IV. CONCLUSION

110. Overall, Thailand has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on Recommendations 13, 16, 19 and 20. Insufficient progress had been made on Recommendation 25 to justify a re-rating at this time.

111. Thailand has also made progress on Recommendations that were amended after the adoption of its MER in 2017. Thailand has been re-rated to Compliant on Recommendation 2, and Largely Compliant on Recommendation 21. Recommendations 15 and 18 remain Largely Compliant.

112. Overall, in light of the progress made by Thailand since its MER was adopted, its technical compliance with the FATF Recommendations as follows as of the reporting date 1 February 2021:

R.	Rating	R.	Rating
1	PC (MER 2017)	21	LC (MER 2017)
2	LC (MER 2017) ↑ C (FUR 2021)	22	NC (MER 2017)
3	LC (MER 2017)	23	PC (MER 2017)
4	LC (MER 2017)	24	PC (MER 2017)
5	LC (MER 2017)	25	PC (MER 2017)
6	LC (MER 2017)	26	PC (MER 2017)
7	NC (MER 2017) ↑ LC (FUR 2018)	27	LC (MER 2017)
8	PC (MER 2017)	28	PC (MER 2017)
9	LC (MER 2017)	29	LC (MER 2017)
10	LC (MER 2017)	30	C (MER 2017)
11	LC (MER 2017)	31	LC (MER 2017)
12	LC (MER 2017)	32	PC (MER 2017) ↑ LC (FUR 2018)
13	PC (MER 2017) ↑ LC (FUR 2021)	33	LC (MER 2017)
14	LC (MER 2017)	34	LC (MER 2017)
15	LC (MER 2017)	35	PC (MER 2017)
16	PC (MER 2017) ↑ LC (FUR 2021)	36	LC (MER 2017)
17	C (MER 2017)	37	LC (MER 2017)
18	LC (MER 2017)	38	C (MER 2017)
19	PC (MER 2017) ↑ LC (FUR 2021)	39	LC (MER 2017)
20	PC (MER 2017) ↑ LC (FUR 2021)	40	LC (MER 2017)

113. Thailand has 31 Recommendations rated C/LC. 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. Thailand's third progress report is due 1 February 2022.