



Anti-money laundering and counter-terrorist financing measures

Thailand

Mutual Evaluation Report

December 2017





The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

APG members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF).

For more information about the APG, please visit the website: www.apgml.org

This mutual evaluation report was adopted by the APG at its annual meeting in July 2017.

© December 2017 APG

No reproduction or translation of this publication may be made without prior written permission.

Applications for permission to reproduce all or part of this publication should be made to:

APG Secretariat
Locked Bag A3000
Sydney South
New South Wales 1232
AUSTRALIA
Tel: +61 2 9277 0600

E mail: mail@apgml.org

Web: www.apgml.org

Cover image: The Grand Palace, Bangkok

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Preface	13
CHAPTER 1. ML/TF RISKS AND CONTEXT	14
ML/TF Risks and Scoping of Higher-Risk Issues	14
Materiality	20
Structural Elements	24
Background and other Contextual Factors	27
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION	34
Immediate Outcome 1 (Risk, policy and coordination)	34
Key Findings and Recommended Actions	34
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES	40
Key Findings and Recommended Actions - IO 6, 7 & 8	40
Immediate Outcome 6 (Financial intelligence ML/TF)	43
Immediate Outcome 7 (ML investigation and prosecution)	54
Immediate Outcome 8 (Confiscation)	61
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION	70
Key findings and Recommended Actions – IOs 9, 10 & 11	70
Immediate Outcome 9 (TF investigation and prosecution)	73
Immediate Outcome 10 (TF preventative measures and targeted financial sanctions)	80
Immediate Outcome 11 (PF targeted financial sanctions)	86
CHAPTER 5. PREVENTIVE MEASURES	89
Key Findings and Recommended Actions	89
Immediate Outcome 4 (Preventive Measures)	90
CHAPTER 6. SUPERVISION	99
Key Findings and Recommended Actions	99
Immediate Outcome 3 (Supervision)	101
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS	111
Key Findings and Recommended Actions	111
Immediate Outcome 5 (Legal persons and arrangements)	112
CHAPTER 8. INTERNATIONAL COOPERATION	118
Key Findings and Recommended Actions	118
Immediate Outcome 2 (International cooperation)	119
TECHNICAL COMPLIANCE ANNEX	127
Recommendation 1 - Assessing risks and applying a risk-based approach	127
Recommendation 2 - National cooperation and coordination	129
Recommendation 3 - Money laundering offence	130
Recommendation 4 - Confiscation and provisional measures	132
Recommendation 5 - Terrorist financing offence	136

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing	138
Recommendation 7 – Targeted financial sanctions related to WMD proliferation	143
Recommendation 8 – Non-profit organisations	145
Recommendation 9 – Financial institution secrecy laws	149
Recommendation 10 – Customer due diligence	150
Recommendation 11 – Record-keeping	157
Recommendation 12 – Politically exposed persons.....	158
Recommendation 13 – Correspondent banking	159
Recommendation 14 – Money or value transfer services	160
Recommendation 16 – Wire transfers.....	163
Recommendation 17 – Reliance on third parties	165
Recommendation 18 – Internal controls and foreign branches and subsidiaries	166
Recommendation 19 – Higher-risk countries	167
Recommendation 20 – Reporting of suspicious transactions	167
Recommendation 21 – Tipping-off and confidentiality.....	168
Recommendation 22 – DNFBPs: Customer due diligence	169
Recommendation 23 – DNFBPs: Other measures	170
Recommendation 24 – Transparency and beneficial ownership of legal persons	170
Recommendation 25 – Transparency and beneficial ownership of legal arrangements	175
Recommendation 26 – Regulation and supervision of financial institutions.....	176
Recommendation 27 – Powers of supervisors	178
Recommendation 28 – Regulation and supervision of DNFBPs	180
Recommendation 29 - Financial intelligence units.....	181
Recommendation 30 – Responsibilities of law enforcement and investigative authorities	183
Recommendation 31 - Powers of law enforcement and investigative authorities	184
Recommendation 32 – Cash couriers.....	186
Recommendation 33 - Statistics.....	190
Recommendation 34 – Guidance and feedback.....	191
Recommendation 35 – Sanctions.....	191
Recommendation 36 – International instruments	192
Recommendation 37 - Mutual legal assistance.....	193
Recommendation 38 – Mutual legal assistance: freezing and confiscation.....	194
Recommendation 39 – Extradition	196
Recommendation 40 – Other forms of international cooperation.....	197
Summary of Technical Compliance – Key Deficiencies	201
TABLE OF ACRONYMS	205

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Thailand as at the date of the end of the on-site visit (11 November 2016). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Thailand's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- There is strong political support for recent AML/CFT reforms and for ongoing coordination and cooperation at policy and operational levels.
- Thailand's statutory instruments demonstrate generally good compliance and AML/CFT institutional arrangements have also developed significantly since the 2007 Mutual Evaluation Report (2007 MER).
- Thailand is subject to a large number of significant ML and TF threats and authorities generally have a reasonable understanding of the risks. The 2012 National Risk Assessment (NRA) informed priorities for reform. The 2016 NRA added to the deeper understanding of risk. That NRA adopted a robust methodology and will provide a good basis for risk-based policy development.
- Authorities have assessed risks of domestic terrorism including many related elements of TF, but transnational terrorism and TF are not as comprehensively assessed. Relevant agencies demonstrate a good understanding of TF risk and context and intelligence sharing structures support awareness of TF risk amongst authorities.
- There are gaps with assessments of sector-specific risks or more detailed TF risks assessments being available to the private sector. Findings of risk assessments have not been well applied to consider exemptions or enhanced measures for ML/TF risk mitigation.
- The Anti-Money Laundering Office (AMLO) is Thailand's central authority for AML/CFT and plays a pivotal role in coordinating ML/TF risk assessments, including the NRA, and the development of the national AML/CFT strategies. AMLO is also the sole AML/CFT supervisor and a specialist asset recovery Law Enforcement Agency (LEA). AMLO, in its FIU role, collects a very wide range of data, and provides a financial analysis and intelligence capability that is highly regarded by key agencies responsible for investigating and prosecuting predicate crimes, ML and TF.
- Financial intelligence is integrated into predicate investigations, although key LEAs tend to place an over-reliance on financial intelligence generated by AMLO at the expense of developing

in-house expertise. This also contributes to less proactive analysis and under-resourced strategic analysis within AMLO.

- Thailand has achieved a reasonable number of successful outcomes from ML investigations and prosecutions; however ML is not sufficiently pursued as a policy objective and used to target key risk areas, particularly corruption.
- Confiscation is actively pursued and AMLO plays a significant role in asset tracing, restraint, seizure, management and confiscation. Comprehensive provisional measures are well implemented. Successful confiscation is well demonstrated in narcotics matters, but is not evident across the spectrum of high-risk crime types in Thailand. The National Anti-Corruption Commission (NACC) results reflect an emphasis on unexplained wealth proceedings rather than financial investigations. Implementation of cross-border controls on cash and related detections and confiscations does not reflect the risks Thailand faces.
- Despite high-risks of TF, particularly in Thailand's southern border provinces, Thailand only had three cases of TF under investigation at the time of the onsite and there had been no convictions for TF. A large number of security cases had been pursued where other relevant criminal provisions were utilised to prosecute offenders for conduct related to TF.
- Thailand has made strategic use of domestic 1373 designations to combat domestic terrorism threats, having made 83 domestic proscriptions. These designations complement criminal justice measures. Implementation of targeted financial sanctions (TFS) against terrorism is strong in the banking and insurance sectors but there are challenges amongst other sectors of Financial Institutions (FIs) and Designated Non-Financial Business and Professions (DNFBPs). Some assets have frozen in relation to the 1373 designations, but no assets have been frozen pursuant to 1267/1989. The results from TFS are largely in keeping with the risk profile.
- Thailand has made some assessments of Non-Profit Organisation (NPO) sector risks however further assessments are required to more effectively target risk-based measures and oversight. AMLO has undertaken outreach to the sector and regulators on risk.
- Thailand has strong policy coordination mechanisms to support implementation of its new legal framework for implementing weapons of mass destruction (WMD) related TFS and additional measures including criminalisation of proliferation financing (PF). Thailand issued guidelines on PF ahead of the new legal framework and conducted awareness raising, outreach and supervision to support implementation by Reporting Entities (REs) from late 2016. The PF guidance included information on vulnerabilities to PF and related sanctions evasion.
- AML/CFT preventive measures reflect a degree of technical compliance with the FATF standards although significant gaps remained at the time of the onsite. There are some gaps in clarity and consistency between the various notifications and guidelines, in particular around enhanced due diligence, which may hinder implementation. Local large commercial banks and foreign commercial banks demonstrate a more developed understanding of their ML/TF risks and obligations, followed by local banks. The implementation of controls on politically exposed person (PEP) continues to be a priority and a challenge. The quality of suspicious transaction reporting (STR) reporting has shown a strong improvement, but the scope of sectors reporting requires further support. The role of AMLO and other authorities in outreach is a strength, but

more support is needed for FIs and DNFBPs to understand their risk and obligations. Comprehensive customer due diligence (CDD) obligations for most DNFBPs only entered into force in late 2016.

- The structural framework for AML/CFT supervision has been significantly strengthened in recent years. The transition of AMLO to the role of primary AML/CFT supervisor was successful. AMLO has a strong understanding of risk to support it taking a risk-based approach to supervision. There are gaps in fit and proper controls over some sectors to prevent criminals and their associates from entering the market and checks do not extend to beneficial ownership, with the exception of the securities sector. It is notable that ownership of the banking sector has been very stable over a long period. AMLO's approach to supervision is generally robust and is continuing to mature, however a greater allocation of resources and more joint work with sectoral supervisors is required to enhance effective risk-based supervision. Available sanctions for AML/CFT failures are low and the process for application of fines for breaches is limited to criminal prosecutions and related settling mechanisms. This undermines effective enforcement.
- Obligations on legal persons to register basic ownership details assist with transparency. Thailand relies on FIs to obtain beneficial ownership (BO) information as part of CDD, however the lack of detailed CDD obligations for DNFBPs undermined the availability of BO information. Filing obligations support the identification of BO for public limited companies. Thailand has demonstrated experience in requesting basic and BO information of legal persons and arrangements formed abroad and information on foreign natural persons who may own or control Thai legal persons.
- Thailand takes an open and flexible approach to international cooperation supported by a legal framework that generally conforms to international standards. Informal cooperation is used as a tool to enhance investigations and discuss transnational elements of predicate crimes. Thailand is very responsive to mutual legal assistance (MLA) requests. However, the international cooperation framework is not used in line with the risk profile nor targeted to specific high-risk jurisdictions including Thailand's immediate neighbours.

B. Risks and General Situation

2. Thailand is a significant regional economy. It is an open cash-based economy with significant levels of international trade and investment and movement of people, goods and capital. Thailand has porous borders for the informal movement of people, goods and cash.

3. Thailand's assessments of risk have identified corruption, drug offences, tax evasion, unfair securities trade, and customs evasion as the five major crimes which contribute to a large majority of all crime-generated assets. Thailand faces a range of risk beyond these crime types. Authorities acknowledge high-risk channels of ML to include commercial banks and the real estate sector. Other channels posing ML risks include cross-border movement of funds, antique traders, NPOs, car dealers and gold & jewellery traders. Cross-border risks relate to immediate neighbour jurisdictions, jurisdiction within and beyond the region and the movement of people, goods and capital through Thailand. These factors have been assessed in NRAs in 2012 and 2016.

4. Thailand is exposed to TF threats from domestic terrorist groups operating particularly in the southern border provinces. Thailand is also vulnerable to transnational terrorism threats including

foreign fighters seeking to return to other Southeast Asian countries. Fundraising for terrorist incidents is mainly generated through illegal activities, crowdfunding, NPOs and self-funding. Authorities consider border customs checkpoints, commercial banks and specialized banks as being vulnerable to TF. The funds identified are mainly used for operational and organisational purposes, particularly to launch incidents and acquire arms and weapons. TF is seen associated with training and conducting campaigns, including through the use of social media, to expand terrorist networks.

5. Thailand displays a generally high-level of political commitment to combat ML and TF. Coordination mechanisms under the Anti-Money Laundering Board (AMLB) support the development of reforms to policies, statutory frameworks and implementation priorities. Cabinet decisions have supported the increased allocation of resources and institutional reform to prioritise AML/CFT implementation. The 2010-2015 National AML/CFT Strategy concentrated on major legal and institutional reforms, including shifting to a risk-mitigation approach.

C. Overall Level of Effectiveness and Technical Compliance

6. Thailand's recent AML/CFT reform have been driven by the outcomes of the 2007 MER, findings of the 2012 NRA and the FATF ICRG review. Key reforms have included the passage of the Counter Financing of Terrorism Act (CFT Act), amendments to the Anti-Money Laundering Act (AMLA), the establishment of a specialised corruption court, the establishment of an anti-human trafficking arm of the Royal Thai Police, implementation of various Ministerial Regulations and issuing of comprehensive controls for proliferation financing.

7. Thailand now has a generally robust legal and institutional framework for international cooperation, financial intelligence and confiscation of proceeds of crime. Thailand has demonstrated an increasing degree of effectiveness and technical compliance in these areas. Progress has been achieved in national coordination, supervision, ML/TF investigation and prosecution, preventive measures and financial sanctions. Major improvements are needed with the transparency of legal persons and arrangements and preventive measures. Further key reforms occurred soon after the onsite visit, including a new Ministerial Regulation on CDD covering DNFBPs and inclusion of tax offences as predicates to ML.

C.1 Assessment of risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

8. Thailand has taken a range of steps to identify, assess and understand its ML and TF risks, particularly through the two NRAs in 2012 and 2016 and joint agency processes to assess terrorism and TF risks. The conduct of the NRA risk assessments was reasonable; however, the findings of the 2012 NRA, in particular, were not well understood by key stakeholders. The 2016 NRA benefited from a refined methodology and a wide range of government and private sector stakeholders. Sector-specific risks have not been comprehensively assessed and detailed threat assessments of particular crime types, transnational threats or laundering channels are not available to be shared with the private sector.

9. Thailand has assessed the risks of domestic terrorism and associated TF with consideration being given to formal and informal intelligence sharing and situational reports. The assessments identify radicalisation via social media and fundraising from NPOs, illegal activities, crowdfunding and self-funding as key risks. Assessments of transnational terrorism and related TF threats have been done within government.

10. Policy and operational level coordination structures function well for combating ML under the AMLB and through various inter-agency coordination processes for CT and counter-proliferation. AMLB regularly reports on AML/CFT progress to the Councils of Ministers which help to support strong political support for AML/CFT reforms and implementation.

11. The AMLB and AMLO played key roles in coordinating the NRA and developing the 2010 – 2015 National AML/CFT strategy. Operational level coordination is characterised by a large number of joint agency structures, but the results from these have been mixed. Strong coordination is in place to help to mitigate terrorism risks by involving the military, security and intelligence agencies along with the RTP.

12. The 2010 – 2015 National AML/CFT strategy largely focused on legal and institutional reforms arising from the MER findings. The 2015-2021 National Security Policy has taken into account some further risk and Thailand is taking steps to update the AML/CFT national strategy following the 2016 NRA. Agency level priorities and risk-based exemptions and enhanced measures have not been sufficiently influenced by risk assessment findings, although a number of agencies have taken important steps to allocate resources according to risk mitigation priorities (eg. AMLO's allocation of supervisory resources).

C.2 Financial intelligence and ML investigations, prosecutions and confiscation (Chapter 3 - IOs 6, 7-8; R.3, R.4, R.29-32)

13. AMLO has strong capacity in collecting information from REs, relevant domestic agencies and international partners and preparing and providing good quality operational intelligence reports to support LEA investigations. AMLO's disseminations have been focused on reactive disseminations to LEAs, reflecting LEAs' reliance on AMLO for financial intelligence. AMLO has had less focus on proactive intelligence dissemination.

14. Thailand demonstrated strong outcomes in ML investigations and prosecutions, especially related to the high-risk areas of fraud and narcotics. However, there is a need for priority to be placed on using AML tools to pursue proceeds of corruption and other major predicate offences. There is a gap with predicate offences such as smuggling of migrants, tax offences and unlawful trafficking in stolen goods. Whilst tax offences were subsequently enacted as a predicate offence after the onsite, smuggling of migrants remains a high-risk area for Thailand and should be a priority action for legislative reform. LEAs could benefit from specialist financial investigation units, particularly the Royal Thai Police (RTP), NACC and the Department of Special Investigation (DSI), to pursue a wider range of proactive ML matters.

15. Only the RTP and the DSI are empowered to investigate ML cases. The RTP demonstrated a reasonable understanding of the benefits of using ML prosecutions as a tool to combat the key profit driven crimes going beyond predicates and asset confiscation. The DSI requires a greater focus, resources and expertise in ML and financial investigation. Early coordination between LEAs' investigators and Office of Attorney General (OAG) needs to be established during ML investigations, particularly in complex matters, and those involving cross-border evidence collection, asset restraint and recovery etc.

16. Thailand has a sound legal framework for freezing, seizing and forfeiture of criminal assets. The system is well supported by AMLO, which is the specialist agency responsible for pursuing a majority of proceeds of crime matters. Thailand also demonstrates progress in relation to forfeiture of assets relating to foreign predicate offences. There is a significant under-use of forfeiture of property of

corresponding value is a weakness that should be prioritised for reform. Challenges are noted in relation to the confiscation of cross-border movement of cash and bearer negotiable instruments (BNI) where regulation, enforcement, and proportionate and dissuasive sanctions require improvement.

C.3 Terrorist financing and financing of proliferation (Chapter 4 – IOs 9-11; R.5-8)

17. RTP is the competent authority for TF investigations, with AMLO having a role in developing TF-related financial intelligence. AMLO has successfully developed good quality TF-related intelligence and has shared detailed financial intelligence reports on TF with RTP. Despite this, only three TF cases were under investigation and no TF prosecutions had been commenced as of the time of the onsite. In some cases where elements of terrorist financing were evident, Thailand has pursued alternative Penal Code provisions to charge various other offences including section 135/2 which covers narrow elements of TF conduct.

18. Financial intelligence has played a key role in the investigation of terrorism incidents and authorities have seen positive results from complex investigations. Despite the noted low numbers of requests for formal international cooperation, the RTP and intelligence agencies demonstrated regular coordination with international partners, especially those from neighbouring countries, to exchange information on CT and CTF matters through informal channels. Financial investigations conducted by AMLO have contributed to domestic designations of terrorists.

19. 83 domestic entities have been proscribed under UNSCR1373 provisions and two persons have been delisted since 2013. TFS has been well-implemented in banking and insurance sectors while more intensive efforts are required in other sectors of FIs, DNFBPs and NPOs. Thailand has been able to freeze approximately 780,000 THB (USD22,285 equivalent) in assets owned or controlled by 35 out of above-mentioned 83 Thai designated persons as of November 2016. Thailand has not contributed to UN proposals under UNSCR 1267 and no assets have been frozen pursuant to the ISIL / Al Qaeda lists. These results from TFS are generally in keeping with the risk profile.

20. Thailand has classified NPOs as being at high-risk for TF in Thailand. Work has been done to assess the risks and supervisors appear to be operating on a risk mitigation basis, however, they do not have adequate sanctions available to them. There has been a concerted effort to conduct targeted outreach to at-risk NPOs.

21. In late 2016 Thailand introduced a generally comprehensive legal framework for TFS against WMD proliferation and criminal offences of PF. Thailand has published PF-related guidance and WMD-related UN designations on AMLO's website. Outreach has taken place to industry ahead of the passage of the new CTPF Act in late 2016¹. Thailand's outreach and supervision have supported a number of sectors to implement screening of customers and transactions for PF-related TFS (Iran and the DPRK).

C.4 Preventative measures (Chapter 5 - IO.4; R.9-23)

22. AML/CFT preventive measures are well implemented by banks, securities companies and specialised financial institutions (SFIs) in Thailand. Local large commercial banks and foreign

¹ NB The new CTPF goes beyond the FATF standards for combating PF, including a stand-alone criminal offence for PF and related STR reporting obligations.

commercial banks have a reasonable understanding of obligations, ML/TF risks and appropriate mitigation measures.

23. There is a lack of consolidated rules, instructions and guidelines to support sectors understanding the details of AML/CFT requirements and their practical implementation. Increased outreach on awareness of ML/TF risks to cooperatives, money transfer agents, and other DNFBPs sectors (e.g. gold and jewellery traders and real estate brokers) is needed to understand obligations and risk mitigation.

24. A significant scope gap remains with the lack of inclusion of lawyers or accountants in the AML/CFT framework in Thailand. Other DNFBP sectors were obliged to report STRs but were not subject to detailed preventive measures. Implementation of AML/CFT controls, including STR report, in DNFBP sectors is not well demonstrated. The passage of the MR CDD for DNFBPs after the onsite visit is a significant development in Thailand's preventative measures framework.

C.5 Supervision (Chapter 6 - IO.3; R.26-28, R. 34-35)

25. In 2015 the AML/CFT supervisory functions of Bank of Thailand (BOT), Securities and Exchange Commission (SEC), and Office of Insurance Commission (OIC) were assigned to AMLO. Each of these prudential supervisors supported programs to transfer supervisors' knowledge and to build capacity at the AMLO. These changes have resulted in a significant improvement of Thailand's AML/CFT supervision structural framework.

26. AMLO has developed supervisory tools to enhance its risk-based approach to supervision and examination methods. There is a need for a more detailed consideration of risks in certain sectors to guide detailed prioritisation of at-risk sectors going beyond banks, e.g. large credit union cooperatives.

27. Supervision of the banking sector has been prioritised and a preliminary round of onsite inspections has been completed with all banks and some NBFIs. Full-scope inspections have been undertaken but thematic examinations in areas of identified high-risk need to be given greater focus. Supervision needs to be applied to all relevant FIs and DNFBPs based on risk. SEC has focused on KYC/CDD and other elements of AML as part of its prudential supervision. There are opportunities for other prudential supervisors to enhance their AML/CFT focus to complement AMLO's supervisory role.

28. Thailand has some gaps with systems and mechanisms for fit and proper controls where regulators have sufficient access to data maintained by LEAs, the FIU, security intelligence agencies and other bodies. There are gaps in the scope of fit and proper controls to prevent criminals and their associates from entering all parts of the market.

29. AML/CFT-related compliance and enforcement actions have been pursued by AMLO and sectoral regulators. However, there are technical impediments to applying administrative sanctions which need to be addressed as a priority. AMLO's supervisory capacity needs to be strengthened with additional resources to allow it to further develop its effectiveness.

C.6 Transparency of Legal Persons and Arrangements (Chapter 7 - IO.5; R.24-25)

30. Elements of ML/TF risks involving legal persons and arrangements were considered in the 2012 NRA. Domestic trusts are not a feature of the Thai system, and there is little awareness of risks posed by foreign trusts operating in the Thai economy. A deeper review of current legal and institutional

frameworks is needed to respond to the risk of misuse of legal persons and arrangements in Thailand.

31. Private limited companies are not subject to the obligation to maintain beneficial ownership information. Thailand relies on having access to CDD information on beneficial ownership obtained by FIs. However, FIs show weaknesses with their CDD and obligations did not apply to DNFBPs at the time of the onsite visit. AMLO demonstrated its experience providing beneficial ownership information to other jurisdictions and seeking beneficial ownership of entities registered overseas.

C.7 International Cooperation (Chapter 8 - 10.2; R. 36-40)

32. Thailand has a comprehensive legal framework and instruments for international cooperation both in formal and informal cooperation. Generally, informal cooperation is well utilised. MLA on ML and TF is lacking, with very low numbers of requests for assistance being made by Thailand - a large portion of MLA requests made by Thailand do not relate to ML, TF or predicates.

33. Thailand generally provides good cooperation to international counterparts with cases evidencing cooperation in complex and high priority cases. Thailand has joined ARIN-AP to support formal cooperation.

34. The MLA Act (2016) provides a legal basis for Thailand to share confiscated proceeds of crime on request of foreign countries. The amendment also includes RTC, AMLO and DSI as competent authorities to act on MLA requests, which add to effectiveness.

35. The Extradition Act (2008) has been well implemented by the OAG, especially in responding to extradition requests. Whilst the number of extradition requests is increasing, authorities could make greater use of extradition for ML, TF and related predicates.

36. LEAs, especially RTP, have been productively cooperating with foreign counterparts including through the use of foreign attaches and liaison officers. AMLO is engaged with international partners at both in operational and policy level within Egmont Group, APG and FATF.

37. Information sharing with foreign regulators and supervisors requires improvement with regards to risk, market entry fit and proper, beneficial ownership information and AML/CFT supervision.

D. Priority Actions

38. The priority recommended actions for Thailand, based on these findings, are:

1. *Risk*: Prepare further detailed assessments of risks, including assessments of key financial and non-financial sectors and stand-alone threat assessments of key crime types. Share the findings of such assessments with all stakeholders, including the private sector. Ensure such findings support risk-based exemptions and enhanced requirements.
2. *ML investigation*: LEAs should develop further in-house ML investigation expertise and more actively pursue ML investigations to target key risk areas.

3. *Asset recovery*: LEAs should more actively pursue asset seizure and confiscation across the spectrum of high-risk crime types in Thailand.
4. *TF investigation*: LEAs should more actively pursue TF investigations to target key risk areas, including transnational TF threats and stand-alone financiers.
5. *NPO outreach*: Share more risk information and conduct further outreach to at-risk NPO sectors.
6. *PF*: Further support implementation of the new legal framework to combat PF.
7. *Update and consolidate regulations*: Address various technical compliance gaps with the scope of AML/CFT preventive measures and clarify and consolidate obligations to assist REs to understand their responsibilities.
8. *Private sector outreach*: Increase detailed risk information, outreach and guidance to the private sector on a risk-based approach.
9. *Market entry & supervision*: Enhance risk-based implementation of fit and proper controls, offsite and onsite supervision. AMLO's robust approach to supervision requires a greater allocation of resources and more joint work with sectoral supervisors to enhance effective risk-based supervision.
10. *Sanctioning non-compliance*: Enhance and streamline the process for applying sanctions for AML/CFT failures.
11. *Transparency of legal persons*: Enhance the obligations for and implementation of registration of legal persons and obligations in relation to capturing beneficial ownership information.
12. *International cooperation*: Focus the use of formal and informal cooperation by LEAs to be more in line with the risk profile, i.e. target specific high-risk jurisdictions including Thailand's immediate neighbours.

EXECUTIVE SUMMARY

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	Substantial	Moderate	Low	Low	Substantial
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Moderate	Substantial	Moderate	Moderate	Low	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - Assessing risk & applying risk-based approach	R.2 - National cooperation and coordination	R.3 - Money laundering offence	R.4 - Confiscation & provisional measures	R.5 - Terrorist financing offence	R.6 - Targeted financial sanctions – terrorism & terrorist financing
PC	LC	LC	LC	LC	LC
R.7 - Targeted financial sanctions – proliferation	R.8 - Non-profit organisations	R.9 - Financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
NC	PC	LC	LC	LC	LC
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
PC	LC	LC	PC	C	LC
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
PC	PC	LC	NC	PC	PC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
PC	PC	LC	PC	LC	C
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
LC	PC	LC	LC	PC	LC
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation		
LC	C	LC	LC		

MUTUAL EVALUATION REPORT OF THAILAND

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 31 October – 11 November 2016.

The evaluation was conducted by an assessment team consisting of:

- Mr John Visser, Austrac, Australia
- Ms Pei-Ling Tsai, Ministry of Justice, Chinese Taipei
- Mr Roland Villaluz, Anti-Money Laundering Council, Philippines
- Ms Joyce Chan, Hong Kong Monetary Authority, Hong Kong, China
- Mr Kamal Hossain, Bangladesh Financial Intelligence Unit, Bangladesh
- Ms Jennifer Wallis, United States Department of Justice, United States of America
- Ms Michelle Harwood, Deputy Director, APG Secretariat.
- Mr David Shannon, Director, APG Secretariat.

The report was reviewed by Ms Masha Rechova, FATF Secretariat, Mr Jonathan Pampolina, the International Monetary Fund and Mr Hari Nepal, Nepal Rastra Bank.

Thailand previously underwent a Mutual Evaluation in 2007, conducted by the International Monetary Fund according to the 2004 FATF Methodology. The 2007 detailed assessment report has been published and is available at www.apgml.org.

Thailand's Mutual Evaluation adopted in July 2007 concluded that the country was compliant with 2 Recommendations; largely compliant with 4; partially compliant with 29 and non-compliant with 13. Thailand was rated compliant or largely compliant with 3 of the 16 Core and Key Recommendations.

CHAPTER 1. ML/TF RISKS AND CONTEXT

Background

39. The Kingdom of Thailand is located in Indo - China peninsula in Southeast Asia, covering 513,115 square kilometres. Thailand is bounded by Myanmar to the north and the west, Lao PDR to the north and the east, Cambodia to the east and Malaysia to the south. Thailand is divided into 77 administrative provinces and has a population of approximately 65 million. Its capital, Bangkok, has a population of approximately 10 million.

40. The Thais form the majority ethnic group of the country, representing 75% of its population while Chinese and other ethnic groups represent 14% and 11% respectively. The official language is Thai and the majority religion is Buddhism.

41. Thailand has a democratic form of government with the King as its head of state. The Prime Minister is the head of the national government, and the Parliament comprises the House of Representatives whose members are both elected through both general elections and party-list basis, and the Senate. Thailand has a history of military coups. The latest coup d'état occurred on 22 May 2014. At that time the military government suspended the previous Constitution. Parliament was reduced to a single legislative chamber (the National Assembly). At the time of this report, Thailand was under an interim Constitution, with a joint government and the military-led group known as the National Council for Peace and Order (NCPO). Thailand is in the process of constitutional reform after a public vote in mid-2016 agreed to a new constitution.

42. The Thai legal system is based on civil law. Judicial power is exercised through the Court of Justice (comprising Court of First Instance, the Court of Appeals, and the Supreme Court), the Constitutional Court, and the Administrative Court (consisting of the Administrative Court of First Instance and the Supreme Administrative Court).

43. Total currency in circulation as at 31 December 2016 was THB1,864,165 million (approx. USD52.8 billion). This amounts to 28,274 THB per person and is equivalent to 49% of GDP. According to the authorities, the use of cash is high relative to other countries.

44. At the time of the onsite visit, one USD was worth approximately 35 THB. This rate is used to convert USD equivalent figures throughout the report.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks and possible exposure to PF

45. While there is no official estimate of the value of proceeds generated annually by predicate crimes committed in Thailand, or foreign proceeds entering Thailand, the amount is high. The size, nature and location of the Thai economy and its positioning in the region expose Thailand as a destination or transit point for foreign proceeds of crime.

46. The 2016 NRA highlights that Thailand is exposed to a range of ML and TF threats and vulnerabilities. Thailand has assessed corruption, drug offences, tax evasion, unfair securities trade and customs evasion are the five major crimes which, taken together, contribute a large majority of all crime-generated assets. The channels that were identified as being at a high-risk of ML are commercial banks and the real estate sector. Other channels that were identified as posing ML risks

are antique traders, NPOs, cross-border movement of funds, car dealers and gold & jewellery traders. In respect of TF, authorities consider that funds are mainly transferred through NPOs, illegal activities, crowd-funding and self-funding. Thailand's highest scoring areas of TF vulnerability relate to border customs checkpoints, commercial banks and specialized banks.

47. In 2012 the NRA identified gambling, copyright infringement, fraud, sexual exploitation and tax evasion as collectively accounting for 95% of all crime-generated products. The same assessment identified corruption, drug trafficking and human trafficking as the primary sources of inbound and outbound flows of criminal proceeds.

48. Thailand has long porous borders that facilitate the movement of people, goods and funds across all borders. This also impacts cross-border trade and remittances and the very large number of informal migrants and informal movement of people, goods and funds into and out of Thailand.

49. The risk of TF is relatively high. The domestic terrorism situation, particularly in Thailand's southern border provinces was considered along with the associated domestic and transnational elements. The presence of and funding arrangements for transnational terror groups in Thailand along with the exposure to proliferation financing including sanctions evasion and the exposure of the Thai economy to DPRK trade were also matters taken into consideration.

Country's risk assessment and scoping of higher-risk issues

50. Thailand produced its first national risk assessment in 2012 with support from the IMF. At the time of the onsite visit, Thai authorities were well advanced in their work to complete a further NRA. LEAs have produced a range of other threat assessments for use of government agencies.

2012 national risk assessment (NRA)

51. The methodology adopted by the IMF in the 2012 risk assessment found Thailand overall has a much higher level of ML risk. Main factors identified include weaknesses in LEAs efforts to detect and investigate ML (low levels of LEA staff trained in AML/financial investigations), transparency of legal persons, and weaknesses in the deprivation of criminal's illicit assets. Outbound flows of proceeds of crime from Thailand to other jurisdictions were perceived to predominately come from corruption, illegal prostitution, drug and human trafficking, insider trading and market manipulation and tax and excise evasion.

52. The scale of proceeds from foreign offences passing through Thailand was not known, however, the 2012 NRA identified the main source countries for proceeds of crime as Myanmar, Malaysia, Cambodia, the USA, Singapore, China and Hong Kong, China. The NRA noted the ease of smuggling cash in or out of Thailand and the very large informal economy, with a predominance of cash transactions across the economy. Preventive measures and their implementation were weak.

53. The 2012 NRA looked at relative ML/TF risks between sectors and found that banks and deposit-taking institutions were of higher net ML risk on the basis of a higher likelihood of substantial ML occurring despite having the best AML controls. The inherent likelihood of substantial ML occurring in the cooperative sector was assessed as being lower. The securities sector was assessed as having a medium risk on the basis of a medium likelihood of substantial ML occurring. The insurance sector was assessed as having the lowest ML risks. Money service businesses (MSBs) were assessed as higher risk reflecting their diverse customer base which includes walk-in customers and tourists and non-residents. The sector has a limited ability to access

adequate resources to enable them to effectively implement AML/CFT risk management frameworks. DNFBPs were assessed at medium risk of ML.

54. The 2012 NRA identified Thailand as generally having a higher level of TF risk. Weaknesses in LEA and FIU efforts to detect TF and CFT preventive measures were noted. At the time of the 2012 NRA, there was an absence of a TF legal framework. The banking and MSB sectors were found to have the highest TF likelihood. Higher risks were noted with NPOs, with weak CFT controls on the sector.

2016 national risk assessment

55. At the time of the ME onsite, Thailand was in the process of finalising an updated full-scope NRA which was scheduled for completion in early 2017. Thailand shared the preliminary results of the NRA with participating industry representatives and the assessment team. The 2016 NRA found:

- a) Flows of cross-border proceeds of crime tended to be more inbound than outbound.
 - i) Inflow mainly emanates from drug and fraud from the US, Europe, Myanmar and China via banks. Tourist businesses are often used as front businesses for incoming proceeds.
 - ii) Outflow tends to result from fraud and gambling proceeds generally to the US, EU and jurisdictions such as Singapore, Hong Kong, China and Macao, China via banks or couriers.
- b) The five major crimes for proceeds of crime are corruption, drug offences, tax evasion, unfair securities trading and customs evasion. Together they contribute approximately 86% of all crime generated assets.
- c) Commercial banks, whilst having good management and control measures, pose the highest vulnerabilities for the ML due to the complexity of their products and a wide range of service channels with branches across diverse locations and interconnectedness to the international financial system.
- d) Real estate agents are often used by criminals as a channel for ML due to the ease to convert proceeds of crime into property rights and the ability to conceal true ownership.
- e) NPOs pose a high-risk due to their inadequate AML/CFT oversight and a lack of transparency.
- f) The cross-border movement of funds is a vulnerability for Thailand. Thailand's borders are a particular vulnerability in light of the ease in which criminals can cross the border, lack of official checkpoints which facilitates many predicate crimes and the smuggling of various items. There are relatively low levels of cooperation between relevant authorities.
- g) Insurance companies, funds transfer companies, money changers, cooperatives, life and non-life insurance companies, specialised banks and the electronic cards business were all found to be low-risk for ML.
- h) In relation to TF, Thailand has worked to assess and estimate volumes of funds raised to launch terrorism incidents, buy equipment and support training, as well as assess the main channels used for fundraising. Funds are mainly raised through NPOs, illegal activities,

crowdfunding and self-funding. Cross-border movement of cash, use of commercial banks and specialised banks are particular vulnerabilities for moving TF-related funds. The funds are mainly used for operational and organisational purposes, predominately to launch incidents and acquire arms and weapons. Funds are also used for training and to conduct campaigns including through the use of social media to expand the network.

- i) Thailand's informal economy is significant with research contending it is on a comparable scale to the formal sector. Other sources put the figure between 30 – 40% of GDP.

Key ML and TF threats

56. The assessment team identified the following ML and TF threats facing Thailand, based on Thailand's risk assessments and other credible assessments and research sources.

- *Organised crime* - Thailand faces significant threats from a range of organised crime groups (domestic and transnational). Transnational crime groups from across the globe have been detected in serious crime cases in Thailand. Such groups are involved in a wide range of crime types and operate in or use Thailand as a destination or transit point to commit crimes and launder proceeds.
- *Corruption* – Thai authorities recognise significant risks from domestic and foreign corruption. For domestic corruption, issues such as bribery, extortion, embezzlement, procurement fraud, patronage, state-owned enterprises and tendering processes, foreign bribes of local officials and cases of facilitation of other predicate crime types present particular risks. Foreign corruption issues of high-risk include Thailand being a destination of choice for proceeds of foreign bribery and the bribery by Thai businesses of foreign officials. Corruption also undermines aspects of the implementation of AML/CFT measures.
- *Terrorism financing* – domestic TF from home-grown groups chiefly operating in the southern border provinces. Financing these groups is generally on a small scale albeit with some cross-border movement of financiers. Thailand faces transnational TF threats, including vulnerability to transnational groups who target Thailand for support, funding, the movement of persons or the laundering of proceeds. The assessment has considered financial vulnerabilities from returning ISIL foreign fighters who may use Thailand as a transit country.
- *Fraud* – Thailand has risks from large numbers of large-scale domestic and transnational frauds, with increasing trends with boiler room scams, MLM companies and cooperatives.
- *Smuggling and trafficking (all involve significant control by various transnational organised crime groups and connections to domestic and foreign corruption and other offences):*
 - *Drug trafficking* – Thailand is a trans-shipment route for illicit drugs and precursors from the 'golden triangle' and 'golden crescent' regions, with drugs ultimately bound for markets in Europe, the US, Canada, Australia and other regions. These include methamphetamine and opioids. Vulnerabilities from the long porous borders with Myanmar, Lao PDR and Cambodia pose risks. Thai nationals' involvement in smuggling cases in other regions was noted. Thai authorities continue to detect

transhipments of cocaine². Thailand has a significant domestic market for methamphetamine which is predominantly imported from Myanmar.

- *Human trafficking* Thailand is a significant source, transit and destination country for human trafficking for forced labour (especially in the fishing and seafood processing industries) and commercial sexual exploitation. Thai authorities have identified significant links to corruption in human trafficking matters. Risks are particularly noted at the border with Myanmar. The UNHCR has estimated that traffickers generated up to US\$100 million per annum on the Myanmar/Thailand/Malaysia route.
- *People smuggling* – Thailand is a transit country for people smuggling within and beyond Southeast Asia. There are significant links to transnational organised crime groups involved in both people smuggling and human trafficking and there are links to corruption. Thai authorities have uncovered sophisticated networks of people smugglers linked with the production of counterfeit identity documentation. People smuggling risks are particularly noted at the border with Myanmar given, the large numbers of Rohingya population coming into Thailand. People smuggling is not a predicate offence for ML.
- *Oil Smuggling* – Thailand is both a destination and transit point for fuel smuggled from Malaysia and other countries by land (especially through the three southern border provinces) and sea. Press reports indicate possible links to domestic terror groups in the southern border provinces.
- *Wildlife trafficking* – Thailand has been both a source and transit point for trafficked wildlife. Until 2015 Thailand was a major market for ivory sales, but Thai authorities have cracked down on the trade.
- *Antiquities trafficking* - Thailand has been both a source and transit point for antiquities trafficking.
- *Laundering of money from foreign predicate offences* – Thailand faces particular risks of proceeds from neighbouring countries in relation to key crime types such as fraud, corruption, drug trafficking, environmental crime, human trafficking and tax crimes operating in the region. Thailand's geographic location and the size and open nature of its financial sector make it vulnerable to illicit funds both ML and TF-related through Southeast Asia and other jurisdictions.
- *Gambling* – Gambling is illegal in Thailand but takes place on a very large scale. This includes domestic gambling syndicates and the movement of people and funds to and from key casino jurisdictions in the region (both casinos on borders with Cambodia, Lao PDR and Myanmar, and other regional casino centres). Risks are posed by foreign casino junkets operating in Thailand or supporting Thai gamblers. The role of trade-based ML in the movement of gambling funds is a risk.
- *Tax offences* – Thailand is a target for a range of tax offences, including the conduct of foreign tax crimes.

² Thai authorities seized the following amounts of cocaine in recent years: 2015 - 48kg; 2014 - 28 kg; 2013 - 69kg. source: US State Department International Narcotics Control Strategy Report - <https://www.state.gov/j/inl/rls/nrcrpt/2016/vol1/253313.htm>

- *Identity fraud* – identity fraud is seen as a stand-alone crime type and is closely linked to ML/TF and other offences. Open sources indicate that Thailand has been a hub for transnational ID fraud syndicates. Thailand has demonstrated very significant outcomes to break up transnational ID fraud groups. Domestic ID fraud is also a feature in ML cases.

57. The channel most vulnerable to ML activity appears to be the banks due to their dominance of the financial sector, the range of products they offer, the transaction volumes they handle, and the interconnectedness of the banking sector with the international financial system.

58. The openness of Thailand's economy and the volume of international visitors and informal migrants expose Thailand to international ML activity, but the full scope of this is unclear. It is clear that Thailand is an attractive destination for proceeds of crime from Mekong countries as well as part of Europe and Asia. The main destinations for outwards flows include the United Kingdom, United States, Singapore, Hong Kong, Macao China and certain tax havens.

Key ML and TF techniques

59. The assessment team has identified the following ML and TF techniques in Thailand, based on Thailand's risk assessments and other credible assessments and research sources.

- laundering schemes being more organised, including the involvement of independent or semi-independent (family members) third party launders;
- laundering using more sophisticated methods such as nominees (formal and informal);
- use of front businesses, in particular, tourism-sector businesses and cash-intensive businesses and activities;
- investment in the real estate sector;
- investment in high-value goods;
- investments in antiquities;
- wire transfers (through banks) out of the country;
- illicit proceeds held in cash and/or illicit proceeds rechannelled from cash into the regulated formal economy.

Risk Scoping Exercise

60. The higher risk areas that were of additional focus by the assessment team included domestic and transnational elements of the following:

- Organised crime risks, including its involvement in various key crime types (drugs, human trafficking, people smuggling, fraud, etc.);
- Corruption risks (both corruption and bribery offences and involvement of corruption in ML/TF and predicates);
- terrorism financing;
- fraud;
- drug trafficking;
- human trafficking;

- people smuggling;
- tax offences; and
- laundering proceeds of foreign offences.

Materiality

Nature of the economy

61. Thailand is an upper middle-income jurisdiction with an open economy. Thailand ranks as the second largest economy in Southeast Asia after Indonesia. It has an international reserve of 5 trillion THB (approx. USD166 billion), ranking second largest in the region after Singapore.

62. In 2015, Thailand's GDP was USD395.3 billion (World Bank) with GDP per capita of 201,342 THB (USD 5,750) and an economic growth rate of 2.8%. In 2015 there was significant growth in tourism sectors, but the net value of exports declined by an estimated 5.6%. Exports to the Cambodia, Lao PDR, Myanmar, Vietnam markets continue to increase while exports to other markets have declined.

63. Economic stability is reasonable: the unemployment rate is 0.8% p.a., the inflation rate is 0.9 % p.a. Thailand has a current account surplus of 467,899 million THB, corresponding to 8.9% of GDP. Industry represents the largest economic sector of Thailand while commerce, service and agriculture have smaller shares in the economy. Thailand's main industries include food processing, automobile and auto parts, gems and jewellery, electrical appliances, rubber, chemical and plastics, textile and garment, computer and electronics. Tourism is an important business sector that propelled the national economy in 2015, with the influx of 29.88 million tourists, producing more than a trillion THB income (*Thailand Ministry of Tourism and Sports Statistics*).

64. Thailand has a very large informal economy, with estimates indicating a figure as high as 40.9% of official GDP in 2014³. While this has significantly reduced in the last 15 years, it remains higher than most Asian countries and amongst the highest globally.⁴ The assessors were told that many Thai citizens and foreign workers (formal or informal) conduct a lot of their economic activity in cash outside of the formal economy.

65. At the end of 2014, bond markets had 9.3 trillion THB total bond outstanding, including short-term (< 1 year) and long-term (> 1 year) bonds. At the same time, stock market capitalization reached 14.2 trillion baht, with corporates as the major players. The monthly value of transactions for the foreign exchange market of authorized entities averaged at 6.8 trillion THB. The money market size reached 2.1 trillion baht with the majority of transactions conducted by FIs.

Financial inclusion

66. Earlier financial surveys indicate a large majority the adult population have a bank account.⁵ In Thailand, most people buy their goods and services in cash, yet a high proportion has access to financial services. The Fin Scope survey found 23% use other formal financial services and further

³F Schneider (Johannes Kepler University) in Bloomberg July 1 2015- <https://www.bloomberg.com/news/articles/2015-06-30/bangkok-s-sex-shops-street-bars-survive-graft-crackdown>

⁴ <http://investvine.com/thailands-shadow-economy-among-biggest-globally/>

⁵ 2013 FinScope survey

1

1% use only informal financial products. Contrasting studies find only 59% of the population have accounts and 41% remain unbanked⁶. The survey found that 87% of all bank accounts have less than THB 50,000 (US\$ 1,670) with the average bank account size at THB 4,861 (US\$ 156). A large percentage of Thais maintain low bank account balances and use these accounts primarily for sending and receiving funds. (ADB and UNCDF). The use of credit cards is growing at the rate of 7.26% per year (PS Newswire 2014).

Thailand's financial sector

67. As at December 2015, Thailand's financial services sector had gross assets of THB27,921 billion (USD962 billion). Details of the financial system are given below:

Financial Institutions under AMLA and their Asset Values (as at December 2015)

FIs covered by the AMLA	Number	Asset Value THB (Millions)	% of financial sector assets
FIs			
Banks	37	20,425,267	78.0%
• Commercial banks	31	15,627,111	59.6%
• Specialized banks	6	4,798,156	18.3%
Finance co.	2	9,045	<.01%
Credit foncier co.	3	1,234	<.003%
SFIs (apart from specialized banks)	2	33,572	0.1%
Life and non-life insurance co.	86	3,025,983	11.5%
• Life insurance co.	24	2,578,384	9.8%
• Non-life insurance co.	62	447,599	1.7%
Cooperatives (capitalization over 2 million THB)	3,123	2,305,188	8.8%
Securities co. according to the law related to Securities and Exchange	78	212,184	0.8%
• Securities co.	42	198,000	0.7%
• Asset Mgt. co. (Mutual Fund mgt.)	23	13,803	0.1%
• Investment advisor co.	10	249	
• Mutual funds brokerage securities co.	3	132	
Other financially related business as prescribed in the ministerial regulation	1,892	171,440	
international payments (licensed)	1,842	N/A	
Local and foreign large commercial banks			
Money changers	1,840	N/A	
Money transfer agents	2	N/A	
Asset mgt. co.	38	169,830	

⁶ Van Dam, S 'Banking the Unbanked: The Mobile Opportunity' Global Banking & Finance Review 23 Sep 2013

FIs covered by the AMLA	Number	Asset Value THB (Millions)	% of financial sector assets
derivatives trading companies	7	1,012	
Futures trading (agricultural futures).	5	597	
Financial advisors (FA)	393	N/A	
Personal loan co.	32	733,587	
E – money card service providers	12	16,478	
Credit card service providers	10	268,041	
E – payment service providers	64	719,314	
Money changers (individuals)	54	N/A	
Total FIs	5,788	27,921,726 million THB (approx. USD 748.1 billion)	

DNFBPs covered by the AMLA

DNFBP sectors	Number	Asset Value (Million THB)
Gems, Gold and Jewellery traders	4,576	207,618
Real estate brokers or agents	1,089	11,375
Total covered DNFBPs	5,665	218,993

Other Businesses and Professions covered by the AMLA

Other business sector	Number	Asset value (million THB)
Car dealers and Car leasing co.	4,263	916,481
Antique traders (pawnshops excluded)	3,968	165,949
Total covered other businesses	8,231	1,082,430

FIs and DNFBPs not covered by the AMLA

FIs/DNFBPs not covered by the AMLA	Number	Asset Value THB (Millions)	% of financial sector assets
Leasing companies	767	653,854	2%
Leasing co. (subsidiaries of Thai banks)	16	406,615 249,215	1.24%
Independent Leasing co.	761	247,239	0.76%
Cooperatives with capital < 2million THB	3,760	68,701	0.2%
Pawn shops⁷	598	65,385	0.2%

⁷ Pawn-shops in Thailand offer secured loans of maximum 100,000 baht per customer, with items of personal property used as collateral for a fixed term

1

FIs/DNFBPs not covered by the AMLA	Number	Asset Value THB (Millions)	% of financial sector assets
Certified Accountants and Auditors	50,159		
Lawyers	80,772		

68. The volume of trade finance processed through Thai banks is significant and Thailand serves as a regional trading centre (including for trade finance).

Payment systems

69. Thailand has a well-developed payment systems environment with a number of areas of growth and innovation. Thailand is rapidly expanding new payment systems, with a sharp increase in online banking and mobile banking. At the beginning of 2016, Thailand had 396,257 EFTPOS ATMs in operation across the country. This number had increased 27% in two years.

Exposure to trade and finance with the DPRK or Iran

70. Thailand has been a significant trading partner for the DPRK, although DPRK is a minor trading partner for Thailand and the bilateral trade volume is relatively small in absolute terms. Thai imports from the DPRK represent a very small overall fraction of Thailand's foreign trade. For example, in 2014 Thailand was the DPRK's 6th highest recipient of exports (US\$19.1 million), albeit only representing 0.57% of DPRK's total exports⁸. UN Comtrade database includes official Thai-reported trade data with DPRK and indicated that Thailand exported USD107 million of goods in 2014 and USD73 million in 2015 to the DPRK⁹. Thai Foreign Ministry statements to the media in 2015 stated that two-way trade totalled US\$126.33 million in 2014, with Thai exports to DPRK including rubber, chemicals and plastics, and Thai imports comprising mainly chemicals, iron and steel and electrical machinery¹⁰. It is apparent that Thai companies export to and invest in projects in the DPRK, however details of direct foreign investment or contracts involving Thai firms operating in the DPRK was not provided. There are particular foreign investments by Thai companies (directly and indirectly) in the DPRK telecommunications sector¹¹. Media reports indicate cases of possible sanctions evasion by entities associated with such investment in foreign jurisdictions.

71. Thai authorities have proactively engaged with the private sector on the UNSC sanction measures and concerned government agencies have issued an announcement on the prohibition of import and export of goods from and to the DPRK.

72. At the time of the on-site visit, there were 23 legal persons involving Iranian entities registered in Thailand but no DPRK entities.

⁸ <http://www.worldstopexports.com/north-koreas-top-import-partners/>

⁹ <https://comtrade.un.org/data/>

¹⁰ <http://www.scmp.com/news/asia/southeast-asia/article/1848407/north-korea-invites-thailand-invest-because-thais-are>

¹¹ <https://www.wsj.com/articles/SB105276813727329300>

Thailand trade statistics with Iran

Product type ¹²	2012		2013		2014		2015		2016	
	Quantity*	Value+	Quantity*	Value+	Quantity	Value	Quantity	Value	Quantity	Value
Rice	2693	66.32	71,878	1,418	46,858	734.8	3,970	97	5,547	125,50
Coffee	35232	2.88	39.793	5.04	40.038	3.51	11.964	4	10.74	3.81
Charcoal	9.5	0.25			174.36	2.18	26	0.5	64.3	0.62
Total	37934	69.45	71,917	1,423	47,072	740	4,007.	102	5,622	129

* = tonnes, + = millions of THB

Thailand trade statistics with DPRK

Item	2014		2015		2016	
	THB	USD	THB	USD	THB	USD
Trade value (million)	4,072.03	116.33	2,762.60	78.91	1,756.71	50.19

Top 5 goods exported from Thailand to DPRK - 2016

Goods	Weight (metric tonnes)
1 Rubber	278.8
2 Processed chicken	226.3
3 Plastic resin	62.6
4 Processed/canned vegetables	55.4
5 Processed/canned fruits	50.1

Top 5 goods imported into Thailand from DPRK - 2016

Items (all not-prohibited)	weight (metric tonnes)
Chemical products	28.5
thread and fibre	15.3
Metal, Steel and related product	10.0
Electrical machinery and parts	8.7
Other fuel	4.9

Structural Elements

73. Structural elements for an effective AML/CFT system are largely in place in Thailand.

¹² The categories of goods only cover those items that are not prohibited.

1

74. Political commitment to AML/CFT is high, with the AMLO SG reporting directly to the Prime Minister. The Prime Minister directly issues instructions and guidelines as recommended by AMLO reports on AML/CFT matters.

75. Media reporting, particularly on AML/CFT cases, appears limited in Thailand. Media coverage of significant Thai financial crime matters is relatively sparse. This lack of in-depth public coverage of financial crime cases means that details of such matters are not regularly available to financial institutions except through government assessments or case sharing. The lack of public coverage also presented an obstacle for the assessment team to gather context of significant cases.

76. A range of indicators for governance and integrity indicate relatively low but generally steady levels. The table below summarises the governance indices from the 2015 World Bank World Wide Governance Indicators Country Snapshot¹³. It is noteworthy that Thailand's average governance score has dropped from 52.7 to 44.3 since the same snapshot in 2005. Three of the six indicators have fallen sharply with the others remaining broadly steady.

Table: Thailand Governance Indicators 2015 - World Bank World Wide Country Snapshot

Indicator	Percentile Rank (0-100)
Voice and Accountability	23.6
Political Stability & absence of violence / terrorism	15.7
Government effectiveness	65.9
Regulatory quality	63.4
Rule of law	53.8
Control of corruption	43.7
Average	44.3

77. In the 2015-16 World Economic Forum Global Competitiveness Report Thailand received a Public Institution Index of 3.7 out of 7¹⁴, where the median of all countries was 4.1. Thailand's rankings have gone down in recent assessments. The ranking scores are based on five governance categories (property rights, ethics and corruption, undue influence, public-sector performance and security).

78. The Freedom House, Freedom of the World report for 2016 gave Thailand an index score of 6.5 out of 7 based on their continuing global assessments of political and civil liberties (N.B. 1 is the freest and 7 the least free) and ranked Thailand 32nd percentile¹⁵. This is a reduction compared to previous scores.

79. Thailand has historically had a relatively low ranking on the Corruption Perceptions Index¹⁶. Thailand had a score of 38 for 2014 and 2015 which was up from 35 in 2013 (out of 100 with zero being a high perception of corruption and 100 being a very low perception of corruption). However, combating corruption is high on the political agenda and various measures have been implemented to this cause, such as a dedicated court for corruption matters and the establishment of the NACC in 1999, a dedicated agency to pursue corruption matters. There has been a wide range of civil society

¹³ <http://info.worldbank.org/governance/wgi/index.aspx#reports> – NB that amongst the percentile rankings 0 corresponds to the lowest ranking and 100 corresponds to the highest ranking

¹⁴ <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=THA>

¹⁵ <https://freedomhouse.org/report/freedom-world/2016/thailand>

¹⁶ Corruption Perception Index, © Transparency International 2016.

measures to prevent and combat corruption, including anti-corruption initiatives in the financial sector.

80. The assessment team considered the impact of the Emergency Decree and the involvement of Military Courts in the implementation of AML/CFT measures in Thailand. After May 2014, the Thai military took over executive power. The 2007 constitution was revoked and replaced by an interim constitution in 2014. Under the interim constitution, Article 44 provides the NCPO power to issue orders to “strengthen public unity and harmony” or to prevent any act that undermines public security. At least 107 orders had been issued pursuant to Article 44 to date covering a range of subjects, with the majority issued for administrative purposes, rather than for security issues. The orders most relevant for present purposes include three NCPO Orders that required certain criminal offences to fall under the jurisdiction of the Military Court.

81. Such offences included section 107-112 of the Penal Code (such as firearms, ammunition, and explosives), offences under the Firearms Act and offences under section 113-118 of the Penal Code (offences against the internal security of the Kingdom). As a result of the issuance of the NCPO Orders, the Military Court is sitting in what it deems to be an abnormal period. The most significant effect of this is that there is no right of appeal from the decision of the Court of First Instance. Military Court procedure otherwise follows the Criminal Procedure Code. The Court of First Instance is comprised of three judges, the head Judge being the Judge Advocate General (who must have a law degree and be a barrister-at-law). The accused is entitled to representation of their choice. On 12 September 2016, the NCPO Order 55/2559 was issued to revoke the 3 previous NCPO Orders which means that all offences committed from the date of the revocation are to proceed before the civilian courts, however over 1,000 matters which pending before the Military Court remain in that jurisdiction. This includes the high profile case of the bombing of the Erawan Shrine in Bangkok in 2015. Military Court cases tried after the NCPO orders on 12 September 2016 can, however, be appealed.

82. The Emergency Decree on Public Administration in State of Emergency (2005) remains in place in three southern border provinces (Pattani, Narathiwat and Yala). The practical effect of the Emergency Decree is that it expands on the agencies power to investigate and collect evidence, detain suspects and seize items in cases including terrorism matters. The assessment team found little impact on the imposition of both the Emergency Decree and the involvement of Military Courts in Thailand’s AML/CFT implementation. The majority of relevant offences used to pursue the financial element of terrorism were not handled by the Military Court (see IO9).

Independence of the judiciary

83. On 12 September 2016, the NCPO issued Order 55/2559 (2016) which decided that cases involving threats to national security and insults against the monarchy will no longer be tried in military courts. This order revokes three prior orders, No 37/2557 (2014) (offences under the jurisdiction of the Military Court), Order 38/2557 (2014) (cases involving multiple offences shall be under the jurisdiction of the military court) and Order 50/2557 (2014) (military court to have jurisdiction over cases relating to firearms, ammunition or explosives used in warfare). All offences committed from the date of the order are to be brought before the civilian courts; however, it does not apply to cases that are pending before the military court. Decisions of the military court tried after 12 September 2016 can be appealed. The order to move trials to civilian courts does not apply to over 1,000 cases that are pending before the military courts including the case of the bombing of the Erawan Shrine in Bangkok in 2015.

Background and other Contextual Factors

Overview of AML/CFT strategy

84. The 2010 – 2015 National Strategy contains core objectives to achieve ML and TF compliance with the international standards and reflected risk and context issues highlighted in the 2007 MER. As a result of the National Strategy, resources were provided and legal reform and institutional change were recommended and undertaken.

85. Thailand has made substantial changes to its AML/CFT institutional framework since the 2007 MER. Subsequent to the 2007 MER, Thailand was included in the FATF ICRG process.

86. Since 2010 Thailand has pursued wide-ranging reforms to policies, regulations, policy decisions, and cabinet decisions to allocate resources and institutional reform to prioritise sustained AML/CFT implementation, including supervision and monitoring. Legislative reform was initiated to the AMLA, the CTF Act, along with Ministerial Regulations, particularly relating to CDD, ordinances and guidelines. The regulatory framework in relation to AML/CFT supervision was restructured to more clearly delineate the supervisory roles of AMLO and other sector-specific supervisors. This led to the removal of Thailand from the FATF ICRG process in 2013.

Overview of the legal & institutional framework

87. Thailand has in place the key institutional requirements for an effective AML/CFT system. With high-level support for the implementation of AML/CFT measures, well-resourced agencies with clear lines of responsibility working collaboratively with each other and an independent judiciary the building blocks are in place to implement the strong legal framework that is in place. The agencies tasked with implementation of AML/CFT measures are set out below.

Law enforcement authorities

88. **The AMLO** sets out AML/CFT policies and measures, serves as Thailand's FIU and serves as an LEA empowered to take proceeds of crime action, including related financial investigation, asset restraint, asset management and confiscation actions. The AMLO is also responsible for the supervision of the reporting entities in AML/CFT matters and acts as a coordinator on policies and practices, financial intelligence exchange for both domestic and international level, including AML/CFT supervision and monitoring.

89. **The OAG** acts as the state attorney and is authorized to consider cases involving predicate and ML/TF criminal offences as well as file lawsuits and proceed with criminal procedures. It is the sole prosecution authority for criminal cases in Thailand. OAG acts as the central authority in accordance with the MACM and the Extradition Act and is also responsible for treaties on MLA.

90. **The RTP** is Thailand's main LEA and is responsible for intelligence functions as well as investigating predicate, ML and TF offences. RTP has several branches including human trafficking branch, the Narcotics Suppression Bureau (NSB), economic crimes bureau and the environmental crimes bureau.

91. **The DSI** Ministry of Justice is a specialist LEA responsible for the investigation of special criminal cases, i.e. complex offences as well as those associated with influential people and organized crime. DSI is responsible for investigating predicates, ML, terrorism and TF.

92. **The National Anti - Corruption Commission (NACC)** is the specialist independent agency responsible for investigating corruption cases and unusual wealth of high - ranking state officials and politicians. NACC also has a role in corruption prevention and is responsible for investigating corruption predicates.

93. **Office of Public Sector Anti - Corruption Commission (PACC)** is a specialist authority for investigating corruption and misconduct of lower-ranking officials (lower than those covered by the NACC). PACC also has a role in corruption prevention. PACC is not directly connected to the NACC and does not share governance arrangements.

94. **Office of Narcotics Control Board (ONCB)** is a policy and LEA responsible for the prevention and suppression of narcotics - related offences. ONCB is responsible for investigating narcotics predicate offences as well as the forfeiture of the assets associated with narcotics offences.

95. **Royal Thai Customs (RTC)** is a revenue agency and LEA responsible for Customs administration in Thailand under the responsibility the MOF. It is authorized to investigate Customs offences under other related law. RTC also implements the cross-border cash declaration regime.

96. **National Intelligence Agency (NIA)** is responsible for intelligence operation on threats to national interests or security, as well as intelligence coordination on ML/FT.

97. **National Security Council (NSC)** is a security policy authority, responsible for giving advice on security policies and measures. It also supervises and coordinates on the issues concerning transnational organized crime, international terrorism, and the proliferation of WMD.

98. **Internal Security Operation Command (ISOC)** is a directorate and central coordinating authority for the remedy and combating of the threats to national security, including terrorism and FT.

99. **Ministry of Foreign Affairs** provides legal opinions on MOUs and acts as the coordinating agency regarding international cooperation related to an extradition request.

Overview of the financial sector and DNFBPs

100. As of December 2015, there were 20,427 reporting entities under AMLA. FIs hold total assets of 36 trillion baht, or 2.7 folds larger than the GDP, and these FIs play the greatest role compared to other institutions. Among them, the deposit-taking FIs (e.g. commercial banks, specialized financial institutions (SFIs), savings and credit cooperatives and credit unions, and money market funds) have a market share of as much as 69.6 percent while non-deposit taking FIs have a 30.4% market share. Commercial banks and SFIs play an important role due to their greater number of branches and ease of access over other FIs (9,664 branches and 61,839 ATMs).

101. Amongst the DNFBPs, only traders in gems/gold and real estate agents are included under the AML/CFT framework. Casinos are illegal and TCSPs do not exist as a separate sector in Thailand. Lawyers, notaries and accountants are not covered under the AMLA.

Table: Overview of DNFBPs in Thailand as of December 2015

Types of DNFBP	Registered Number	Laws	AML/CFT Authorities
----------------	-------------------	------	---------------------

1	Casinos	None	illegal in Thailand	
	Gold and Jewellery Traders	4,576	Civil and Commercial Code / AMLA, Section 16 (2)	AMLO
	Real Estate Brokers	1,089	Civil and Commercial Code / AMLA, Section 16 (4)	AMLO
	Lawyers	80,772	The Lawyer Act, B.E. 2528 (1985)	None
	Certified Accountants and Auditors	50,159	The Accounting Act (2000) ¹⁷ The Accounting Professions Act (2004)	None
	Trust and company services provider	None		

Overview of preventive measures

102. Thailand imposes various preventive measures on REs predominantly arising out of the AMLA. Enforceable instruments include the Ministerial Regulations (MRs), Notifications (issued by both AMLO and the Prime Minister's Office (PMO)) and AML Board Rules. Section 4 of AMLA provides a basis for the PM to issue MRs, Rules and Notifications for the execution of the AMLA. Various MRs make reference to section 4 of the AMLA and relevant constitutional provisions. Section 62 of the AMLA sets out penalties for various obligations that exist in the AMLA and subsidiary instruments with direct references to both Ministerial Regulations (e.g. for CDD) and for procedures issued by the AMLO Board (e.g. record keeping). Certain AMLA MRs contain provisions for details of obligations to be set out in rules or further instructions. AMLO Notifications issued pursuant to provisions are considered enforceable as a lawfully issued extension of enforceable provisions in the MRs. Similarly, PMO Notifications issued pursuant to enforceable provisions in the AMLA are enforceable. Thus, the sanctions at section 62 AMLA apply to non-compliance with the broader obligations included in the MRs AML Board procedures, Notifications and PMO rules.

103. Guidelines issued by AMLO and other regulators support the obligations contained in the various enforceable instruments. The guidelines themselves are not directly enforceable.

Overview of legal persons and arrangements

104. Legal persons in Thailand are referred to as juristic persons. Section 65 of the Civil and Commercial Code provide that a juristic person can only come into existence by virtue of this Code or of other law. The Department of Business Development (DBD), Ministry of Commerce serves as the National Central Registrar (the "Registrar") in Thailand. Juristic persons are classified as follows:

For-profit legal persons

105. Legal persons registered under the Civil and Commercial Code include:

¹⁷ See Annex DBD 4

- *Ordinary Partnership* – are formed under the C & C Code. The persons are joint partners who share unlimited liability for all the Partnership's obligations. It is not mandatory to register an Ordinary Partnership but partners can choose to do so as provided in Section 1064 of the C & C Code.
- *Limited Partnerships* – are formed under section 1077 of the C & C Code and are required to register. Upon registration they have separate legal personality. One or more partner's liability is limited to such amount as they may respectively undertake to contribute to that partnership and/or one or more partners who are jointly and unlimitedly liable for the obligations of the partnership. Only the partner with unlimited liability is able to act as a managing partner.
- *Company Limited* – (private companies) are formed with the capital divided into shares and the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them. Any three persons may, by subscribing to a memorandum promote and form a limited company. No invitation to subscribe to shares is able to be made to the public. Limited companies must keep a register of shareholders containing identifying information about each shareholder and the number of shares they hold. Directors must send a copy of the list at least once per year to the registrar and inspection is open to shareholders and members of the public.

106. Legal persons registered under the Public Limited Companies Act include:

- *Public Limited Company* – are formed under the Public Limited Companies Act. Any fifteen or more natural persons may, by preparing a memorandum of association and performing other actions under the Act, promote and form a company. Promoters must not have been bankrupt or imprisoned by final judgement in any offence against property committed dishonestly. Information including basic details of the directors, the location of the principal business office and branch offices, articles of association and a list of shareholders is then provided to the registrar upon registration.

107. *Foreign companies* operating in Thailand (in accordance with the Foreign Business Act) do so under license. Controls apply where a Thai juristic person's majority shareholdings are foreign owned. As of 31 December 2015, there are 4,461 foreign corporate bodies undertaking business in Thailand of which 3,053 were still active. The three businesses most undertaken by foreigners are auction service and advertising businesses (45%), agencies / regional offices (31%), construction/engineering services / state project consultancy (12%).

Non-profit organisations

108. A *foundation* consists of property specially appropriated to a public charity, religious, art, scientific, education or another purpose for the public benefit and not for sharing profit. It must have regulations and be registered under the Civil and Commercial Code. It is subject to tax on its profits albeit at a very low rate (1%).

109. *Associations* (Societies) are governed by the C & C Code and registered by the DPA on a similar basis as foundations. (see Rec 8 for details).

110. *Foreign NPOs* operating in Thailand are governed by the Rule of the Ministry of Labour and Social Welfare on the entry of foreign private organisations to operate in Thailand, the Working of Alien Act and the Rule of Committee on Consideration of the Entry of Foreign Private Organisation.

111. On 31 December 2015, there were 1,296,021 juristic persons registered with DBD of which approximately 617,504 were active (48%). 65,995 were inactive juristic persons (5%) and 612,522 juristic persons ceased to operate (47%).

Status of juristic persons operating in Thailand as of 31 December 2015

Status	Number
Operating business (48%)	
Private Limited Company	438,278
Public Limited Company	1,110
Limited Registered Partnerships	177,404
Ordinary partnership	712
<i>Total Number of Profit organization (registered as juristic person under Thai law)</i>	617,504
Inactive juristic persons (5%)	
Dissolved	50,666
Received absolute receivership order	1,110
Bankrupted	2,968
<i>Total Number of inactive juristic persons</i>	65,995
Ceased juristic persons (47%)	
Liquidated	205,520
Defunct companies and partnerships (were removed from the register)	400,209
Amalgamated	1,153
Converted	5,343
Ceased	297
<i>Total Number of ceased juristic persons</i>	612,522
<i>Total Number of registered juristic persons with DBD</i>	1,296,021

Summary of NPOs operating in Thailand – as of December 2015

Type of NPO	Supervising authority	Number
Society/Associations	DPA	11,390
Foundation	Ministry of the Interior	12,421
International Private Organizations	Department of Employment	80
Total		23,891

Trusts and other legal arrangements

112. Thailand prohibits the formation or governance, under Thai law, of express trusts or other types of legal arrangements with similar structures or functions. Thai law does not prohibit the formation or operation of foreign trusts in Thailand under Thai law. Thailand has a legal framework for statutory trusts (the 2007 Trust Act) and another for usufructs (Civil and Commercial Code). Each of these is a form of investment trust or leasing contract and are not express trusts or legal arrangement with a similar structure or function. Trusts created under the Trust Act of 2007 must be registered with SEC and categories of persons and entities who may be trustees under such trust contracts are also set out by the SEC.

Overview of supervisory arrangements

113. **The AMLO** - is the AML/CFT regulator and supervisor for all of the reporting entities covered under the AMLA.

114. **Bank of Thailand (BOT)** is Thailand central bank and prudential regulator supervisor. BOT stipulates regulations, issues licenses, and supervises banks, financial institutions as well as other regulated businesses. BOT oversees market entry fit and proper controls for its sector and elements of AML/CFT as part of its supervision of operational risk. BOT has licensing and supervisory authority for the following sectors: asset management companies; commercial banks, specialised banks; finance companies; credit foncier company; SFIs; money changers; money transfer agents; personal loan companies; e-money service providers; credit card service providers and e-payment service providers.

115. Securities and Exchange Commission (SEC) is Thailand's security sector prudential regulator and supervisor. SEC oversees market entry fit and proper controls for its sector and elements of AML/CFT as part of its supervision of operational risk. SEC has licensing and supervisory authority for the following sectors: securities companies; asset management companies (mutual fund management); investment advisory companies; mutual funds brokerage securities companies; derivatives trading; futures trading; and financial advisors.

116. **Office of Insurance Commission (OIC)** is the prudential regulator and supervisors of the insurance industry. OIC oversees market entry fit and proper controls for its sector and elements of AML/CFT as part of its supervision of operational risk. OIC has licensing and supervisory authority for life insurance companies and non-life insurance companies.

117. **Cooperative Promotion Department (CPD)**, Ministry of Agriculture and Cooperatives, prescribes regulations and supervises cooperatives. It is entrusted with registering, promoting, supporting and developing the performance of cooperatives in accordance with the law on cooperatives. Cooperatives taking deposits and offering credit do not have a prudential supervisor. CPD oversees market entry fit and proper controls for the cooperatives sector.

118. **Cooperative Auditing Department (CAD)**, Ministry of Agriculture and Cooperatives is responsible for the auditing of cooperatives and groups of farmers. Cooperatives taking deposits and offering credit do not have a prudential supervisor.

119. **Ministry of Finance (MOF)** has licensing authority for Commercial banks; Specialised banks; Finance companies; Credit foncier companies; Money changers; Money transfer agents; Securities companies; Investment advisor companies; Life insurance; Non-life insurance.

120. **Department of Provincial Administration (DPA)**, Ministry of Interior, prescribes the regulations for non-profit organizations, and is authorized by the registrar to provide registration services for foundations and associations. It also supervises antique dealers, who are listed in the AMLA as the reporting entities, and supervises pawnshops.

121. **Department of Employment (DOE)**, Ministry of Labour is responsible for prescribing the regulations for controlling alien labour and permission to foreign NPOs operating in Thailand.

122. **Department of Business Development (DBD)** is Thailand's companies regulator, acting as a central registrar for controlling the registration of Thai legal persons. DBD is also the central accounting agency with the duty to supervise accountants in line with accounting standards.

1

123. **Federation of Accounting Professions (FAP)** is an SRB of professional accountants established under Section 6 of the Accounting Professions Act (2004).

124. **Lawyers Council** is an SRB of lawyers, responsible for the promotion and protection of its members' interests, in accordance with the Lawyers Act (1985).

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Immediate Outcome 1 (Risk, policy and coordination)

Key Findings and Recommended Actions

125. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Key Findings

The 2012 and 2016 NRAs and other assessments of TF risks demonstrate that competent authorities have a reasonable understanding of ML/TF risks. Thai LEAs do not regularly produce written threat assessments of particular crime types, however joint agency sub-committees meet to share information and assess elements of risk of most key crime types. While the 2016 NRA has considered threats of laundering proceeds of foreign predicate offences, the depth of understanding of such threats requires further improvement. Authorities have comprehensively assessed risks of domestic terrorism and related TF, but transnational terrorism and related TF threats are not as well understood.

While the 2016 NRA assessed elements of sectoral risks, there is an absence of detailed assessments of sectoral risks (e.g. for banking, securities, gold traders, real estate, NPOs, etc.), topic-specific threat assessments or case by case risk information to support targeted approaches to risk mitigation. The results of risk assessments are not well used to justify exemptions or support enhanced measures.

Thailand's strong AML/CFT policy coordination includes high-level structures and operational level coordination and cooperation structures. Operational cooperation requires greater support.

Thailand 2010 – 2015 AML/CFT Strategy focused on major legal and institutional reforms and shifting to a risk-mitigation focus across AML/CFT. Thailand had commenced preparing an updated national strategy reflecting preliminary findings of the 2016 NRA.

Thailand demonstrated that its established inter-agency coordination and cooperation activities have supported reforms and implementation planning to give effect to UN obligations in relation to combating the financing of proliferation of WMD.

Recommended Actions

- Implement the 2016 NRA, providing outreach and guidance on its results to a wide range of government and non-government stakeholders.
 - Implement a communication strategy for the NRA and other ML/TF assessment products to ensure effective awareness-raising for government and private sector stakeholders.
- Adjust national and sectoral AML/CFT policies, based on risk assessment findings, with a focus on moving from mostly reactive approaches to include proactive efforts to tackle higher risks.
 - Give greater overall focus in national policies to combating foreign ML/TF threats
 - Set priorities (national, sectoral and agency) and support risk-based implementation of

AML/CFT measures by the private sector.

- Adjust agency-level priorities for combating financial crime risks - LEAs, regulators and especially RTC.
- LEAs should more regularly produce written threat assessments of predicate crimes to provide a basis for further assessments of related financial crime. Initially focus on narcotics (ONCB); fraud (RTP & DSI); human trafficking (RTP); corruption (NACC); tax (DR & DSI), smuggling (RTC & RTP); gambling (RTP); and misuse of legal persons (all LEAs and DBD).
 - NACC should assess corruption and bribery risks behind the unexplained wealth (e.g. risks in state-owned enterprises, procurement, foreign bribery, etc.).
- AMLO should produce more detailed strategic intelligence products for government and private sector stakeholders.
- Prioritise detailed risk assessments, for higher risk sectors (e.g. for banking, cooperatives, securities, gold traders, real estate, NPOs, etc.).
- Support enhanced cooperation to implement the new measures to combat PF, including greater cooperation with strategic trade control agencies and sharing of information on threats and potential for sanctions evasion.

Thailand's assessments and understanding of its ML/TF risks

126. Thailand is subject to a large number of significant ML and TF threats. Thai authorities have undertaken a number of assessments of ML/TF risks that support a reasonable understanding of key areas of risk, albeit with some relative strengths and weaknesses amongst the assessments.

127. The 2012 NRA had identified the major proceeds generating offences as gambling, piracy of product, fraud, sexual exploitation and tax evasion. The 2016 NRA preliminary findings indicate corruption, drugs, tax evasion, unfair securities trade and customs evasion as major proceeds generating crimes in Thailand.

128. Thai authorities were working to finalise the 2016 NRA in early 2017. The 2016 NRA process and oversight by the sub-committee that sits directly underneath the AMLB reflects high-level political commitment. The continuing 2016 NRA process is a positive development, with a wide range of government and private sector entities involved in the assessment. The process of updating the NRA adds to agencies' awareness of risk. There is a continuing need for strong stakeholder engagement across a wide range of government and non-government bodies to respond to the findings of 2016 NRA.

129. The preliminary outcomes of the 2016 NRA and descriptions of the process to complete the NRA suggest that the ultimate assessment will be reasonable. The methodology for the 2016 NRA appears to be sound, as it builds on the IMF's methodology with further additions to further reflect the Thai context. The assessment team has seen detailed materials related to the process, including information collection plans, assessment criteria and the like.

Sources of proceeds/channels of laundering, sources of TF both domestic and foreign

130. Thai LEAs do not regularly produce written threat assessments of particular crime types; however joint agency sub-committees meet to share information on the risks of most key crime types. This includes analysing crime statistics and sharing some key cases. AMLO publishes various

ML/TF situation reports, which are distributed to government and private sector stakeholders. These important assessments from AMLO outline various elements of current and emerging risks.

131. There is a need for further detailed analysis of risks relating to narcotics, fraud, human trafficking, corruption, tax, smuggling, gambling, etc. While the 2016 NRA covers all of these crime types and others, more detailed assessments are needed. Further assessments of corruption risks are needed to support authorities to follow the proceeds of corruption and bribery, particularly those that go offshore. A comprehensive understanding of threats of laundering proceeds of foreign offences was not sufficiently demonstrated. The 2016 NRA process has included a focus on assessing various ML and TF threats and vulnerabilities at the border.

132. Authorities have comprehensively assessed risks of domestic terrorism, including many elements of related TF. This is supported by formal and informal intelligence sharing and situational reports. In relation to the situation in Thailand's southern border provinces, the authorities are well appraised of the risks. The significant involvement of the military and security and intelligence agencies along with the RTP demonstrate the whole of government approach in those provinces to understand and mitigate terrorism risks.

133. To a lesser degree, Thailand has assessed elements of transnational terrorism threats and related TF risks, including with regional partners. There are exchanges of information on TF risks, including involvement in the 2016 south-east Asian regional TF risk assessment. Further work is required to prepare detailed assessments of transnational TF threats and finding ways to share key findings with the private sector.

134. There is a pressing need for further risk assessment in collaboration with regional partners for TF risks associated with returning foreign terrorist fighters. The widespread movement of ISIL-linked foreign fighters returning from Syria, Libya and Iraq to south-east Asia is a key risk faced by Thailand and its regional neighbours, particularly given the risk of Bangkok being used as a landing point for returning foreign fighters heading to other jurisdictions in Southeast Asia.

135. In the 2012 NRA, Thailand assessed TF as high-risk. Thailand notes that the significant domestic terrorism risks are concentrated in the three southern border provinces and in part of the adjacent province of Songkla. Authorities note that domestic terror perpetrators rarely use formal financial channels, but often rely on the use of arms stolen from the military, police and innocent people to facilitate terror attacks.

136. Thai authorities note that Islamic State has not been found to operate in Thailand and no Thai has been found fighting in Syria or Iraq although authorities accept that the country has been at risk of exploitation by foreign terrorist fighters (FTF) both as a shelter and a transit point. A number of other transnational terrorist groups have sought to exploit Thailand or launch attacks and there have been a number of bombings in Bangkok in recent years with possible links to transnational terror groups. There is little evidence that Thailand is a destination for funding from overseas groups or a funding source for terror groups operating outside Thailand. For example, authorities in Thailand advised that they were able to confirm that funds sent to NPOs in neighbouring countries to conflict zones had not been used to fund terrorism or the activities of foreign terrorist fighters.

137. The 2016 NRA found that funds raised to support terrorist incidents are mainly from NPOs, proceeds of illegal activities, crowdfunding and self-funding.

138. NSC is the policy agency that analyses information from the Intelligence and Law Enforcement Community to develop policy. The NSC provided valuable insights into Thailand's knowledge of Al-

Qaida, the impact of the Arab Spring, social media's role to recruit foreign terrorist fighters for ISIS. JI and Philippines groups were also discussed and their influence from ISIS, demonstrating a sound understanding of international terrorism risks that may impact Thailand. Major terror events in the last 4 years that appear to include transnational terrorism activity include the arrest of an Iranian ostensibly assembling bombing equipment in January 2012, the 2012 Valentine's Day bombing in Bangkok (four Iranians arrested) and the arrest of persons linked to the Erawan Shrine bombing.

139. The NIA has closely monitored social media for radicalisation and possible financing but has not found this medium being used to raise funds. The NIA monitors social media to identify networks and follow money trails but relies heavily on AMLO. NIA expressed a view that funds were carried in and materials bought in Thailand to undertake attacks. Money sent to Syria is monitored by AMLO and there is no evidence of it being used for terrorism. These have been confirmed as being used for humanitarian purposes and sent to certain countries that are also monitoring the use of these funds. Thailand authorities advised that money is going to refugee camps in bordering countries.

140. 2012 NRA considered the major sources and techniques for TF included charitable donations, proceeds of crime, legitimate business and funding from outside the jurisdiction. The preliminary draft findings of the 2016 NRA noted that most of the funds for incidents in the Southern border provinces are coming from self-funding rather than raising money through domestic NPOs. However, international bodies providing funds to domestic NPOs for educational or religious purposes are at risk of being diverted for other purposes, most often organisational purposes or mass movement. Cash couriers are often utilised to channel funding for domestic terror attacks whilst international organisations are using the financial sector to send money to domestic NPOs.

National policies to address identified ML/TF risks

141. Thailand's policy-level inter-agency AML/CFT coordination and cooperation add to the effective development of policy to address identified ML/TF risks. There are strong political drivers to support and reinforce the coordination and cooperation at policy levels. The AML Board is a key structure in this. However, the national policies that have been developed, and their implementation, have largely focused on addressing domestic threats.

142. ML/TF risk information is submitted regularly to the Councils of Ministers through the AMLB process. This supports the Thai government to consider urgent issues and to inform related strategies, including the 2015-2021 National Security Policy.

143. Thailand had an AML/CFT Strategy from 2010 to 2015 which was focused on major legal and institutional reforms and shifting to a risk-mitigation focus across AML/CFT. The 2012 NRA and other threat assessments led to adjustments in responses, in particular, ML threats from narcotics, fraud and corruption. Since 2014 there has been a greater national priority to combating narcotics, corruption and human trafficking.

144. At the time of the onsite visit, Thailand had commenced inter-agency work to adjust national AML/CFT strategies and priorities to take into account preliminary findings from the 2016 NRA and the ME process. Thailand plans to adopt an updated national strategy once the 2016 NRA is complete. With sufficient joint agency input, the NRA should provide a good basis to prioritise and support the risk-based implementation of AML/CFT measures.

Objectives and activities of competent authorities

145. AMLO's objectives and activities most directly reflect national priorities and objectives with activities and resources to match. Notably, SEC and ONCB have also built in significant AML/CFT objectives and relevant activities into their work. Other competent authorities have further to go, with particular challenges faced in LEAs (see IOs 6-8). Implementation of objectives and activities of RTP, DSI and RTC have largely focused on addressing domestic threats and have lacked a proactive risk-mitigation approach to include foreign threats. In the absence of detailed assessments of risks faced by particular sectors, sectoral regulators have not sufficiently taken a risk-based approach to their implementation of various AML/CFT controls; this is reflected in the discussion at IO3.

National coordination and cooperation

146. The structures of the AMLB and the Transaction Committee and several inter-agency sub-committees institutionalise formal cooperation. These structures have supported a significant range of policy reforms, the completion of two NRAs and significant enhancements to Thailand's overall AML/CFT framework. There are various task forces and joint agency structures under the AMLB and other structures to support operational-level cooperation. However, at an operational level, there appear to be some weaknesses in joint agency work, information sharing and joint decisions in relation to priorities. The assessment team notes that there are many strengths but some weaknesses with concrete cooperation and coordination in AML in practice.

147. Structures and joint agency cooperation in relation to combating TF are well developed and generally operate well at a policy level. At the operational level, AMLO and RTP closely cooperate in TF investigation. However, there are gaps in relation to the practical implementation of cooperation in CFT. For example, too often the sole responsibility for TF investigations is left to AMLO and while there is some information sharing under the ISOC and via hotlines, AMLO does not in practice have full access to intelligence, surveillance and other tools held by law enforcement, security and intelligence agencies and the military to progress TF investigations.

148. Thailand's inter-agency processes have worked well to support the preparation of the new legal framework and plans for the implementation of TFS to combat PF. The Sub-Committee on Coordinating for Prevention and Solution of Proliferation of WMD was appointed in 2011 as the key mechanism for policy and action plans to implement UNSCRs on combating WMD. This has involved a wider set of stakeholders than earlier AML/CFT coordination work. Thailand consulted with the UN and other international and regional bodies when framing legislation to give effect to UN and FATF obligations to combat the proliferation of WMD and PF by state and non-state actors.

Exemptions, enhanced and simplified measures

149. Thailand has a number of exemptions to STR and CTR reporting; however, these are not based on the results of the assessment(s) of risks. In the case of MR. No. 5 (2000) the exemptions for transactions conducted solely between state-owned enterprises is not in keeping with the risks.

150. The risk assessments available are insufficient to support the application of enhanced measures for higher-risk scenarios, or simplified measures for lower risk scenarios.

151. The exclusion of most DNFBPs and some FIs from either the full AML/CFT system or from CDD obligations is not risk-based. The 2012 NRA assessed and ranked risks from various sectors that were not covered by the AMLA, however, the subsequent lack of inclusion of most of those sectors in AML/CFT controls was not based on proven low risk. One example of actions taken to respond to

the 2012 NRA was the amendment of AML/CFT obligations to cover individuals conducting money changer business.

Private sector's awareness of risks

152. The 2012 NRA has been disseminated to all of the public and private agencies, and most FI sectors have been engaged in the 2016 NRA process. This engagement adds to the private sector's understanding of risk. However, the relatively complex nature of the 2012 NRA and lack of sector-specific illustration of threats and vulnerabilities reduces its value to enhance the private sector's understanding of risk.

153. There are challenges with the private sector's understanding of risk, despite a good level of outreach by AMLO and, more recently by the NACC. In both cases, outreach has focused on legal obligations and prevention, which are important contributions, but there is a lack of accessible information regarding threats and vulnerabilities and trends with profit-driven crime and TF. AMLO shares typologies and red flags with the private sector which adds to their awareness, but a weakness is that few of the assessments that are conducted are shared with the private sector.

154. There is a lack of assessments of particular risks for individual sectors (e.g. for banking, securities, gold traders, real estate, etc.). As such, there are gaps in the detailed risk information provided to the private sector to support them to take a risk-based approach. AMLO has shared case studies and other risk information, but additional outreach is required to share information on risk with the market, including by other regulators, LEAs and self-regulatory bodies. This will require some form of sectoral risk assessments to be completed and findings from various LEAs' threat assessments to be shared with REs. The competent agencies and SRBs seem to have a preliminary understanding of some of the risks. Private sector entities all noted the benefit of information on risk received from AMLO, including information of ML typologies, etc. However, DNFBPs in particular, appear to lack a clear understanding of the dynamics of risk in their sectors.

Overall Conclusion on Immediate Outcome 1

Thailand has a substantial level of effectiveness for Immediate Outcome 1

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions - IO 6, 7 & 8

Key Findings – IO 6

AMLO is a well-resourced FIU subject to high-level governance under the AML Board. AMLO supports good coordination and cooperation amongst key competent authorities.

AMLO collects a wide range of data and has appropriate powers to access relevant further information. Weaknesses with cross-border reporting, CDD by REs and STR reporting detract from data available to AMLO for analysis.

AMLO produces good quality operational intelligence reflecting developed practices and systems and well-trained and skilled staff. Relevant authorities confirm the integrity and quality of AMLO analysis in assisting their investigations.

AMLO's volume of strategic analysis needs to be increased. In-depth analysis (e.g. data mining and other macro analysis) of AMLO's significant data holdings has commenced but more is needed.

AMLO's disseminations to LEAs (including AMLO's litigation unit) are predominately reactive, demonstrating the responsiveness of AMLO to LEA investigative priorities. The majority of AMLO's proactive disseminations are to the AMLO litigation unit which initiates proceeds of crime matters for later civil confiscation, and possible further dissemination to LEAs highlighting the emphasis on asset forfeiture.

Apart from RTP and AMLO's asset tracing function, few LEAs utilise AMLO disseminations to initiate their own financial investigations. Parallel financial investigations are not sufficiently prioritised although AMLO plays a key support role in many high profile investigations by RTP.

There are weaknesses in LEAs capacity for financial investigations.

The use of financial intelligence by LEAs for ML and predicate investigations is well demonstrated by the RTP, but less so by other LEAs, such as the DSI and NACC. Parallel financial investigations are not sufficiently prioritised in all criminal investigations although AMLO plays a key support role in many complex investigations by the RTP and, to a lesser extent, the NACC.

While AMLO produces quality financial intelligence related to terrorism, TF and conducts criminal investigations of TF, RTP demonstrated only a limited uptake of such AMLO disseminations.

The over-reliance on AMLO's expertise in financial investigations contributes to a lack of financial investigation expertise across LEAs, particularly the DSI and NACC.

LEAs develop and integrate financial intelligence into their investigations of higher risk predicate crimes, but this predominantly occurs in high profile narcotics, human trafficking, terrorism and some corruption cases however it is not routine practice across most other investigations.

AMLO's disseminations to supervisors and other authorities support risk-based approaches.

Recommended Actions

- LEAs policies and agency-level plans should prioritise the use of financial intelligence for the predicate, ML and TF investigations. This should include an integration of support from AMLO (including drawing on AMLO's special powers).
- DSI, NACC and RTC, in particular, need to improve their expertise in financial intelligence and investigations, noting adequate powers to obtain financial information are available to them.

- AMLO should prioritise proactive intelligence products to analyse criminal activity that may not be known to competent authorities (e.g. targeting significant ML syndicates, emerging crime types etc.). Increased proactive disseminations to LEAs should follow.
- Increase the resources allocated by DSI, RTP and NACC for financial investigations. Ensure each agency has a clearly designated financial investigation team as a focus for capacity.
- Increase the scope and volume of strategic intelligence undertaken by AMLO to identify strategic risks and to assist with policy decisions, targeted operational activity, resource allocation, etc. The analysis should draw on AMLO's large data holdings to identify patterns and trends indicative of large-scale ML and criminal activity and emerging risks or criminal activity that may not be known to competent authorities
- AMLO should obtain and make use of cross-border reports provided to BOT and information captured by RTC at the border.

IO 7 Key Findings

Thailand has achieved a reasonable number of successful outcomes from ML investigations and prosecutions; however, ML is not sufficiently pursued consistent with stated policy objectives.

There have been notable recent cases of ML investigations successfully dismantling networks of 3rd party professional ML involving transnational elements. However, this approach has not been sufficiently pursued in keeping with the risk profile.

LEAs do not prioritise pursuing ML charges as a tool to combat wider networks of criminal activity and expand and enhance results of predicate investigation.

Thailand demonstrates successful outputs pursuing ML related to fraud and drug cases, which are a key risk area. Beyond those crime types, Thailand does not consistently pursue ML in keeping with the risk profile. ML is not proactively pursued in corruption matters or in other key high-risk predicate crime types. Laundering foreign predicates are only pursued to a limited degree. Thailand has experience of prosecuting legal persons for ML, but the prosecution of a legal person for ML is inhibited by the statute of limitations requiring ML prosecution of a legal person within one year.

Sanctions for ML are not dissuasive when compared to sanctions for predicates and thus may not add to the prosecution of the predicate offence. A number of high-risk categories of predicate offences are missing (e.g. tax offences, people smuggling and trafficking in stolen goods).

Thailand has some well-developed capability to pursue complex financial crime matters through predicate and proceeds investigations. However, most LEAs need to develop further specialist financial investigation capacity to pursue a wider range of proactive ML matters.

Recommended Actions

- Establish top-down policy priorities to proactively pursue ML investigations against a wider range of predicates (including foreign predicates), organised crime groups, and the facilitators of laundering criminal proceeds. This is particularly needed for the DSI.
- Include tax offences, smuggling of migrants and illicit trafficking in stolen goods as predicate offences to ML.
- Greatly increase awareness amongst LEAs of the benefits of using ML prosecution as a tool to combat the key threats from profit-driven crime going beyond predicates and asset confiscation.
- Increase the limitation period for prosecution of a legal person for ML to extend beyond one year.

- Provide targeted ML training for investigators, prosecutors and judges.
- Consider establishing specialist financial investigation units within LEAs, particularly the RTP and the DSI. Each needs specialist investigators, trained in financial tracing and intelligence to provide support to predicate investigations and to work side-by-side in investigating ML and sharing information.
- OAG needs to further engage with RTP, NACC and other LEAs' investigators at an early stage of investigations to support ML investigations. Particularly in complex matters such the involvement of cross-border evidence collection, asset recovery etc.
- Thailand should consider empowering other LEAs (in addition to RTP and DSI) to investigate ML in parallel with those predicate offences that they are authorised to investigate.

Key Findings – IO 8

Forfeiture of criminal proceeds and instrumentalities is generally pursued as a policy objective, however, in practice the primary results have focused on restraint and forfeiture of narcotics proceeds. Greater focus on asset restraint and confiscation is required for all high-risk crime types.

Thailand has a sound legal framework for freezing, seizing and forfeiture of criminal assets. The system is well supported by AMLO, as the specialist agency for pursuing a majority of proceeds of crime matters. LEAs tend to rely on AMLO's expertise in financial investigations to pursue and trace assets for confiscation.

Thailand provided statistics in relation to asset restraint and forfeiture for civil, corruption and customs matters overall, but could not provide comprehensive statistics of forfeiture or restraint of assets based on criminal conviction.

The absence of key statistics in relation to criminal forfeiture presents a challenge with measuring forfeiture across different crime types. However, upon discussions with authorities and taking into consideration civil forfeiture successes, the team considered restraint and forfeiture were generally implemented well in Thailand.

Based on civil forfeiture statistics, the value of assets forfeited appears to be relatively low when compared to the number of seizures ordered by the AMLO Transaction Committee.

Thailand does not adequately pursue property of corresponding value due to an inadequacy in some legal provisions along with the absence of established practice.

Authorities have taken some action in relation to forfeiture of assets relating to foreign predicate offences. Whilst a legislative basis is now in place which enables Thailand to repatriate assets back to requesting jurisdictions, bilateral asset sharing agreements are first required and authorities confirmed that Thailand had not yet entered into any asset sharing agreements. Thailand will most often commence domestic proceedings and seek to restrain and confiscate assets the subject of foreign offences domestically.

Thailand's asset management adds to effectiveness and AMLO's asset management practices are well supported with suitable training and guidance available to officers. Officials demonstrated the ability to manage, preserve and ultimately sell large and complex assets.

LEAs have strategic plans and manuals in place providing guidelines for the seizure, tracking, storage and management of proceeds of crime.

Despite the serious risk faced by Thailand from undeclared cash smuggling and increasing risk of inflows of proceeds of crime from neighbouring countries, the cross-border movement of cash is not sufficiently regulated or enforced. Penalties and outcomes are not dissuasive. The powers to seize,

restrain and confiscate detected undeclared cash is inadequate and the outputs from the framework require improvement.

Recommended Actions

- Reinforce priorities to pursue asset tracing, restraint and confiscation for offences going beyond drugs. This particularly important in relation to pursuing the proceeds of corruption, fraud, gambling and bribery going beyond unexplained wealth.
- Prioritise reforms to the declaration (cash / BNIs) systems and improve investigative measures and increase sanctions to target cash smuggling to reflect cross-border cash smuggling risks.
- Amend legislation to ensure that forfeiture of corresponding value can be pursued in all predicate and ML and predicate matters. As criminal forfeiture is based on a *personam* action where only the defendant's assets are forfeited upon a conviction, a money judgement against the convicted defendant in a criminal forfeiture would provide greater opportunities for authorities to recover assets that have been dissipated, moved abroad or hidden. The defendant's other assets/clean assets/property of corresponding value could be allowed to satisfy a money judgement where direct proceeds are no longer available.
- Consider establishing advanced passenger information (API) systems at the border to provide complementary information to assist with the implementation of cash / BNI declaration systems.
- LEAs need to make greater use of the financial intelligence generated by AMLO in their intelligence gathering for the purpose of restraining and seizing assets.
- Authorities should seek international cooperation, including obtaining domestic orders against criminal proceeds located overseas for enforcement and registration in a foreign court.
- Prioritise finalising the regulation on asset sharing and repatriation and initiate asset sharing agreements with other jurisdictions to enable asset sharing/ repatriation to requesting jurisdictions.

Immediate Outcome 6 (Financial intelligence ML/TF)

General frameworks

155.AMLO is a long-established FIU with significant experience and is subject to high-level governance under the AMLB, including the Transaction Committee which governs the use of special powers and asset restraint. Under section 41 of AMLA, the SG is directly answerable to the Prime Minister. The AMLB has the authority to propose policy measures through the Cabinet.

156.AMLO has 334 staff, of whom 38 serve in the financial intelligence division and 17 in the international cooperation division. 44 of AMLO's staff are responsible for supervision. At the time of the onsite AMLO advised that approval had been given for a further 184 staff for AMLO, of whom 30 would be involved in FIU and investigation work.

STRs and other reports received and requested by competent authorities

157.AMLO, as the FIU, has extensive information available to it from a wide range of sources and databases. AMLO collects a wide range of transaction data including STRs, property transaction data, cash reporting data and electronic transfer data from a wide range of REs. AMLO also has powers to

obtain further information from any of the REs in the course of analysis or investigation. These powers to access information can be exercised for any of AMLO's functions and feedback confirms that the information obtained is valued by other competent authorities. AMLO can set timeframes on data requests whilst other agencies, in general, cannot.

158. AMLO and other agencies have direct access to relevant government records through the data exchange centre (DXC) incorporating 18 databases of agencies (land titles, vehicles, immigration, etc.). AMLO also has agreements to obtain information from other agencies such as criminal records and investigation details, taxation and passport information.

159. AMLO has an effective system around the use of informants. There are currently 75,000 AMLO informants comprising of members of the public from all provinces and government officials. These informants approach AMLO who then conceal their identity and provide them with a code number for correspondence to ensure anonymity. Informants also work with the NACC to identify instances of corruption. Details of the information obtained from informants can be seen in the table below '*complaints of suspicious activities received from the public and AMLO informants.*'

160. The three tables below detail the extensive volume of data collected by AMLO and the following fourth table details the extent to which this information is incorporated into the analysis by AMLO.

Number of reports received by AMLO

Year	Cash transactions ¹⁸	Transactions involving assets	STRs	Money or Wire transfer transactions ¹⁹	Cash cross-border declaration	Total
2011	972,384	636,535	130,617	2,645,675	4,286	4,389,497
2012	1,038,150	225,128	117,348	14,753,284	3,092	16,137,002
2013	1,036,462	154,405	57,335	16,767,660	6,884	18,022,746
2014	1,235,733	251,268	12,887	14,463,134	7,204	15,970,226
2015	989,628	342,281	10,669	18,032,177	9,421	19,384,176
2016	1,040,221	131,873	21,357	14,403,164	3,198	15,599,813
Total	6,312,578	1,741,490	350,213	81,065,094	34,085	89,503,460

Complaints of suspicious activities received from public and AMLO informants

Channels of Receiving Complaints	No. of complaints				
	2013	2014	2015	2016	Total
Letter	143	230	697	519	1,589
Submission in person	51	65	163	183	462
Hot Line AMLO 1710	142	182	89	23	436
Website and e-mail	59	104	96	82	341
Post box 559	8	8	10	8	34

¹⁸ Cash transactions reporting (CTR) obligations require CTRs for any transaction over 2 million THB in cash

¹⁹ Cash transaction for money transfer and electronic payment of 100,000 THB or more and all transfer and electronic payment of 700,000 THB or more through Financial institutions

Channels of Receiving Complaints	No. of complaints				
	2013	2014	2015	2016	Total
News	0	-	22	0	22
Government agencies	0	433	962	0	1,395
Others	4	-	12	4	20
Total	407	1,022	2,051	819	4,299

Complaints or suspicious activities received from public and AMLO informants (not STRs)

Predicate offences	2013	2014	2015	2016	Total
Narcotics	0	239	483	134	856
Sexual Exploitation	6	19	35	14	74
Public fraud	88	68	242	128	526
Misappropriation or fraud (Financial institutions)	1	5	10	1	17
Malfeasance in office	52	122	294	133	601
Extortion or blackmail (claiming an influence of a secret society or criminal association)	0	6	3	1	10
Customs evasion	7	14	26	4	51
Terrorism	0	0	13	0	13
Gambling	49	62	153	46	310
Being a member of a racketeering group	0	0	2	12	14
Counterfeiting or violating intellectual property	3	4	30	10	47
Forging document, electronic cards or passports	3	3	11	17	34
Illegal exploitation of natural resources / environment	0	121	146	37	304
Murder or grievous bodily injury	0	2	-	0	2
Restraining or confining a person	0	0	-	0	0
Theft, extortion, blackmailing, robbery, fraud, misappropriation	30	155	182	79	446
Unfair securities trading practice	0	0	3	1	4
Offence relating to arms or arms equipment	0	0	1	0	1
Human trafficking	0	12	75	2	89
Financing of Terrorism	0	3	-	0	3
Organized crime	0	2	4	2	8
Not predicate offences	168	185	338	198	889
TOTALS:	407	1,022	2,051	819	4,299

Number of reports used in AMLO analysis

Year	Type of Transactions					
	CTR	Assets	STR	Domestic Wire Transfer	International Wire transfer	total
2016	27,082	2,902	4,646	243,265	5,438	283,333
2015	15,778	4,415	16,592	102,919	4,532	144,236
2014	18,654	2,433	4,718	35,432	20	61,257
2013	5,754	2,188	969	3,595	26	12,532
Total	67,268	11,938	26,925	385,211	10,016	501,358

161. While there have been variations in the numbers of reports to AMLO in each year, AMLO indicates that the quality of STRs has improved significantly at the same time as there has been a dramatic reduction in the number of STRs.

162. There are gaps with some sectors of REs not filing or very rarely filing STRs. Most STRs come from banks and securities and asset management companies. A number of DNFBP sectors were either not required to file STRs, or were not obliged to conduct CDD, which weakens the basis to identify possible STRs. In addition, there are impediments such as MR No. 5 (2000) which preclude filing STRs on transactions solely between government or agencies or state-owned corporations, which may limit the filing of STRs involving corruption and bribery (see IO4). Thailand advised that the Office of Auditor General of Thailand has reported unusual transactions to AMLO resulting in the transaction committee ordering the temporary freezing of assets in two cases.

163. AMLO receives very few cross-border cash reports relative to the size of the cash economy and cross-border trade with immediate neighbours. Thailand faces cash smuggling vulnerabilities due to porous borders. The weaknesses with the scope of obligation and implementation of cross-border cash transactions reporting result in gaps in cross-border cash movement data available to AMLO (see R.32).

Operational needs supported by FIU analysis and dissemination

Analysis

164. AMLO has 38 staff members dedicated to financial intelligence analysis and financial transaction analysis. Of the 38, 18 analysts are in the financial investigation (proceeds of crime) section and eight in the TF section.

165. A substantial amount of data collected by AMLO is not actively incorporated in analysis as evidenced by the data in the tables above. This is largely explained by the nature of operational arrangements between AMLO, other competent authorities and AMLO's own Litigation Divisions.

166. AMLO proactively initiates analysis of STRs and informant reports it receives, supplemented by analysis of the other transaction reports it holds. AMLO assess and rates every STR received and provide regular statistical feedback to REs based on the quality rating of reports received. A further source of information that may initiate analysis by AMLO comes from information provided through its network of over 75,000 'informants'.

Financial intelligence reports disseminated to relevant agencies on the basis of STRs (including complaints, informants and news)

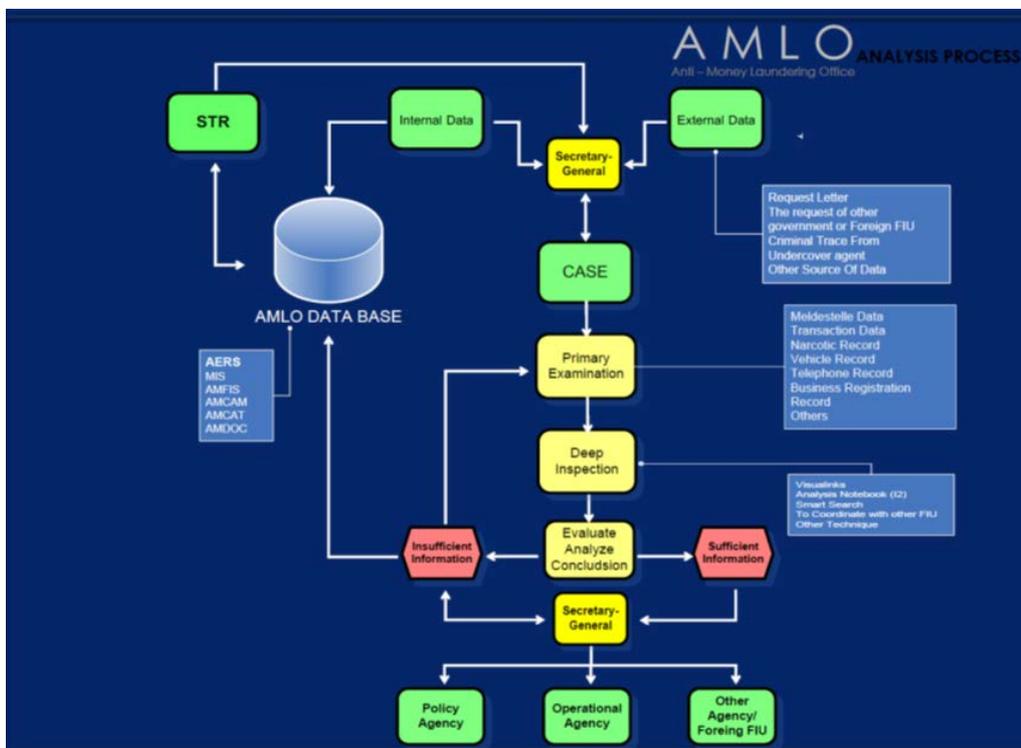
Year	Number of Disseminations						Total
	AMLO	RTP	ONCB	NACC	DSI	Others	
2011	10	55	12	3	7	5	92
2012	13	53	36	5	18	4	129
2013	33	47	20	6	19	4	129
2014	134	31	17	7	8	23	220
2015	188	75	32	9	10	60	374
2016	103	107	6	59	24	52	351
Total	481	368	123	89	86	148	1295

3

167. AMLO produces good quality operational intelligence reflecting developed and considered practices and well-trained and skilled staff. The intelligence products produced by AMLO include well-researched analysis drawing on the extensive data available, the generation of link charts to demonstrate the connection between entities and considered narrative assessment. Relevant authorities confirm the integrity and quality of AMLO analysis in assisting their investigations. AMLO’s financial analysis and intelligence capability are highly regarded by key LEAs.

168. At the time of the onsite AMLO reported that 40% of received spontaneous information was proposed to the transaction committee for further action, another 40% of them were in the process of evidence collecting, and 20% of received spontaneous information was terminated. AMLO officers are challenged in effectively proactively analysing the data collected and meeting the demands placed upon them for financial analysis and investigation support by competent authorities and AMLO’s Litigation Division. Given the risk faced by Thailand and the context in which its agencies operate, there is a need to better address this imbalance in some way, which could include, for example: increasing analytical resources in AMLO, which has already been proposed by the Government of Thailand; developing better case prioritisation models to govern which cases to dedicate resource; investing in more effective analysis tools, which has also already been initiated by AMLO; increasing the capacity and capability of other LEA’s to conduct their own financial analysis and financial investigation; or AMLO devolving analysis of its data to a wider group of Thai authorities or experts.

169. AMLO conducts analysis in reaction to a request from another competent authority. In 2013, 126 requests from LEA were received, 198 were requested in 2014, and 308 analysis reports were requested in 2015, an increase by more than 244%. This increase in the number of requests received from LEA suggests a growing appreciation of the value added to investigations by competent authorities from financial intelligence developed by AMLO. The steps for processing STRs below detail how AMLO respond to the receipt of information and how it is disseminated to LEAs.



170. In relation to STRs, analysts progress the STR immediately if the transactions are relevant to predicate offences or criminal activity. The analyst's reports will be progressed through the line of management to the SG who must approve the dissemination to the relevant government agency where a link to crime has been found through database searches.

171. Where there is no direct link, an assessment of the unusual nature of transactions will be made and enquires will be conducted to check people surrounding the person identified in the STR. Where suspicions are determined an assumption will be made that it is linked to crime and dissemination can follow. If there is a request from outside AMLO the request must go to the secretary general and he must authorise an individual to undertake the analysis. The SG can delegate his powers as far as three levels below the SG, as needed.

172. The DXC database used by AMLO in its analysis has 18 databases including DSI and RTP cases under investigation. Audit trails exist on DXE and data owners send audit trails to supervisors at AMLO. Analysts in the Financial Intelligence Division have access to the DXC database.

Analysis related to TF

173. AMLO gives particular intelligence support to TF investigations by its own TF investigations team and other LEAs and security intelligence agencies. In relation to the situation in the southern border provinces and possible TF cases, data in the three southern border provinces is extracted from the AMLO database which is compared with other factors to identify anomalies and contextual information. AMLO also works closely with the banking association of the southern border provinces and meets with them on a monthly basis as part of a working group.

174. AMLO produces good quality intelligence products in relation to domestic terrorism and TF cases. AMLO demonstrated that its work produces evidence of financial links and other association based on financial reports and the result of enquiries on the ground. This intelligence identifies associated persons of interest and in one case firearms used in the attacks. The assessment team were advised that if more resources were available to AMLOs TF section there would be more intelligence produced and more cases prosecuted.

175. AMLO has only limited experience of developing intelligence in relation to foreign TF threats. However, ongoing analysis of TF has been made by security organs such as the NIA and NSC. AMLO and other authorities have predominantly focused on domestic threats or risks that Thais may be involved in foreign TF activities. The conduct of strategic analysis by AMLO in relation to TF was not apparent to the team, possibly due to the fact that the team working on TF analysis within AMLO was stretched to capacity working on operational analysis.

176. The nature of crimes in the southern border provinces and limited resources impact AMLO's ability to be more effective. The eight personnel in the AMLO TF Section of the Financial Intelligence Division depend on the other 38 analysts in the Financial Intelligence Division. The AMLO TF Section generally respond within two weeks on cases or, if the case is a high priority, in a matter of hours.

177. Thai authorities, including AMLO, need to monitor the level of resource allocated to investigate TF and to balance this with resources assigned to respond to other significant risks. A modest increase in dedicated resources for the TF section would increase effectiveness. Such an increase could be justified taking into account the nature of the risk posed by terrorism in Thailand.

178. AMLO officers have effectively followed valuable financial leads to gather additional intelligence in relation to TF while on the ground in the southern border provinces.

179. However, Thailand is aware of the risk that may emerge as returning foreign terrorist fighters from neighbouring countries seek transit points from conflict zones. Foreign terrorist fighter trends are being monitored by AMLO through typologies reports and other open source information, including FATF reports to determine and assess risks from foreign terrorist fighters.

3

180. AMLO is a member of the Egmont group and shares TF-related information amongst counterpart FIUs. AMLO participated in both regional CTF Summit hosted by Australia and Indonesia's FIUs to share information on TF and contributed to the regional risk assessment on TF flowing from these summits.

Intelligence development and evidence collection during AMLO financial (assets) investigations:

181. High-quality financial intelligence is generated by AMLO in the course of running parallel investigations of criminal assets. This is disseminated to LEAs and used by them to supplement and enhance the investigation of predicate offences. Financial intelligence has been utilised in the prosecution of predicate offences, and the effectiveness is largely a result of efforts by AMLO.

182. The use of financial intelligence by LEAs has been focused on asset tracing and restraint and not as a primary tool to unravel criminal syndicates. There should be a greater focus on the identification of associates and other persons of interest through financial and other links in order to further ML, TF and other predicate crime investigations to strengthen the use of financial intelligence by LEAs.

183. AMLO has one person who undertakes strategic analysis. Subsequent to the onsite, two additional staff were assigned to strategic analysis work.

184. Analysis is in three broad categories: i) a monthly overview of STR identifying transaction behaviours with possible links to ML, spreading pattern, linkage between group of people, area, time period etc. ii) Money laundering situation reports presenting a study of new techniques, methods, forms and factors involved in the commission of predicate offences (including TF) and ML offence; and iii) typologies reports. These reports seek to provide alerts and assist in predicting trends to monitor.

185. These reports are well structured and informative and represent an earnest effort to provide a strategic perspective but more could be done to increase the depth, quality, timeliness and focus of strategic analysis products if these were prepared in conjunction with other key government agencies and directed towards raising awareness of risks in reporting entity operations.

186. AMLO have also invested in statistical analysis tools and have indicated an intention to make better use of these to analyse the large data sets available to them to identify money laundering and indicators of criminal predicate activity.

187. AMLOs focus on its own civil confiscation responsibilities in its FIU disseminations. The financial intelligence skills gap evident in LEAs generally, other than the RTP, may undermine demand for analytical products from AMLO. This may reduce the proactive analysis and strategic analysis focus in AMLO.

Dissemination

188. The transaction data collected by AMLO is not directly accessible by other competent authorities and approval by the AMLO SG or his delegate is required before this information can be disclosed to other competent authorities.

189. AMLO has detailed standard operating procedures in place to guide all steps in the process of analysis and intelligence generation to dissemination. The approval process for commencing analysis of complaints and disseminating intelligence product, STRs and responses to requests for information from competent authorities is strictly adhered to by AMLO officials. The dissemination process is sound and secure. AMLO use safe hand and encrypted communication systems to disseminate intelligence products. Data security measures are sound and the service level agreement with partner agencies requires turning around responses to LEAs requests in 2 weeks.

190. The overall number of proactive disseminations to LEAs (i.e. without an LEA request) is increasing every year. For example, the number of proactive reports disseminated to LEAs increased from 2 in 2013 to 55 in 2016. Vastly more proactive disseminations go to AMLO's litigation unit. Even taking into account the fact that a large number of those reports are automatic referrals to AMLO based on legislative obligations, the number of proactive disseminations to LEAs is still very low given the very significant amount of information available to AMLO. This is reflective of the number of reactive disseminations to LEAs and the number of proactive disseminations to AMLO's litigation unit.

191. By far the greatest number of proactive disseminations from the AMLO intelligence division is to the AMLO litigation division. This is in line with the focus by Thai authorities on following assets for seizure and confiscation in lieu of criminal ML investigations. Referrals to other competent authorities are reactive as indicated in the table below. Analysis and intelligence products disseminated by AMLO appear to be largely directed towards asset restraint activities, rather than financial investigations of ML or predicate offences.

192. Whilst the analysis of this data demonstrates that AMLO is responsive to the needs of its stakeholders, AMLO could better support the needs of LEAs via more proactive analysis at both the operational and strategic level.

Number of financial intelligence reports disseminated (excluding TF financial investigations)

Year	Disseminate to other agencies			Disseminate within AMLO			Total no. of dissemination		
	Pro-active	Re-active	Total	Pro-active	Re-active	Total	Pro-active	Re-active	Total
2013	2	94	96	1	32	33	3	126	129
2014	3	83	86	388	115	503	391	198	589
2015	33	153	186	364	155	519	397	308	705
2016	55	296	351	408	321	729	463	617	1,080
Total	93	626	719	1161	623	1784	1254	1249	2503

193. While the AMLA clearly delineates AMLO's role in litigation related to assets, AMLO can only investigate in relation to asset restraint. Other LEAs have primary responsibility for investigation of predicates under their respective mandates, with money laundering the sole responsibility of RTP and DSI. TF investigations are officially the responsibility of the RTP. Despite this, AMLO seems to be the primary authority responsible for initially undertaking TF investigations, with advanced financial investigations of TF cases shared with the RTP at relatively advanced stages.

194. In its financial investigations, AMLO has almost the full range of investigation powers, including special powers in relation to access to records of reporting entities and anyone else who may hold

relevant information. AMLO does not have the authority to investigate criminal cases of ML or the authority to interrogate suspects for any purpose.

Use of financial intelligence and other information

3

195. DSI and RTP are the only LEAs authorised to refer ML charges and regularly utilise AMLO's expertise to run parallel investigations of criminal proceeds in the investigation of ML and predicate offences. AMLO is the primary agency responsible for tracing and restraint of criminal proceeds and often performs these functions on behalf of other competent authorities in parallel to investigations of predicate offences; even though authorities such as the RTP and DSI can also initiate asset restraint proceedings through the OAG. Thai LEAs consistently spoke in support of the expertise in financial analysis and investigation provided to them by AMLO and the value added to their operations as a result.

Case study – RTP investigation of a large-scale human trafficking ring

The RTP Human Trafficking team undertook an investigation of the smuggling of Myanmar Rohingya people into Thailand. RTP sought assistance from AMLO in conducting financial investigations to utilise the powers available to them under the AMLA. Due to the close collaboration between RTP and AMLO and use of both agencies financial investigation skills, the authorities were able to uncover a large network of offenders, both those involved in the smuggling and those involved in the financing and laundering the profits. Various financial enquiries were conducted into associates and family members of suspects which ultimately proved successful in tracing profits of the crime back to the principal offenders. CCTV footage of suspects withdrawing and depositing cash, telephone records, previous human trafficking cases and significant assistance from banks proved successful in uncovering the large network. As a result of the extensive financial investigations, authorities were able to locate the mastermind of the criminal enterprise and identify high-level officials and others involved in the offending. A significant amount of money laundering and various criminal charges resulted. Authorities estimated that approximately 70% of the investigation was based on financial intelligence.

196. Whilst there is strong evidence that financial intelligence is integrated into LEA investigations, international exchanges with foreign counterparts and prosecution of predicate offences, LEAs place significant reliance on AMLO to undertake financial investigations and gather financial evidence. Thai LEAs consistently spoke in support of the expertise in financial analysis and investigation provided to them by AMLO and the value added to their operations as a result. AMLO is able to use its powers of asset tracing to support LEA's investigations of predicate offences and ML. Financial investigation skills and use of financial intelligence are not as well developed outside AMLO and the RTP.

197. RTP demonstrated the use of financial intelligence in key complex matters, particularly narcotics and human trafficking cases. Evidence of financial intelligence being used to target and investigate large organised crime groups was notable and successes in identifying members of the groups followed. In these cases, the RTP relied on its own expertise however they also worked in collaboration with AMLO who provided on-going training and expertise to the RTP throughout these cases. The team noted that when assets are involved, AMLO works closely with the RTP to pursue related assets. A number of significant cases were detailed to the team demonstrating the effective integration of AMLO's expertise and intelligence in RTP operations.

198. NSB demonstrated their capability in using financial intelligence to pursue drug trafficking rings and was able to exhibit this in a case study. The case study demonstrated how the use of financial intelligence led them to a large transnational drug ring resulting in multiple arrests and demonstrated their use of in-house financial intelligence expertise.

199. NACC does not appear to use to the extent required or have financial intelligence capability within the NACC. When a matter involves complex financial trails, the NACC will invite officials from other agencies with expertise to sit on an investigative sub-committee including AMLO. However, neither the NACC nor AMLO provided statistics of cases that benefitted from a sub-committee or that involved complex financial investigations. All financial investigative work for the NACC is undertaken by AMLO for the purpose of pursuing assets involved in the offending.

200. DSI has adequate resourcing and apparent expertise, but despite this case studies have not demonstrated the sustained use of financial intelligence to assist their investigation of special high-risk cases. DSI is multi-disciplinary and is comprised of experts from different agencies to provide them with in-house financial intelligence capability.

201. RTC (Customs) did not demonstrate how their use of financial intelligence assists their targeting and investigation of cross-border matters.

202. Whilst successes have been demonstrated by the RTP and NSB, the use of financial intelligence by other competent authorities such as the DSI and NACC to follow money trails to aid investigation of predicate offences and disrupt ML and TF activities is incidental rather than a central and critical tool used by those authorities.

203. Financial investigation skills of LEAs require development in most agencies. The NSB and RTP demonstrated that they have developed independent financial investigation skills to some extent but these skills are less evident in other LEAs.

Cooperation and exchange of information/financial intelligence

204. AMLO and other competent agencies in Thailand have appropriate powers to access relevant information and there is evidence of coordination and cooperation amongst the key competent authorities at both the operational and strategic level.

205. The AMLB reports directly and regularly to the Cabinet in relation to the implementation of national AML/CFT strategies and matters of emerging risk requiring a coordinated national response.

206. Further, the Office of the Prime Minister's Regulation on Coordination in Compliance with the AMLA is a directive that appears to be adhered to assiduously by competent authorities in Thailand and has created a culture of cooperation amongst relevant agencies.

207. As the central AML/CTF authority and coordinating body, AMLO has access to a vast array of data sources aside from the transaction reports reported by reporting entities, including a large number of informants who provide information directly to AMLO.

208. AMLO participate in joint investigations established as working groups or joint committees by law enforcement agencies to investigate complex and major crimes, including the financing of terrorism. Thailand has been served well by the expertise AMLO has developed and the efforts it has

made in raising awareness and its attempt to raise financial intelligence skills in the agencies with whom it deals.

3

209. The AMLO SG or his delegate is required to grant approval to disseminate, which is very regular practice. Data exchanged between agencies, including disseminations, are subject to strict data security and secrecy provisions that apply to all government agencies and classified information is transferred by “safe hand” between agencies in most cases. In other cases, encrypted communications and secure systems are deployed to exchange data.

Overall conclusion on Immediate Outcome 6

Thailand has a substantial level of effectiveness for Immediate Outcome 6.

Immediate Outcome 7 (ML Investigation and Prosecution)

General legislative and institutional frameworks

210. Thailand's legal and institutional frameworks for ML investigation and prosecution show a generally high degree of compliance. The AMLA is the core legal framework for ML and section 5 criminalises ML. The absence of smuggling of migrants, trafficking in stolen goods and tax offences as predicate offences to ML impacts effectiveness given the high incidences of such offences and the risk they pose to Thailand. It should be noted that Thailand has pursued ML aspects of people smuggling matters through human trafficking and related offences.

211. DSI and RTP are the only LEAs competent to finalise ML investigations and refer matters to the OAG for the prosecution of ML charges. All other LEAs, including AMLO, NACC, ONCB and RTC may investigate elements of ML, but ultimately they have to pass on the case (via a complaint) to DSI or RTP for them to finalise any ML investigation and decide whether or not to refer the matter to the OAG for prosecution. AMLO provides significant support with their use of financial intelligence to assist the investigation and their power to freeze and seize assets.

212. ML investigations are able to be taken in parallel with other predicate offences such as corruption (investigated by the NACC and PACC), drugs offences (investigated by ONCB and NSB) and other criminal offences (RTP or DSI).

ML identification and investigation, including parallel investigations

213. Thailand targets various cases for ML investigations with case examples evidencing ML convictions for a range of high-risk predicate offences.

214. ML cases are primarily identified through two channels: parallel investigations with predicate offence investigations or asset tracing investigations; and disseminations by the FIU based on STRs and other data.

215. LEAs pursuing financial investigations have a wide range of tools available to them to investigate ML, including access to criminal records, tax records, oral inquiries and special techniques such as surveillance, witness inquiry, undercover operations, computer forensics and search and seizure. Cooperation with different government agencies including the Land Department and other registries appear to work well and does not seem to be an impediment to effective ML investigations and prosecutions.

216. Thailand demonstrated that LEAs investigating ML cases have made regular use of AMLO's wide powers to support financial investigations. LEAs rely heavily on intelligence and evidence from AMLO to quickly obtain evidence and intelligence. AMLO is able to use its information collection powers to assist LEAs to obtain information including bank records.

217. The focus of Thai authorities on following the money predominately relates to the tracing and seizing of assets for confiscation. Statistics for freezing, seizing and confiscation demonstrate that Thailand prioritises the use of these criminal justice measures to deprive criminals of their assets rather than investigating ML.

218. There is a focus on joint investigations and involving key specialties in complex investigations, which is a strength. A Prime Minister's Office Regulation requires inter-agency collaboration in such matters. When agencies such as RTP, DSI, NACC or the ONCB are investigating a predicate and

evidence of ML becomes clear, they may invite officers from AMLO, DSI or RTP to join the investigation and provide advice on financial investigations including tracing, seizing and freezing. Whilst authorities discussed the use of these joint investigations in case studies and provided examples, statistics evidencing the number of such investigations were not provided.

3

219. The assessment team sought an understanding of the challenges faced in investigating and prosecuting ML given the low number of ML cases coupled with the risk profile of profit-driven crime in Thailand. It was apparent that at an early stage in an investigation, LEAs often took the decision not to pursue financial investigations or ML. LEAs indicated that the prosecution of the predicate in line with Thailand's harsh criminal penalties along with a robust non-conviction based asset seizure and confiscation regime was sufficient deterrence and punishment. Secondly, it was apparent that LEAs did not have sufficient in-house expertise and training in conducting financial investigations which are required as part of an ML investigation. This was coupled with the fact that once charged, LEAs have a short amount of time in which to bring a matter before the Court and they spend this time focusing on the predicate investigation. The team was concerned that some LEAs do not recognise how ML investigation may lead to more significant targets in a criminal enterprise than can be achieved by only freezing and seizing assets.

220. Authorities advised that increasingly complex methods used by offenders to launder funds such as co-mingling create challenges for LEAs and the OAG in prosecuting ML.

221. LEAs indicated that where the evidence in the predicate case is not sufficient they consider the ML offence as a tool to prosecute an offender. However, they prioritise the predicate investigation. This is important because once an offender is arrested for an offence; LEAs have 84 days to have the matter sent to a prosecutor. For this reason, they tend to suspend the ML investigation so as to avoid the time constraint and focus on the predicate offence.

Table: ML investigations, prosecutions and convictions

	2011		2012		2013		2014		2015		2016		Total cases	Total persons
	Cases	Persons												
AMLO filed petition to RTP	9	NA	14	NA	7	NA	16	20	6	46	8	14 (incl 2 legal persons)	60	80
Investigation - RTP/DSI	29	NA	44	23	40	17	32	170	33	188	69	148	247	497
Prosecutions (persons)	2	NA	18	NA	27	NA	92	98	102	143	58	83	299*	324
Convictions (1st instance)	11	NA	10	NA	27	NA	23	118	42	53	29	NA	142	171
Convictions (Appeal)**	8	NA	11	NA	10	NA	12	66	14	55	36		91	121

*Thailand confirm that the reason for the significantly larger number of prosecutions to investigations is due to the fact that the RTP record the number of cases based on a network of persons whereas the OAG records numbers of arrested defendants.

** the number of convictions in the final Court of Appeal or Supreme Court are also included in the conviction numbers at first instance.

Table: STRs, disseminations and ML investigations

Year	STRs used in analysis	Dissemination* - AMLO to RTP	AMLO file ML petition to RTP (cases)	RTP ML investigations	Dissemination* AMLO to DSI	AMLO file ML petition to DSI	DSI ML investigations	ML Prosecutions (OAG)
2011	453	55	9	29	7	-	-	2
2012	n/a	53	14	44	18	-	-	18
2013	969	47	7	39	19	1	1	27
2014	4,718	31	16	32	8	1	1	92
2015	16,592	75	6	28	10		5	102
2016	4646	107	8	47	24	3	8	58
total	28,060	368	60	219	86	5	15	299

*disseminations of financial intelligence reports. It should be noted that the disseminations to RTP and DSI may not solely relate to ML, some relate to predicates investigated by those agencies as well.

222. Thailand demonstrated successes when financial investigations have facilitated predicate and ML investigations leading to major crime rings. One case example identified how financial intelligence along with the use of international cooperation and asset seizure helped bring down a major wildlife and rosewood trafficking ring resulting in ML charges.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

223. Prior to 2012, 70% of ML cases related to drugs, however, this expanded between 2013 – 2015 to include corruption, public fraud and human trafficking. Whilst some ML matters have related to areas of high-risk in Thailand, the types of ML being investigated and prosecuted are not consistent with the threats and risk profile of Thailand. This is particularly the case for the significant assets generating organised crime rings involving human trafficking, smuggling, drugs, and wildlife and environmental crimes.

Table: predicate offences relating to ML investigations in 2014 and 2015

Predicate offence	2016		2015		2014	
	RTP	DSI	RTP	DSI	RTP	DSI
Narcotics	5	1	3		5	
Fraud	32	7	5		2	
Corruption	1				2	
Customs	2		1		1	
Stealing	4		1		1	

Human Trafficking	1		1			
Counterfeit of documents	1		8			
Terrorism	1		2			
Tax fraud	5			1		
Gambling	1			1		
Embezzlement	1			3		
Murder or grievous bodily injury	1					
ML offences	8					
Not specified			7		21	
Total	61	8	28	5	32	

224. Whilst it was evident that Thailand's focus on investigating and prosecuting key predicate offences is consistent with the risk profile, this is not the case with pursuing ML cases. Two agencies are tasked with the investigation and it was noted that DSI did not investigate any ML cases in 2014 and only 5 in 2015. RTP figures for ML investigations were slightly higher with 32 cases in 2014 and 28 cases in 2015. However, this is not in line with the risk profile and the significant and varied work the RTP undertakes in large-scale organised crime such as human trafficking, fraud, gambling and wildlife crime. There is very little proactive focus on cross-border ML.

225. The NSB (within RTP) demonstrates a greater capacity to conduct complex financial investigations 'in-house' and it was evident that they worked in parallel to AMLO to conduct ML investigations alongside significant drug trafficking matters. The NSB also has wide powers to conduct financial investigations and doesn't rely on AMLO as much as other agencies do to carry the load of the entire financial investigation. This was also evident in the statistics of drugs seizures and confiscation. Other divisions of the RTP, particularly human trafficking, were able to demonstrate financial intelligence capabilities culminating in ML charges including a significant case where RTP was able to charge 83 people with ML (see case below).

226. NACC can pursue corruption in relation to high-ranking officials under the Organic Act, but does not regularly conduct financial investigations in parallel to corruption. The main reason for this is that the NACC focuses on unexplained wealth charges, in line with their legislative power, which reverses the burden of proof to the accused person. They may conduct civil confiscation on the basis of unexplained wealth. NACC does draw on AMLO to assist with financial investigations. NACC lacks sufficient specialist capability to conduct financial investigations to identify networks of those involved in laundering corruption proceeds and appears to allocate a significant portion of its resources to prevention of corruption in government procurement. Criminal charges of bribery and corruption are pursued under the Penal Code and investigated by the RTP, but RTP does not regularly pursue ML related to such matters.

227. The lack of expertise amongst LEAs (with the exception of AMLO, some specialist RTP teams and NSB) in investigating the financial aspect of crime is a key challenge for ML investigations. Whilst the RTP has an economic crimes unit, in effect each police officer is responsible for investigating ML as well as the predicate offence. It was not clear that such officers had received training in financial investigations. However, LEAs did not demonstrate the will or policy objective to pursue ML both as a deterrence method and a way of more comprehensively tackling organised crime and third-party launderers. It was not clear to the assessment team that Thai LEAs view ML investigations as a tool to deepen understanding of organised crime players, methods and trends. However, some cases demonstrate increasingly sophisticated and complex investigations leading to ML charges.

Case study – multiple arrests including ML charges in large-scale human trafficking case

Initial arrests were made in relation to two offenders transporting 89 Rohingya people after conducting searches of a vehicle. Investigations commenced which included the scrutiny of CCTV footage at the time of deposits and withdrawals of cash, which resulted in 11 more arrest warrants. AMLO supported the investigation including the taking of witness and statements and financial investigations. Joint search teams subsequently found numerous graves and patients and the arrest of 77 suspects followed.

RTP drew on existing evidence including previous cases (such as Myanmar labour trafficking cases), financial transactions and telephone records to identify further suspects. The analysis revealed transnational elements of the offending.

AMLO were able to trace financial transactions from arrested suspects back to additional key suspects by virtue of the bank statements and wire transfer details. They found that accomplices and family member's bank accounts were used to conduct financial transactions. Joint financial investigations between AMLO and RTP on 88 suspects and other involved persons found 2 main accounts, one was the sister of an offender and the other was an associate. The accounts had significant turnover with 380 million THB between them. 2 further batches of arrest warrants involving 33 suspects and 11 suspects respectively were later issued. Some of those arrested were government officials.

In total, 81 people have been served arrest warrants for ML, 2 are since deceased. The investigation alleged that these 81 suspects carried out money laundering crimes on over 4,000 occasions.

Types of ML cases pursued

228. ML cases have predominantly been for self-laundering. However, there are some cases of prosecuting 3rd party launderers. Details of some cases were provided demonstrating the prosecution of legal persons for ML. The team was advised subsequent to the onsite that there was an ongoing investigation into a legal person.

229. Thailand does not place a concerted focus on pursuing ML for the high-risk offences present in the jurisdiction particularly those emanating from foreign predicate offences. Thailand pursued ML investigations on the basis of foreign predicate offences in 4 matters in 2015 and 3 matters in 2016. In such matters, AMLO gathered financial intelligence through the Egmont Group with assistance from ARIN-AP. It is not clear that Thailand sufficiently pursued MLA in these matters (see IO2).

230. The absence of tax offences and smuggling of migrants as predicates to ML results in these two key risk areas not being pursued. However, specifically in the case of smuggling, Thailand demonstrated the use of other legal offences to pursue ML for conduct that would otherwise constitute smuggling.

Examples of prosecuting different types of ML

Foreign predicate: Thailand provided assistance to the United States on a matter regarding the use of malware to hack into bank accounts across many jurisdictions. Thailand police arrested two people in relation to the matter and 56 bank accounts were seized belonging to the suspects. AMLO filed a criminal complaint with the DSI for money laundering. The matter is now with the OAG to prosecute

the defendants for ML and is pending before the court.

Self-laundering: the RTP uncovered a significant high ranking police officer and a network of corrupt officials engaging in illegal gambling. The network also sought bribes from oil smuggling gangs. In a joint investigation between the RTP, RD, NACC, the Army and AMLO, financial investigation and analysis was undertaken of more than 30 persons. Authorities uncovered proceeds of crime that had been laundered via various methods including real estate, cars, antiquities and bank deposits. Forfeiture orders were made by the Court and the high ranking police officer was charged and found guilty of ML.

Third party laundering: Thai authorities investigated a drug trafficker and a significant drug producing factory was located near the Thai/Myanmar border. Authorities uncovered the fact that the defendant paid hill tribe people to transport tablets to his customers, one of which was eventually caught and confessed. The defendant and his mistress were subsequently investigated and it was found that the defendant had transferred money to his mistress. The matter went before the Court and both the defendant and his mistress were found guilty of ML. The mistress received 2 years imprisonment for ML.

Stand-alone ML: Authorities suspected a defendant was involved in drug-related matters and launched an investigation. It was found that the defendant used accounts of his children and other people and began transferring funds into those accounts. Authorities ascertained that the defendant had full control over those accounts. Despite the prosecution not being able to prove drug offences, the court found that the defendant used the accounts for the purpose of concealing the true source of funds and convicted the defendant of ML.

231. Based on statistics, DSI and the NACC have had the least amount of training in ML investigation, as shown in the table below, DSI, while having almost 1200 personnel, from 2013-2015, only 26 individuals participated in AMLA training. Given both DSI and the NACC are responsible for investigating high-risk key offences in Thailand, participation rates are low.

Number of officials attending AMLO seminars for LEAs to implement AMLA

Year	Seminars	Participants	AMLO	ONCB	NACC	DSI	RTP	OAG	Court
2013	11	921	7	6	2	2	364	402	138
2014	11	660	285	13	17	4	190	80	71
2015	7	644	310	11	5	20	269	29	-
Total	29	2225	602	30	24	26	823	511	209

Effectiveness, proportionality and dissuasiveness of sanctions

232. Sanctions for ML have not been applied in a manner that is dissuasive. Few individuals have been prosecuted and sentenced to imprisonment for ML. In 2014 the average custodial sentence in the Appeal Court was 2 years and 5 years in the Supreme Court. However, Courts have the ability to sentence cumulatively for each instance of offending. However a defendant will only serve a maximum of 20 years, even if a much larger penalty has been handed down by the court. In this regard whilst the penalties are low for each individual act, some cases show a willingness of the court to impose cumulative sentences up to a maximum of 20 years.

Table: Money laundering penalties

	2014			2015			2016		
	1 st instance	Appeal Court	Supreme Court	1 st instance	Appeal Court	Supreme Court	1 st instance	Appeal Court	Supreme Court
prosecutions (persons)	98			143			83		
convictions (persons)	23	66		53	55				
Fines									
Cases	1	1	-	3	1	-			
Persons	3	1	-	3	1	-			
Total (THB)	566,666	1,600,000	-	535,332	44,444	-			
Imprisonment									
Cases	23	43	8	42	43	2	27		
Persons	118	54	12	53	52	3	33		
Average prison term (years)	2	2	5	2	2	2	2.7		
Average Suspended sentence	2	-	-	2	-	-			

233. All new Judges are required to attend training courses which include the topic of AML; however there are no ongoing specialised training courses for judges on ML. With the small number of ML cases before the courts the opportunity to gain experience in such matters is limited. Notably, OAG has planned to set up a special division specialising in ML prosecution in December 2016 which will double the staff resources by rotating senior and experienced prosecutors into the special division.

Application of criminal justice measures where ML conviction is not possible

234. As stated above Thailand has a framework for civil forfeiture which it utilises in many cases in lieu of pressing ML charges. These measures are often used in the absence of a conviction for ML or the successful prosecution of a predicate. Thailand does not require an offence to have occurred within Thailand in order to apply freezing, seizing and confiscating and has demonstrated use of these provisions when acting on requests for assistance.

Overall conclusion on Immediate Outcome 7

Thailand has a moderate level of effectiveness for Immediate Outcome 7.

Immediate Outcome 8 (Confiscation)

Legislative and institutional framework

3

235. Thailand has a generally sound legal framework for freezing, seizing and forfeiture measures. The AMLA includes provisions for civil forfeiture without the requirement for a criminal conviction. Under the AMLA, property laundered, proceeds of crime and instrumentalities can be forfeited. Provisions that purport to be able to forfeit property of corresponding value are available under the Penal Code and Organic Act on Corruption, however, there was no demonstrated practice of these provisions.

236. The RTP has the ability to forfeit criminal proceeds under the Penal Code, the NACC has a full suite of forfeiture options open to it under the Organic Act on Corruption ('the OAC') and the Narcotics Suppression Act also provides power to freeze, seize and confiscate.

Confiscation of proceeds, instrumentalities & property of equivalent value as a policy objective

237. Forfeiture of criminal proceeds and instrumentalities are generally pursued as a policy objective. Property of corresponding value is not pursued as a matter of policy or practice. ONCB and AMLO have forfeiture of criminal proceeds and instrumentalities set up as an objective in the agencies' relevant policy and strategic plan. Other LEAs place a clear emphasis on using forfeiture as a tool in tackling criminal properties.

238. Whilst the NACC is responsible for corruption charges and unexplained wealth charges when it comes to forfeiture, the NACC has exclusively resorted to unexplained wealth forfeiture. For example, the NACC did not provide any details for forfeiture in corruption cases, only in unexplained wealth matters. Financial investigations and asset tracing of officials receiving bribes and forfeiting such bribe payments under AMLA have not been proactively pursued. The NACC outlined that in cases where they cannot prove bribery offences they resort to unexplained wealth charges which reverse the burden of proof from the prosecution to the defendant to prove assets are legitimate. The result of a focus on unexplained wealth charges in lieu of more substantial investigation for bribery offences deprives authorities of the modus operandi, wider networks and the relevant players involved in corruption in Thailand.

239. For example, the NACC has confiscated nearly USD574million over the last four years in relation to unexplained wealth charges. Also over this period, 5826 charges of malfeasance in office were brought before the Courts of first instance. From the AMLO statistics available, in 2 matters the Court of first instance ordered confiscation relating to malfeasance in office. No figures were supplied from the RTP who is tasked with investigating these charges and bringing the requisite forfeiture action. The NACC was not able to discuss with the team-specific cases where bribery or corruption charges were laid on the basis of financial investigations and assets forfeited on a conviction basis.

240. The domestic offence in Thailand of malfeasance in office is widely drafted, enabling officials to be prosecuted under this section without authorities having to demonstrate any financial gain by the defendant. Whilst some cases prosecuted under this section do result in financial gain, it is not a required element of the offence.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

i. Proceeds of crimes, instrumentalities and property of corresponding value

241. LEAs have a range of legal tools available in forfeiting criminally linked assets. Authorities can adopt a flexible approach to recover assets. Authorities can pursue criminal or civil forfeiture or a parallel action contingent upon the sufficiency of evidence and types of assets sought for forfeiture.

242. Despite the absence of statistics on the forfeiture of instrumentalities, authorities such as the RTP, ONCB, NSB and the DSI discussed the fact it was policy and regular procedure to seek forfeiture of instrumentalities. The Court has the power to order the forfeiture of exhibits in a criminal matter which includes instruments used in the crime. The RTP and DSI outlined how they store such assets in storage or consider the sale of perishable or assets that dissipate in value prior to forfeiture. Whilst, the team was not properly able to assess the extent of the use of forfeiture to confiscate instrumentalities in light of the absence of statistics, Thailand did advise that in 2013 and 2014 forfeiture of property was ordered by the first instance criminal court in 661 cases. The NACC also has the legal power to seek forfeiture of instruments of crime. However, statistics provided by the NACC only pertained to unexplained wealth confiscation and not confiscations from instruments or property of corresponding value.

243. Legal provisions allowing for the forfeiture of property of equivalent value has only recently been inserted into the OAC and the Penal Code (although the team note weaknesses in this provision). Historically, the absence of both legal provisions and regular practice in forfeiting property of corresponding value effectively impede the entire forfeiture regime and its effectiveness corresponding to Thailand's risk profile. Authorities were not able to explain the operation of the provisions or any demonstrated use of them. As the majority of high crime types in Thailand are prosecuted under the Penal Code, this weakness is notable.

ii. Provisional Measures

244. Effective provisional measures are in place and operate well. AMLO can secure freezing orders quickly through the Transaction Committee and maintain close relationships with compliance officers at financial institutions to ensure timely action.

245. Section 48 of the AMLA gives the Transaction Committee the power to order provisional seizure or attachment of assets for no more than 90 days. In the case of compelling necessity or urgency, the SG shall order seizure or attachment of the asset for the time being and then report it to the Transaction Committee accordingly.

246. Although powers for obtaining an ex parte restraining order are not expressly stated in the statute or in any implementing regulations, AMLO provided a range of case studies to demonstrate its effectiveness. They demonstrate that in practice based on "a reasonable ground", the Transaction Committee, upon reviewing the evidence presented by both LEAs and AMLO investigating officers, can issue a 90-day restraining order ex parte. OAG indicates that in order to convert the TC order to a court order, most cases will be rushed to the court when the 90-day expiration date is fast approaching. The 90-day TC restraining order may not be extended. The AMLA only allows an application to the Court to seize once the prosecutor has petitioned the court for forfeiture of the property. If this has occurred then under section 55, if there are reasonable grounds to believe the asset may be dissipated, the public prosecutor may file an ex parte petition to the court for its provisional seizure or attachment. If there is convincing evidence the application is justifiable, the court shall give the order. In practice, the court grants every single order placed before it.

Table: seizures and confiscations across multiple Thai agencies

Authority/legal action	2013		2014		2015		2016		Total USD
	orders	Value (THB/USD)	No. of orders	Value (THB/USD)	No. of orders	Value (THB/USD)	No. of orders	Value (THB/USD)	
AMLO seizure/forfeiture									
Transaction Committee giving a written order freezing or seizing assets	105	USD112,664,900 THB3,943,271,509	186	USD95,204,368 THB 3,332,152,894	221	USD342 868 929 THB12,000,412,549	201	USD 602,779,540 THB21,097,283,900	1,153,517,737
Transaction Committee order withholding a transaction					1	USD1,232,190 THB43,126,661			1,232,190
Court order to seize / freeze assets on application by AGO - AMLO cases	90	USD5,449,917 THB190,747,100	144	USD18,589,733 THB650,640,664	164	USD103,160,907 THB3,610,631,748	188	USD174,162,377 THB6,095,683,204	301,362,934
Total asset value of confiscation - AMLO Civil forfeiture	76	USD4,990,955 THB174,683,435	95	USD4,944,934 THB 173,072,716	172	USD8,534,061 THB298,692,149	155	USD4,630,607 THB162,071,274	23,100,557
Funds to the AML Fund		USD2,215,953 THB77,558,358		USD1,451,726 THB50,810,428		USD1,428,923 THB50,012,321		USD1,433,377 THB50,168,199	6,529,980
Funds sent to the Ministry of Finance		USD5,498,128 THB192,434,496		USD3,269,557 THB114,434,496		USD10,431,392 THB365,098,753		USD6,063,484 THB212,221,951	25,262,561
NACC seizure/forfeiture									
NACC seizures (not provided)									
Unexplained wealth - Forfeiture (NACC)	347	USD1,942,857 THB68,000,000	304	USD10,314,285 THB361,000,000	455	USD3,685,714 THB129,000,000		USD457,142 THB16,000,000	15,942,856
ONCB seizure/forfeiture									
ONCB Seizure		USD62,742,857 THB2,196,000,000		USD37,000,000 THB1,295,000,000		USD23,000,000 THB805,000,000			122,742,857
Forfeited assets devolved on ONCB Fund (cases)	409	USD4,030,395	524	USD8,209,540	1288	USD8,159,389	1254	USD6,318,013	26,717,337
DSI seizure									
DSI seized value (including instrumentalities)		THB198,677 USD5676		THB33,500 USD957		THB644,494,829 USD18,414,137		THB1,614,463,000 USD46,127,514	64,548,284

247. The table above demonstrates the seizure values relative to the forfeited assets across different LEAs. It is notable that over the last 4 years of AMLO civil forfeiture, approximately USD1.1 billion was seized by the Transaction Committee and over the same period, USD23.4 million was confiscated by the Court. This represents approximately 2.18% of all seizures resulting in confiscations. To mitigate this point, Thailand confirmed that there are four large cases where forfeiture is pending where a combined value of THB 14,417,976,280 (approx. USD411 million). These four cases have been filed to the Court in the fiscal year 2017.

248. In emergency situations, AMLO is authorized to administratively freeze a target asset in Thailand, including in response to an Egmont partner's request (section 48(2) AMLA). Such administrative restraint requires the SG approval. AMLO also indicates that such assistance can also be rendered to a non-Egmont group member on a reciprocal basis.

249. AMLO has the authority to stop a transaction that has already been in process, and temporarily restrain target accounts for no more than 3 days by working closely with the financial institution holding the account. In practice, AMLO, working with the FI in Thailand, has successfully stopped one transaction which had been ordered by a customer and restrained the target account which contained alleged fraud proceeds. This related to a matter regarding malfeasance in office. Section 35 operates on a "probable cause" basis allowing a temporary restraint no more than 3 days, and where there is "convincing evidence"; the temporary restraint of the target account may be extended to a maximum of 10 days under Section 36 by the Transaction Committee.

250. LEAs are also authorized by their respective law to obtain a restraining order against the assets in Thailand.

251. Under the AMLA, half of the assets that are cash or money received from the management of seized or frozen assets are sent to the Anti-Money Laundering Fund (AML Fund) and the other half to the Ministry of Finance. The AML Fund also received assets retained but not claimed by any person under section 49 or 51 and interest accrued. The respective amounts received by each fund are outlined in the table above. Under the AMLA, assets may only be transferred 1 year after the court's order that the asset be vested in the state becoming final which can take further time. Thailand advises that there is currently approximately 3.7 billion THB (USD 105,714,285) being held waiting for transfer to the Fund.

252. The table below demonstrates the crime types that relate to the seizures by AMLO. Successes occur mainly in narcotics matters. Whilst some other high-risk predicate crimes are represented, narcotics matters form a significant proportion of seizures with other key crimes such as corruption, human trafficking, environmental crimes and fraud under-represented in AMLO seizures. As figures have not been provided by the RTP who prosecute these crimes the assessment team is unable to assess successes in these high-risk crime types through criminal confiscation.

AMLO seizure statistics (2013 – 2016) and main crime types involved

Authority	2013		2014		2015		2016	
	No of orders	Value (THB/USD)	No. of orders	Value (THB/USD)	No. of orders	Value	No of orders	Value (THB/USD)
Transaction Committee order - freeze or seize assets	105	3,943,271,509 (USD 112,664,900)	186	3,332,152,894 (USD 95,204,368)	221	12,000,412,549 (USD 342,868,929)	201	21,097,283,900 (USD 602,779,540)
Narcotics	84	THB 48,262,539	135	THB184,151,456	103	THB146,090,464	105	THB262,692,850

		USD1,378,929		USD5,261,470		US4,174,013		USD7,505,510
Gambling	3	THB10,834,800	1	THB 405,517	6	THB1,331,198,658	61	THB89,515,904
		USD309,565		USD11,586		USD38,034,247		USD2,557,597
Public fraud	5	THB107,203,929	16	THB148,734,210	32	THB577,126,541	6	THB265,100,047
		USD3,062,969		USD4,249,548		USD16,489,329		USD7,574,287
Theft, extortion, blackmailing, robbery, fraud, misappropriation	6	THB3,642,299,086	18	THB2,883,720,509	13	THB8,313,475,495	6	THB110,098,654
		USD104,065,688		USD82,392,014		USD237,527,871		USD3,145,675
malfeasance in office (corruption)	1	THB7,080,790	2	THB5,925,243	29	THB956,893,191	6	THB14,987,199,262
		USD202,308		USD169,292		USD27,339,805		USD428,205,693
Court order - seize / freeze assets (AGO application)-cases	90	THB190,747,100	144	THB650,640,664	164	THB3,610,631,748	188	THB6,095,683,204
		USD5,449,917		USD18,589,733		USD103,160,907		USD174,162,377
Narcotics	83	125,752,244	126	116,153,655	111	370,673,537	115	303,763,340
		USD3,592,921		USD3,318,675		USD10,590,672		USD8,678,952

253. Thailand noted that it may take a long time to obtain a forfeiture order, which explains the low forfeiture amount compared to seizures. Forfeiture can only be ordered by a Court. Per the Court of Justice and OAG, an average timeframe for prosecuting a civil forfeiture case is approximately 6 months however this timeframe is the current estimate evolving from a policy only effectuated last year with intent for the court to expedite forfeiture cases.

254. At an early investigative stage, a joint task force consisting of various LEAs along with AMLO would involve the Revenue Department (RD) if there is any indication of tax evasion. RD's administrative recovery/administrative fines or penalties in lieu of forfeiture has been actively pursued where forfeiture fails or is unavailable.

Table: Amounts forfeited by RD related to predicate crimes

Year	Narcotics	Others	Persons	Cases settled	Forfeited value (Baht)	Forfeited value (USD)	On-going cases
2015	22	7	29	16	274,658,777	7,847,393	13
2016	10	3	13	6	251,144,060	7,175,544	7
Total	32	10	42	22	525,802,837	15,022,938	20

iii. Foreign predicates and property moved overseas

255. Authorities have taken some action in relation to foreign predicate cases where the proceeds of foreign predicate offences are located in Thailand. However, Thai authorities had not, at the time of

the onsite visit, obtained a domestic order against criminal proceeds located offshore for enforcement and registration in a foreign court.

256. Sharing and repatriation of forfeited assets was previously precluded prior to the amendment of the MACM due to a provision of Thai law which barred the transfer of the forfeited assets outside Thailand. The MACM was amended in 2016 and the sharing of forfeited assets with requesting jurisdictions is now permitted under the law. However, there has not been any asset sharing with other jurisdictions since the amendment to the law.

257. The assessment team was advised that in order to carry out sharing and repatriation, Thailand needs to enter into a bilateral sharing agreement with their treaty partners even though the existing MLAT/As has relevant provisions covering the return of the assets to the treaty partners.

258. Thailand confirms that in 7 cases during 2015 and 2016, Thailand was asked for assistance to seize and forfeit assets based on foreign predicate offences. Most of the cases are still being pursued through the courts and only very basic details of the cases were provided to the assessment team. Statistics for the 7 cases are provided below:

Assistance provided by Thailand based on foreign predicate offences

Subject	Country	illegal Activity	Seize Value (THB)	Prosecute (THB)	Confiscation Value (THB)
Mr.C	China	Pyramid Scam	286,518,868	286,518,868	
Mr.J	South Africa	Rhino horn smuggling	7,248,401	6,416,612	6,416,612
Mr. S	Mekong Operation	Narcotic	25,390,165	26,155,395	
Mr.J	Netherlands	Narcotic, TOC	156,158,464	196,078,461	
Total			475,315,900	515,169,337	6,416,612
Mr.D	USA	Malware Scam	1,426,122	1,426,339	
Mr.G	The Netherlands	Public Fraud	20,075,804	20,075,804	
Ms.P	Malaysia	Fraud	421,622	421,622	
Total			21,923,548 (USD626,000)	21,923,766 (USD626,000)	0

259. The courts in Thailand, in both criminal and civil forfeiture cases, are vested by the relevant statute with extraterritorial jurisdiction over the assets located abroad. Thai courts have the authority to issue an order against criminal proceeds located overseas for enforcement and registration in a foreign court against such assets. However, this did not occur until March 2017 after the onsite, when a Thai court exercised its discretion and issued a domestic order against criminal proceeds located overseas for enforcement and registration in a foreign court. The absence of such orders is pertinent in light of the risk profile in Thailand, particularly in corruption matters. The assessment team noted that authorities did not consider that the risk of domestic proceeds of crime particularly from corruption being sent offshore was a significant risk for Thailand.

iv. Asset Management

260. Management of seized assets is a very significant strength. AMLO's asset management practice is well supported in terms of both process and practice. Once the asset management division takes over an asset from the competent officer, the team considers whether it is able to generate revenue. With a view to maintaining the asset, such assets are sent to the SG for a decision whether or not to

rent out or appoint a manager over the asset. Revenue is deposited into the Government Savings Bank. If the asset is not revenue-generating, the stakeholder may take that asset back into custody upon the provision of a guarantee or security. The asset may be put up for auction or put to use for a government benefit. Where the asset is unsuitable for keeping or will pose an undue burden, authorities have legal options to dispose of it. If the asset is later found not to be connected to an offence the asset is returned to the owner or its value in lieu along with compensation and depreciation in an amount determined by the committee. In this regard, Thailand's practices are well established and flexible to suit different factual circumstances.

Case study – wildlife trafficking case

Ms C had been previously arrested for allegations involving the trafficking of tigers from Malaysia to Thailand into Vietnam via Laos although charges were never laid against her. Later, her brother Mr K was arrested in a forest north of Bangkok. It transpired that Mr K had a significant network smuggling protected Rosewood into China as well as other networks involved in elephant ivory and live pangolin smuggling. When arrested he had a significant amount of cash, ostensibly to purchase the rosewood. AMLO sought assistance from the Vietnam FIU. It was estimated that K's network laundered up to USD35 million between 2011 and 2014 using complex methodologies. Authorities discovered that a tiger zoo owned by Mr K's sister, Ms D in Thailand was used as a front for the smuggling.

AMLO seized a significant amount of K's assets including luxury women's watches, 29 cars that were at a car dealership owned by K and his wife and approximately 6 million THB in cash. AMLO seized 24 plots of land owned by members of K's ring. They also seized the zoo and appointed an expert to manage the zoo pending forfeiture. AMLO officers continue to manage and retain oversight of the zoo, the wildlife contained within it, and remaining assets pending further court orders.

Mr K and his wife were charged with conspiracy to illegal logging and trafficking of Siamese Rosewood, attempting to bribe officials and ML. Ms D was charged with ML. On 29 November 2015, the First Instance Court made an order to forfeit THB111 million (USD3,171,428) in assets including the zoo, property, vehicles and cash. The case is currently under appeal.

261. Suitable training and support have been obtained for ONCB and AMLO for their asset management teams. AMLO and the ONCB demonstrated that the use of experts to assist in managing difficult and complex assets was also a strength.

262. AMLO's asset management team uses information technology to effectively manage and account for assets under their control. It has developed the AMCATS software system which records and tracks all data relevant to the seizure of each asset. This enables AMLO to manage assets, as well as generate reports, produce statistics and account for its inventory.

263. Thailand's main LEAs have strategic plans and manuals in place setting out expressed guidelines on the procedures for seizure, tracking, storage, auction, disposal of, and official uses of properties. The integrity of the asset management programs is subject to effective oversight. In addition, a property owner is provided an opportunity to challenge a pre-trial sale of the property by the seizing agency. AMLO demonstrated many case samples of the complexity and efficiency of their asset management regime, including the following case:

264. *The sale of high-value antiques* - One matter involved a high-level official who had amassed a significant amount of assets through gambling and corruption. The official owned a large number of assets including antiques, cars and high-value Buddhist amulets. AMLO successfully managed the

assets and held them securely pending large auctions that were ultimately held to sell the assets. AMLO worked with experts on particular assets to determine the best method of sale and the specialised market in which to sell them.

Cross-border cash / BNI declarations

3

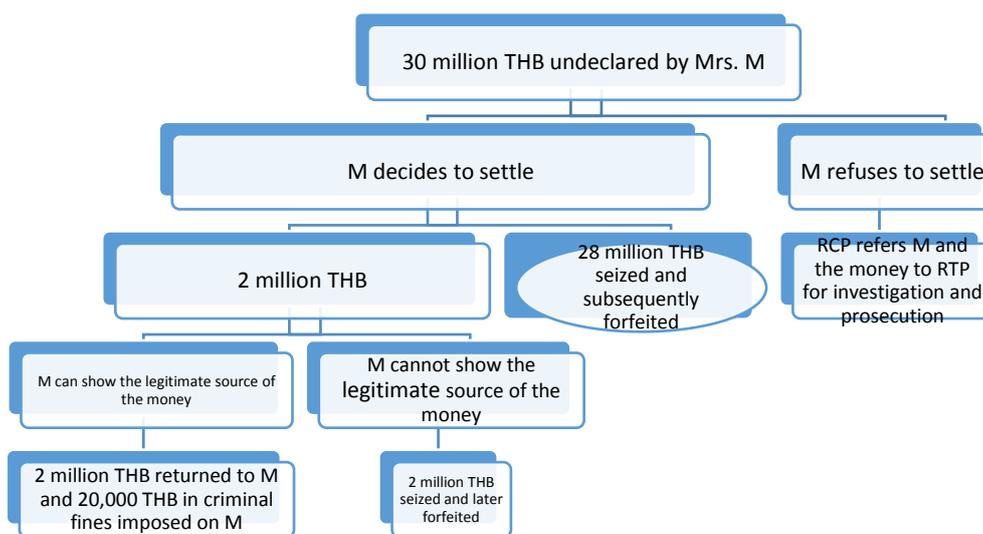
265. There are serious risks from undeclared cash smuggling, with increasing high-risks of inflows of proceeds of crime from neighbouring countries. The movement of undeclared currency (“cash smuggling”) is identified as an increasing high-risk in Thailand and some steps have been taken to target cross-border movement of cash. Thailand has a significant cash-based economy.

266. Thailand has a legal framework in place for the declaration and identification of cross-border movements of funds. However, declaration of BNI was not required under Thai law. The threshold for foreign currency was equivalent to \$20,000 USD. At the time of the onsite, there was no declaration or disclosure requirement on the importation of THB into Thailand from anywhere. New legislation introduced in December 2016 included requirements for the declaration of Thai currency and BNI. A declaration must be made to RTC where 450,000- 2 million THB is exported to Lao PDR, Cambodia, Myanmar, Malaysia, Socialist Republic of Vietnam and People’s Republic of China (only Yunnan province). Approval must be given by the BOT to export 2 million THB or more to Lao PDR, Cambodia, Myanmar, Malaysia, Vietnam and China (only Yunnan province) and to export 50,000 THB or more to countries other than those listed. RTC is presently considering its declaration form requirements. Thailand’s neighbouring countries including Laos, Malaysia and Myanmar have agreed to establish a Point of Contact system providing intelligence information on travellers.

The RTC authorities’ use of “settlement system” to forfeit undeclared currency.

In 2014 Mrs M, a Lao national tried to smuggle 30 million in THB banknotes to Lao PDR concealed in a pick-up truck. Customs officers arrested Mrs M at the Thai-Laos border. RTC passed the case to AMLO and the RTP. RTC settled to forfeit some of the currency... However, AMLO was still investigating her network for ML.

267. The chart below demonstrates how the settlement system operates with RTC:



268. The title of the money forfeited by RTC will be vested to the government of Thailand and sent to the Ministry of Finance. Therefore, a settlement with RTC is the equivalent of forfeiture.

269. After Mrs M's settlement with RTC, she will be released from RTC's custody because RTC's case ends after the settlement. Mrs M's file, however, will still be referred to AMLO and RTP for further investigation. RTC may arrest Mrs M if the RTC finds any suspicion that M has committed an offence and if Mrs M is still available for arrest.

270. 28 million THB in the above-referenced case study will be seized nonetheless because any amount above 2 million THB requires a permit from BOT and Mrs M failed to obtain the permit. However, since the 28 million THB is subject to seizure under the Customs Act, RTC will not even inquire about the source of the 28 million THB.

Table: RTC seizure and forfeiture of smuggled goods and currency

Year	Type of Asset	Smuggling		Evasion	
		Fines (THB)*	Seized assets (THB)	Fines (THB)*	Seized assets (THB)
2013	Currency	20,000	-	-	-
	Other Goods	28,300,503	322,156,601	941,380,624	11,311,018
2014	Currency	80,000	42,460,000	-	-
	Other Goods	18,880,326	512,019,528	885,231,090	36,081,201
2015	Currency	40,000	29,283,000	-	-
	Other Goods	13,703,424	420,654,673	829,762,982	47,009,486

* value of fine" is the asset forfeited by RTC

271. Once the settlement occurs or the undeclared currency and criminal fines are seized by RTC, the traveller will be let go without imposing any criminal penalty. Deterrence of the cross-border currency movement by a third-party cash courier such as a 'smurf' is not served where the money seized is not the third-party courier's property.

272. While some steps have been taken to target cross-border movement of cash, the systems for declarations, detections and seizures have weaknesses and are not well implemented. The system needs to be brought up to fully comply with the international standard and implemented in a way that reflects the risks. Sanctions are not dissuasive in instances where failures to properly declare cross-border movements of currency occur and investigate measures are inadequate to inquire into the source of the funds.

273. Although the powers and processes to restrain, seize and confiscate detected cash are inadequate, section 24 and 27 of the Customs Act authorises customs officers to seize currency, exclusive of BNI, moved through the border that has not be declared to authorities. Section 58/1 provides a range of broader authorities allowing seizure of any item on the basis of suspicion of terrorism. Investigative measures following detection are weak and there is little deterrence flowing from any actions taken against cash couriers.

Overall conclusion on Immediate Outcome 8

Thailand has a substantial level of effectiveness for Immediate Outcome 8.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key findings and Recommended Actions – IOs 9, 10 & 11

274. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Key Findings

Immediate Outcome 9

LEAs and intelligence agencies demonstrate a good understanding of the risk and context of TF in Thailand for domestic terrorism matters, but a less well-developed understanding of transnational TF risks. Financing domestic terrorism is generally low-scale and involves self-funding for attacks.

The standalone TF offence was promulgated in the CTF Act in 2013, however at the time of the onsite there were no convictions for the offence, but three investigations were underway. In a number of matters where TF conduct relating to a terrorist act was identified, Thailand has prosecuted offenders under Penal Code provisions which criminalise limited aspects of financing an act of terrorism. Thailand was unable to provide statistics demonstrating the number of such Penal Code cases in which financial support for terrorism was prosecuted. LEAs prefer using the Penal Code provision over the new TF offence, given the far stronger penalties.

AMLO is not a competent LEA to investigate TF, but it plays a major role in the financial investigation of terrorism matters, including TF. AMLO has a team of people dedicated to TF who work closely with RTP. RTP and the DSI are responsible for investigating TF matters; however it is apparent that DSI is not actively involved in TF. RTP relies heavily on AMLO to conduct the financial aspects of terrorism investigations, and require greater in-house financial intelligence expertise. AMLO has very regular informal and formal exchange of information with relevant LEAs and security agencies regarding terrorism cases.

AMLO has pursued a number of proactive and detailed financial investigations drawing on a wide range of intelligence sources. Targeting for these TF investigations is achieved through joint agency processes and RTP referrals. AMLO has shared the findings of its completed TF investigations with RTP, but few have led to further investigation by the RTP or prosecution for TF.

Thailand has demonstrated financial investigations relating to transnational terrorism threats, including terror attacks in Thailand. This has included international cooperation with foreign partners on financial trails, including in neighbouring jurisdictions. However, evidence sharing, including through MLA, is rarely pursued for financial investigations related to CT and TF.

Financial investigations of terrorist matters have supported the use of TFS to target the assets of terrorism offenders (see IO 10). As a matter of policy, Thailand pursues terrorism prevention through the use of intelligence information.

Immediate Outcome 10

Thailand CFT law (2013) and related regulations give effect to UNSCR 1267 and 1373 targeted financial sanctions (TFS).

Thailand has regularly used UNSCRs 1373 in targeting domestic terrorism in the southern border provinces. Thailand has made 83 domestic proscriptions under UNSCR 1373 and has de-listed two persons since 2013. Despite risks of financial links with neighbouring jurisdictions, Thailand has not requested any other jurisdiction to consider giving effect to the Thai 1373 list and has not given effect to foreign requests to freeze. Thailand has shared its 1373 designated list with BIMSTEC members and Malaysia. Thailand has not contributed to proposals to the UN under UNSCR 1267.

Implementation of TFS appears to be strong in the banking and insurance sectors but there are challenges amongst other sectors of FIs and DNFBPs. This is of particular concern in the high-risk sector like money changers, money remitters and NPOs. Up to November 2016 Thailand had frozen approximately 780,000 THB (USD \$22,285 equivalent) in assets owned or controlled by Thai designated person. These assets were related to 35 of the 83 persons designated under 1373 since 2013.

Implementing REs require further information on risks of TF and sanctions evasion to assist their implementation of TFS. Government agencies are required to implement TFS. NPOs receiving foreign funds through banking channels may have their funds screened for UN sanction list, which adds to effectiveness, but more needs to be done to assist at-risk NPOs to screen directly.

Thailand has made some assessments of NPOs sector risks, classifying TF risks is high in the sector. Risk scoping of NPO sector done in 2016 identified the features and types of NPOs which are likely to be at risk of TF abuse. Recognizing the risks from unlicensed NPOs operating in Thailand, Thai authorities are encouraging those unlicensed NPOs to be licensed.

There are good examples of targeted outreach to the sector and NPO regulators on TF risk factors. However, further support is needed to help sustain outreach to at-risk NPOs. Domestic NPOs registered by the provincial authority may raise fund abroad and receive foreign fund but there is no regulation or guidelines for receiving those fund.

Oversight of NPOs activities by DPA seems to be risk-based. Both DPA and the DOE have the authority to revoke licence for unlawful activities but DPA and DoE lack sufficient enforcement powers and sanctions for non-compliance. However, provincial authorities in the southern border provinces provide further oversight in high-risk areas.

Immediate Outcome 11

Thailand passed the CTPF Act in July 2017, which establishes fundamental building blocks of a system to combat financing of the proliferation of WMD in Thailand which includes both TFS to implement UNSCRs against DRPK and Iran and a criminal offence of proliferation financing to implement prohibitions under UNSCR 1540.

Thai authorities have established strong policy coordination mechanisms related to combating WMD proliferation, including related proliferation financing.

Since mid-2016 Thailand has conducted outreach to REs on upcoming PF-related TFS and has required REs to implement monitoring systems to be ready to implement TFS. AMLO has publicised WMD-related UN designations via its website through a designations communication portal common with the CT-related TFS. AMLO conducted awareness raising and outreach to support implementation by REs. AMLO has amended supervision procedures to support checking of implementation in the future. It is evident that a number of sectors have commenced screening customer and transaction databases in keeping with the UN lists for Iran and the DPRK.

While Thailand has little trade with Iran, Thailand is a relatively important trading partner with the DPRK. Detailed information on risk and vulnerability for PF and possible typologies of sanctions evasion is yet to be shared with REs to assist them to effectively implement the new PF-related TFS.

Recommendations

Immediate Outcome 9

- Amend the CFTPF to increase the available sanctions for TF and other technical gaps in the TF offence. Increase the financial penalties for TF to make them effective and dissuasive.
- At the policy level, RTP should prioritise investigating parallel TF investigations alongside all terrorism matters. This will require greater in-house awareness raising, financial intelligence expertise and collaboration with AMLO for the purpose of TF investigations. RTP should make greater use of AMLO intelligence to pursue TF investigations.
- Take steps to expedite TF charges arising from AMLO's financial investigations.
- Increase the resources available to AMLO to conduct TF investigations and enhance AMLO's access to information related to terrorism investigations.
- Increase the focus on cross-border aspects of financing terror networks in the southern border provinces and beyond.
- Ensure that there is an RTP Unit allocated to deal with specialist TF matters.
- Increase the targeting and investigation of transnational terror groups particularly returning foreign fighters and other groups that seek to use Thailand and the Thai economy.
- Ensure CFT capacity building and training for LEA investigators, prosecutors and judges.
- Ensure that LEAs and prosecutors further pursue informal and formal international cooperation to support targeting, investigation and prosecution of TF cases and related preventive measures.

Immediate Outcome 10

- Support more comprehensive implementation of TFS across a wider range of sectors.
- Share further information on risk, including risks from sanctions evasion.
- Increase cooperation with sectoral associations to support targeted implementation of TFS amongst the smaller FIs and DNFBPs sectors and NPOs.
- Consider requesting other jurisdictions, particularly neighbours, to give effect to 1373 designations, taking into account the risk profile and practicality.
- Ensure government agencies check for designated entities without delay, including LEAs and NPO regulators.
- Priority should be given to license the existing unlicensed NPOs on a risk sensitive basis.
- Increase sustained outreach to at-risk NPO sectors.
- Ensure implementation of effective sanctions by NPO regulators to support compliance with controls on transparency and CFT.

Immediate Outcome 11

- Provide notifications to all REs and relevant stakeholders to ensure they are aware of their obligations and commence screening of customers and transactions.
- Ensure notifications of changes in designations are communicated to REs and other relevant stakeholders without delay.

- Identify at-risk sectors for targeted outreach and future offsite and onsite supervision of CPF measures.
- Share detailed information on risk and vulnerability for PF and possible typologies of sanctions evasion with REs to assist them to effectively implement the new PF-related TFS.
- Conduct further outreach and awareness-raising in relation to the new CPF regime. This should include guidance on risk and sanctions evasion.
- Consider updating sectoral guidance to reflect both the expanded TFS and the new PF offence (and related STR reporting obligations) to guide implementing sectors.

*Immediate Outcome 9 (TF Investigation and Prosecution)*²⁰

275. Thailand enacted the Counter Terrorism Financing Act in 2013 (CTF Act) which established a TF offence in Thailand. Prior to the enactment of the CTF Act, section 135/2 of the Penal Code were used to prosecute the financing aspects of terrorism. After the ME onsite, Thailand enacted the CTPF Act in 2016 which now consolidates the offence and penalty for TF along with other offences including proliferation financing and targeted financial sanctions. For the purpose of this evaluation, implementation of the CTF Act and provisions in the Penal Code will be analysed.

276. Section 16 of the CTF Act (section 25 of the CTPF Act) criminalises TF and imposes a 2-10 year imprisonment sentence and/or a fine from 40,000 THB to 200,000 THB (USD5700). As discussed in R.5, the minor shortcomings in compliance are with financing travel of individuals to another state, the commission of the TF offences by a group of persons acting with a common purpose and aiding, abetting and directing an attempted TF offence. Thailand is not a party to all the required TF conventions although it has criminalised some of the conduct contained therein.

Prosecution/conviction of types of TF activity consistent with the country's risk profile

277. RTP and DSI have the power to investigate TF cases whilst the OAG is responsible for the power of indictment for TF cases. AMLO has powers to conduct elements of a TF investigation but must rely on RTP to finalise the investigation and provide a brief of evidence to the OAG. Within the DSI the Security Cases Bureau is responsible for investigations and for taking legal action against offenders of crimes with a serious impact on national security and involving terrorism.

278. AMLO plays a significant role in conducting investigations, tracing funds, gathering evidence and analysing transactions. AMLO has a team of six analysts who carry out dedicated financial intelligence and investigative work relating to terrorism. It is often the case that the sole responsibility for TF investigations is left to AMLO and while there is some information sharing under the ISC and via hotlines, AMLO does not, in practice, have full access to intelligence, surveillance and other tools held by law enforcement and the military to progress TF investigations. However, AMLO demonstrated that it provides good intelligence products and evidence, based on its financial investigations, to LEAs for their furtherance of investigations of terrorism and TF offences.

279. Authorities demonstrated a clear understanding of the domestic terrorism and associated funding profile. As outlined in IO 1 and section 1 of this report, the major risks emanate from the situation in the southern border provinces where there is a significant military presence.

²⁰ IO 9 was revised in February 2017 (i.e. after the on-site), to broaden the reference to types of TF activity to include 'other assets' in addition to funds. The revision has been reflected in the recommendations presented in this report.

280. An Emergency Decree is in effect in the southern border provinces in order to provide greater resources and more widespread powers to authorities. The situation results in a greater focus by LEAs on terrorism and related criminal offences rather than TF cases. Such criminal offences carry much greater penalties than TF, including death. However authorities note that where TF has been investigated alongside large bombings, the funding for such attacks is usually self-funded, low level and funding does not pass through FIs.

4

281. At the time of the onsite, there were three TF matters under active investigation by RTP that were being sent to the OAG for advice on prosecution. AMLO and RTP financial investigations have contributed to the designation of 81 domestic terrorists, there have not yet been any TF charges laid under the CTF Act. Thailand provided details of two cases that were prosecuted for the Penal Code elements of financing terrorism. The low number of TF investigations and the absence of TF prosecutions under the 2013 CTF Act confirm that Thailand is not pursuing TF matters in line with its risk profile.

282. Whilst the work of the intelligence and police agencies alongside AMLO to investigate matters is noted, the significant amount of investigative work that is being undertaken is not resulting in TF prosecutions, which is not in line with the risk profile in Thailand. The following cases demonstrate Thailand's exposure to transnational terrorism.

Case studies - transnational terrorism risks

Erawan Shrine bombing - in 2015, there was a bomb blast at the Erawan Shrine in central Bangkok, killing 20 people. Enquiries led to AMLO conducting financial investigations into a number of foreign persons possibly associated with the attack. AMLO sought assistance from foreign counterparts (Turkey, Cambodia, Malaysia, China and Bangladesh). Arrests were made in Malaysia of persons alleged to be involved. International information exchanges contributed to the arrests of two suspects in Thailand, who were held in military custody. Both are under trial before the Thai military court on charges including possession of bombing materials and causing explosions with the intention to kill, rather than terrorism offences. AMLO's financial investigation was ongoing, including domestic and foreign actors involved in the attack. Public pronouncements on the case downplay any connection to terrorism or TF.

2012 Valentine's Day bombing - in February 2012 three bombs exploded in central Bangkok injuring five people. The first blast exploded in the bombers' apartment, with subsequent bombs thrown by the suspects as they tried to flag down a taxi. Thai authorities advised that five Iranians were involved in this matter and two had been arrested. Three suspects fled Thailand, one of whom is currently subject to an extradition request to Malaysia. One suspect was arrested by Malaysian authorities attempting to travel to Iran. Financial enquiries were ongoing.

TF identification and investigation

283. TF matters are generally identified through LEAs disseminations to AMLO seeking further investigation or on AMLO's own initiative working in parallel with relevant LEAs. As discussed in IO6, AMLO receives information from a number of sources. However, few sources of information received by AMLO have related to TF including six complaints received from the public or informants. AMLO spontaneously disseminated 26 reports relating to terrorism to the RTP but none related to TF. At the time of the onsite there were three TF matters under active investigation by RTP that were being sent to the OAG for advice on prosecution.

284. Although a stand-alone TF offence came into effect in the 2013 CTF Act, the RTP has not moved to regularly make use of the offence. RTP continues to rely upon section 135/1 and 135/2 of the Penal Code (security offences). Section 135/2(2) particularly criminalises aiding and abetting terrorism offences and includes procuring or gathering property. Section 135/1 carries a potential death penalty although the offence of providing funds and property under section 135/2 carries a period of imprisonment from 2 – 10 years. Section 90 of the Thailand Criminal Code provides that when an act is one and the same violating various provisions of the law, that offence carrying the more severe punishment shall be applied.

285. Between 2010 – 2012, AMLO in collaboration with other LEAs, investigated 13 Penal Code s.135/2 matters that involved elements of TF. These matters led to indictments however it is not clear how many of these cases were tried. In one case, asset forfeiture was ordered in relation to a school that was used for training and arms storage by domestic terror groups. Thailand was unable to provide statistics of Penal Code s135/2 matters involving financial support of terrorist acts for the period 2012-2016. It is not apparent that large numbers of financial investigations have been opened in relation to security offences under section 135.

286. Authorities outlined some of the difficulties faced in bringing TF cases including challenges connecting the incident with offenders and a reluctance of witnesses to disclose information. Given these challenges and the nature of small-scale funding for domestic TF, defendants are often arrested and prosecuted for alternate charges or are designated domestically as terrorists so that authorities may pursue assets at any time in the future. Thailand indicates that it has, in practice, generally charged those who have supported terrorist activity by raising funds under various offences other than terrorism or terrorist financing, with section 84 of the Penal Code (principals and supporters of criminal offences) or bombing offences being commonly charged.

Prosecution of the financing of terrorism under section 135/2 of the Penal Code

Case 1 – certain perpetrators were investigated for conspiring to shoot surveillance military in Pattani. 5 individuals provided guns and a vehicle to facilitate the offence as well as other expenses. They were also responsible for keeping watch whilst 10 other offenders were committing the terrorism offences. 4 offenders were arrested and tried under section 135/1 in conjunction with section 135/2 of the Penal Code including for the provision of financial support for terrorism. All offenders were convicted on 26 November 2013 and were sentenced to death for the terror offences.

Case 2 – involved an individual who provided motorcycles, a mobile phone and money to terrorists to commit a bombing (the bomb was on the motorcycle and triggered by the mobile phone). 5 offenders were charged under section 16 of the CTF Act however ultimately the OAG charged them under section 135/1 and 135/2 for the joint provision of assets to commit terrorism. The offenders were convicted on 2 March 2017 and sentenced to 37 years imprisonment.

287. One challenge for Thailand is the collection of all forms of evidence in relation to incidences and targets located in the southern border provinces. Witnesses generally do not file complaints and evidence gathering is challenging because of the security situation. Consequently, RTP has established an operational coordination mechanism in collaboration with intelligence agencies and LEAs such as AMLO, ONCB, Southern Border Provinces Police Operation Centre, Metropolitan Police, Border Patrol Police Bureau, Central Investigation Bureau, Immigration, NSB, Interpol and RTC. The specialist work undertaken coordinates intelligence operations, financial investigations and the investigation and suppression of crimes related to the incidents. It also facilitates coordination and supports investigations for the prosecution of offenders. A key role that it plays is to consider the

financial trails around the situation in the southern border provinces and the interconnection with other key crime types such as human trafficking, drug crimes, illegal oil trade etc. from a financial perspective. Authorities consider that the financial trails are able to provide a broader picture of the offending than other forms of evidence due to the difficult security situation in the Southern border provinces. The RTP was able to articulate cases where they have been able to identify financiers of terrorist incidences as a result of the work done by this group. This has also led to designations under 1373.

288. In relation to transnational terrorism and related TF, AMLO has received 9 foreign requests for assistance in 2015 and 1 in 2014 from relating to TF. It is clear that the RTP and security intelligence agencies have made many requests and proactively shared information with foreign counterparts in relation to terrorism, including financial aspects of terrorism. It is notable that authorities chiefly rely on informal channels for information exchange and during the last five years Thailand has not made any requests for MLA in TF matters.

Financial Investigations related to TF (CFT Act, 2013)

Year	AMLO TF Investigations	AMLO referrals of TF to RTP	RTP TF investigations	Referrals to OAG	Prosecutions
2016	76	4	4 ²¹		0
2015	70				0
2014	111				0
2013	87				0
Total	344	4	4	0	0

289. The figures in the table above reflect the work undertaken by the dedicated TF investigation team within AMLO to support counter terrorism and TF investigations. As discussed in IO6, the intelligence division of AMLO produces high-quality financial intelligence in relation to TF. Much of that intelligence is shared with both the AMLO TF investigation division as well as various LEAs. The AMLO TF team demonstrated a strong capability and experience of conducting complex financial investigations of TF matters, including in collaboration with other LEAs.

290. There are currently three TF cases under investigation.

Case studies - 3 TF matters currently under investigation

TF Case 1: After a bomb exploded in a southern province, authorities discovered many offenders were involved and investigated based on CCTV. This led to arrests and ultimately confessions from those involved that they had received money from sources in a neighbouring country to purchase bombs and related devices that led to the attack. Offenders confessed to the use of couriers to transport money across the border in order to fund the attacks. Of those arrested in this case, 3 offenders are designated persons under the CFT law. This case is still being investigated by the Police with a view to forward it to the OAG for prosecution. At the time of the onsite, no request for international assistance had been made to any jurisdiction to assist in this case.

TF Case 2: related to a bomb in a shopping centre. Many offenders were involved in this matter and after investigations, certain offenders were arrested. One offender indicated that

²¹ Three RTP TF investigations were ongoing at the time of the onsite visit

he purchased the car used to carry the car bomb and provided it to the bomber. Due to his conduct in providing the car to the bomber, the offender was charged with TF. AMLO undertook financial investigations and uncovered transactions from another jurisdiction. Enquiries were made with that jurisdiction and cooperation is ongoing.

TF Case 3: involved bombs that were placed in two locations involving multiple offenders. Authorities found that the vehicles used to transport bombs and facilitate the attacks were stolen. It was revealed that one person had acquired a mobile phone and motorbike and gave it to the offenders and their associates to assist in launching the attack. Consequently, that person was charged with TF. The matter was ultimately prosecuted under sections 135/1 and 135/2 of the Penal Code and the offenders were convicted on 2 March 2017.

TF investigation integrated with -and supportive of- national strategies

291. TF investigations have contributed to risk assessments of terrorism and TF threats. The work by security intelligence agencies and AMLO's and work to identify and investigate financial trails associated with terrorism has added to ongoing assessments of the terrorism and TF environment.

292. TF investigations have led to the authorities using 1373 designations as a tool to designate and freeze assets belonging to offenders who authorities are aware is involved in terrorist activity. This has led to 83 domestic designations of terrorists which enable them to disrupt both past and future funding for those designated persons who would not require a prosecution of TF to freeze assets.

293. Thailand's high-level commitment to combating terrorism was evident however the commitment to following through TF matters was less apparent. Apart from the coordination mechanism within the RTP, it is not clear that other coordination results in the cooperative use of investigative and surveillance resources in relation to domestic TF cases.

294. Thailand was not able to demonstrate investigation of cross-border TF cases relating to the terrorism associated with the southern border provinces.

295. Thailand was not able to demonstrate a substantive focus on investigating TF related to transnational threats, including foreign terrorist fighters or the network involved with the Erawan Shrine bombing.

Effectiveness, proportionality and dissuasiveness of sanctions

296. Given there are no TF convictions with the standalone TF offence, Thailand was unable to demonstrate the effectiveness of sanctions imposed. The CFT Act does not include dissuasive or proportionate sanctions. The maximum financial penalty is approximately USD5700 and a custodial penalty of up to 10 years imprisonment. The available sanctions are not proportionate when compared to terrorism offences in Thailand. In light of this, it is evident that authorities have actively pursued alternative charges that have led to significantly greater periods of imprisonment or the death penalty. The penalty for TF does not encourage authorities to conduct parallel financial investigations for TF and the focus has clearly been on the prosecution of the offence of terrorism, or the planning and preparing for it.

297. Only one case was presented where concrete information showed sanctions were imposed for TF conduct under Penal Code s.135/2. This related to a case tried in 2016 for which the defendants were sentenced to 37 years imprisonment (see case study above).

Other use of criminal justice or regulatory measures to disrupt TF

298. Thailand has sought to proactively combat terrorism by supporting anti-extremism. This has marked a shift from a focus on intelligence, searches and arrests to a focus on engaging with people through peace projects and identified measures for countering violent extremism. Alternative action in the southern border provinces has focused on safeguarding lives and property, justice administration, promoting understanding, education, religious and cultural support, improving capabilities and quality of life and improving government efficiency. ISOC Region 4 is running a project called "Return People to Their Home", aimed at persuading perpetrators to cease violence and leave the insurgent movement by offering them an opportunity to return to normal life in society. Under the project, the government will render assistance in their prosecution and, in certain cases, provide remedies. So far 983 persons have been admitted to the project.

299. Immigration procedures have led to the disruption of the movement of members of terrorist groups in transit to Thailand through the use of deportation procedures.

300. Thailand pursues a significant number of prosecutions under the relevant Penal Code sections. Perpetrators of terrorist attacks were charged under Section 135/1 and 135/2 of the Penal Code as set out below. The charges predominately relate to shooting (47%), agitating (29%), bombing (18%) and arson (9%). It is noted that the above statistics do not encompass those matters that proceeded through the Military Courts.

Security cases from 2012 - 2016

Investigation					Prosecution				Conviction		
cases	Don't know offender	Know offender (cases)*	Arrested (cases)	Case Dismiss	Prosecuted	In process	Not prosecuted	Dismissed	Cases Punished	defendants	Case dismiss
2259	1421	838	354	135	55	308	68	547	52	197	82

*this refers to individuals who have been identified on CCTV or via other means and not yet identified.

Charges brought under s135 of the Penal Code (terrorism)

2011		2012		2013		2014		2015		2016 (Jan-Nov)	
Cases ²²	Convictions	Cases	Convictions								
<i>(2007-2016) First Instance Court – 460 cases brought before the Court, 200 matters finalised</i>											
30	52	7		26	18	63	36	9	11	29	
<i>(2007-2016) Appeal Court cases – 249 matters brought before the Court, 174 finalised</i>											
16	47	18	-	47	59	47	47	50	21	63	
<i>(2001-2016) Supreme Court cases – 182 cases brought before the court, 19 cases finalised</i>											
38		31	19	30	-	33		19	-	27	

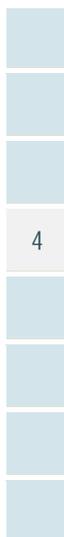
301. The table above demonstrates the number of cases of Penal Code terrorism that have been brought before the Court. This includes offences under section 135/2 and the related provisions of

²² cases brought before the Court

principals and supporters of s135 offences. Thailand did not provide clear statistics including acquittals. It should be noted that the term 'finalised' in the statistics table includes cases both acquitted and convicted.

Overall conclusion on Immediate Outcome 9

302. Thailand has a moderate level of effectiveness for Immediate Outcome 9.



Immediate Outcome 10 (TF Preventative Measures and Financial Sanctions)*Implementation of Targeted Financial Sanctions for TF without Delay*

303. Thailand established its legal and regulatory framework for implementing targeted financial sanctions for TF in 2013 with the enactment of 'Counter Terrorism Financing (CTF) Act' and the issuance of 'Ordinance of the AML Board Prescribing Rules and Procedures for Making a Notification and Communication of List of Designated Person and Taking Actions under Section 6(1), (2) and (3)' and 'Ministerial Regulation Prescribing Rules and Procedures for Considering and Reviewing the list of Designated Person by the AMLO and the Transaction Committee'. Amendment of CTF Act in 2015 addressed some deficiencies.

304. In practice, UN lists are converted to Thai designations and communicated by AMLO via upload of the lists to AMLO's website to the private sector without delay.

Designations

305. Thailand did not make or co-sponsor any proposal to the 1267/1989 committees for designation. This is in keeping with the risk profile in Thailand. However, there is a lack of awareness amongst LEAs about the UN listing process; its benefit and their responsibilities.

306. Thailand's comprehensive mechanism for domestic 1373 proscription has been used to designate 83 Thai individuals. This appears to reflect the risk profile and agencies comprehensive of understanding of domestic terrorism risk, especially in Thailand's southern border provinces.

307. Thailand has implemented mechanisms to consider and decide on de-listing requests. Based on these procedures two designated persons have been comprehensively assessed and ultimately removed from domestic designation following review process which reflects the integrity and effectiveness of the system.

Case studies - de-listing**Case 1:**

Mr A had an act involving terrorism and the Civil Court ordered as a designated person. AMLO came to know from surveillance that he has moved Narathiwat Provinces to reside in Pattani Provinces returned to normal social life and was not involved in terrorism or TF anymore. According to these facts, Civil Court delisted Mr A from designated persons list according to the application of AMLO.

Case 2:

Mr M had an act involving terrorism and the Civil Court ordered as a designated person. Mr M was arrested and prosecuted for security offence, sentenced for 7 years imprisonment. AMLO investigated and found that, during his term in prison, Mr M did not appear to have any act involved with terrorism or TF. Based on these facts, AMLO proposed to the Civil Court to delist Mr M from designated persons list and the court decided accordingly.

308. Despite some cross-border risks in the southern border provinces of Thailand, up until the onsite visit Thailand had not requested any foreign country to give effect to its domestic UNSCR 1373 list. After the onsite, AMLO confirmed that they had shared the list with Malaysia and BIMSTEC members.

309. The CFT Act provides a basis for Thailand to make 1373 designations of both domestic and foreign terrorists, however Thai authorities appear to consider that designation of foreign terrorists can only be accommodated if the designated persons threaten Thailand's stability or security. Where a case does not meet the requirements for granting a foreign request, AMLO instead keeps a watch on the person's transactions.

310. AMLO received a request from the US to designate a person and freeze their accounts in 2015. A further five names on the OFAC list have been put into the process of designation under section 5 of the CTF Act of Thailand's own accord. The Designation Committee had approved AMLO's request and AMLO was waiting for further information and evidence from the US to submit to the court.

Freezing actions taken

311. No assets had been frozen pursuant to 1267/1989 and procedures to coordinate with the UN regarding access to funds have not been tested. Given Thailand's risk profile, it is reasonable that no 1267-related assets have been frozen. However, there is relatively weak implementation across many sectors.

312. Up to November 2016, Thailand had frozen approximately 780,000 THB (USD22,285 equivalent) in assets owned or controlled by a designated person. These assets were related to 35 of the 83 persons designated between 2013 and 2016. Details are in the following table:

Assets frozen under Thailand Sanction List from Feb. 2013-May 2016

Type of Assets	Value (THB)	USD equivalent
Bank accounts	103,473	2,956
Insurance premium	42,374	1,210
Liability insurance	235	6.7
Credit card instalment transaction	42,392	1,211
Land	591,090	16,890
Total	779,564	22,273

Implementation of TFS by REs and government agencies

313. AMLO has conducted outreach, awareness raising and oversight to support the implementation of TFS. However, more needs to be done particularly in the securities sectors and some low capacity but high-risk sectors like money changers, money remitters, NPOs and DNFBPs.

314. There is a need for Thai authorities to share more TF risk information across the private sector to support their implementation of TFS. This relates both to 1267 persons and entities and the Thai economy, as well as financial trends with domestic terror groups and risks from potential sanctions evasion.

315. Most of the REs rely on the list of designated persons from AMLO, but some banks use commercial vendors' systems. Generally, AMLO's dissemination of designation list is immediate. Implementation of TFS relating to UNSCR 1267 is good in the banks and insurance sector but not in the other FIs and DNFBPs or in the high-risk sector like money changers, money remitters and NPOs.

316. While the Thai insurance sector is assessed as low-risk for ML and TF, implementation of TFS in this sector is generally sound. This sector has benefited greatly from its association's efforts in developing and updating the database of designated persons, PEPs and sharing those lists among the members. The association also conducted several outreach programs for its members. Other low

capacity sectors such as money changers, money remitters, cooperatives and DNFBPs may consider the use of associations in this regard.

317. Insufficient understanding of the beneficial owner requirements (see details under IO4) raises the concern that this could undermine REs ability to establish whether their customers are acting on behalf or at the director of the listed person.

4

318. Only one match with a sanctioned name was reported to AMLO from a bank and that was identified as 'false positive'. AMLO does not collect or review the details of preliminary false positives identified by REs which do not result in freezing or reporting. During on-site supervision AMLO examines implementation of TFS however their on-site supervision does not cover all the REs due a shortage of manpower and other resources.

319. There is a need for sectoral regulators to include a greater focus on TFS obligations within their sector. Gaps in regulators awareness of their duties and responsibilities in implementing TFS undermine overall effectiveness in this field. AMLO and MFA should also take further steps to raise awareness of other regulators i.e. licensing authorities, customs, immigration and LEAs on the obligations of UNSCRs.

320. Thai government agencies have an obligation to check for matches with UN and domestic designations; however some delays and inconsistencies were noted. This could be due to an over-reliance on MFA hard copy distribution rather than an AMLO notification that could save a significant amount of time.

321. Implementation of sanctions screening by NPO regulatory authorities (DOE and DPA) while registering or monitoring NPOs needs to be strengthened in practice. NPOs appear to rely on banks screening of foreign funds received through banking channels.

Targeted Approach, Outreach and Oversight of At-Risk Non-Profit Organisations

322. Thailand has taken some measures to review the NPO sector and the existing laws and regulations to take proportionate and effective actions if the NPOs being abused by terrorist.

323. Both the 2012 NRA and 2016 NRA suggest that NPOs in Thailand are high-risk for ML & TF. However, NPO sector risk scoping done by AMLO with the help of World Bank as part of NRA 2016 where they have identified which subsets of NPO falls under the definition of NPOs according to FATF definition and the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.

324. Authorities note that over two-thirds of Thailand's approximately 168,000 NPOs are unregistered. The 2012 NRA and draft findings of the 2016 NRA highlight weaknesses with adequate AML/CFT supervision and gaps with registration, oversight and management standards making the NPOs vulnerable for being used as a channel for ML.

325. NPO sector regulators (DOE and DPA) are aware of a significant number of unlicensed NPOs operating in Thailand, but there has not been sufficient implementation of measures to increase formal registration of at-risk sectors of NPOs. DPA is very much focused on southern border provinces as this region is high-risk for terrorist activities. But lack of proper supervision and a huge number of unlicensed NPOs adds to vulnerabilities in Thailand. Subsequent to the onsite, Thailand confirmed they have commenced drafting a law encouraging unlicensed NPOs to be licensed.

326. NRA 2012 mentioned 3,048 NPOs established or owned by non-resident. All the NPOs working in Thailand can raise fund from abroad but there is no clear procedure for receiving foreign funds or donations. DOE has registered only 80 foreign NPOs and regulating their activities in line with their declared objectives.

327. The 2015 amendment of the AMLA extended powers of AMLO over NPOs to call for explanations of suspicious activities, temporarily freeze suspected transactions and conduct examination during sunrise and sunset.

Outreach to NPOs on risk

328. DPA and AMLO have conducted at least yearly training programs over the last three years to disseminate knowledge of how NPOs are at risk of abuse for TF. In 2014, AMLO in collaboration with DPA, League of Foundations of Thailand and the League of Associations of Thailand conducted 10 seminars for NPOs in 42 provinces of Thailand which there were 1,032 attendees. AMLO and PDA inform that they are discussing plans to increase outreach activities in the provinces based on the risk levels of areas and the types of NPOs.

329. The DPA provides annual training in relevant law compliance to NPOs both in Bangkok and in the provinces in cooperation with the League of Foundations of Thailand and the League of Associations of Thailand. NPO at the high-risk area involved. In 2015 – 2016, Thailand confirmed that there are more targeted outreaches in the high-risk areas, particularly NPOs located in Pattani, Yala, and Narathiwat. It was not evident to the team that those NPOs at higher risk of TF were identified and targeted for such training. The following table demonstrates the number of training arranged by AMLO, DPA and DOE for NPOs:

Training provided by AMLO, DPA and DOE for NPOs

Period	NPOs	No. of Participants	Issues covered during outreach
2012	15	30	<ul style="list-style-type: none"> • Operation of foundations & associations • overview of AMLA obligations • the risk of abuse NPO for TF
2013	20	50	
2014	900	1023	
2015	600	675	
2016 (November)	300	358	

Registration and monitoring of NPOs

330. DPA is the Registrar of Thai associations and foundations under sections 78 and 110 of C&C Code. Foreign NPOs require approval from DOE for working in Thailand. Section 109 of C&C Code authorizes the Registrar to supervise the operation of associations and section 128 of the same Act authorizes the Registrar to examine and oversee. Ministry of Interiors issued an order reiterating that the Registrar examines the operation of associations and foundations, and monitor their important activities at least once a year, as well as organize training courses for them every year, both in Bangkok and other provinces.

331. During registration, both DPA and DOE examine the purpose and objectives of the proposed NPO, conducts background checks of the people involved with it, and especially for domestic NPO, they check the financial capacity of the sponsor. In case of foreign NPO, DOE depends on the attestation of documents from sponsoring countries embassy. In some cases DOE refers the case to NSC for further checks and in relation to the financial aspects the NSC relies on AMLO.

332. The MOL Rule on the Entry of Foreign NPOs requires foreign NPOs to submit a semi-annual report on the result of operation to the Committee for information (clause 14). The report contains the operation of the foundation in the previous year; the ledger and a copy of the balance sheet certified by a licensed auditor; and copies of the minutes of the board meetings.-

333. It is not clear, however, whether the information contains the identity of persons who own, control, or direct their activities and how the public can access the information. Although Thailand mentioned that the Registrar has the authority to examine foundations to check whether they have operated in accordance with their objectives, it is not stated that the examination includes checking whether all funds are fully accounted for and are spent in a manner consistent with the purpose and objectives.

334. Foreign NPOs are subject to a six month probation period following registration. Licences are then given for 2 years at which point they must renew. Every six months foreign NPOs working in Thailand must submit reports about their activities to the DOE who then examines them for any areas of concern. The DOE may then advise the NPO to correct certain areas. If they fail to comply the DOE has the authority to revoke the license however there are very few administrative sanctions to make them comply. Moreover, DOE has only five officials to monitor 80 foreign NPOs. Most of them are very large in size with diversified functions. Similarly, the DPA has a lack of administrative sanctioning powers against non-compliance by domestic NPOs.

335. DPA conducts both off-site and onsite monitoring. Domestic NPOs have to report annually on their activities, income and expenses, the balance sheet certified by an accredited auditor, and a copy of the minutes of all committee meetings during the year. The registrar examines reports and carries out onsite monitoring on a random basis as necessary.

336. The Ministry of Interior has emphasized with registrars the obligation to examine the activities of NPOs and regularly monitor their key movements at least once a year. Where an NPO is found to be engaging in an activity not in line with rules or contrary to state security or public morality or stop operations for more than two years, the registrar or the public prosecutor shall have the power to file a petition with the court for an order to remove the directors or dissolve that NPO under the C&C Code (section 131).

337. From 2014-2015 complaints were filed against 7 foundations and 4 associations for operating inconsistently with rules governing foundations and associations. Meanwhile, 13 foundations and 21 associations were sanctioned for failure to register the appointment or changing of directors within the prescribed period or failure to register revision to their rules.

Monitoring of NPOs in the three southern border provinces

Province	Number of staff	Entities registered and active in the province		NPOs receiving onsite monitoring	
		<i>Foundations</i>	<i>Associations</i>	<i>Foundations</i>	<i>Associations</i>
Narathiwat	2	92	62	80	50
Pattani	67	165	131	24	7
Yala	43	246	81	18	3

338. In addition to DPA and DOE, NSC also plays a role in relation to NPOs activity in the southern border provinces, under their remit to oversee as security issues at the southern border provinces. NSC is the key coordinator in these provinces. The NSC uses two organizational frameworks for this purpose. One is the sub-committee on state direction of which the permanent secretary of foreign

affairs is the chair. That committee coordinates the work between the state and NGOs and they conduct security assessments, monitoring of activities for foreign NGOs working in Thailand. They present recommendations and suggestions to solve identified problems. A working group meets monthly to discuss sensitive issues, which includes financial contributions from abroad. The director of the southern border office of the NSC leads this working group.

339. No cases of terrorism or TF involving NPOs have been charged in Thailand. DPA shares information with AMLO, NIA and security authorities, in the examination of profiles and conduct of persons who sit on committees of associations or foundations. Security authorities in the three southern border provinces coordinate with AMLO to target their monitoring on key risk areas.

Deprivation of TF Assets and Instrumentalities

340. Thailand has not frozen any assets of UNSC designated persons and has not yet given effect to foreign requests under UNSCR 1373 however it has frozen assets in 35 of the 83 cases of designated persons. After freezing action, investigation and evidence gathering continues to review whether there have been changes to the designated person's terrorist involvement.

341. There have been three cases where designated persons' assets were traced and deemed suitable for provisional measures and forfeiture related to terrorism or TF offences (under AMLA 3(8)). In September 2015 AMLO submitted a request to OAG to file a petition before the court. The Civil Court reached a verdict in March 2016 to forfeit two bank accounts of two designated persons. The other case remains under court proceedings.

Consistency of CFT measures with the overall TF risk profile

342. Thailand generally implements UNSCR 1267 in keeping with its risk profile. However, considering the openness of Thai economy and border and geographical position of Thailand in the region, it should give greater focus to implementing TFS related to the movement of foreign terrorist fighters and fund transfers to/from such groups. In this regard, Thai authorities need to focus on risks beyond banks and ensure AMLO and other LEAs increase their vigilance in implementing UNSCR 1267. Better information and guidance on risk is an essential element to improve effectiveness in this area.

343. Application of asset freezing measures in relation to UNSCR 1373 is in line with Thailand's risk profile. All the designated persons were identified because of their involvement in terrorist acts in the southern border provinces. The assessment team was informed that Thai government is also trying to solve the problem politically.

344. The NRA 2012 and draft summary of NRA 2016 suggest that NPOs are at high-risk of being abused for TF. Thai authorities demonstrate that they are very focused on the NPOs working in the southern border provinces. NPO monitoring in those provinces appears risk-based. Continuing work on the identification of high-risk NPOs for TF is needed for the DPA and DoE to focus risk-based oversight and outreach, given the current human resources available. Thai authorities need to take additional measures in relation to unlicensed or unregistered NPOs and assess their risks of abuse for TF.

Overall conclusion on Immediate Outcome 10

345. Thailand has a moderate level of effectiveness for Immediate Outcome 10.

Immediate Outcome 11 (PF Financial Sanctions)

4 346. In October 2016 Thailand passed a new comprehensive law (the Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing (CTPF) Act) to combat PF by state and non-state actors. However, the law had not entered into force by the completion of the assessment of Thailand. The law provides for list-based targeted financial sanctions 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. The new law requires REs and all other natural and legal persons in Thailand to implement asset freezing obligations without delay as required under R.7.

347. The new CTPF Act goes beyond TFS obligations in FATF recommendation 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.

348. Thailand's inter-agency processes have worked well to support the preparation of the new legal framework and support implementation of TFS to combat PF. Thailand consulted with the UN and other international and regional bodies when framing PF legislation.

Context

349. Thailand faces various WMD proliferation and PF vulnerabilities primarily due to its geographic location as a regional trade hub, its vulnerability to the transit and trans-shipment of licit and illicit goods and the extent of its trade with the DPRK. Thailand has taken a number of steps to understand its exposure to trade and economic ties with the DPRK and Iran. Thai authorities have taken some steps to assess a number of vulnerabilities to PF, including sanctions evasion, by persons and entities designated by the UN in relation to WMD proliferation. It is not clear that authorities have a shared understanding of possible sanctions evasion vulnerabilities arising from trade and investment with the DPRK (section 1 of this report for descriptions of trade between Thailand and Iran or the DPRK).

350. Thailand has taken a range of steps to establish a system for controlling trade in most proliferation-sensitive items, including trade in categories of strategic goods. Thailand relies on assorted laws to license the import, export, and transit of nuclear materials, chemicals, biological substances, and munitions items. LEAs possess the legal bases and many of the institutions necessary to search, detain, and seize suspicious cargo.

351. Thailand established a Committee for the Management of the export of Dual-Use Goods. The committee is chaired by the Minister of Commerce and involving key agencies and ministries. Thailand has issued a List of Dual-Use Items and related controls. The list was prepared based on the EU List and information from other cooperation frameworks. In late 2015 the Ministry of Commerce has issued a Notification designating dual-use items as items subject to authorization and designating items subject to measures for the maintenance of export order. This, along with enhanced Customs powers, appears to institute a strong framework for the regulation of trade in dual-use items.

Implementation of targeted financial sanctions related to proliferation financing without delay

352. Thailand has strong policy coordination mechanisms related to combating WMD proliferation, including related proliferation financing (see IO1). Sub-Committee on Coordinating for Prevention and Solution of Proliferation of WMD was appointed in 2011 to serve as the key mechanism for the

formulation of policy and action plans in relation to the implementation of UNSCRs on combating WMD. AMLO is a member of the sub-committee.

353. In mid-2016 Thailand commenced using the mechanism of the AMLO website to publicise changes to WMD-related UN designations. This mechanism is the same as for 1267 & 1373 to ensure REs have a single portal to be updated with sanctions information.

354. Thailand has sought to use other mechanisms prior to the new CPF legislation entering into force. AMLO issued a range of instructions to REs to prepare them for implementation of TFS against PF. This adds to effectiveness, as a number of sectors have commenced screening customer and transaction databases in keeping with the UN lists for Iran and the DPRK.

355. In anticipation of the passage of the CTPF Act, AMLO conducted awareness raising and outreach to support implementation by REs. AMLO has amended supervision procedures to support checking of implementation in the future.

356. Detailed information on risk and vulnerability for PF and possible typologies of sanctions evasion will be required to assist REs to effectively implement the new PF-related TFS.

Vigilance Measures

357. Thailand has implemented certain vigilance measures which go beyond the standard of R.7 and add to effectiveness.

358. In mid-2014 a ship suspected of involvement with a company on the UN sanctions list was approaching Thai waters. Based on foreign cooperation requests the ship was denied entry to Thai waters and denied port or other services.

359. Thailand has direct experience of using customs and other powers to interdict arms trafficking cases that involved sanctioned jurisdictions (Iran and the DPRK). In late 2009 Thai authorities interdicted a large shipment of arms being transhipped through Thailand from the DPRK in breach of UN sanctions. Thai authorities arrested the crew and confiscated the arms.

360. AMLO supervision includes some checking during onsite visits of whether any correspondent banks operate in or are incorporated in the DPRK.

Identification of assets and funds held by designated persons/entities and prohibitions

361. At the time of the onsite visit, no assets or funds related to designated persons or entities had been identified by Thai FIs.

362. No PF-related assets have been frozen pursuant to the UN targeted financial sanctions, as the CTPF had not entered into force.

363. In mid-2016 a bilateral request was made through the MFA for AMLO examination of transaction information regarding particular transactions made through a Thai bank, with the possible involvement of a company designated under UNSCR 1718. AMLO, through its supervisory powers, has been involved in collecting CDD and transaction information and is liaising with relevant partners.

FIs' and DNFBPs' understanding of and compliance with obligations

364. REs and other persons and entities that are required to implement TFS lack sufficient information on vulnerabilities and possible techniques of sanctions evasion. Country-specific information on PF vulnerabilities and trends is crucial to support effective implementation.

365. Thailand began a series of engagements with the private sector in early 2016 in anticipation of the incoming legal and regulatory framework to implement TFS against PF. Thailand issued guidance to REs in January 2016 in the form of circular letters. These instructions derive from the MOFA obtaining cabinet approval for instructions to implement the UNSCR in the absence of the CPF law.

366. In mid-2016 AMLO and other agencies conducted awareness raising workshops for FIs and DNFBPs covering a range of issues including the nature of the global standards to combat PF, a selection of red flags (derived from UN panel materials); and explanations of list-based and risk-based approaches regarding combating PF. At that time the Thai authorities gave guidance to REs regarding steps to screen customers and transactions against the WMD-related UN lists. In case of suspicion of a match with 2231 or 2270 designated entities or prohibited activities, REs were advised to refuse to conduct transactions and file STR to AMLO.

367. In the future, it will be important for authorities involved in monitoring TFS and dual-use trade regulations to share information on trends in exporter activity to help to identify potential sanctions evasion.

Competent authorities ensuring and monitoring compliance

368. AMLO has advised REs to cover PF obligations in their internal policies and to assess PF-related risks as part of the enterprise-level risk assessment. REs are required to send their policy and procedures to AMLO. The off-site examination team analyses and assesses REs risk rating at entity-level. At this stage, an AMLO official may call an RE to give more clarification on their policy and procedures or provide more details on their measures by interviewing RE staff or write to AMLO in writing. The results are summarized and used for on-site scoping and to help AMLO with risk-based approach planning.

369. In the course of workshops and other engagement with REs during 2016, AMLO has advised FIs to revise their internal policies to cover obligations under UNSCRs 1718, 2270 and 2231. Internal policies were required to include the freezing of assets of designated persons as well as assets under their control or at their direction, be it direct or indirect.

370. AMLO's supervision division has taken a number of steps to prepare for the ongoing monitoring and supervision of the implementation of TFS against PF. During 2016 AMLO prepared a revision of its examination checklists to include procedures for implementing WMD-related UNSCRs on the basis of the Ministerial Regulations on CDD and AMLO Notification Concerning Guidelines for the Identification of Factors in the Risk Assessment of Customers in Relation to Area or Country.

371. AMLO's methodology to plan for and target risk-based supervision includes collecting and considering information and intelligence related to ML/TF and PF from open and closed sources.

Overall conclusion on Immediate Outcome 11

Thailand has a low level of effectiveness for Immediate Outcome 11.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

372. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Key Findings

Thai authorities have undertaken significant amounts of outreach to FIs & DNFBPs on both obligations and risks, but more is needed. AMLO's recent engagement with sector associations is a strength. There is a lack of sector-specific risk information available to the market, which is a challenge for supporting risk-based approaches by FIs/DNFBPs. Understanding of ML/TF risks is most evident amongst foreign banks, securities companies and, followed by large domestic commercial banks. The understanding of risks is less evolved in some other sectors, particularly amongst DNFBPs.

AML/CFT preventive measures are in place, although there are gaps in some key obligations and a lack of coverage of certain FIs and some DNFBPs. A challenge for FIs and DNFBPs understanding of AML/CFT obligations is the number and diversity of instructions and a lack of consolidated rules and a lack of clarity and consistency between the various notifications and guidelines (eg higher risks and enhanced due diligence).

AML/CFT systems and controls are most advanced in large commercial banks, foreign commercial banks and securities companies but much lower across other financial and DNFBP sectors. Other than for commercial banking and the securities sectors, the application of CDD measures are not consistently implemented and there is an over-reliance on registry information and customers' self-declarations.

AMLO has taken a more proactive role in defining STR requirements and giving feedback on STRs, which has contributed to significant improvements in STR quality over the last three years. However, significant variations still remain between different sectors in terms of understanding and applying the processes leading to quality STRs. Reporting is still not evident in some higher risk sectors such as real estate brokers.

Understanding the need to have internal systems and controls to ensure compliance with targeted financial sanctions is stronger in prudentially regulated sectors, improving in others but remains weak in trade-related activities and correspondent banking activities.

Recommended Actions

- Include lawyers and accountants (including auditors) and the missing FI sectors in the AML/CFT framework. The particulars of obligations should reflect risk assessment findings.
- Address the identified TC gaps; in particular, those relating to CDD, PEP, correspondent banking and wire transfer requirements.
- Develop and issue consolidated rules, instructions and guidelines to support FIs and DNFBPs understanding of the details of AML/CFT requirements and their practical implementation
- Prioritise (including increased resources) further programs that support increasing awareness and understanding of key ML/TF risks across all REs drawing sector-specific risk assessments.

- AMLO's outreach and engagement program on ML/TF risk assessment and awareness as well as the provision of risk-focused guidance should continue and be expanded to better target specific risks and a wider range of sectors – e.g. real estate, lawyers, etc. Include key risk inputs from the widest possible range of stakeholders, both public and private, REs, industry associations, regulators, LEAs etc.
- Ensure REs enhance their mitigation of key risks across all sectors by providing practical and sector-specific guidance and follow up with targeted supervision. This should focus on identifying high ML/TF risk areas, implementing CDD (including PEP) controls on high net worth, tax evasion, CDD on corporate customers and customers with complex ownership structure, CDD or conducting transactions using new technology, correspondent banking, wire transfer and trade finance.
- Enhance engagement with sectoral bodies (bankers' association, etc.) to ensure their support of awareness of ML/TF risks, AML/CFT obligations, and good practice for implementation.
- Assist sectors and FIs to obtain the right set of data to help in the identification of PEPs; ensure controls around beneficial ownership are adequately and effectively implemented; and (ii) ensure that cross sectoral compliance with targeted financial sanctions regimes is effective by ensuring all parties in trade finance transactions are subject to sanction screening.
- AMLO, BOT and other authorities should form a joint agency structure to consider ML/TF risks arising from the development of new technologies and provide guidance to FIs/DNFBPs and others developing such technology.

Immediate Outcome 4 (Preventive Measures)

Background and context

Preventive Measures and guidelines

373. Thailand's main AML/CFT obligations for preventive measures are set out in the AMLA which was last revised in 2015. The AMLA defines reporting entities (REs); and requirements for customer identification, STR and transaction reporting, record keeping and penalties for non-compliance with AMLA obligations (including its regulations). The details of customer due diligence are set out in regulations issued under the AMLA. AMLA also sets out roles and responsibilities of the AMLO, AMLB and the Transaction Committee.

374. Thailand has issued binding Ministerial Regulations (MR) under the AMLA: i) MR No. 1 (2000) defines four businesses as FIs whereas MR No 11 adds two more businesses as FIs; ii) MR No. 5 allows exemption from STR requirements for transactions connected with certain types of customers; and iii) MR Prescribing Rules and Procedures for Customer Due Diligence (2013) (MR CDD) by financial institutions, but not DNFBPs. The MR CDD prescribes the customer risk assessment, CDD measures, wire transfers, cross-border correspondent banking measures, internal controls and recordkeeping requirements for CDD REs²³. The PMO Notification on Customer

²³ CDD REs include all FIs (i.e. commercial banks, securities companies, life and non-life insurance companies, cooperatives with operating capital > THB2 million, juristic persons undertaking other financially related business as prescribed in the MR, finance companies, credit fonciers) and business and

Identification for FIs and Businesses and Professions under section 16 (2013) provides further requirements for basic CDD to the full range of FIs and DNFBPs covered under AMLO. The CDD requirements contained in the PMO, however, are not as comprehensive as those in the MR CDD.

375. AMLO and a number of sectoral supervisors (BOT, SEC, AIMC, etc.) have issued Notifications which are enforceable means, and set out supplementary AML/CFT obligations e.g. AMLO Notification Concerning Guidelines for Prescribing Factors for Consideration for Low-risk Customers, AMLO Notification Concerning Politically Exposed Persons (PEPs), BOT Notification No. SorNorSor.7/2559 Re: Guidelines on Acceptance of Deposits or Money from Customers, SEC Notification of Capital Market Supervisory Board No. TorThor. 35/2556 Re: Standard Conduct of Business & Providing Services to Clients of Securities Companies and Derivatives Intermediaries, etc.

376. There are a number of gaps in the coverage of FIs and DNFBPs. Of the FI sectors, leasing companies, pawn shops and cooperatives with a capital of less than 2 million THB are missing, but represent slightly over 2% of total financial sector assets. The 2016 NRA identified a number of risks with car leasing companies which are retail leasing firms outside of the scope of FATF standards. Amongst the DNFBPs, gold and jewellery traders and real estate brokers are REs and are covered by the basic identity obligations in the PMO Regulation and many of the obligations in the AMLA with the exception of detailed CDD. Lawyers, notaries, Certified Accountants and Auditors are not covered under the AML/CFT regime. These are material gaps.

377. AMLO also issued guidelines to REs, many of which are tailored to assist particular sectors to implement their AML/CFT obligations. For example, AMLO's Guideline for CDD was issued to 15 different REs.

Understanding of ML/TF risks and AML/CFT obligations and application of risk mitigating measures

378. REs in Thailand have received some important inputs on risks facing Thailand; however, there are gaps with comprehensive inputs on risk, which detracts from REs' understanding of ML/TF risks. The 2012 NRA was available to REs in summary form and provides some important risk information, however, it is a comparatively high-level assessment and does not include a great deal of detail on various risks elements in relation to crime types, sectoral risks, etc. Many REs contributed to the 2016 NRA, but the detailed findings had not been completed or shared with the market at the time of the onsite visit. There have not yet been an assessment of ML/TF risks in particular sectors of the Thai economy and there are relatively few published threat assessments to illustrate emerging or continuing risks (e.g. relating to corruption, terrorist financing, organised crime, foreign offences, and tax evasion). In the absence of these key risk inputs, REs own risks assessments lack a contextual basis.

379. Those FIs covered by the MR CDD are required to have a written policy and procedure for assessment and management of ML/TF risks and to conduct that assessment on a regular basis. However, these requirements do not extend to other types of FIs and DNFBPs²⁴. It is clear that the enterprise-level risk assessments are being conducted amongst banks, securities brokers and insurers, but other sectors have not yet commenced implementation of these controls. Supervisory

professions prescribed in s16(1) (i.e. investment advisors and capital transfer consulting business) and s.16(9) (i.e. non-FI electronic payment service providers).

²⁴ other types of FIs and DNFBPs include cooperatives with operating capital less than THB2 million, leasing companies, gold & jewellery traders, real estate brokers & agents

work by AMLO has given attention to the implementation of risk assessment procedures which has contributed to improvements in entity-level risk assessments.

380. AMLO has undertaken a great deal of outreach and seminars to FIs and some DNFBPs through their sector associations over the past three years, which has included some sectors not yet sufficiently covered by AML/CFT obligations. This has included good sharing of typologies and cases and updated risk information. AMLO's engagement with sector associations has been a real strength. For example, AMLO organized seminars for the banking, securities, investment management and insurance sectors, these seminars were organised jointly with TBA, AIB, ASCO, AIMC, TLAA and TGIA on guidelines on CDD. A number of industry associations provided positive feedback on AMLO's outreach and engagement on risk and AML/CFT obligations and the preparation of guidance.

381. Notwithstanding the level of outreach and seminars, some sectors exposed to higher risks (gold & jewellery traders, real estate brokers, money transfer agents, money changers and larger cooperatives) appear to have a relatively poor understanding of risk. These sectors may not have received as much AML/CFT outreach and training. FIs indicated that there is still a need for more guidance and regular interaction with the supervisors especially AMLO to further increase their understanding of the sectoral ML/TF risk and emerging trends.

382. Most of the banks and securities companies interviewed perceived the cross-border movement of funds in the border areas to be a primary challenge, with the proceeds of drug trafficking and corruption being very significant issues. These challenges are linked to broader organised crime threats to Thailand. In practice, banks, particularly local commercial banks operating country-wide identify geographic risk and business operations conducted in specific regions (especially the northern and eastern part) as high-risk. Products, services and transactions considered to be higher-risk were wire transfers, cash deposits and relationship with PEPs.

Financial Institutions and DNFBPs' application of mitigation measures

383. In general, foreign banks, securities companies and SFIs demonstrate a more developed understanding of their ML/TF risks within their sectors and a corresponding implementation of mitigating measures in keeping with the risks. Local large commercial banks and foreign commercial banks also have a reasonable understanding of the ML/TF risks and appropriate mitigation measures. However, cooperatives, money transfer agents, and other DNFBPs have a much less mature understanding of ML/TF risks and how that understanding relates to the application of preventive measures. Understanding amongst gold & jewellery trader and real estate brokers appears to be particularly low, taking into account the manifest risks and the trends in Thailand and neighbouring jurisdictions in recent years.

384. FIs appear to view all the supervisors open and approachable in providing AML/CFT –related advice. Engagement between AMLO, FIs and DNFBPs has generally been in the context of outreach and seminars/consultative meetings. There is a lack of a clear mechanism for feedback outside of that context.

385. The development and application of AML/CFT policies (including group-wide policies), internal controls, and programmes to adequately mitigate the risks are more advanced in local commercial banks, foreign commercial banks and securities companies but very less across other financial and DNFBP sectors. For example, banks and securities companies established their own risk assessment framework, developed policies and procedures on CDD, transaction monitoring and STR and conducted enterprise-wide risk assessments. In particular, foreign banks apply not only their local policies and procedures but also group-wide policies and procedures which are usually more

rigorous. The application of CDD measures to identify and verify the identity of their customers (including beneficial owners) and ongoing monitoring is well understood in commercial banking and the securities sector, albeit the approach is generally rules-based. For example, foreign commercial banks and securities companies would look behind a company that has multiple layers in their ownership structure to try to identify the corporate shareholders.

Application of CDD requirements

386. A challenge for FIs and DNFBPs understanding of AML/CFT obligations is the number and diversity of instructions, a lack of consolidated rules and a lack of clarity and overarching consistency between CDD measures set out in the MR CDD and a number of sectoral notifications and the guidance issued by the AMLO. These apparent inconsistencies and a number of CDD gaps may contribute to the inconsistent application of measures by FIs and REs, in particular, enhanced due diligence.

387. In addition to the scope gap with those DNFBPs and few FIs that are not regulated for AML/CFT, the main shortcomings with CDD requirements are summarized below:

- i) While the MR CDD sets the obligations in keeping with the standards, some requirements set out in the sectoral guideline (i.e. AMLO Guideline for CDD) are not consistent, including: identification or verification of shareholders or beneficial owners of a customer takes place only when the CDD REs suspects that customer poses ML/TF risk, then the CDD REs could exercise discretion to assess the needs for additional information from “UBOs”²⁵ ;
- ii) Clause 1 of the Approval for Customer Acceptance prescribes that although under the MR provisions, REs are required to identify a customer’s or occasional customer’s identity, a customer or either one of the persons making transactions is not required to identify oneself unless REs have suspicions that the customer or occasional customer may be connected with ML/TF activities;
- iii) REs could change a customer’s risk rating from a high to low-risk²⁶ without the requirement to obtain the senior management approval;
- iv) FIs are allowed to provide low ML/TF risk service or transactions to non-face-to-face customers or occasional customers. Upon identification of these types of customers, REs are allowed to collect less instead of more CDD information than that under the face-to-face situation, which is contrary to the fact that generally, non-face-to-face relationships or transactions are considered as potentially high-risk situations²⁷;
- v) Failure to prescribe in MR CDD a minimum threshold for verification of the natural person who ultimately has a controlling ownership interest in a legal person;
- vi) No requirements are in place to apply risk management procedures where a customer may utilise the business relationship prior to verification;

²⁵ Clause 1.2, 2.2, 3.2, 4.2 of “Arrangement for Customer Identification” and clause 1, 1.1, 1.2 (Example 1) of “Approval for Customer Acceptance, AMLO Guideline for CDD.

²⁶ Such requirement was set out at clause 2.3.4 of section “ML/TF Risk Management for the Customer” of the AMLO CDD Guideline for Banks).

²⁷ Clause 1 & 2 of “Arrangement of Customer Identification”, AMLO Guideline for CDD.

- vii) Although CDD on existing customers would be triggered under certain situations, some examples provided for were not based on materiality and ML/TF risks (e.g. dormant account or customers who are delinquent debtors);
- viii) Factors to be considered for low-risk type customers set out in an AMLO Notification are in fact examples of low-risk customer types. Simplified CDD measures could be applied to those assessed as low-risk customers and some pre-determined low-risk type customers (e.g. certain foundations) without any detailed risk assessment or analysis;
- ix) Simplified CDD measures allowed reduction of the verification requirements of the customer's current information, reduction of the requirements of identification information and reduction of the examination and review of movements of transactions or business relationships;

388. There is also a lack of detailed processes and procedures for ascertaining beneficial ownership and complex ownership structure. When queried by the assessment team, some banks and supervisors were unclear as to how to ascertain the ultimate beneficial owners in respect of a corporate customer that has a complex ownership structure. In some cases, the UBOs may not be identified or verified at all.

389. There is a lack of guidelines or requirements for the types of information or documents to be obtained for i) understanding the ownership structure of customers who are legal persons; ii) the identification and verification of the parties connected to trusts and; iii) conducting regular reviews on customers, which significantly compromised the adequacy and effectiveness of CDD.

390. The understanding by some sectors and REs of RBA is not sufficiently evolved and in some cases very low. As a result of this and the matters identified above, preventive measures may not always be informed by full information on the customer relationship or well targeted to mitigate ML/TF risks. All FI sectors that are covered by CDD requirements tend towards a rules-based approach to compliance with CDD requirements despite the obligations. Risk-sensitive approaches to implementing CDD requirements, including those for beneficial owners, are not effectively and consistently applied across sectors.

391. Some of the deficiencies identified by supervisors (AMLO and SEC) between 2013-2015 are indicative of common gaps. In relation to commercial banks, deficiencies identified included: failings with internal procedures that may lead to tipping-off; failings with reviewing and updating customer profiles; deficiencies with transaction monitoring systems; failure to file STRs; failings with record keeping; and failings with risk classifications of customers. In relation to securities companies, deficiencies included: Failings with implementing KYC/CDD requirements and STR obligations; deficiencies found in transaction monitoring system.

392. The MR CDD for DNFBPs only came into effect on 22 November 2016. Prior to that time, there was lack of comprehensive CDD obligations for DNFBPs.²⁸

Application of enhanced or specific CDD and recordkeeping requirements

²⁸ The MR CDD for DNFBPs has not been comprehensively analysed as part of this report as it came into force and effect after the assessment team's onsite visit.

393. The approach taken by FIs to risk-classification was rather narrow; banks in general classified those respondents located in high-risk countries as high-risk respondents and subjected them to EDD. In the absence of good guidance on risk, it is a challenge for FIs to implement EDD controls in a risk-sensitive manner.

394. Application of recordkeeping requirements appears to be well done in practice, most particularly by the commercial banking sector, insurance and securities sectors. While there are a number of gaps with the recordkeeping requirements in the AMLA, in practice many REs appear to be going beyond their AMLA recordkeeping obligations, which adds to effectiveness.

5

Enhanced controls for customers who are politically exposed persons

395. Identification of domestic and regional foreign PEPs remains a challenge. There is a lack of any explicit requirement for establishing the source of wealth. REs noted the need for further guidance on PEPs and difficulties in obtaining information on domestic PEPs. In view of this, some associations have supported their members to assist them to collect further information on Thai PEPs. In one sector (general insurance) they have developed and shared a PEP database with its members. The absence of more detailed guidance on PEPs is a significant concern; given the corruption risks in Thailand are high. Details obtained by banks indicated the number of their customers identified as PEPs (see the table below), it was noted that the number of PEPs identified by the FIs is more than 59,000.

396. An additional factor is that MR No.5 (2000) somewhat undermines the PEPs obligation, as it removes any requirement to file STRs that for transactions between government entities (including state-owned corporations) or certain foundations. This does not take into consideration the potential involvement of PEPs in authorising such transactions or if there is a general suspicion of ML.

Statistics of the Number of PEPs maintained relationship with FIs

FI Type	Risk Rating* for exams	The no. of entities fall into this category	The Number of PEPs
Commercial bank	1	-	-
	2	-	-
	3	30	56,056*
	4	-	-
Sub - total		30	56,056
Specialized banks	1	1	1,715*
	2	-	-
	3	5	1,299*
	4	-	-
Sub - total		6	3,014
Total PEP customers		36	59,070

Risk Rating (high – 1, medium high – 2, medium – 3, low – 4)

NB: The number of PEPs segregated by product and service may have led to some PEPs being counted more than once.

397. Some institutions are clearly implementing additional controls for customers who are PEPs, but a number of interviewed FIs in different sectors were either not aware or did not have systems in place to facilitate the effective implementation of enhanced controls. This is an area where a great deal more needs to be done, particularly taking into account the risks faced by Thailand.

Correspondent banking & wire transfers

398. Correspondent banking is a key feature of banking operations in Thailand, both for general operations and those connected with wire transfer transactions and trade finance activities. There are some important technical compliance gaps.

399. Numerous technical compliance shortcomings are noted in the controls on wire transfers. Despite AMLO conducting sample testing during onsite inspections of wire transfer messages to ensure the messages contain originator information, the obligation to include the originator's information in the wire transfer message may not be sufficiently understood by all FIs. FIs and associated supervisory activity did not demonstrate an adequate understanding of the risk-based implementation of controls to mitigate the risks of ML/TF in correspondent banking activity associated with wire transfers and trade finance. For example, beneficiary FIs are required to take reasonable post event monitoring measures to identify cross-border wire transfers that lack required originator and beneficiary information, however, no guidance on risk factors was provided to FIs in the application of post-event monitoring procedures.

New Technologies

400. Thailand requires those CDD REs to conduct an ML/TF risk assessment prior to the introduction of new products and services and existing information technology. However, no ML/TF risk assessment was made by the country or supervisors in respect of the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies. BOT does require banks to seek approval from BOT prior to using any new system or equipment utilizing new technologies. During the approval process, BOT and AMLO held discussions with FIs and financial service providers (e.g. e-payment service providers) on matters of risks and risk mitigation, however there is a need for a more consistent approach to regulators considering ML/TF risk mitigation.

Internal controls and foreign branches and subsidiaries

401. There are technical compliance gaps with the implementation of risk-based obligations for REs to screen employees sharing of information at group-level compliance, audit, and/or AML/CFT functions. Foreign officers, branches and subsidiaries are required to close down the operation if they are unable to implement legal requirements in the host country without taking any appropriate additional AML/CFT measures. FIs are required to inform the home supervisors when they have concerns with AML/CFT implementation amongst their foreign branches and subsidiaries. The team notes that larger FIs, in particular foreign banks, are implementing many of these controls due to home supervisor obligations, however there are significant weaknesses with domestic FIs.

Targeted Financial Sanctions (TFS) for terrorism

402. Banks, securities and insurance sectors generally demonstrated a strong implementation of monitoring for targeted financial sanctions. There has been a good deal of outreach by AMLO on implementation and there is a good understanding of obligations. While associations give some support to systems in certain sectors (e.g. money changers), other sectors and institutions may not have suitable systems or support to enable effective customer and transaction screening. See IO10 for further details.

High-risk Jurisdictions

403. Financial institutions, in particular commercial banks, appear to focus on country risk in determining overall risk. The lack of clear risk information giving context to the dynamics of country risk has presented challenges. It was not, for example, apparent that high-risk jurisdictions other than those listed by the FATF were given adequate focus by REs.

404. Thailand has issued both a guideline and notification on the classification of high-risk countries and applying enhanced CDD measures on customers who are high-risk. There is a lack of mechanisms to support good risk mitigation including notifying CDD REs about weaknesses in the AML/CFT systems of other countries. There were weaknesses with notifications to draw REs attention to updated lists of high-risk countries.

Reporting obligations and tipping off

STRs filed by FIs and DNFBPs

Reporting Entities	Suspicious Transaction Reports				
	2011	2012	2013	2014	2015
Banks	130,183	116,753	55,695	11,236	8,705
Finance & Credit Fonciers	2	-	-	-	
Securities & Asset Management	231	328	1,084	761	797
Cooperatives	151	-	-	31	105
Life Insurance & non-life insurance	46	50	167	348	259
Legal entity, Section 3	4	5	33	26	30
Department of Lands	-	-	-	-	126
Financial advisor and consultant	-	20	29	7	8
Gold and Jewellery Traders	-	2	3	-	
Car dealers and hire purchase	-	168	281	438	527
Real Estate Broker	-	1	3	-	
Antique Dealers	-	-	-	-	
Personal Loans businesses	-	20	32	32	30
Credit Card business	-	-	7	8	79
e-Payment business	-	1	1	-	3
Total	130,617	117,348	57,335	12,887	10,669

Types of STRs filed by sector

Year	Type of REs	STRs related to Attempted transactions	STRs related to PEPs	STRs related to incomplete CDD
2015	Total	136	32	25
	Banks	15	30	24
	Securities co.	1	-	1
	Insurance	78	1	-
	Car Hire purchase	-	1	-
	Personal loan	42	-	-
2014	Total	59	46	8
	Banks	12	23	4
	Securities co.	1	2	4
	Insurance	43	21	-

Year	Type of REs	STRs related to Attempted transactions	STRs related to PEPs	STRs related to incomplete CDD
	Personal loan	3	-	-
2013	Total	61	28	34
	Banks	25	18	30
	Securities co.	-	1	4
	Insurance	36	9	-

405. There has been a marked decrease in the quantity but reportedly significant improvement in the quality of STR reporting over the last three years. This is a welcome development and is attributable to AMLO's series of actions to more clearly define reporting requirements and increase the range of approach to feedback given on quality and quantity of reports. For example, AMLO provided feedback on STRs received along with examples of quality STRs to facilitate REs' understanding of better filing of STRs. The data and information from REs and AMLO indicates a decrease in defensive reporting.

406. There are still challenges across all sectors with the detection of what is suspicious or unusual, and consequential STR reporting and overall compliance is not yet at an adequate level. The rate of STR reporting amongst securities companies is steadily improving while the STR statistics for the banking sector has seen a continued significant decrease, while in some other sectors is not evident at all (i.e. finance companies & credit foncier companies, gold & jewellery traders, real estate brokers, antique traders, money changers, money transfer agents and e-payment service providers). A gap in the STR regime arises with the operation of MR No.5 (2000), as it removes the requirement to file STRs that are between government entities (including state-owned corporations) and certain foundations, regardless of whether there is a suspicion of corruption or ML. Given the risks identified in the NRA, this shortcoming is material. Improved risk information coupled with further guidance and continuing feedback should further improve STR reporting.

407. While DNFBPs have certain obligations including filing STRs, the lack of CDD obligations undermines their ability to identify suspicions that might form the basis for an STR.

Internal controls and legal/regulatory requirements impeding implementation

408. FIs and some DNFBPs interviewed had internal controls and procedures for AML/CFT compliance. The levels of controls in banks, securities brokers and insurers generally reflected the size, risk level, and scope of operations. FIs with an international presence implement policies and procedures at the group level. Other FIs and DNFBPs either lacked or did not have well developed internal controls. There are no indications of legal or regulatory impediments (e.g. secrecy) to internal controls.

Overall Conclusion on Immediate Outcome

409. Thailand has a low level of effectiveness for Immediate Outcome 4.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

410. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 and R.34 and 35.

Key Findings

Gaps exist with both the scope of FIs covered and the controls applied. Fit and proper controls are not sufficiently wide or comprehensively implemented to prevent criminals and their associates from entering the market. Other than for the securities sector, checks do not extend to beneficial ownership, while sectoral regulators do not always have sufficient access to relevant data.

The structural framework for AML/CFT supervision has been significantly strengthened in recent years with AMLO taking on the role of primary AML/CFT supervisor from 2015 from BOT, SEC, and OIC. The transition involved a significant transfer of knowledge and capacity building at AMLO and was underpinned by a credible process, reflecting strong cooperation between supervisors.

AMLO's approach to risk-based supervision is generally based around the relative categorisation of sectors undertaken in the 2012 NRA. In common with other regulators, AMLO's risk-based supervision is developing but needs a more comprehensive understanding of sectoral and institutional risks (including the more consistent application of the findings of assessments) in the application of the risk-based approach. AMLO has prioritised supervision of the banking sector, completing an initial round of onsite inspections in all banks and some NBFIs.

There has been a reasonable level of initial offsite inspection of various sectors since AMLO took over as the primary supervisor, the risk sensitivity of offsite supervision could be strengthened through work such as thematic offsite monitoring in collaboration with sectoral associations. This is particularly important for high volume DNFBP sectors.

AMLO has been progressively strengthening resources in recent years. Further supervisory resources, mapped to risk, are needed to more directly support effectiveness.

Prudential regulators have real strengths and significant supervisory resources and SEC, in particular, has retained a strong focus on KYC/CDD and other elements of AML as part of its prudential supervision, although other prudential supervisors need to do a lot more to ensure a greater focus on AML/CFT to complement the role of AMLO. Risk information (sectoral risk assessments, etc.) need to be strengthened to support a risk-sensitive approach to prudential supervisors residual AML/CFT roles (fit & proper, supervision, etc.).

Prudential regulation and supervision and AML/CFT supervision of cooperatives which operate as financial institutions (credit unions, etc.) are very weak. There are material risks in the lawyers and accountants sectors which are not yet covered by the AMLA.

Collectively, the supervisory tools of some financial sector supervisors fall short of providing adequate, timely and consistent data on the nature and quantum of inherent risk at both the sectoral level and at that of individual institutions.

Sanctions provided for in the AMLA are insufficient although sanctions available to prudential

regulators are available in cases of AML/CFT failings and can be applied in parallel with AMLA sanctions.

The processes for applying fines are limited to criminal prosecutions and related settling mechanisms. This places an undue burden on supervisors for efficiently applying monetary sanctions in cases of serious AML/CFT failings. A wider range of administrative sanctions, including fines, need to be available to regulators. BOT's experience with administrative fines provided in the Electronic Transactions Act is a good precedent.

AMLO and the prudential supervisors have focused on warning letters and action plans to rectify gaps with follow up on specific action plans. The overall number and values of fines applied has been low and the lack of wider use of sanctions diminishes the overall effect on compliance.

Outreach and awareness raising have been prioritised by AMLO, which has driven considerable improvements in compliance. This outreach has been risk-based, addressing those higher-risk sectors first. There is a need for a great deal more outreach to be done, including with sectoral associations and prudential regulators.

Recommended Actions

- Prioritise risk-based implementation of market entry fit and proper controls, supported by information on beneficial ownership from domestic and foreign counterparts.
- Increase the availability of ML/TF risk information (e.g. FIU, LEAs and other sources made available to AMLO and other regulators, specific to sectors (and sub-sectors) and enterprise level for fit and proper checking and risk-based regulation / supervision.
- AMLO should continue to develop supervisory tools to enhance its risk-based approach and examinations and methods used (e.g. thematic examinations in areas of identified high-risk) should be tailored to the risks presented, both at a sectoral and institutional level.
- Provide AMLO with additional supervisory resources, with resourcing levels to be adjusted taking into account updated sectoral assessments.
- Minimally covered sectors exposed to high-risks such as real estate agents, gold traders and others, should be covered by supervisory activities on a thematic basis, as a priority.
- Continue to develop risk-based supervision capacity: i) Increase knowledge transfer and sharing between supervisors, which may include joint supervision, secondment programs, etc. between supervisors (the prudential supervisors, CAD, AMLO) to further support effective exchange of ML/TF expertise and knowledge; ii) pursue opportunities for joint supervision (prudential & AML).
- Review and revise the existing penalty and fines provision and the policy by which these are implemented to ensure that applicable administrative (e.g. public reprimands or revocation of licenses), civil and criminal sanctions are both dissuasive and proportionate and are applied consistently in line with the policy, which should reflect the widest use of a range of possible sanctions and supervisory tools.
- Ensure competent authorities have adequate prudential controls over cooperatives that are credit unions to support more effective AML/CFT controls in the sector.
- Prudential supervisors should prioritise AML controls that are integral to their prudential work in order to ensure a more balanced approach and effective use of available resources, while at the same time supporting increased sharing between supervisors. Such an approach may be

reviewed as AMLO takes on further responsibilities.

- While the focus of supervisory work should continue, it will need to be expanded to include smaller and less sophisticated institutions.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

6

411. At a policy level, Thailand has not sufficiently supported strong fit and proper controls as a key defence to large-scale abuse of REs for ML/TF. Policies do not adequately prioritise risk-based market entry fit and proper controls supported by comprehensive regulatory frameworks and sufficient information to achieve effective implementation.

412. Thailand has extended licensing and registration requirements to most FIs although there are gaps in the scope of categories covered and the depth of requirements (see TC Annex). There are some strengths but a greater number of weaknesses with effectiveness in applying fit and proper controls on a risk-sensitive basis, for example fit and proper controls have not yet been implemented for most DNFBPs and certain types of FIs and most regulators do not apply controls to beneficial owners and reviewing criminal associates. There are particular gaps with the fit and proper controls on leasing companies, real estate agents and dealers in precious metals and stones.

413. The details of the licensing, supervisory and AML/CFT authorities are summarized below:

Licensing and / or Main Supervisory Authorities – Financial Institutions

Financial Institutions:	(L - licensing, S - supervisory, L/S - both licensing and supervisory authority)				
	BOT	SEC	OIC	MOF	MOA&C
Commercial banks	✓(L/S)			✓(L)	
Specialized banks	✓(L/S)			✓(L)	
Finance Co.	✓(L/S)			✓(L)	
Credit foncier Co.	✓(L/S)			✓(L)	
SFIs	✓(L/S)			✓(L/S)	
Money changers	✓(L/S)			✓(L)	
Money transfer agents	✓(L/S)			✓(L)	
Asset Mgt. Co.	✓(L/S)				
Securities Co.		✓(L/S)		✓(L)	
Asset Mgt Co.(Mutual Fund management)		✓(L/S)			
Investment advisor Co.		✓(L/S)		✓(L)	
Mutual funds brokerage sec. co.		✓(L/S)			
Derivatives trading		✓(L/S)			
Futures trading		✓(L/S)			
Life insurance Co.			✓(L/S)	✓(L)	
Non-life insurance Co.			✓(L/S)	✓(L)	
Cooperatives (Savings, Agricultural & Credit Unions) with capital > 2M THBs	✓ Those with capital.				✓(L/S)

Financial Institutions:	(L - licensing, S - supervisory, L/S - both licensing and supervisory authority)				
	BOT	SEC	OIC	MOF	MOA&C
	2M THB				
Personal loan companies (FATF FI definition)	✓(L/S)				
E-money card service providers	✓(L/S)				
Credit card service providers	✓(L/S)				
E-payment service providers	✓(L/S)				
Money Changer (individuals)	✓(L/S)			✓(L)	
Financial Advisor		✓(L/S)			
Leasing companies				✓(L)	

Licensing and / or Main Supervisory Authorities – DNFBPS

DNFBP Sectors	MOI	DBD*	FAP	MOC	Lawyer Council
Lawyers					✓ L/S
Accountants			✓(L/S)		
Gold & Jewellery traders		✓(R)			
Real estate brokers		✓(R)			
Car dealers		✓(R)			
Antique traders	✓(L/S)				

*Department of Business Development acts as a central registrar for all Thai legal persons but does not grant specific categories of registration for these entities

414. While fit and proper controls are in place for FIs and two types of DNFBPs (i.e. lawyers and accountants), the scope of controls is not sufficiently wide or comprehensively implemented to ensure these controls are effective in preventing criminals and their associates from entering the market. The SEC is the only regulator which extends fit and proper checks to the beneficial owners of a licensee, but even in SEC's case there may not be sufficient focus on ongoing requirements to update fit and proper with material changes in circumstances (e.g. following a conviction).

415. Thailand has not instituted systems and mechanisms to ensure that all regulators are able to access or actively pursue data relevant to applications and fit and proper controls. This data is held with LEAs, the FIU, security intelligence agencies and other bodies. In the absence of such data, effective checking is not possible. Although some steps had been taken by SEC, OIC and BOT on fit and proper controls, there remains a need for greater focus on ongoing fit and proper checks to ensure effectiveness in preventing criminals and their associates from entering the market. SEC requires the intermediaries to have an on-going process to monitor the fitness and properness of the directors, managers, persons with power of management and major shareholders whereas BOT requires its FIs to notify them upon new or re-appointment or changes of these parties. BOT implemented a new procedure in 2017 (after the onsite visit by assessment team) to require applicants to self-declare criminal records which BOT will verify against records kept by RTP. OIC requires a director, manager, or person authorized to act on behalf of the insurance company or consultant of the insurance company to have fit and proper as prescribed by law. OIC implemented fit and proper checking by requiring applicants to self-declare criminal records and conducting background checks with BOT, SEC, DSI, AMLO, RTP and the other intelligence agencies.

416. Comprehensive fit and proper checks do not extend to DNFBPs. Both the Lawyer Council and the FAP include licensing criteria that cover some fit and proper elements, however these are not broad enough.

417. Amongst all supervisory agencies, only SEC has proactively targeted unlicensed securities and derivatives business and has in the past five years (from 2012 to 2016) initiated 62 investigations in this regard.

Supervisor's Understanding and Identification of ML/TF Risks

6

418. AMLO's current understanding of sectoral ML/TF risks is largely based on the 2012 NRA and information on trends informed by a number of major ML, predicate and TF cases since that time. Other sectoral (prudential) supervisors base their understanding of risks, in part, on the 2012 NRA together with their experience from prudential supervision. The approach has not, however, sufficiently taken emerging risks into account (for example the very large cooperative credit union sector). AMLO's supervisory activities have generally been based around the relative categorization of sectors undertaken in 2012 NRA, which while useful, did not provide an in-depth understanding of ML/TF risks within each sector.

419. Neither the 2012 NRA nor subsequent assessment processes have assessed elements of risk relevant for each sub-sector or individual enterprises within specific sectors. As such, key inputs have been absent to support the focus and intensity of supervision and allocation of supervisory resources for priority sectors.

420. Since 2013 AMLO has drawn together entity-level risk information from AMLO's own intelligence and litigation divisions and other sources to help to determine the focus of offsite and onsite supervision of particular entities, which is a strength. Prior to 2013 (and since in the case of the SEC), BOT and SEC drew on AMLO information, including risk information, to assist in their AML/CFT supervision.

421. AMLO and other regulators require a more comprehensive understanding of sectoral and institutional risks and a more consistent application of the findings of assessments of such risks to underpin their risk-based approach to regulation and supervision.

Risk-based Supervision for Compliance with AML/CFT Requirements

422. Thailand has significantly restructured the AML/CFT supervisory framework in recent years, which provides a solid platform for increasingly risk-based supervision. Since 2014 AMLO has been responsible for AML/CFT supervision of all REs in Thailand. Prior to 2013, BOT, SEC and OIC were the main supervising authorities for FIs and certain DNFBPs and the supervisory approach adopted was predominantly based around statutory requirements rather than an understanding of risks. The transition from a prudential regulatory approach to an AMLO-led risk-based model of AML/CFT supervision was well supported and involved significant transfer of knowledge and capacity building on the part of AMLO. The successful transition reflects strong cooperation between supervisors.

423. Based on its understanding of risks, AMLO has focused its supervisory efforts on high-risk sectors (banks and MSBs). The findings in the 2012 NRA regarding risk levels was the primary driver for determining the priority and frequency of examinations for particular sectors:

Priority and frequency of examination based on sectoral ML/TF risk

Sectorial ML/TF Risk Level (NRA 2012)	Priority	Frequency of Examination	
		Off-site	On-site
Higher/much higher/ highest	High	Annual	Annual/ Cause Inspection
Medium	Medium	Annual	Biannually/ Cause inspection
Low/ lower/ lowest	Low	Biennial	Every 3 years/ cause inspection/ sampling

424. AMLO commenced onsite inspections beginning in 2015 and completed an initial round of onsite inspection of all banks and a limited number of NBFIs, money changers and money transfer business. AMLO also undertook onsite inspections of a small number of gold & jewellery traders and real estate brokers. In the past three years, AMLO also conducted off-site monitoring on most of the high and non-high-risk entities although such monitoring was restricted to the review of policies and procedures only, rather than wider-ranging review of the effectiveness of controls.

425. AMLO's onsite inspections covered nine standard AML/CFT requirements (policy and procedures, institutional risk assessment, CDD, customer identification and verification, wire transfers, customer monitoring process, transaction reporting system, reliance on third parties, and implementation of CFT Act) on FIs, in which the supervisors' time was evenly assigned to each of the nine control areas. Generally, an equal amount of supervisors' time (except for banks and money changers) was assigned to most of the REs despite the fact that the nature of operations and associated risks are quite different for each type of entity. In respect of gold & jewellery traders and real estate agents, the scope was limited to customer identification & verification, transaction reporting, record keeping and implementation of the CFT Act. Taken together with the approach to sampling in which AMLO would randomly examine customer information and transaction reports without specifying the number of reviewed samples, there are indicators that AMLO's onsite inspection approach is not sufficiently risk-based.

426. A number of key areas of AML/CFT controls did not receive sufficient focus or were not covered during onsite supervision conducted so far. This has included beneficial ownership requirements, identification and determination of PEPs, wire transfers and correspondent banking or risks relating to trade-based money laundering, complex structures and terrorist financing.

427. To date, AMLO has not conducted thematic supervision despite potential areas arising out of the NRA, such as tax evasion and corruption and vulnerabilities which may exist in certain sectors and are known to facilitate the laundering of these predicates. Therefore while AMLO has made a reasonable start to its work and taken AML/CFT supervision to a new level in Thailand, a comprehensive risk-based approach is some way off.

428. There has been insufficient supervision focus on correspondent banking. While AMLO has conducted full scope AML/CFT examinations on banks and major FIs, the scope covered nine key control areas and did not focus on correspondent banking. It is noted that AMLO did conduct sample testing during onsite inspections of the quality of payment information in wire transfer messages, for example, to check that the messages contain originator information. It is notable that the Thai Association of Bankers has issued their own sectoral guidance on a number of risk areas associated with correspondent banking operations, which is supplemented by similar sectoral guidance on wire transfers.

429. Supervision of cooperatives, gold traders and real estate agents has also been insufficient, taking into account the risk and context of Thailand. AMLO used self-assessment questionnaires for offsite supervision of some DNFBPs (gold traders and real estate agents) in 2015 and 2016. There have been no AML/CFT compliance inspections of cooperatives, those companies undertaking derivatives trading business, companies undertaking futures trading business, financial advisors, personal loan and credit card companies, and leasing companies and money changers who are individuals. The greatest risks seem to be with cooperatives, credit unions, gold dealers and real estate agents. Lawyers and accountants are not REs under AMLA; therefore they are not subject to any AML/CFT supervision.

430. AMLO meets with sector regulators individually 3 -4 times per year and there appears to be a reasonable level of effective co-operation between them. Whilst all sectoral regulators share the findings of their onsite examinations with AMLO, the assessment team noted the particularly high degree of cooperation between AMLO and the SEC, with the SEC maintaining a strong focus on AML/CFT in its supervision of operational risk issues amongst brokers and dealers.

BOT- Offsite & Onsite Prudential Reviews/Examinations covered AML/CFT (2013 - 2016)

Reporting Entity Type	Offsite reviews				Onsite/Site visit Examinations			
	2013	2014	2015	2016	2013	2014	2015	2016
Financial Institutions								
Commercial banks	15	15	15	15	15	15	15	15
Foreign bank Subsidiaries / branches	15	15	15	15	6	5	12	15
Finance & credit fonciers co.	5	5	5	5	2	2	5	5
SFIs	8	8	8	8	6	6	8	8
Credit cards and personal loans services	22	30	30	47	12	6	6	20
Asset Mgt. Co.	23	35	35	43	2	2	2	8
E-Payment business*								
List A	0	0	1	1	0	0	0	0
List B	8	8	8	10	0	0	0	0
List C	81	87	93	96	0	0	6	8
Money Changers	1,170*	1,411*	1,715*	1,887*	168	173	170	39 (Q1)
Money Transfer agents	1,283*	1,303*	1,322*	1,337*	80	76	120	54 (Q1)

431. The scope of off-site reviews and onsite examinations conducted by BOT on commercial banks and their financial groups included comparatively limited AML/CFT aspects. The offsite reviews mainly focused on the FIs' risk profile, financial condition, incident reports which may include AML/CFT, while the onsite examinations looked at policies and procedures, the FI's AML/CFT self-assessment report, a high-level look at CDD (i.e. verifying customer's identity against the business online database, ensuring the senior management approval is obtained for opening high-risk accounts, etc., some aspects of regular reviews, monitoring and screening, etc.) The coordination mechanism between AMLO and prudential regulators included the appointment of contact persons, exchange the timeline of the off-site and on-site examination, and discussion of the findings of the examination after the visit.

Offsite Reviews and Onsite Examinations of FIs & REs by AMLO (2013 – 2016)

	Offsite reviews				Onsite/Site visit Examinations			
	2013	2014	2015	2016	2013	2014	2015	2016
Financial Institutions								
Commercial banks	-	30	-	-	-	-	7	23
Specialized banks	-	6	-	-	-	-	1	5
Finance companies	-	2	-	-	-	-	-	-
Credit foncier Co.	-	3	-	-	-	-	-	-
SFIs	-	-	-	-	-	-	-	-
Securities Co.	-	40	-	-	-	-	5	-
Asset Mgt. Co. (Mutual Fund Mgt.)	-	24	-	-	-	-	3	-
Life insurance	-	24	-	-	-	-	2	-
Non-life insurance.	-	64	-	-	-	-	2	-
Money changers	-	-	1,518*	-	-	-	45	-
Money transfer	-	2	-	-	-	-	2	-
Asset mgt. Co.	-	31	-	-	-	-	20	-
derivatives trading	-	-	9	-	-	-	-	-
Co. engaged in futures trading.	-	-	6	-	-	-	-	-
Personal loan & credit card providers	-	-	-	-	-	-	-	-
E – payment services	-	-	-	73	-	-	2	-
Designated non-financial Business-								
Gems, Gold and Jewellery traders	-	-	1,204	-	-	-	7	-
Real estate brokers or agents	-	-	283	-	-	-	5	-
Total	0	226	3,020	73	0	0	101	28

432. AMLO plans to conduct a sectoral risk assessment and will prioritize the examination based on the assessment result. AMLO will also conduct a follow-up offsite examination on all banks, all of which are considered high-risk and will develop a plan for onsite work depending on the result of that work.

433. While AMLO has taken on additional resources since becoming the main AML/CFT supervisor for all reporting entities in 2014, current resourcing and skill/experience levels for AML/CFT supervision within the AMLO are not adequate given the wide scope of AMLO's responsibilities. At

the time of the ME on-site visit, AMLO had 25 officers in the supervision and examination section who are charged with conducting both on and off-site examinations and another 5 officers in the litigation section which is responsible for inspection of REs found to have shortcomings in AML/ CFT controls.

434. Resourcing constrains AMLO's ability to perform its function on a timely basis, although AMLO has recognised this vulnerability and there are plans to further strengthen resources. The assessors considered that the aspiration to strengthen resources should extend beyond AMLO. Further resources are needed across the regime to support effectiveness.

Remedial actions and effective, proportionate, and dissuasive sanctions

6

435. AMLO and the prudential supervisors have focused on advice letters, warning letters and follow up action plans to rectify gaps. Since taking over supervision in 2015, AMLO has issued 10 warning letters (8 on commercial banks, 1 on specialized bank and 1 on securities company) and imposed fines on 8 entities (3 commercial bank and 5 securities companies). Around 400 customer accounts which might have possible sanctions are still subject to investigation. In respect of the prudential supervision by sectoral regulators, they have real strengths and significant supervisory resources. BOT has issued (i) 19 advice letters, one warning letter and imposed fines on one bank; and (ii) 2 warning letters and 81 verbal warnings to MSBs. OIC provided details of one occasion in which they conducted an onsite inspection of a non-life insurance company where an advice letter was issued. SEC's supervision has more focus on AML/CFT controls, their supervision programs include KYC/CDD and other elements of AML and led to the identification of deficiencies in these areas resulting in the issue of 43 warning letters, fines being imposed on 13 securities companies and sanctions being imposed on 3 directors from 2 companies in the past 5 years.

436. While AMLA sets out the criminal liability, penalty and fines for AML/CFT breaches the spectrum of sanctions is insufficient. Sanctions available to prudential regulators are available in cases of AML/CFT failings and can be applied in parallel with AMLA sanctions, but the level of fines or penalties which may be imposed on FIs may not be considered to be dissuasive, particularly where regional or global financial institutions are concerned. Supervisors have a range of remedial measures available ranging from advisory letters, warning letters, fines, revocation of license, and removal of director and suspension of directors.

437. In practice, the sanctions that are available have not been widely used. Other than SEC, sanctions against FIs and DNFBPs for breaches of AML/CFT requirements by other prudential regulators or main supervisor have been insufficient. This may be attributed to the low level of AML/CFT compliance inspections undertaken by the relevant supervisors (i.e. BOT, OIC) and the current restrictions on the capacity of AMLO to carry out inspections on entities found to have shortcomings which may warrant sanction, although AMLO has plans to further strengthen available resources.

438. One of the greatest barriers to effectiveness of sanctions under current arrangements is the process of applying fines, which is limited to criminal prosecutions and related settling mechanisms. These mechanisms place an undue burden on supervisors as supervisors need to prepare briefs of evidence prior to negotiating settlement with REs who breach regulations. The process leads to delays, high costs to regulators and is reliant on obtaining the consent of the RE to be sanctioned. Altogether these requirements have been a significant impediment to the efficient application of monetary sanctions in cases of serious AML/CFT failings. A wider range of administrative sanctions, including fines, need to be available to regulators.

439. During the onsite visit, AMLO was unable to provide the exact number or breakdown of cases that may involve possible sanctions. However, to illustrate scale, the number of cases being investigated involved approximately 400 accounts which were being handled by only 5 officers.

440. It is important to note that Thailand has recently begun to move to a wider range of more flexible tools for sanctioning non-compliance, with the BOT being empowered to directly apply administrative fines in the Electronic Transaction Act. This is a very important precedent and allows the BOT to move quickly in cases of serious failings.

441. The cooperatives supervisor has not effectively sanctioned cases of non-compliance.

442. While there is close follow-up on specific action plans, the lack of wider use of sanctions diminishes the overall effect on compliance. The overall number and values of fines applied have been very low.

Impact of supervisory actions on compliance

443. The AMLO, BOT, SEC and other supervisors indicated that their supervisory activity, in particular, remedial actions and cautions, usually produces the desired changes in the behaviour of supervised entities. There has been consistent follow through from BOT, SEC and AMLO, but this was not demonstrated in the case of the cooperatives supervisor. According to feedback from the AMLO, SEC and the supervised entities, both AMLO's and SEC's supervisory actions have generally had a positive impact on the level of awareness and compliance in the banking, money changers and securities sector. Improvement in the number and quality of STRs which are available for use in financial investigations appears to be one outcome attributable, in part to these efforts to increase awareness.

Promoting a clear understanding of ML/TF risks and AML/CFT obligations

444. Sectoral supervisors and the AMLO have issued guidance to promote entities' understanding of their AML/CFT obligations. However, there are consistency issues which have not been addressed. According to the feedback provided to the assessors, entities experienced significant difficulties in following numerous regulations, guidelines, notifications and guidance. A more consolidated approach to regulation and guidance is needed to support REs' understanding of AML/CFT obligations.

445. Outreach and awareness raising has been a priority for AMLO and has to a large degree been risk-based, addressing banks and the securities sector first. AMLO has conducted seminars and lectures to FIs and REs between 2014 and 2016. However, training provided to FIs and REs (e.g. finance companies & credit foncier companies, SFI, companies engaged in future trading, companies engage in derivative trading) was not regarded as sufficient, in particular with respect to the higher risk sectors such as money changers, money transfer business, asset management companies, gold and jewellery traders, car dealers, car leasing companies, real estate brokers or agents, antique traders and money changers who are individuals.

Remedial actions and sanctions for AML/CFT

Types of actions		Advice Letter	Warning Letter	Fines	Range of Fines (million THB)	Revocation / non-renewal of licence	Removal of director	Suspend Directors	Verbal Warning for MC & MT
2012	BOT	1	-	1	-	0*	0**	-	-
	SEC	-	12	4	0.12 – 1.05	-	-	-	-
	AMLO	-	-	-	-	-	-	-	-
	OIC	-	-	-	-	-	-	-	-
	CPD	-	-	-	-	-	-	-	-
	Others	-	-	-	-	-	-	-	-
2013	BOT	2	-	-	-	0*	0**	-	MC:37 MT:5
	SEC	-	12	3	0.22 – 1.14	-	-	-	-
	AMLO	-	1 bank	3	total fines 1.7	-	-	-	-
	OIC	-	-	-	-	-	-	-	-
	CPD	-	-	-	-	-	-	-	-
2014	BOT	-	1 (MC: 1)	-	-	0*	0**	-	MC:20 MT:3
	SEC	-	9	1	0.18	-	-	-	-
	AMLO	-	7 banks 1 sec co	1 bank 1 sec co	total fines 0.12-0.18	-	-	-	-
	OIC	-	-	-	-	-	-	-	-
	CPD	-	-	-	-	-	-	-	-
2015	BOT	12	MT:1	-	-	0*	0**	-	MC:16 MT:0
	SEC	-	8	5	0.14 – 2.27	-	-	1 co. (2 directors) Fine 0.15 MB	-
	AMLO	-	1 specialized bank	2 banks 1 sec co	total fines banks – 1.12 sec co – 0.39	-	-	-	-
	OIC	1	-	-	-	-	-	-	-
	CPD	-	-	-	-	-	-	-	-
2016	BOT	4	-	-	-	0*	0**	-	-
	SEC	-	2	(on process)	(on process)	-	-	1 co. (1 director) Fine 0.08 MB	-
	AMLO	-	-	-	-	-	-	-	-
	OIC	-	-	-	-	-	-	-	-
	CPD	-	-	-	-	-	-	-	-
Totals		20	55	22		0	0	2	81

Outreach and Awareness Raising activities

Type of REs	2014		2015		2016	
	Times	Attendees	Times	Attendees	Times	Attendees
Commercial & Specialized banks	21	1,448	16	1,727	10	640
Finance companies and Credit foncier co.	1	18	-	-	-	-
SFIs	-	-	-	-	1	50
Securities co.	4	278	8	1,051	7	1,240
Life & non-life insurance	13	1,265	4	321	3	300
Cooperatives	18	1,300	9	687	9	716
International payment methods (MC/MT)	3	250	5	344	2	46
Asset mgt. co.	3	190	1	50	-	-
Derivatives trading	1	40	-	-	1	120
Futures trading business	-	-	1	28	-	-
Land Offices	1	57	7	312	1	70
Gems, Gold & Jewellery	-	-	-	-	1	30
Car dealers & leasing co.	4	255	1	40	-	-
Real estate brokers / agents	1	200	-	-	-	-
Antique traders	4	650	3	147	1	40
E - payment services	-	-	2	110	2	175
Money Changers (individuals)	4	1,564	-	-	-	-
Total	78	7,515	57	4,817	38	3,427

446. AMLO's engagement in the FI sector had produced less measurable outcomes, which may be due to resource and experience limitations of AMLO, particularly in their understanding of higher risks and more complex controls in more developed institutions. The ability to engage all sectors on the most difficult issues and challenges is something AMLO is cognisant of.

447. While there has been good industry engagement by AMLO, there continues to be a need for more regular, constructive engagement with all of the AML/CFT supervisors, informed by AMLO information on risk. Other than a single seminar conducted jointly by the AMLO and OIC to OIC officials and 6 seminars conducted with CPD and CAD to CPD & CAD officials, there has been no other outreach provided by the AMLO to prudential supervisors, to provide information on risk.

448. There is a pressing need for LEAs, including the NACC and RTC to be involved in outreach to REs to better understand, identify and mitigate ML/TF risks of the individual sector. This should be done in concert with AMLO.

Overall Conclusion on Immediate Outcome 3

449. Thailand has a moderate level of effectiveness for Immediate Outcome 3.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

450. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 and R.25.

Key Findings

Information on the creation and types of Thai legal persons is readily available. Thailand does not recognise trusts under its domestic law; however foreign trusts operate in the Thai economy.

The 2012 NRA assessed many elements of ML/TF risks associated with legal persons and arrangements that may be formed or operate in Thailand. AMLO demonstrated a good awareness of risks of misuse of legal persons, however, this is not consistent with other authorities.

Registration obligations on legal persons (DBD, RD, and SEC) increase the transparency of basic ownership of Thai legal persons and Thai authorities and the public have access to such information. However, there are weaknesses with the accuracy and reliability of basic information held on the DBD registry as compliance with filing requirements is weak and verification is not done well. Transparency of ownership information is enhanced by automatic sharing of information between the RD (tax), DBD and SEC.

There are no obligations on private limited companies to obtain beneficial ownership information, except that DBD requires private limited companies to obtain, update and report BO information of bearer shareholders. SEC filing obligations support the identification of beneficial ownership for public limited companies.

While Thailand relies on obtaining REs' CDD on beneficial ownership of legal persons and arrangements, implementation of CDD amongst FIs has weaknesses (see IO4) and CDD requirements did not apply to any DNFBPs at the time of the onsite visit. Thailand demonstrated it has obtained beneficial ownership information from REs, including in relation to foreign requests and has sought and obtained basic and beneficial ownership information of legal persons and arrangements formed abroad and information on foreign natural persons who may own or control Thai legal persons.

Recommendations

- Consider any updated risk information since the 2012 NRA and conduct a more in-depth assessment of risks associated with Thai legal persons with foreign ownership.
- Review legislation for legal persons and regulators to ensure direct and indirect requirements in relation to transparency of beneficial ownership; and coverage, powers and sanctions (including a consistent approach to ensuring the accuracy of information by means such as offences for making false or misleading statements) of DBD and other regulators to support compliance. Amend companies' legislation to require companies to take reasonable measures to obtain and hold up-to-date information on companies' beneficial ownership.
- Target outreach and guidance to DNFBPs and FIs as well as DBD, Office of Business

Registration, SEC, RTP, DSI, AMLO, etc. based on the findings of the assessment of risks and to support REs on the timing and intensity of ongoing CDD to maintain beneficial ownership information of customers.

- DBD and other regulators should expand their oversight and enforcement of companies and partnerships to ensure the accuracy and timeliness of information held and filed by legal persons.
- Amend AML/CFT legislation to explicitly require customers of FIs who are trustees (of foreign trusts) to declare their legal status to the FI.
- Ensure that LEAs give greater focus to techniques to 'lift the corporate veil' of companies in financial investigations.
- Identify priority jurisdictions for international cooperation on legal persons and arrangements and ensure that mechanisms are in place and are used to support proactive cooperation in keeping with the risk profile.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

451. Information on the creation and types of legal persons that may be established under Thai law is available on websites of the DBD, the Office of Business Registration and the SEC. Similar information is available through a consultation of the relevant legislation, in particular the C&C Code and the PCA. The DBD website (http://www.dbd.go.th/dbdweb_en) includes various guides in Thai and English on the creation, types and legal obligations for legal persons in Thailand.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

452. There are real risks that criminals misuse legal persons to launder criminal proceeds in Thailand, however there has not been a detailed assessment of the ML/TF risks of particular types of legal persons and arrangements that may be formed or operate in Thailand.

453. The 2012 NRA assessed ML/TF risks of legal persons and arrangements in Thailand and applied a series of risk estimation tools (ratings and rankings) for each sub-sector of legal person and arrangements active in Thailand, both domestic and foreign. The 2012 NRA findings on LEA investigators' challenges in obtaining leads or evidence resulting from a lack of beneficial ownership transparency were a result of a lack of AML/CFT regulatory controls for the transparency of legal persons and legal arrangements; very weak transparency for the more than one million legal persons in Thailand. LEAs reported insufficiently detailed records held by companies to identify, seize or secure assets relating to ML offences; and it was perceived as very easy to set up front companies. The NRA assessed and ranked various sub-sectors and their features and included an assessment of vulnerabilities and consequences.

454. While the 2012 NRA considered a number of elements of risks from legal persons and arrangements in Thailand, it is not clear that the findings in this regards have been well understood by competent authorities beyond the AMLO.

455. Thailand is not a regional centre for company formation or services jurisdiction and Thai company law provides few options for complex legal structures. There is a company services sector for domestic companies in Thailand, albeit a small one, which includes promotion of corporate

vehicles for foreign investors. Much of this later business focuses on incorporation options for non-resident foreign investors to overcome relatively strict controls on non-resident foreigners owning real property. The extent to which Thai corporates are active in foreign economies is not clear.

456. Thailand does not recognise domestic trusts; however it is clear that foreign trusts are active in the Thai economy. This includes both foreign trusts investing or using financial services in Thailand and the formation of foreign trusts in Thailand for the use of Thai nationals. Examples of foreign trusts for Thai nationals include the use of foreign family trusts to support inter-generational security of family holdings. It is apparent that some trust formation services are performed for these purposes in Thailand, although this does not appear to be a large sector. Trust services are subject to very limited controls and are not well understood by Thai authorities.

457. Use of informal nominees and similar structures to obscure beneficial ownership is a risk noted in the 2012 NRA. Corruption risks (corruption officials using complex structures) is particularly noted.

458. AMLO demonstrates a generally good understanding of some of the vulnerabilities of misuse of domestic and foreign legal persons, and, to a lesser extent, foreign trusts. This is particularly derived from AMLO's long experience with development of financial intelligence and asset tracing investigations. It is not clear that DBD (as the regulator of most companies), LEAs, regulators or the tax authorities have a detailed understanding of the threats or many of the vulnerabilities of Thai and foreign legal persons and foreign legal arrangements operating in Thailand. LEAs have identified a number of cases involving corporate entities for committing fraud, concealing proceeds of crime and other crime types.

Mitigating measures to prevent the misuse of legal persons and arrangements

459. There have been few additional mitigating measures put in place since the findings of the 2012 NRA highlighted a number of risk factors from legal persons and arrangements in Thailand.

460. There has been a limited review of legislation for legal persons and legal arrangements regarding direct and indirect requirements in relation to transparency, including the coverage, powers (including a consistent approach to ensuring the accuracy of information) and penalties.

461. The main measures implemented to increase the transparency of legal persons incorporated in Thailand are the public availability of information contained in the Business Register and DBD and the access granted the authorities (to varying degrees and under different circumstances) to the information collected by reporting entities through CDD and other processes.

462. Obligations exist to maintain accurate records of shareholdings and directors. Such information is variously available online and/or with the company. These obligations for registering basic ownership information are not well implemented or enforced. DBD has good systems for online registration and filing and DBD has comprehensive access to available registration information via the DBD's data warehouse system. At present, the DBD lacks statutory powers or resources to ensure compliance with filing requirements for shareholders and directors.

Status of juristic persons operating in Thailand as of 31 December 2015

Status	Number
Private Limited Company	438,278
Public Company Limited	1,110
Limited Registered Partnerships	178,116
Ordinary partnerships	
<i>Total active juristic persons (excluding foreign corporate bodies)</i>	<i>617,504</i>
Total (excluding foreign corporate bodies)	1,296,021
Foreign corporate bodies	4,461
Total number of dissolved (liquidated/converted/amalgamated)	261,752
Total number of non-active (liquidated, receiver/bankrupt)	65,995
Total inactive companies	327,747

463. Data provided by the DBD indicates that there are high rates of inactive companies and weaknesses with compliance with filing returns to the DBD registrar. This undermines the accuracy and reliability of the information held by the registrar.

464. Bearer shares and formal nominee shareholders or directors are not a significant issue in Thailand. Legislation and regulations prohibit bearer shares and nominees (natural persons or corporate nominees). Shareholders of private limited companies may be represented by third parties on the basis of a duly signed power of attorney, which ensures the transparency of the actions. Companies must maintain a copy of the power of attorney when the non-shareholder third party exercises the rights carried by the shares in the company's meeting.

465. Authorities indicate that they have taken steps to mitigate the risks from share warrants for both public and private limited companies. Before issuing share warrants, a company is required to conduct shareholders meeting and register with the registrar. Moreover, the share cannot be sold to other persons except existing shareholders.

466. For public limited companies (PLC), there are comprehensive disclosure requirements that greatly enhance transparency. Disclosure requirements to the SEC apply to all PLCs and are coupled with further disclosure requirements for those listed on a stock exchange. Compliance with those obligations is generally overseen and enforced by the SEC.

467. The sharing of information between the RD (tax), DBD and SEC regarding ownership of juristic persons is a strength for the transparency of legal persons. This information sharing does not, however, extend to beneficial ownership.

468. There is a legal basis to allow competent authorities to access information on shareholding and legal control which is available on legal persons within Thailand.

Beneficial ownership

469. The only obligations on private limited companies to obtain, maintain or report their beneficial ownership arrangements is in the case of bearer shareholders, wherein they must be obtained and submitted to DBD. SEC filing obligations contribute to the identification of beneficial ownership for public limited companies.

470. Thailand relies on existing sources of information to indirectly obtain BO information, including information obtained by FIs pursuant to the MR CDD. When a legal person is a customer of an FI, CDD obligations extend to shareholders, directors, financial statements and records of revenue and expenditure that may be obtained through the office of business registration or the revenue department. Comprehensive CDD requirements did not apply to DNFBPs at the time of the assessment. It should be noted that new comprehensive CDD requirements were applied to some DNFBPs from late 2016, but these will not extend to lawyers or accountants, which are the sectors most involved in company services in Thailand. It is apparent from the 2012 NRA and feedback from authorities that company service providers are a minor feature in the economy and lawyers are only sometimes used to establish or have a role in managing limited liability companies.

471. The system of reliance on CDD undertaken by FIs and holdings of records relating to companies' activities partly supports identification of beneficial owners in some cases, but it may not result in FIs or competent authorities being readily able to obtain up to date beneficial ownership information for private limited companies. Authorities may have difficulty identifying which RE has a particular legal person as a customer. CDD records are only updated periodically under ongoing CDD requirements, while BO arrangements may have changed in the interim. As such, CDD processes may be either incomplete or out of date regarding beneficial ownership.

472. Thailand demonstrated some direct experience of using a combination of company records of legal ownership combined with CDD information obtained by banks and other FIs, to obtain information regarding the UBO of Thai legal person. These records are sought in relation to both domestic asset tracing cases by AMLO and in response to foreign requests for beneficial ownership information. In the case of MLA requests, the work to obtain the information is chiefly provided by AMLO.

473. Authorities and reporting entities have all indicated that it is more difficult to obtain and verify the beneficial ownership of Thai legal persons where there are foreign entities involved.

Legal arrangements

474. Domestic express trusts are not able to be formed under Thai law. This excludes risks faced by the formation of domestic trusts. However, there are no prohibitions on forming or operating foreign trusts in Thailand. As indicated above, there are indications that foreign trusts operate in Thailand and in transactions involving Thai nationals or entities. Trust services (involving foreign trusts for

Thai customers) that may be operating in Thailand were covered in the 2012 NRA to some degree but are not well understood by Thai authorities.

475. There are no explicit requirements for trustees (of foreign trusts) using banks or other financial institutions to declare their trustee status at the point of establishing a customer relationship.

476. There are no direct controls on trustees of foreign trusts doing business in Thailand, however CDD requirements on FIs extend to identifying whether or not a customer is a party to a trust and to conduct CDD on related foreign legal arrangement in such cases, but it is not clear that such CDD these will be either complete or up to date. As with companies, authorities may have difficulty identifying which FI has a particular trustee of a foreign trust as a customer. CDD records are only updated periodically under ongoing CDD requirements, while trust control arrangement may have changed in the interim. As such, CDD processes may be either incomplete or out of date regarding trustees.

477. CDD requirements extending to identifying trustees had not applied to DNFBPs at the time of the assessment, although new comprehensive CDD requirements were applied to certain DNFBPs from late 2016. Lawyers and accounts (including auditors) were not included in the AMLA at that time.

Timely access to adequate, accurate basic and beneficial ownership information on legal persons

478. Basic information is easily accessible through online consultation of the information contained in the DBD and Office of Business Registration. AMLO may access CDD held by FIs (as soon as the reporting entity that holds the information has been identified). This applies across the range of FIs and DNFBPs, but, in practice, most frequently concerns banks. The quality of the CDD information collected by banks is considered to be generally adequate by LEAs, although the beneficial ownership information was generally less reliable than basic information, and the process for the identification of the beneficial owner needed to be strengthened. AMLO demonstrated experience with obtaining beneficial ownership information in the course of ML and asset tracing investigations.

479. As indicated under IO.3, significant concerns remain with respect to the identification of beneficial owners by financial institutions and this is not done at all for DNFBPs. This would suggest that the accuracy and reliability of the information collected by REs to which the authorities have access are not as optimal as they should be.

480. Information is also collected through international cooperation which in some cases has proven adequate, but is considerably more challenging in instances where the counterparties do not cooperate.

481. Access to the beneficial ownership information of foreign legal arrangements may also be obtained from reporting entities (especially banks) but is generally more reliant on foreign countries' active cooperation, with varying degrees of timeliness and success.

Effectiveness, proportionality and dissuasiveness of sanctions

482. Very few sanctions are available for failure to file and update information with the DBD or maintain records at the company. The DBD, as registrar, has acted to monitor and enforce compliance or apply those few sanctions that are available but not dissuasive and proportionate.

483. There are limitations on the range of sanctions available to AMLO and other supervisors in relation to the conduct of CDD, including customers that are legal persons or arrangements. Available sanctions have not been implemented in a dissuasive and proportionate manner.

International Cooperation

484. Thai authorities (chiefly through AMLO) demonstrated their experience with requesting basic and beneficial ownership information of legal persons and arrangements formed abroad and information on foreign natural persons who may own or control Thai legal persons. This has included cases involving company formation jurisdictions in Asia and beyond. A number of these cases are ongoing.

485. This has also resulted in assets being identified abroad with plans to repatriate to Thailand, but, in the absence of statistics, no precise indication was provided on the extent of these results.

486. There have been a sizeable number of case requests to Thailand from foreign partners seeking international cooperation including information on Thai legal persons. Thai authorities were able to respond to provide basic information and beneficial ownership information when it could be obtained. This, to some extent, reflects the risk profile.

487. As mentioned above, basic information on legal persons incorporated in Thailand may be accessed online, in these instances; foreign authorities may obtain information without having recourse to information requests to Thai authorities.

Overall conclusion on Immediate Outcome 5

Thailand has a low level of effectiveness for Immediate Outcome 5.

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

488. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R. 36-40.

Key findings

AMLO is the most active agency to seek international cooperation, especially via the informal channel, to aid their financial investigations related to proceeds of crime, predicate investigations, ML and TF. AMLO engages very effectively with its foreign counterparts, both upon request and spontaneously. AMLO makes extensive use of the Egmont, APG, FATF and ARIN-AP channels for supporting international cooperation. AMLO has a well-established and experienced international cooperation team, who also participate in operational matters of the agency alongside their international cooperation role.

Thailand has an open and flexible approach to international cooperation and a legal framework that meets most aspects of the FATF recommendations. The requirement for dual criminality is interpreted flexibly.

Thailand prioritises providing formal and informal assistance for international cooperation in response to foreign requests. However, Thailand does not sufficiently prioritise seeking international cooperation and outgoing requests are not regularly made in the work of LEAs or prosecution authorities. It was not evident that Thailand is targeting informal cooperation or MLA in keeping with the significant risks posed by Thailand's neighbours and its porous borders.

The Central Authority is well resourced, has well-trained staff and sufficient resources to carry out timely and effective MLA.

Thailand has never sought MLA for ML or TF and has made very few MLA requests relating to predicates. A significant portion of the MLA and extradition requests made by Thailand relate to matters other than ML, TF and predicate offences.

LEAs demonstrated the use of informal cooperation as a tool to enhance investigations and discuss transnational elements of predicates.

Thailand does not actively seek formal cooperation to pursue assets sent offshore, however it does seek and provide information through various informal channels leading to asset recovery. Thailand has never shared forfeited assets with foreign partners due to previous legislative prohibitions.

Thailand responds well to extradition requests however authorities have responded to more extradition requests than they have made to other jurisdictions. Despite demonstrating an increasing trend, there are a low number of extradition requests made by Thailand which does not reflect risk. Thailand faces challenges with extradition due to harsh domestic penalties, however it has made some positive changes to overcome these challenges.

There is strong engagement particularly between police and customs and their counterparts under various forums. However, Thailand does not sufficiently prioritise the use of international cooperation to obtain admissible evidence for domestic proceedings.

Thailand has some experience of cooperation with foreign regulators and supervisors, however there is a need for significantly more cooperation in relation to sharing information on risk, market entry fit and proper, beneficial ownership information and AML/CFT supervision. AMLO

demonstrated some experience of sharing and seeking information on beneficial ownership.

Recommended Actions

- Consider at a joint agency and agency level, the priority jurisdictions for international cooperation based on findings of the NRA and other risk assessments.
- Based on this process develop a priority international cooperation plan to guide FIU, LEAs, supervisors and others in their proactive international cooperation.
- Based on findings of national and sectoral level assessments of risk, identify policy priorities for international cooperation for each sector.
- Conclude asset sharing agreements with other jurisdictions in order to provide the widest form of assistance to other jurisdictions.
- Seek international cooperation in relation to corruption cases to better understand the transnational element to corruption.
- Seek greater formal and informal cooperation with immediate neighbours in line with the risk profile.
- Widen investigations, particularly in relation to assets that have moved offshore and pursue offenders offshore for extradition. This should be done by the provision of more MLA requests for information, asset tracing and seizing and also extradition.
- Supervisors should seek and proactively share information with foreign supervisors in relation to risk, market entry fit and proper, planning and conduct of supervision and regulatory outcomes (e.g. sanctions, etc.).

Immediate Outcome 2 (International Cooperation)

Background and context

489. Thailand has a sound legal framework and mechanisms for international cooperation both through the formal and informal channels of cooperation. Technical compliance levels show a high degree of compliance. Assistance broadly covers evidence gathering, investigation, inquiry, prosecution, forfeiture of assets, provision of documents and serving of documents, transfer of persons in custody for testimonial purposes, locating persons and other proceedings on criminal matters.

490. Thailand's work to understand ML and TF risks (the NRAs and other assessments) has not sufficiently considered the main geographic and transnational risk to inform priorities for international cooperation (see IO 1). This results in national and agency level policies insufficiently focusing on priority threats and shared risks with foreign counterparts. This is equally true of criminal justice and financial regulatory areas.

491. An important contextual issue is that a significant number of jurisdictions have law enforcement attaches or liaison officers stationed in Bangkok to support cooperation both with Thailand and other jurisdictions in South East Asia. This increases the opportunities for direct engagement with foreign counterparts.

Provision of constructive and timely MLA (including extradition)

492. The OAG acts as the Central Authority and is responsible for the timely provision of international cooperation in Thailand, including extradition. MLA requests may come directly to the

OAG in the event of an MLA treaty (MLAT) or via diplomatic channels on the basis of reciprocity in the absence of an MLAT. In both events, requests end up with the OAG who instructs and coordinates with implementing competent authorities to assist. Both the OAG and AMLO are members of ARIN-AP.

493. Thailand advised that in practice there is little difference in the practice and procedure whether a requesting state has a treaty or not with Thailand. Thailand confirms that incoming requests for both MLA and extradition are about 50/50 between treaty partners and non-treaty partners.

494. Thailand currently has MLAT with 14 other countries and extradition treaties with 15 countries. The prioritisation of treaty negotiations is soundly based and consistent with the risk identified.

495. Thailand requires dual criminality when giving effect to a request to provide assistance and advises that in practice, when considering dual criminality the underlying conduct of the offence is closely considered rather than the name, title or category of the offence. Thailand has never denied assistance based on dual criminality. Whilst Thailand may be inhibited from providing MLA in relation to ML offences based on the missing predicates, authorities demonstrated case examples which evidenced a wide interpretation of the underlying offence in order to enable them to give effect to requests.

496. To further widen the cooperation Thailand can provide, the MACM was amended which allows them to act on an order of a competent authority to seize or freeze an asset. Previously Thai authorities could only act on a court order.

497. The OAG is sufficiently resourced and has systems in place to support responses to MLA requests in a timely manner. The Central Authority has a centralised database in which incoming and outgoing requests are tracked for MLA and extradition. OAG staff appear to be well trained and adequately resourced. Reminders are sent to domestic competent authorities who are executing MLA requests every 3 months if responses are not received.

498. Both the OAG and Thai embassies adopt a practical approach to assisting requesting jurisdictions to ensure their documents are compliant with Thai law. Feedback from other jurisdictions experience of cooperation with Thailand generally indicates positive outputs from international cooperation.

499. From 2012-2016, Thailand received 565 requests for assistance in criminal matters. Of these, 37 requests are related to ML offences, 91% of which have been responded to. As for requests relating to predicate offences of ML over the same period, 291 requests were received, 93% of which were responded to.

500. One challenge to the provision of constructive assistance was Thailand's inability to share assets it has forfeited on request from other jurisdictions. Thailand has never shared assets with another jurisdiction on request. Since the amendment to the MLA Act in 2016, Thailand now has a legal framework to share forfeited assets on request of foreign states. However, authorities believe there must first be a treaty or agreement between the two states specifically on asset sharing and Thailand is yet to agree any such treaties and the current MLATs do not qualify as an asset sharing agreement under the amendment. A further previous impediment to effective cooperation was that the RTP was named as the only competent authority to carry out MLA requests. The recent inclusion of AMLO, RTC and DSI as a competent authority to act on MLA requests has added to effectiveness.

MLA requests made and received from 2012 – 2015.

Year	No. of requests received					No. of requests sought				
	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016
Total	94	131	110	121	109	35	44	46	38	35
related to ML	4	4	8	10	11	-	-	-	-	-
-Requests fulfilled	4	4	8	8	10	-	-	-	-	-
-Requests denied	-	-	-	2	1	-	-	-	-	-
related to predicate offences	45	60	57	62	67	13	12	13	17	19
fulfilled / in process	41	57	53	59	61	13	12	12	16	19
-Requests denied*	4	3	4	3	6	-	-	1	1	-
-Reason for refusal	-Non-compliance with rules, wrong channel, re-submit, clarification required.									
related to TF	-	-	1	1	-	-	-	-	-	-
-Requests fulfilled	-	-	1	-	-	-	-	-	-	-
-Requests denied	-	-	-	1	-	-	-	-	-	-

*Thailand confirms that all requests that were initially denied were on the basis of administrative grounds and were all subsequently re-submitted correctly and are included in the statistics above.

501. Thailand provided a number of case studies in which international cooperation was provided. A number of those matters are on-going and the details are not able to be published however information was provided to the assessment team indicating wide-ranging cooperation in those cases.

502. In one case Thailand provided assistance to the United States regarding a request to freeze various assets including a van, house, condominium and bank accounts. Thailand discussed the challenges in freezing all the requested assets as they had been transferred to third-party names. Thailand advised that in this case, they don't register the foreign freezing order; they open their own investigation and pursue domestic freezing orders, using the foreign court order as evidence in their domestic investigation.

Case study – corruption and asset recovery

The former governor of Thailand's Tourism Authority was investigated for accepting USD1.8 million in bribes from two Hollywood producers to allow them to manage the Bangkok Film Festival. Authorities in the United States first alerted Thai authorities to the potential corruption matter where the two producers were investigated and charged under the Foreign Corrupt Practices Act in the US. Bribes were paid by the US nationals through numerous bank accounts in Singapore, the UK and the Isle of Jersey in the name of the former governor's daughter and a friend. Thai authorities

prosecuted the former governor along with her daughter for her role in laundering the money. The NACC launched an investigation into her unexplained wealth. The case proceeded due to a significant amount of collaboration and cooperation between the United States and Thailand. In March 2017, the former governor and her daughter were convicted and monies were ordered to be forfeited under unexplained wealth provisions.

Extradition

503. Thailand has a sound legal framework under the Extradition Act (2008) allowing for the extradition of other nationals present in Thailand that is in line with the FATF standards.

504. Thailand is able to progress extradition matters expediently through the Thai Courts, in most cases it may take around 45 days. There is only one avenue of appeal from the First Instance Court to the Court of Appeal, the decision of which is final. People can also agree to be extradited and in this situation, the extradition is able to be progressed relatively quickly. The following table demonstrates the number of extradition requests sought and provided.

Extradition requests sought and provided

Year	No. of requests received					No. of requests made				
	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016
Total	36	28	24	17	13	6	6	10	13	21
Related to ML	1	1	1	-	1	-	2	3	1	-
Requests fulfilled	1	-	-	-	1	-	2	2	-	-
Requests denied	-	1	1	-	-	-	-	1	1	-
Related to predicates	21	5	6	2	7	1	2	3	1	3
Fulfilled/ in process	19	5	6	2	7	2	2	2	-	2
Requests denied	2	-	-	-	-	1	-	1	1	1
Reasons for refusal	-Clarify & resubmit -under prosecution in Thai Court									
Related to TF	-	-	-	-	-	-	-	-	-	-

505. In one case, Thailand agreed to extradition of a German national, the case proceeded through the court system and the person was extradited to Germany within 6 months. In another case, Thailand received an extradition request from the USA regarding drugs matters. The person consented to be extradited and the process took 3 months.

506. Thailand does not have any informal or simplified extradition channels although extradition can be undertaken by consent which truncates the process, and further Thailand can provisionally arrest a person and place them into detention pending resolution of the extradition request. Through the use of Interpol channels, Thailand has deported 50 individuals subject to Interpol Red Notices to the countries that requested the Red Notices.

507. Thailand has demonstrated, in various actual cases, that it has taken positive action on the request for assistance of other countries by freezing and seizing assets; searching for and seizing physical evidence; and extraditing the offenders.

MLA sought (including extradition)

508. The table above demonstrates that Thailand does not make MLA requests in line with its risk profile. Thailand has never made a formal MLA request relating to ML or TF. Thailand made 198 MLA requests in the period 2012-16. Of these 74 requests were made in relation to predicate offences, with 11 related to narcotics matters, 11 to corruption, 8 to customs matters and 31 related to theft, extortion, misappropriation and blackmailing. In terrorism cases, Thailand does often charge, and therefore seek assistance, based on other offences such as bomb-making, however figures of such requests for assistance were not provided.

509. Given the significant risks posed by Thailand's neighbours and its porous borders, it was not evident that Thailand is targeting MLA to address these key risks. Whilst the team acknowledges that Thailand actively pursues informal cooperation, successful prosecutions are likely to require formal evidence admitted into proceedings. For example, Thailand confirmed that it exchanged information with Cambodia on 4 occasions over the last 3 years, with Myanmar on 2 occasions and Malaysia on 8 occasions. This is supplemented by the use of Interpol over the last 12 months, Thailand has had 12 exchanges of information or intelligence with Malaysia, 3 with Myanmar and none with Cambodia. Noting the findings in section 1 of the report, Thailand has not actively sought cooperation in line with its risk profile and taking into account the risks on its borders.

510. Thailand has received many more extradition requests than it has made. Thailand has received 118 requests and made 56 extradition requests in the period 2012-16. Of the 56 extradition requests, only 16 related to ML, TF or predicate offences. The low extradition figures do not reflect the risk profile of Thailand, both in relation to ML and predicate offences. 6 requests for extradition related to ML have been made in the previous 3 years. Thailand noted that they often experience difficulty having their extradition requests agreed to due to the harsh penalties imposed under Thai law however despite this provide open cooperation to other countries. The team notes the positive workarounds Thailand has implemented to gain greater assistance through extradition and notes the increasing extradition figures.

511. Offences such as corruption, drug trafficking, murder and terrorism carry the death penalty in Thailand creating difficulty obtaining the extradition of offenders for these offences. Thailand has sought to address the challenge through a 2016 amendment to the MLA Act whereby for any case in which international assistance is given, a death sentence shall be converted into a life sentence. The success of this section is yet to be demonstrated and Thai authorities may continue to face challenges despite the amendment. Thailand also seeks to pursue alternate charges against an accused that carry lower penalties which they hope will facilitate greater cooperation. Thailand has sought to overcome previous challenges to effective extradition and statistics for extradition requests demonstrate an increasing trend.

Case study: the extradition, prosecution and asset recovery relating to a former financial advisor to the now-collapsed Bank C– Mr S

Mr S, a former financier was an adviser to the now-defunct Bank C which made unrecoverable loans to management. At the time of the bank's collapse, it had USD3billion of unrecoverable loans on its books. It was alleged that Mr S amassed approximately USD82million from the fraud. It was further alleged that the fraud and subsequent collapse of the bank helped to trigger the 1997-1998 Asian

financial crisis. He was charged in 1996 but fled to Canada where he was arrested later that year. After a 13 year long extradition battle, he was extradited to Thailand and was ultimately sentenced to 10 years in prison in. Thai authorities have traced about USD 65 million in offshore bank accounts belonging to him including USD4million in Britain, USD6.4 million in Guernsey, and USD54 million in Switzerland. The money held in Switzerland was ultimately forfeited in Switzerland and repatriated to Thailand. He remains in prison in Thailand serving his sentence. A multi-agency working group has been established in Thailand dedicated to the investigation of assets belonging to Mr S with a focus on international cooperation.

Informal Cooperation (criminal justice agencies) including the FIU

512. Thailand demonstrates a willingness to engage in informal cooperation with foreign counterparts. However, Thailand's outreach to foreign LEA counterparts requires improvement and further targeting in line with its risk profile.

513. Authorities discussed some matters involving corruption in which international cooperation has been sought. The NACC confirm that from 2012 – 2016, international cooperation has been sought in 16 cases. Greater emphasis could be placed on international cooperation in corruption matters, particularly in pursuing the proceeds of crime offshore.

514. Thailand has worked on joint investigations with other jurisdictions, for example allowing the Korean police undertake an online gambling investigation within Thailand. Special Branch works closely with Malaysian Police and Thailand has cooperated with the FBI on an operation regarding internet crime against children.

515. AMLO is the most active agency to seek international cooperation, especially via the informal channel, to aid in their financial investigations related to proceeds of crime, predicate investigations, ML and TF. AMLO engages very effectively with its foreign counterparts, both upon request and spontaneously. AMLO makes extensive use of the Egmont, APG, FATF and ARIN-AP channels for supporting international cooperation. AMLO has a well-established and very experienced international cooperation team, who also participate in operational matters of the agency alongside their international cooperation role.

516. Between 2012 - 2015, AMLO made 160 requests to foreign agencies. 16.8% are related to public fraud; 10.6% were related to transnational organized crime; 10% are related to malfeasance in office; 8.1% were theft, blackmailing, extortion, robbery, fraud and embezzlement; and 5.6% related to drugs. From 2013-2015, AMLO received 417 foreign requests for informal assistance. All of them have been fully responded to. An average of 5-7 days was needed to respond to the request in less complex cases, and an average of one month for complex cases.

517. *The RTP* - Thailand exchanges intelligence information with its foreign counterparts through direct engagement with foreign LEAs present in Bangkok, through INTERPOL and ASEANAPOL. Overall, the bulk of RTP's exchange of information occurs at the operational level using these informal channels, rather than through MLA. This practice may explain the low number of requests made under the MLA but maybe a more expedient process in the exchange of information. The RTP houses Interpol and also hosts regular meetings with police attachés from foreign countries stationed in Thailand.

518. The RTP has attachés based in Cambodia, Myanmar and China. The ONCB also has officers stationed overseas to facilitate cooperation, which adds to effectiveness. *RTP Special branch*

demonstrated a good working relationship with Malaysia and has travelled to Malaysia to gather intelligence and exchange information in criminal matters. This is particularly strong in relation to terrorism information exchange.

519. Collaboration with neighbouring countries occurs through the RTP who hold regular coordination meetings with counterparts along the southern border to exchange intelligence information.

520. *The NSB* has previously held meetings with the FIU of Malaysia, Indonesia and the Philippines and advises that they actively assist each other. The NSB also meets twice a year with representatives from the Mekong region to exchange information and report on the status of operational matters. They also consider action plans to combat transnational crime.

521. *ONCB* – the ONCB has MOUs with 24 countries including Russia and almost all ASEAN members. MOUs generally cover the sharing of information with the group. The ONCB also has attached in Myanmar, China, Vietnam and Lao PDR to facilitate information.

522. *RD* - Thailand directly exchanges information with its foreign counterparts through the Double Tax Agreement. Requests received under this arrangement include requests for information on ownership and beneficial ownership.

523. *RTC* was able to demonstrate that it has good working relationships with foreign partners and suitable powers and mechanism for exchange. It is not clear that RTC has sufficiently pursued cooperation with foreign counterparts in keeping with the cross-border risk profile. Thailand confirms that contact persons have been appointed between Thai customs and the foreign customs of border countries.

524. *NACC* - Thailand exchanges information with foreign counterparts in corruption cases through various channels including the Stolen Asset Recovery Initiative. NACC follows up with formal MLA if documents will be used in court as evidence. The NACC tends to rely on Interpol for information exchanges as well as dealing directly with their foreign counterparts. In this regard, Thailand currently has 32 MOUs with foreign anti-corruption counterparts along with an MOU between ASEAN countries.

Informal assistance (financial regulatory, including NPO regulators) – incoming & outgoing

525. All of the prudential supervisors and AMLO have suitable powers and mechanisms to support cooperation and information exchange with foreign counterparts on AML/CFT and related prudential concerns. The Cooperatives Promotion Department does not have frameworks or powers for international cooperation in relation to those cooperatives that are functioning as financial institutions. The OIC engages with supervisory colleges to discuss issues relating to supervision of global and regional insurance regulated entities. The SEC is a member of International Organisations of Securities Commissions (IOSCO) and has signed both multilateral and bilateral MOUs.

526. While some international cooperation has taken place on AML/CFT supervisory issues, it is not yet well developed in relation to sharing ML/TF risk information by sectoral supervisors or by the AMLO or sharing information to undertake risk-based controls for market entry fit and proper. More international cooperation is needed in relation to planning, conducting and sharing the results of offsite and onsite AML/CFT supervision. Improvements could also be made on implementing correspondent banking and wire transfer controls.

527.SEC has the most developed framework and regular experience of international cooperation. This is supported through their membership of the IOSCO MOU, which has been effectively used for international cooperation in regulatory and enforcement cases.

528.BOT has well developed international cooperation with foreign partners on prudential supervision, including through participation in supervisory colleges. However international cooperation on supervision (offsite and onsite), when it has considered operational risk, has not included a focus on AML/CFT cooperation.

Cooperating on transparency of legal persons – incoming & outgoing

529.Thailand is able to exchange information and provide formal international cooperation in relation to basic beneficial ownership information however authorities may not be able to provide a wide range of information.

8

530.Of the requests received by AMLO for international cooperation, 40% have related to beneficial ownership of information of legal persons. AMLO advised that all requests were responded to. In practice, Thailand is able to provide details including shareholder information, authorised persons, related companies, financial statements, income records and details of directors. AMLO confirm that they would furnish information not only from the DBD but from relevant FIs to send back to requesting jurisdictions.

International cooperation – the fitness company case

In 2012, a fitness company was sued in Thailand's Bankruptcy Court by a Thai Bank seeking repayment of a significant loan. The company subsequently shut down seven of its eight fitness centres in Thailand. After some investigation, Thai authorities suspected that the business was not legitimate and noted a significant amount of money being sent offshore from the company. The fraud led to members losing membership fees, significant losses to shareholders and losses to the Thailand Inland Revenue.

AMLO sought cooperation from Canada, the USA, Hong Kong, the British Virgin Islands, Bahamas, China, Cambodia, Australia and Samoa in relation to this matter as it sought to follow the money sent offshore from Thailand. Requests sent to Canada, the BVI, Bahamas and Samoa related to information on beneficial ownership of companies registered in those jurisdictions. Thailand reports that positive information was received providing beneficial ownership information from these jurisdictions. Thailand continues to investigate assets that may be available for seizure and confiscation through the use of MLA and note that very complex legal structures are used in this case to hold assets. Case meetings were held between FINCEN and FINTRAC and financial reports provided by various jurisdictions assisted in the investigation.

Overall conclusion on Immediate Outcome 2

531. Thailand has a substantial level of effectiveness for Immediate Outcome 2.

TECHNICAL COMPLIANCE ANNEX

1. This annex provides a detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report. Where both the FATF requirements and national laws or regulations remain the same, this report refers to an analysis conducted as part of the previous Mutual Evaluation in 2009. This report is available from www.apgml.org.

*NATIONAL AML/CFT POLICIES AND COORDINATION****Recommendation 1 - Assessing risks and applying a risk-based approach***

2. Recommendation 1 is a new FATF recommendation and has not been previously assessed.

3. *Criterion 1.1* - Thailand completed a national risk assessment for ML and TF in 2012 in conjunction with the IMF and commenced preparing a second NRA in 2015 which was close to completion in late 2016. The processes, mechanisms, and information sources adopted by Thailand for the two NRAs were reasonable. A number of threat assessments have been undertaken for specific crime types. There are various inter-agency processes which support agencies to jointly identify and assess emerging ML/TF risks.

4. *Criterion 1.2* - AMLO is mandated under Section 40 (3/2) of the AMLA to conduct national ML/TF risk assessments. This is to be undertaken in coordination with various agencies through the AMLO Board (at the policy level) and the AML/CFT National Strategy Steering Sub-Committee. The AMLA requires AMLO to disseminate the results of such assessment to agencies supervising reporting entities and other relevant agencies for AML/CFT.

5. *Criterion 1.3* - Thailand conducted an initial NRA in 2012 and is in the process of updating this for 2016, so in practice it appears Thailand updates its assessment of risk every 3-4 years. As the designated authority AMLO also produces typology and other money laundering situation reports as part of its legislated FIU function but these have not been frequent or numerous.

6. *Criterion 1.4* - Section 40 (3/2) of the AMLA requires AMLO to provide the outcomes of risk assessments to supervisors and other authorities. Thai authorities included a number of FIs, DNFBPs and their associations in the NRA process, which has added to their understanding. Thailand has published a version of the NRA on the AMLO website and has conducted a wide range of outreach to various FIs and DNFBPs on the findings of the two NRAs. The NRA process included outreach to sectoral bodies and FIs.

7. *Criterion 1.5* - The 2010 – 2015 National AML/CFT Strategy contains core objectives which reflect the risk identified in the 2007 MER. Resources were provided and legal reform and institutional change was undertaken as a result of the National Strategy. Included in the strategy was the requirement to conduct a robust jurisdiction-wide NRA. A number of new functions and changes to resource allocation were initiated as a consequence of the 2012 NRA. AMLO formulated new onsite and off-site plans in relation to supervision and a new Supervision and Examination Division was established within AMLO. Increased allocation of personnel was provided for higher risk sectors. A new Litigation and Special Measures Section was established in 2013, responsible for coordinating the proceedings of criminal ML cases and providing support throughout the

proceedings. These new litigation sections are primarily focused on asset confiscation work. These changes have largely occurred within AMLO as a result of legislative reform. Other structures such as the National Committee for the oversight of anti-corruption work and the committee for cooperation in corruption prevention were established in 2014. Amendments were made to the AMLA in line with the risk profile in relation to gambling and national strategies for the prevention and suppression of human trafficking and drugs were implemented.

8. *Criterion 1.6* - AMLA provides a basis for exemptions from AML/CFT requirements, but these have, in some cases, not been applied based on proven low risks, including use on occasional or very limited bases. Section 25 (4) of the AMLA allows the AMLB to establish rules and procedures for assessing risks related to ML or TF which may arise from transactions conducted by government agencies or certain categories of entities not subject to reporting obligations under the Act and to recommend guidelines to prevent such risks. Pawn shops have been assessed as low-risk in the NRA 2012 and have been exempted from AML/CFT requirements. The Ministerial Regulation No 5 exempts all covered REs from obligations to file STRs and CTRs for any transactions to which government or state-owned enterprises or certain royal foundations are the sole parties. However, there does not appear to be a basis for the exemptions on proven low risks. The exemptions are wide-ranging and relate to all types of FIs engaging in such transactions.

9. *Criterion 1.7* - While Thailand is taking actions to highlight higher risks (through the NRA or other assessments) there are no requirements that such risks be addressed by either: (a) requiring REs to take enhanced measures to manage and mitigate the risks; or (b) requiring REs to ensure that this information is incorporated into their enterprise risk assessments.

10. *Criterion 1.8* - under the AMLO Guidelines for issuing policy and procedures for assessment and management of risk related to ML and TF ('AMLO risk assessment guidelines'), covered businesses and professions along with FIs shall issue and act in accordance with written risk policy and procedures to mitigate risk. The risk assessment guidelines require them to act in accordance with, amongst other things, the NRA, risk factors related to the customer, geography or country, product, service, transaction type and service channel (at Article 4(2)). However as noted above, not all DNFBPs were covered under the AMLA.

11. *Criterion 1.9* - AMLO, as the key AML/CFT regulator and supervisor and is responsible for ensuring that financial institutions and DNFBPs are implementing their obligations to assess risks and take risk mitigation in response to identified risks. A small number of FI sectors and a greater number of DNFBPs were not covered by the AMLA and obligations for risk assessments and risk mitigation and were thus not subject to supervision of risk mitigation requirements.

12. *Criterion 1.10* - FIs must conduct regular assessment and management of ML/TF risk of their business using suitable criteria (in particular customers, geography/country, product & services, transaction type and service channel) risk mitigating measures. Relevant information, including the result of the risk assessment and management analysis must be kept up-to-date, accurate and complete, and is required to be sent to AMLO. However, these requirements do not extend to some categories of FIs (cooperatives with operating capital less than two million THB, leasing companies²⁹ and pawn shops). Thailand enacted a new MR on CDD for some of the missing FI and DNFBP

²⁹ According to 2016 NRA, certain sectors or channels were identified as being at a high ML risks, in particular, the following sectors: commercial banks, real estate agents, antiques traders, car dealers, leasing companies, traders of gems and gold and money changers.

categories in late November 2016 (after the ME onsite visit) which extended risk assessment obligations.

13. *Criterion 1.11* – Those FIs covered by the MR CDD are subject to a general obligation to have policies and procedures for risk assessment and risk management which are approved by the board or top management of REs. Those REs are required to have an independent internal audit mechanism for monitoring compliance with the AML law and appoint an executive officer to supervise observance of the AML law. In addition, the REs are required to take enhanced measures in case of higher risks. BOT also requires FIs' board of directors to formulate the AML/CFT policies on KYC and CDD and set up an independent compliance unit to monitor the compliance with the established policies and procedures. (Art. 2 & 3, AMLO Notification Concerning Guidelines for Issuing Policy and Procedures for Assessment and Management of Risk Related to ML/TF, Art. 4, 48 & 15 of MR CDD, section.4.2 of BOT Policy Statement for AML/CFT of FIs). The scope gap of FIs and DNFBPs apply to this criterion.

14. *Criterion 1.12* - CDD REs are allowed to adopt a broad brush approach to simplified CDD rather than based on an adequate analysis of risk, to customers who were assessed as low-risk (see criterion 10.18). Factors for considering low-risk were set out in a Notification issued by AMLO, although some of the factors are in fact examples of low-risk customer types including governmental organizations, certain foundations and FI type institutions. Simplified CDD measures could be applied to these pre-determined low-risk typed customers and other types of customers without any detailed risk assessment or analysis. (Art. 12, 16 MR CDD, Art. 3 – 7 AMLO Notification Concerning Guidelines for Prescribing Factors for Consideration for Low-risk Customers). The remaining scope gaps apply to this criterion.

Weighting and Conclusion

15. There are moderate short comings including exemptions from AML/CFT requirements available under the AMLA that have not been applied based on proven low risks, the absence of appropriate coverage of important DNFBPs, risk requirements limited to only FIs and enhanced measures to mitigate the ML/TF risk. In addition, enterprise level risk assessment obligations are affected by the scope gap of DNFBPs and a small number of FIs. Recommendation 1 is rated partially compliant.

Recommendation 2 - National Cooperation and Coordination

16. In its 2007 MER Thailand was rated partially compliant with the previous Recommendation 31.

17. *Criterion 2.1* - Thailand's 2010-2015 National AML/CFT Strategy was approved by the cabinet in December 2010 and implemented by 58 AML/CFT agencies. Section 40(2/3) of the AMLA requires AMLO to take the result of risk assessment into consideration when setting AML/CFT policy and strategy. The National Strategy requires regular review within 3-5 years. Thailand is currently drafting the 2016-2020 National Strategy. The strategy was not updated after the 2012 NRA was completed, although a significant number of strategic policy decisions were taken resulting from the NRA (for example the shift to a single AML/CFT supervisor). Beyond the national strategy, Thailand has pursued a number of strategic and operational level policy changes based on risk assessment findings.

18. *Criterion 2.2* - According to Section 24 of the AMLA, the AMLB is the main mechanism of Thailand's AML/CFT system, which comprises 6 experts committees and 9 ex-officio committees, to be responsible for the national AML/CFT policies. AMLB members include non-political heads of agencies, on national security, law enforcement and supervision. The AMLB, having AMLO as the

secretariat, schedules to meet monthly to collectively set AML/CFT policy. There are a number of well-structured policy and operational coordination mechanisms for combating terrorism, including terrorist financing.

19. *Criterion 2.3* - The mechanism of coordination is established and specified by law, by which the AMLO acts in the policy-making level, whilst the nine sub-committees work at the operational level.

20. *Criterion 2.4* - while the National Security Council (NSC) is the competent authority responsible for setting the policy and coordinating on proliferation on WMD, AMLO is the key agency in execution of financial sanctions and the exchange of information relating to financing of proliferation of WMD. AMLO coordinates with agencies and contributes to information through the Sub-Committee on WMD, for which the NSC is the secretariat.

Weighting and Conclusion

21. While Thailand has pursued a number of strategic and operational level policy changes based on risk assessment findings, there is a minor shortcoming as the national AML/CFT strategy has not been updated to take into account findings of the two NRAs and other assessments of risk. Recommendation 2 is rated largely compliant.

Recommendation 3 - Money laundering offence

22. In its 2007 MER, Thailand was rated partially compliant with the former recommendation 1 (physical elements of the offence) and largely compliant with former recommendation 2 (mental elements and corporate liability).

23. *Criterion 3.1*- Section 5 of AMLA criminalises ML, specifically (1) the conduct of transferring, accepting a transfer of, or converting an assets connected with the commission of an offence for the purpose of assisting other persons to evade liability or to be liable to a lesser penalty in respect of a predicate offence; (2) acting in any manner for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offence or the acquisition of rights therein; (3) obtaining, possessing or using an asset, knowing at the time of obtaining, possessing or using that the asset is one connected with the commission of a predicate offence. As stated in the 2009 MER, whilst this does not strictly follow the language of the Vienna and Palermo Conventions, the conduct is broad enough to cover their requirements.

24. *Criterion 3.2* - the 2007 MER noted that Thailand did not cover a wide range of predicate offences to ML. Thailand adopts a list based approach to cover relevant predicate offences. Section 3 of AMLA, along with the Counter Terrorism Financing Act, Anti-Human Trafficking Act, Organic Act on the Election of MPs and the Appointment of Senators, the Anti-Participation in Transnational Organized Crime Act, mitigates most of the identified deficiencies. Notably, tax evasion and smuggling of migrants are not included as a predicate offence which is pertinent in light of the risk profile for Thailand. The remaining predicate offence to be listed is the illicit trafficking in stolen and other goods.

25. *Criterion 3.3 is n/a*. Thailand applies a listed-category approach to ML predicate offences.

26. *Criterion 3.4* - section 3 of AMLA satisfies the requirement that the ML offence extend to any type of property regardless of its value that directly or indirectly represents the proceeds of crime.

The definition of asset under AMLA applies the definition of “property” in sections 137 and 138 of the C & C Code which covers all types of property derived from commission of crimes.

27. *Criterion 3.5* - Whilst it is not expressly stated in AMLA, the courts have inferred that there is no requirement for a person to have been convicted of a predicate offence. The Supreme Court in matter 6602/2550 confirmed that the section 3 definition of “asset connected with the commission of an offence” is not dependant on a conviction for the predicate. Section 58 of AMLA further provides that where an asset is connected with the commission of an offence whereby other laws become applicable, and no action has been taken under those laws or action has failed to achieve its purpose, then action under the AMLA may be taken against that asset.

28. *Criterion 3.6* - Section 3 of AMLA stipulates ‘*Predicate offence under paragraph one (listed predicate offences) shall include a penal offence committed outside the Kingdom which would have constituted a predicate offence had it been committed in the Kingdom.*’

29. *Criterion 3.7* - According to Section 5 of AMLA, the offence of ML applies to persons who commit the predicate offence. Criminal liability attaches in both self-laundering and third-party laundering.

30. *Criterion 3.8* - There is no specific provision that expressly provides that the intent and knowledge element of ML crime has to be proven with clear evidence. Rather, Thailand in its judicial operation admits a general rule to take all circumstances into consideration to infer the intent and knowledge in an actual ML case. Thailand provided three Appellate Court judgments which confirmed that the Courts do draw inferences from conduct of the defendants to support charges of ML.

31. *Criterion 3.9* - ML is punishable on conviction to a penalty of one to ten years imprisonment or to a fine of THB20,000 – THB200,000 (USD571 -5,714) or both. Thailand has demonstrated that jail terms for ML are often cumulative so that each instance of offending is penalised separately. However, the fine may not be considered to be adequately dissuasive.

32. *Criterion 3.10* - Section 61(1) of AMLA provides a penalty for legal persons who commit ML and its ancillary offences set out in sections 5, 7, 8 and 9. The penalty on conviction is a fine of THB200,000 – THB 1 million. Personal liability for those responsible for the conduct of business of the legal person is provided for with penalties of one to ten years imprisonment or to a fine of THB20,000 – THB 200,000 (USD5,714) unless that person can prove they took no part in the commission of the offence of such juristic person. Criminal liability applies to juristic persons as well as natural persons and civil and administrative proceedings can proceed simultaneously. However, in light of the seriousness of legal persons committing ML, the fine may not be adequately dissuasive.

33. *Criterion 3.11* - Section 7, 8 and 9 of AMLA prescribes several ancillary offences to ML crimes, including participation in; association with/conspiracy to commit; aiding and abetting. Counselling the commission of an offence is not listed as an ancillary offence to ML in the AMLA. The Penal Code provides further support for ancillary offences which would cover conduct involved in counselling the commission of an offence in sections 84 and 86.

Weighting and Conclusion

34. There is a minor shortcoming with the lack of coverage of certain predicate offences and the concern that financial penalties for ML are not adequately dissuasive. Thailand is largely compliant with Recommendation 3.

Recommendation 4 - Confiscation and provisional measures

35. In its 2007 MER, Thailand was rated largely compliant with former recommendation 3. The 2007 MER identified limited powers to identify and trace property in non-narcotics related matters, there were no provisions allowing voiding of actions designed to circumvent the forfeiture process and there were no provisions allowing the initial application to freeze or seize be made ex-parte. Since 2007 a range of amendments have been made to the AMLA, and its implementing regulations

36. The types of confiscation available in Thailand are:

- Civil forfeiture (non-conviction based) under the AMLA covering instrumentalities, property laundered, proceeds of crime and other benefits. It excludes property of corresponding value.
- Criminal confiscation (conviction based) under the Penal Code and the Narcotics Suppression of Offenders Act
- Forfeiture of unexplained wealth (under the Organic Act on Corruption)
- Customs forfeiture for prohibited or restricted goods including currency.

37. *Criterion 4.1* - there are four legislative frameworks for the confiscation of property in Thailand: The AMLA, the Penal Code, the NSOA, the Customs Act and the OAC.

38. *4.1(a) and (b)* - Forfeiture of property laundered, proceeds of and instrumentalities used is covered in the AMLA. Property is able to be forfeited if it is an asset connected with the commission of an offence (s51 AMLA). This includes asset obtained from the commission of a predicate offence or money laundering offence, from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or ML and shall include money or assets that were used or possessed to be used in, or for aiding and abetting the commission of a predicate offence or ML offence (2) money or assets obtained from the distribution, disposal or transfer in any manner of the money or asset under (1) or (3) fruits of the money or asset under (1) or (2).

39. Forfeiture provisions in the Penal Code apply to any criminal offence in Thailand including terrorism offences. Sections 32 and 33 provide the power to forfeit (a) property used or possessed for use in the commission of an offence by a person; and (b) property acquired by a person through the commission of an offence. Section 34 allows for the forfeiture of proceeds of corruption as well as any property given as an inducement or reward to commit an offence.

40. The NSOA provides for conviction based forfeiture of assets connected with the commission of an offence including benefits of crime (ss27-29). This includes properties obtained by means of using such money to purchase or by causing in any manner to transform money or properties irrespective of the number of such transformation and whether or not money will be in the possession of or belong to other persons. Section 30 provides for non-conviction based forfeiture of instruments, equipment, conveyances, machines or any other properties used in the commission of an offence relating to narcotics or used as accessories for producing the commission of an offence related to narcotics or processed for use in the commission of an offence relating to narcotics, irrespective of whether that person has been convicted or not.

41. In corruption matters, assets may be forfeited under section 123/6 and 123/7 of the OAC, the combined effect of which allows the court to order forfeiture of property used or possessed for use

in an offence, the property, property of equivalent value, instruments of corruption, benefits obtained, bribes and inducements that were offered or any other benefits.

42. Under section 27 *ter* of the Customs Act (1926), Customs officials may carry out administrative forfeiture in respect of assets seized for a range of customs offences including importing and exporting restricted and prohibited goods which includes currency. Goods that are connected with or in possession for terrorism may also be forfeited under section 58/1. If the goods don't belong to the offender, the Court may order forfeiture if the owner knew or had reasonable grounds to suspect an offence was or will be committed but did nothing to prevent it (s32 *bis*).

43. *Criterion 4.1(c)* - The CTF Act criminalises TF and deems it a predicate offence to ML under the AMLA. Thus, the forfeiture authority of criminal proceeds under the AMLA applies as property derived from TF falls within the definition of asset connected with the offence.

44. *Criterion 4.1(d)* - Forfeiture of property of corresponding value is only provided for under the OAC (No.3) and the Penal Code (s37). The Penal Code provides for the forfeiture of property of corresponding value when an offender does not deliver the forfeited item within a specified time frame. Penal Code provisions can be read across all criminal offences in Thailand.

45. *Criterion 4.2* - Thailand has provisions in a number of laws authorizing the relevant governmental agencies to conduct financial investigations in order to identify, trace and evaluate property that is subject to forfeiture. Each LEA, including AMLO, has its own powers to trace property that may be subject to confiscation.

46. *Criterion 4.2 (a)* - the RTP may use search warrants to discover and seize any articles which may have been used to commit an offence; and inquiry officials may examine the person of an offender, or search for articles, the possession of which constitutes an offence or articles which are obtained through an offence (s132 PC) to issue a summons to a person who may possess an article which may be used as evidence (section 69 and 132 CPC). Competent officials under the Anti-Trafficking in Person Act also have broad powers to summons people to give statements or submit documents or evidence or to enter a dwelling place or premise to search, seize or attach. Officials have the same powers under the Anti-Participation in Transnational Organized Crime Act (section 14), the Narcotics Suppression Act (sections 19 and 20) and section 24 of the Special Case Investigation Act.

47. Section 34(1) of AMLA provides the Transaction Committee with the powers to examine transactions or assets connected with the commission of an offence or give an order withholding a transaction. Section 38 of AMLA gives officials the power to summons FIs, government agencies, state organisation or agency or a state enterprise to provide a written statement, or furnish a document or evidence for examination. They may enter dwelling places or vehicles reasonably suspected to have an asset connected with the commission of an offence if there is concern that delays in obtaining a search warrant would prejudice the asset.

48. Section 37/2 of the OAC empowers the NCC commission to conduct an inspection of financial transactions or the acquisition of assets and liabilities. In carrying out this task, the NCC Commission shall exercise the powers of the AMLB and Transaction Committee under the AMLA.

49. These powers combined empower the authorities under various jurisdictions of the offences to investigate property subject to forfeiture. These are supplemented by MOUS for example between the Office of the NACC and AMLO to share information on financial transactions.

50. *Criterion 4.2 (b)* - Many provisions under the AMLA such as Sections 35-36, 38, 40, 48, 49, 55, 56, and 57 authorize provisional measures at the investigative as well as various litigation stages to freeze and seize the property thereby preserving their availability for later forfeiture to the state. Section 35 allows the Transaction Committee to have the power to give a written order withholding a transaction for a fixed period of time, no longer than 3 days when there is probable cause to suspect and sufficient evidence to believe that any transaction is involved or may be involved in the commission of predicate offence or money laundering offence. In cases where there is convincing evidence of a connection to the commission of an offence, the TC may order the withholding of a transaction for no longer than 10 days.

51. In the event of the TC having reasonable grounds to believe that an asset connected with an offence may be dissipated, it has the power to order provisional seizure or attachment of the asset for no longer than 90 days. However the SG may order seizure or attachment in cases of compelling necessity or urgency for the time being and report it to the SG later. If the SG finds convincing evidence during the 90 day period that an asset is connected to the commission of an offence, it sends the matter to the public prosecutor to file a petition with the court for its forfeiture (s49). Once that petition has been filed, the public prosecutor may file an ex parte petition to the court for its provisional seizure or attachment on the basis of reasonable grounds to believe that the asset may be dissipated. The court shall only order its provisional seizure if it finds convincing evidence the application is justifiable.

52. In narcotics matters, a Properties Examination Committee (PEC) comprised of high-level officials from various Ministries including Justice, the Attorney General, RTP, Lands, Customs, Revenue and the BOT considers property connected to an offence. The PEC decides whether property is connected to a narcotics offence and may seize or attach relevant property. The PEC examines the property and in the event the owner or examinee cannot adduce evidence to prove the assets are legitimate, the PEC issues an order seizing or attaching such properties (Section 22 of the Narcotics Suppression Act). Section 22 therefore reverses the burden of proof to the person in possession or ownership of the property to prove its legitimacy. There is no ability to seize or confiscate property of corresponding value in the NSOA however the powers under the Penal Code would be available in narcotics offences.

53. Section 78 of the OAC empowers the NCC Commission to issue an order of temporary seizure or attachment of property in the event that property may be connected with unusual wealth. Section 14 of the Anti-Participation in Transnational Organized Crime Act, and Section 17 of Customs Act, also provide similar provisional measures to prevent dissipation of the property that is subject to forfeiture.

54. Although the power for obtaining an ex parte restraining order is not expressly stated in statute, AMLO provided a range of case studies evidencing that in practice, based on the evidential threshold of 'reasonable ground' the Transaction Committee may issue a 90 day restraining order ex parte to preserve assets for forfeiture (s48 AMLA).

55. Section 37 of the Penal Code allows for the seizure of property of corresponding value only in the event that a defendant does not deliver property that was forfeited.

56. Customs officials have the power to seize articles liable to forfeiture which includes prohibited and restricted goods that have been imported or exported (section 24 Customs Act (1926)). Customs officials may also seize goods under reasonable grounds to believe that goods are connected with or in possession for terrorism (section 58/1 Customs Act).

57. *Criterion 4.2(c)* - Thailand does not have any provisions that enable the authorities to take steps to void or prevent actions that prejudice the country's ability to freeze, seize or recover property subject to confiscation. The Civil Procedure Code prohibits dealings with property after seizure however no provisions provide the authorities with power to set aside or void transactions. However, Thailand can seize assets that have been transferred into the name of third parties if they can prove the asset is connected to an offence.

58. *Criterion 4.2(d)* - a wide range of investigative powers are available to authorities under their respective legislation. The AMLB has wide powers under s38 of the AMLA including summoning any person to give statements, enter a dwelling place to search for and seize assets or evidence, and summons financial institutions, government agencies, state organisations or agencies and state enterprises to provide documents or evidence. The NCC Commission has the powers of the AMLB and TC to carry out investigations.

59. *Criterion 4.3* - provisions under the ALMA, the Narcotics Suppression Act, the OAC and the Civil and Commercial Code provide for the protection for the rights of bona fide third parties, consistent with criterion 4.3.

60. *Criterion 4.4* - mechanisms are in place for the management or disposal of seized or forfeited assets appear to meet the requirement of this criterion. In terms of the management or disposal of property frozen and seized under the AMLA, the AMLB Ordinance on the Custody and Management of the Seized or Frozen Assets B.E. 2543 (2000), the AMLB Ordinance on Permitting the Stakeholder to Take the Asset for Custody and Utilization, Putting up the Asset for Auction and Using the Asset for Benefits to the Authority B.E. 2543 (2000) and the AMLB Ordinance on Putting up the Asset for Auction B.E. 2544 (2001) which implement Section 57 of the AMLA, provide mechanisms for managing or disposing of frozen or seized assets based on nature, condition, or category of such assets.

61. Officials from AMLO demonstrated the ability to manage large and complex assets and an expertise in valuing, preserving and realising assets once they are confiscated. For managing or disposing of the forfeited assets under the AMLA, in 2013 the AMLB Ordinance on AML Fund was passed which authorized the establishment of the AML Fund in Thailand. This Ordinance also contains provisions regulating the use of the Fund to pay for certain expenses permitted by the statute in relation to forfeiture.

62. Provisions exist for the management or disposal of seized or forfeited assets under the Narcotics Suppression Act, the Revenue Department's Regulation Related to the Auction of the Property of the Unpaid Tax B.E. 2553, and the Customs Act along with the Customs Procedure Code B.E. 2556 (2013).

Weighting and Conclusion

63. Thailand has a comprehensive asset seizure and confiscation regime. There are minor shortcomings with provisions to void actions that prejudice the authorities' ability to confiscate property. Thailand is rated largely compliant with Recommendation 4.

Recommendation 5 - Terrorist financing offence³⁰

64. In its 2007 MER, Thailand was rated Partially Compliant for former Special Recommendation II. Gaps were noted with provision or collection of funds for an individual terrorist or a terrorist organization; narrow mental elements of the offence and a number of other gaps. Thailand enacted the CTF Act in 2013 to address certain gaps.

65. The CTF Act was further amended and renamed in December 2016 as the CTPF Act (largely to add a regime to combat proliferation financing). The contents of the CTF Act (2013) were largely copied into the CTPF Act (2016), however, the CTPF Act was not in force and effect as although it had been passed by the National Legislative Assembly, it had not yet been gazetted. The assessment team has thus quoted the provisions of both acts although the assessment for technical compliance is against the CTF Act.

66. Section 135/2 of the Penal Code provides further sanction for the conduct of financing terrorism and has been used significantly by Thai authorities, particularly prior to enactment of the CTF Act. The offence falls under terrorization offences and criminalises procuring or gathering property to terrorize or commit any offence in a part of a plan to terrorize or abet people into a part of terrorization. It carries a penalty of two to ten years. The offence of terrorization is defined in section 135/1 of the Penal Code and includes committing acts of violence or danger to life or body harm, acts designed to cause injury to a transportation system, communication system or structure base of public interest; or acts likely to cause injury to state property or a person's property or envelopment to cause economic injury.

67. The section therefore may cover conduct that is required to be criminalised by the various TF conventions. However, property is not defined and the conduct requires a link to a terrorist act. The offence under section 135/2 does not satisfy all elements of R.5 but does cover some relevant conduct.

68. *Criterion 5.1* - TF is criminalised in s25 of the CTPFA (s16 CTF Act) and includes the requisite elements of providing or collecting funds or conducting a financial or asset transaction or undertaking in any way with the intention that it be used for the benefit of a designated person or a person or organisation involved in terrorist acts. Terrorist acts are defined in s 4 CTPFA as any act which constitutes an offence related to terrorism under the Penal Code, or any act which constitutes an offence within the scope of international conventions and treaties related to terrorism, to which Thailand is a party, whether such act is committed inside or outside Thailand is a terrorist act (s3 CTF Act). Ancillary offences such as aiding, abetting or conspiring to commit TF are also criminalised.

69. Thailand is a party to the following treaties annexed to the UN TF Convention: 1) the Convention for the Suppression of Unlawful Seizure of Aircraft (ratified on 16 May 1978); 2) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (acceded on 16 May 1978) ; and 3) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (acceded on 14 May 1996). As Thailand is not a party to the remaining conventions under the TF convention, there is a gap in the definition of terrorist acts to which the TF

³⁰ The methodology for R.5 was revised by the FATF in February 2017 (i.e. after the on-site visit), to broaden the reference to types of TF activity to include 'other assets' in addition to funds. The revised version will be taken into account during the follow-up process.

offence is applicable. As mentioned above, section 135/1 & 135/2 of the Penal Code criminalise financing some of the conduct contained in those UN Conventions.

70. *Criterion 5.2* - section 25 of the CTPFA (s16 CTF Act) covers the requirements of this criterion as outlined above. Section 135/2 of the Penal Code also provides a basis for prosecution for the gathering or procuring of property to terrorize or commit any offence in part of a plan to terrorize.

71. *Criterion 5.2 (bis)* - criminalising the financing of travel to a state other than that of their residence has not been expressly criminalised in either the CTPFA or the CTF Act. In view of the fact that the application of the current offence to the scenario of financing travel would not have sufficient proximity to a terrorist act, Thailand's legislation does not cover 5.2 bis.

72. *Criterion 5.3* - section 25 of the CTPFA (s16 CTF Act) does not specifically use the words "legitimate or illegitimate source." The provision, however, is couched in very broad terms so as to include both sources of funds. Providing, collecting, or conducting financial or asset transaction or undertaking "in any way" can encompass either legitimate and illegitimate transactions or undertakings.

73. *Criterion 5.4* - mere knowledge that the person who benefits from such transaction or undertaking is the designated person, or mere intention that the funds or assets in such undertaking are to be used in support of whatever activity of a designated person or a person, group, legal person or an entity involved in terrorism for the benefit whatsoever of the designated person or of a person or organization involved in a terrorist act, with the assumption that the other elements of the offence are proven, will suffice to convict an offender under section 25 of the CTPFA. The provision does not require that the funds be linked to specific terrorist acts. Section 135/2 of the Penal Code criminalises gathering or procuring property in part of a plan to terrorize.

74. *Criterion 5.5* - the CTPFA does not provide that the intent or knowledge required to prove the offence can be inferred from objective factual circumstances. However, sections 226 and 227 are broadly drafted to allow the admissibility of any evidence that will prove guilt or innocence of the accused. The Supreme Court has promulgated numerous decisions convicting the offender, relying on the same principle to accept proof of the intent or knowledge of the offender.

75. *Criterion 5.6* - under the CTPFA, natural persons who commit TF shall be liable to 2 – 10 years imprisonment or a fine from forty thousand to two hundred thousand THB (USD5,714) or both. In light of the seriousness of the offence of TF, the pecuniary penalty is not adequately dissuasive. Penalties under section 135/2 of the Penal Code are 2 to 10 years imprisonment and a fine as from THB40,000 – THB200,000.

76. *Criterion 5.7* - section 25 of the CTPFA provides that any legal persons who commit the offence of TF including aiding, abetting or conspiring shall be liable to a fine from five hundred thousand THB to two million THB (USD57,142). Further, Section 25, paragraph 4 of CTPFA provides that offences committed under Sections 23, 24 and 25, paragraph 4, committed by a legal person shall be offences for which fines can be determined by the settling committee under the law on anti-money laundering. The Supreme Court of Thailand stated that, as a general principle, criminal liability may also be extended to legal persons. A legal person's criminal liability for TF does not preclude the possibility of parallel criminal, civil, or administrative proceedings. Criminal, civil, and administrative proceedings are entirely separate from one another in Thailand. As such, criminal liability for TF does not bar civil or administrative proceedings where they can be pursued. In light of the context of Thailand, the team considers the sanctions are adequate.

77. *Criterion 5.8* -

- (a) The CTF Act criminalises attempts to commit TF (section 16(3), however it is notable that this provision was not transferred to the CTPFA.
- (b) and (c) - participating as an accomplice, organising or directing others to commit a TF offence is covered under the provision that prohibits aiding, abetting or conspiring in the commission of an offence under Section 25 (s16 CTF Act). However, these provisions only cross reference to the principal offence not to the attempted offence. Consequently, aiding, abetting or conspiring in the commission of an attempted TF offence is not criminalised.
- (d) Some of the conduct in contributing to the commission of one or more TF offences by a group of persons acting with a common purpose is likely to be covered under the aiding, abetting and conspiring provisions of the CTPFA and CFT Act. Section 86 of the Penal Code also criminalises the assisting or facility to any other person committing an offence and deems that person a supporter in committing the offence and is punishable by 2/3 of the punishment provided for such offence. However, the Penal Code does not cover the act of contributing to an attempted TF offence by a group of persons acting with common purpose.

78. Section 135/3 of the Penal Code punishes supporters of offences under section 135/2.

79. *Criterion 5.9*- both the CTPFA and the CFT Act deem TF a predicate offence under the AMLA. As the AMLA deems offences relating to terrorism under the Penal Code as predicates to ML, offences under section 135/2 would be deemed a predicate to ML.

80. *Criterion 5.10* - section 4 CTPFA (s3 CTF Act) provides that terrorist act means any act which constitutes an offence related to terrorism under the Penal Code, or any act which constitutes an offence within the scope of international conventions and treaties related to terrorism, to which Thailand is a party or has acceded, whether such act is committed inside or outside Thailand. This would include offences under section 135/2 of the Penal Code. Further section 7 of the Penal Code confirms that offences under section 135/2 of the Penal Code are to be punished in the Kingdom, including in the event that they occurred outside the Kingdom.

Weighting and Conclusion

81. Minor deficiencies identified in the CFT Act are a lack of criminalisation of contributing to the commission of one or more TF offences by a group of persons acting with a common purpose and aiding, abetting or directing an attempted TF offence.. Thailand is not yet a party to all the required UN Conventions on terrorism which narrow the scope of the TF offence, although elements of financing those same offences are covered in the Penal Code offence. Thailand has not legislated against the financing of travel of individuals to another state. These deficiencies were not rectified in the new CTPFA. Given the moderate shortcomings, Thailand is rated largely compliant with Recommendation 5.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

82. In its 2007 MER, Thailand was rated PC with former Special Recommendation III.

83. Thailand enacted the Counter Terrorism-Financing Act in 2013 (the "CTF Act") supplemented by the CTF Act (No. 2) (2015). The AML Board issued the "CTF Ordinances" (2013), comprising of the

“*AMLB Ordinance on designation of a person involved in a terrorist Act under a Resolution or Declaration of the UNSC (2016)*”, “*AMLB Ordinance prescribing rules and procedures for making a notification and communicating the list of designated persons and taking action under section 16(1)(2) and (3) (2013)*” referred to as the AMLB Ordinance 2013, along with the “*Ministerial Regulation Prescribing Rules and Procedures for Considering and Reviewing the List of Designated Persons by the AMLO and the Transaction Committee*” (the “MR CTF (designated persons) (2013)”). Together they provide the mechanisms or procedures for the listing and de-listing of individuals or entities pursuant to the relevant UNSCRs as well as for freezing the assets of designated persons or entities.

84. On 31 December 2016, the CTPF Act came into force and effect and has incorporated all the provisions of the CTF Act and repealed the earlier act. Sections 28-29 of the CTPF Act confirm that the “CTF Ordinances” and “CTF Ministerial Regulations” remain in force to implement the CTPF Act. For the purposes of the assessment, the provisions of the CTF Act are assessed although the team has outlined the corresponding provisions contained in the CTPF Act for relevance.

85. *Criterion 6.1(a)* - Thailand has confirmed that AMLO is the competent authority to coordinate amongst agencies to support the Ministry of Foreign Affairs, upon the approval of the Cabinet, proposing persons and entities for designation to UNSCR 1267/1989 Committee and the 1988 Committee.

86. *Criterion 6.1(b)* – Section 13 (3-4) of the CTF Act empowers AMLO to receive or disseminate information useful to implement designations and to gather or collect information and evidence relevant to designations or assets freezing. This is coupled with the interagency mechanism to consider cases of designation as set out in the MR CTF (designated persons) 2013. Together, these provide a mechanism for identifying targets for designation, based on the designation criteria set out in the relevant UNSCRs.

87. *Criterion 6.1(c)* - Under the mechanism outlined at 6.1(c), Thailand is able to apply an evidentiary standard of proof of “reasonable grounds” when deciding whether or not to make a proposal to the UN for designation. Such a proposal for designation would not be dependent on the existence of criminal proceedings.

88. *Criterion 6.1(d) and (e)* - Thailand indicated that it commits, when proposing names to the 1267 Committee, AMLO, through the Ministry of Foreign Affairs, would follow the procedures and standard forms for listing, adopted by the 1267 Committees as well as provide detailed information and a statement of a case on the basis for the listing. Thailand indicated that it would not object to a disclosure of its designating state status.

89. *Criterion 6.2(a)* - Section 5 of the CTF Act (section 7 of the CTPF Act) designates the court as the competent authority to take designation decisions pursuant to UNSCR 1373. The process for proposing and considering designations is supported by the AMLO, the Designation Committee, the Transaction Committee and the public prosecutor (MR CTF (designated persons) refers). While the CTF Act does not expressly reference foreign requests, the designation criteria at s.5 of the CTF Act (7 CTPF Act) is open to designating nationals or foreigners, whether with in the country or outside of Thailand and only requires ‘probable evidence to believe’ natural or legal persons (or those acting on their behalf) may be involved in terrorist act or TF. It would be open to Thailand to reach this view on the basis of information obtained from other jurisdictions.

90. *Criterion 6.2(b)*– Section 6 of the CTF Act (Section 7 of the CTPF Act) and Article 3 of the MR CTF (designated persons) set up a mechanism for identifying targets for designation, based on the designation criteria set out in UNSCR 1373. When there is sufficient information establishing

reasonable grounds to suspect that a person is connected to terrorism or TF, AMLO sends the proposed names of designated persons and entities to the Designation Committee which consists of personnel from a variety of governmental agencies including intelligence, law enforcement, and regional authorities. The Designation Committee, acting upon Articles 3 & 4 of the MR CTF (designated persons), needs to make its decision based on a majority of the committee members on the AMLO's proposed designations. The Designation Committee's decision is then provided for the Transaction Committee's consideration, and with the Transaction Committee's approval, the proposed names will be submitted to a prosecutor to make the court application. Section 6 of the CTF Act allows an ex parte application to be filed with a court for an order of the designations.

91. *Criterion 6.2(c)* - Article 6 of the MR CTF (designated persons) requires AMLO to act in a timely manner to implement article 2, i.e. collect further evidence and information on possible designations and refer to the Designation Committee for decision regarding reasonable grounds to suspect that any person is connected with the commission of terrorist act or TF. Thailand indicated that in the event the information provided did satisfy the authorities of the domestic requirement of having reasonable grounds under Section 6 of the CTF Act (7 of the CTPF Act), Thailand may be in a position to make a prompt determination subject to their national principles.

92. *Criterion 6.2(d)* - Section 7 of the CTPF Act mandates the evidentiary standard of proof is "reasonable grounds" in making designations. There is nothing to make designations conditional upon the existence of a criminal proceeding.

93. *Criterion 6.2(e)* - No statutory provisions establish an explicit basis for Thailand to request another country to give effect to its domestic designations. However, section 13(3) of the CTF Act provides a general basis for the AMLO to disseminate information or reports relevant to implementing TFS. Thailand confirmed that in practice they would comply with UN procedures as set out in UNSCR 1373.

94. *Criterion 6.3 (a)* - Section 13(4) of the CTF Act provides a general basis for the AMLO to gather, collect information and evidence relevant to the targeted financial sanctions. AMLO is further able to utilise LEA powers relevant to investigating suspicion of terrorism or TF. Section 7 of the CTPF Act, along with the MR CTF (designated persons), provide for legal authorities and procedures to determine the designated persons and entities based on reasonable grounds. Thai authorities utilise the civil code to support the court's consideration of application for designation by AMLO.

95. *Criterion 6.3(b)* - An ex parte petition can be filed with the court against designated persons or entities without prior notice pursuant to Section 6 of the CTF Act (s 7 CTPF Act).

96. *Criterion 6.4* - Section 4 of the CTF Act (section 6 of the CTPF) Act confirms that when the UN designates persons or entities for involvement in terrorism, provided that the designation does not go against the Thai Constitution or law, AMLO shall order designation of the persons and entities without delay. Thailand confirms that despite the requirement for the designation not to go against Thai law, there have never been any refusals of designation in practice.

97. Section 6 of the CTF Act (section 8 of the CTPF Act) imposes financial sanction measures against any targeted individual or entities including freezing of the assets of the designated persons or entities or anyone acting on their behalf.

98. *Criterion 6.5(a)* - Section 6 of the CTF Act (section 8 of the CTPF Act) requires all REs and all natural or legal persons within Thailand to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities authorizes the freezing of the assets of designated

persons or entities, consistent with criterion 6.5(a). The freezing must be made without notice to the customer and does not require a further order from any authority.

99. *Criterion 6.5(b)* - Section 6 of the CTF Act (section 8(1) CTPF Act) provides the requirement to freeze those assets of the designated persons or a person acting on behalf of, or at the direction of, or an undertaking controlled by such persons. The freezing of assets of designated persons or entities operates regardless of whether such property is linked to a particular terrorist act. "Assets", as defined under Section 3 of the CTF Act (section 4 of the CTPF Act), constitutes "funds, property or intangible object, susceptible of having a value and of being appropriate, including the fruit thereof, and shall include legal documents or instruments in any form, whether in paper or any other material or in electronic form, evidencing title to, possession, right to claim, or any other interest in, such funds or property". However, the section does not specifically state that assets should include those jointly owned or controlled by designated persons or entities. In practice, Thailand freezes the whole asset not just those assets that are beneficially held by the designated person.

100. *Criterion 6.5(c)* - Section 16 of the CTF Act (section 25 of the CTPF Act) prohibits persons from providing, collecting or conducting financial or asset transactions or undertaking in any way, directly or indirectly, with the knowledge that the person benefitting from such conduct is a designated person.

101. *Criterion 6.5(d)* - Section 6 of the CTF Act (section 8 of the CTPF Act) and the AMLB Ordinance 2013 provide a mechanism for communicating designations to the reporting entities as well as guidance to the reporting entities on their obligation in taking freezing actions, consistent with criterion 6.5(d). Article 4 of the AMLB Ordinance 2013 provides for a mechanism to provide notification of designations to the reporting entities while Article 5 for notification to the designated persons entities themselves. Essentially, once the designation is approved or ordered by a court, AMLO will notify all reporting entities of the new designation, by transmitting the order through its electronic CDD gateway to connected banks, by posting it on its website, or by publishing it via AMLO's email.

102. *Criterion 6.5(e)* - Article 6 of the AMLB Ordinance 2013 requires the REs, upon receiving notification of the designation, without delay, to freeze the assets of the designated persons or entities. Article 6 further requires the report entities to report to the AMLO the information on the freezing action taken as well as on counterparties who transacted with the designated person and entities. Article 6 does not expressly capture attempted transactions related to prohibitions although the STR requirements under the AMLA for the TF offence may capture some attempted transactions. Despite this, it is not clear how this also applies for the AMLB Ordinance 2013 or whether the obligation extends to reporting instances of refusal of provision of financial services or funds.

103. *Criterion 6.5(f)* - Section 10 of the CTF Act (section 13 of the CTPF Act) protects the rights of bona fide third parties acting in good faith, including providing an avenue for relief through the courts in relation to debts due under contracts entered into prior to freezing actions occurring. The section includes protections for the court to make orders to ensure that funds are not inadvertently released for the benefit of designated persons or entities.

104. *Criterion 6.6(a)* - Section 4 of the CTF Act (section 6 of the CTPF Act) provides that delisting of the designated persons or entities for UNSCR 1267 can be made upon the UN Sanctions Committee's declaration, in line with criterion 6.6(a). While no procedures to submit the request are specified in the CTF Act, the Thailand advised that in practice, AMLO can follow the procedures specified by the UN Sanctions Committee through the Ministry of Foreign Affairs.

105. *Criterion 6.6(b)* - In regards to the publicly known procedures for considering delisting of the designated person or entities pursuant to UNSCR 1373 where they no longer meet the criteria for designations, Section 5 of the CTF Act (section 7 CTPF Act) provides that, “where there is circumstantial change”, AMLO, with the consent of the Transaction Committee, can refer a delisting matter to the court for an order to delist. AMLO has demonstrated that this has occurred in practice.

106. *Criterion 6.6(c)* - Section 9 of the CTF Act (section 12 of the CTPF Act) provides a forum for the designated persons or entities pursuant to UNSCR 1373 to file a petition to challenge listing and freezing of their assets. The court can order delisting or unfreezing of the assets if the evidentiary burden is satisfied.

107. *Criterion 6.6(d)* - Neither the CTF Act or the CTPF Act specifies the procedures to facilitate review by the 1988 Committee. However, Thailand indicates that since the procedures are not specified in the domestic legislation, the process can be carried in accordance with the guidelines or procedures by the 1988 Committee and UNSCR 1730.

108. *Criterion 6.6 (e)* - The CTF Act does not specify the procedures for informing designated person and entities of the availability of the UN Office of the Ombudsperson to accept de-listing petition. However, section 6 of the CTF Act (section 7 CTPF Act) sets forth the authority for notifying all the designated person and entities. Thailand further claims that such authority and the mechanism set up under the AMLB Ordinance 2013 includes the notification on the availability of the Office of the UN Ombudsperson to accept a de-listing petition.

109. *Criterion 6.6(f)* - there is no express legislative provision in relation to false positives. Whilst an application to the court is allowed under section 9 of the CTF Act (section 12 CTPF Act) to seek permission to take action with assets, the only persons who have legal standing to make an application under that section are persons designated under section 5 or whose assets were frozen under section 6 due to being a designated person. Section 10 of the CTF Act (section 13 CTPF Act) allows for applications by people other than persons designated however the scenario of false positives is not contemplated under that section.

110.6.6(g) - Thai authorities communicate de-listing and unfreezing decisions via AMLO transmitting orders through its electronic CDD gateway to connected banks, by posting it on its website, or by publishing it via AMLO's email.

111. *Criterion 6.7* - Section 9 and 10 of the CTF Act (sections 12 and 13 of the CTPF Act) provides the authority for a court to grant access to frozen funds or other assets. A designated person or entity pursuant to UNSCR 1373 may file a petition with the court to gain access to frozen funds under Section 12 while under Section 13 a non-designated person or entity may petition access to frozen funds to pay the expenses numerated under paragraph (1) to (4). Section 12 does not specify what kind of expenses are permitted to be paid from the frozen funds; thus, it is unclear whether they are in accordance with the procedure set out in UNSCR 1452. Furthermore, the CTPF Act does not appear to provide the recourse for the designated person or entities pursuant to UNSCR 1267 to gain access to the frozen funds.

Weighting and conclusion

112. There are minor shortcomings in relation to procedures to submit delisting requests and provisions or procedures relating to false positives. Further clarity is required on the access to funds by designated persons in accordance with UNSCR 1452 and 1373. Thailand is rated largely compliant with Recommendation 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

113. Recommendation 7 was added to the FATF Recommendations in 2012 and was not previously assessed.

114. Thailand's National Legislative Assembly passed the CTPF Act on October 27, 2016. The CTPF Act incorporates the prior CTF Act and other provisions to implement Recommendation 7. The CTPF Act was not gazetted at the time of the mutual evaluation onsite and consequently it is not assessed as part of the mutual evaluation. The assessment team has nevertheless outlined the provisions of the CTPF Act as against R.7 for ease of reference.

115. Section 16 of the CTPF Act provides that AMLO, with approval of the committee, may refer the proposed names for designation to the Ministry of Foreign Affairs, which can in turn make a request to the United Nations Security Council to make designation of such a person, group of persons, legal person or entity. Section 16 also provides that AMLO should appoint a committee known as the "designation committee" to make proposals. The designation committee, according to Section 16, at a minimum, is required to consist of representatives from the Ministry of Defence, Ministry of Foreign Affairs, National Intelligence Agency, National Security Council, Internal Security Operations Command, RTP, Office of the Judiciary and AGO as members

116. *Criterion 7.1* - Section 15 of the CTPF Act authorizes the AMLO to order designations in accordance with the UNSCR designations relating to the financing of the proliferation of WMD (PF). Section 15 of the CTPF makes it clear that such designation should be ordered without delay

117. *Criterion 7.2(a)* - Section 17 (1) of the CTPF Act imposes financial sanction measures against the designated individuals or entities relating to PF, authorizing the reporting entities to freeze, without delay, the assets of such designated persons or entities or anyone acting on their behalf.

118. *Criterion 7.2(b)* - The term "assets", as defined under Section 4 of the CTPF Act, constitutes "funds, property or intangible object, susceptible of having a value and of being appropriate, including the fruit thereof, and shall include legal documents or instruments in any form, whether in paper or any other material or in electronic form, evidencing title to, possession, right to claim, or any other interest in, such funds or property". The freezing of assets of designated persons or entities operates regardless of whether such property is linked to a particular terrorist act. However, the section does not specifically state that assets should include those jointly owned or controlled by designated persons or entities. Section 17(1) provides the requirement to freeze those designated persons or a person acting on behalf of, or at the direction of, or an undertaking controlled by such persons.

119. *Criterion 7.2(c)* - Section 25 of the CTPF Act prohibits persons from providing, collecting or conducting financial or asset transactions or undertaking in any way, directly or indirectly, with the knowledge that the person benefitting from such conduct is a designated persons.

120. *Criterion 7.2(d)* - Section 17 of the CTPF Act and the CTF Ordinance provide a mechanism for communicating designations to the reporting entities as well as guidance to the reporting entities on their obligation in taking freezing actions, consistent with criterion 7.2(d). Article 4 of the CTF Ordinance provides for a mechanism to provide notification of designations to the reporting entities while Article 5 for notification to the designated persons entities themselves. Essentially, once the designation is approved or ordered by a court, AMLO will notify all reporting entities of the new designation, by transmitting the order through its electronic CDD gateway to connected banks, by posting it on its website, or by publishing it via AMLO's email.

121. *Criterion 7.2(e)* - Article 17 of the CTF Ordinance requires the reporting entities, upon receiving notification of the designation, without delay, to freeze the assets of the designated persons or entities. Article 17 (2)-(3) further requires the reporting entities to report to the AMLO the information on the freezing action taken as well as on counterparties who transacted with the designated person and entities. It does not appear that Article 17 captures attempted transactions.

122. *Criterion 7.2(f)* - Section 11 and 19 of the CTPF Act protect the rights of bona fide third parties acting in good faith to implement Recommendation 6. Section 11 provides that “[a]ny person shall be excluded from liability for a loss or claim resulting from the performing of an act under Section 8 [and 17], unless gross negligence is proven”. Presumably “any person” should compass both natural persons and legal entities. By virtue of Section 19, protection of bona fide third party under Section 11 equally applies to PF.

123. *Criterion 7.3* -section 23 and 24 of the CTPF Act appear to impose criminal sanctions for failure to comply by the reporting entities or its executives. It is unclear whether administrative or civil penalties are also available. Section 22 of the CTPF Act indicates that AMLO has the authority to “supervise, monitor, examine and assess actions taken the [CTPF] Act”.

124. *Criterion 7.4* - Section 15 of the CTPF Act provides that delisting of the designated persons or entities can be made upon the UN Sanctions Committee’s declaration, attempting to address criterion 7.4(a). However, no language in the CTPF Act appears to enable the designated persons and entities to petition a request for de-listing at the Focal Point for de-listing established pursuant to UNSCR 1730, or inform the designated persons or entities to petition the Focal Point directly, as required by criterion 7.4(a).

125. *Criterion 7.4 (b)* – As stated, supra, Section 12 of the CTPF Act, allows the designated persons or entities pursuant to UNSCR 1373, under Section 7, to file a petition with the court for an order to resolve the previously entered freezing order. This language presumably includes petitions that may be filed by the persons or entities that are inadvertently designated. However, Section 12 appears to only apply to the designated persons or entities under Section 7, not Section 15 for proliferation financing. Under Chapter II of Financing of Proliferation of Weapons of Mass Destruction, no section similar to Section 12 exists.

126. *Criterion 7.4(c)* – Section 20 of the CTPF Act provides the authority for the designation committee to grant access to frozen funds. Section 20 provides that a designated person or entity may file a petition with the designation committee to gain access to frozen funds. The designation committee can then refer the matter to the Ministerial of Foreign Affairs to make a request to the United Nations Security Council to consider such petition, and the United Nations Security Council’s resolution on the petition controls. Section 20 does not specify what kind of expenses are permitted to be paid from the frozen funds nor does it specify the exemption conditions under which access to the frozen funds can be granted; thus, it is unclear whether they are in accordance with the procedure set out in UNSCR 1718 and 1737.

127. *Criterion 7.4(d)*—Section 15 of the CTPF Act appears to address criterion 7.4 (d) for notification of delisting and unfreezing to the reporting entities. It is noted, supra, there is a process in place to communicate with the reporting entities on designations and freezing. Similarly, it is expected that the process for administering the delisting may be largely equivalent to the process for listing.

128. *Criterion 7.5(a)* - With regard to contracts, agreements or obligations that arose prior to the date on which accounts became frozen, no language in the CTPF Act permits the addition to the accounts

frozen of interests or other earnings due on those accounts or payments due under such contracts or obligations, as required by criterion 7.5(a).

129. *Criterion 7.5(b)* - Section 13 of the CTPF permits a non-designated individual to file a written petition with court to allow the payments for the debts due under such contracts or obligations “which were concluded before the date the account became subject to freezing”. However, this does not appear to be in line with criterion 7.5(b) which requires the contract that was entered into prior to the listing of the individuals and entities. In addition, the CTPF Act does not specify conditions under which such debts may be paid to a non-designated individual.

Weighting and conclusion

130. The CTPF Act (2016) and related mechanisms covers or goes further than the technical element of Recommendation 7 with only minor shortcomings. There are gaps in relation to reporting attempted transactions, mechanisms to resolve false positives and detailed provisions in relation to access to funds and release of funds to innocent third parties... Recommendation 7 is rated non-compliant.

Recommendation 8 – Non-profit organisations

131. In its 2007 MER, Thailand was rated non-compliant with former Special Recommendation VIII.

132. NPOs used in Thailand are associations and foundations. A foundation consists of property specially appropriated to public charity, religious, art, scientific, education or other purpose for the public benefit and not for sharing profit. It must be registered under the C & C Code, once registered it is classed as a legal person and it may enter into contracts and bring legal action. It is subject to tax on its profits albeit at a very low rate (1%). An association is created to conduct any activity which, according to its nature, is to be done continuously and collectively by persons other than that of sharing profits or income earned, it must have its regulations and must be registered according to the provisions of the C&C Code. They are typically used for sport associations or clubs.

133. Three types of foreign NPO are permitted to operate in Thailand: (1) operating in Thailand only; (2) those headquartered in Thailand but operative in the neighbouring countries; (3) those headquartered in Thailand but operative both within and outside Thailand.

134. Associations and foundations are governed by the C & C Code and overseen by the DPA. Foreign NPOs are governed by the Rule of the Ministry of Labour and Social Welfare on the entry of foreign private organisations to operate in Thailand (‘MOL Rule on entry of foreign NPOs’), the Working of Alien Act and the Rule of Committee on Consideration of the Entry of Foreign Private Organisation (Rule of Committee on entry of foreign NPOs’) and overseen by the Department of Employment.

135. The C&C Code requires that the settlor founders submit a founding statement to the local registrar in the localities where the headquarter of the foundation or association shall be situated, along with: (1) the name of the foundation/association; (2) its objectives; (3) the addresses of the headquarter and all local branches; (4) the its properties at the time of its foundation; (5) the regulations concerning its board such as the number, nomination, term of office, the termination of membership, the meeting; (6) regulations concerning its management; (7) regulations concerning property and accounting management. After receiving application the Minister of Interior appoint the registrar for registration of a foundation/association.

136. Foreign NPOs are required to provide objectives, policy, project or work plan and operation plan, names of members of the executive committee or the executives, particulars concerning budget, revenue and financial sources, evidence of being a juristic person from their domicile country or in the absence of that a certificate from their embassy certifying its domicile and financial status, details of a representative while applying for registration under clause 13 of the MOI Rule.

137. If a board member of an association or foundations is a foreigner, a certification from the National Intelligence Agency and the embassy of the foreign national are required.

138. The following table summarises the types, supervisors of NPOs and concerned legal instruments for governing NPOs in Thailand.

Types of NPO	Laws / Regulations concerned	Supervisor y Authority	Totals (2015)
Society	<ul style="list-style-type: none"> The Civil and Commercial Code The Act Prescribing Offences Related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundation, B.E. 2557 (2014) Ministerial Regulation related to the Registration, Operation and Registration of Foundations (2002) Ministerial Regulation related to Fee and the Exemption from Fee for Foundations, B.E. 2545 (2002) 	DPA	11,390 in Bangkok: 6,405 Other Provinces: 4,985
Foundation	<ul style="list-style-type: none"> The Civil and Commercial Code The Act Prescribing Offences Related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundation, B.E. 2557 (2014) Ministerial Regulation related to the Registration, Operation and Registration of Foundations, (2002) Ministerial Regulation related to Fee and the Exemption from Fee for Foundations, B.E. 2545 (2002) 	DPA	12,421 Bangkok: 6,766 Other Provinces: 5,655
International Private Organizations Operating in Thailand	<ul style="list-style-type: none"> The Regulation of Ministry of Labour and Social Welfare Related to the Entry of Foreign Private Organizations to Operate in Thailand, B.E. 2541 (1998) The Regulation of the Committee Considering the Entry of Foreign Private Organization B.E. 2543 (2000) 	Department of Employment	80

139. Foreign NPOs wishing to operate within Thailand must submit an application to the Committee considering the operation of foreign NPOs. The Committee of high-level officials and other representatives of government agencies has the power to grant permission for a foreign NPO to operate in Thailand, to enable them to establish an office in Thailand or a regional office and grant permission to the number of positions and nature of work for aliens who will enter to work for a foreign NPO.

140. *Criterion 8.1 (a)* - Thailand included some high-level assessments of the NPO sector in the 2012 NRA, but there was little differentiation amongst the types or features of NPOs within the sector, such that the NRA could identify those categories of NPOs that might be at risk of TF abuse.

However, Thailand has conducted NPO sector risk scoping as part of its 2016 NRA where they identified which NPOs that fall within the FATF definition along with subsets of those NPOs, which by virtue of their activities or characteristics are likely to be at risk of TF abuse.

141. Thailand risk-scoped NPOs as part of this exercise and assessed certain NPOs as low, medium or high-risk. The risk scoping found that those foundations that undertake fund raising pose the highest risk in Thailand and particularly those who are religious or educational based and work in the three southern border provinces. The risk scoping found around 25 million THB of funds was raised through NPOs in the southern border provinces. For other NGOs they found very low and medium risk, particularly those that don't undertake fund raising activities. For example clubs that are formed for charity etc. are classified foundations by their objectives. Religious and educational NPOs comprise about 33% of foundations. They also focused on the location noting 503 foundations were located in the deep southern border provinces which accounts for 3.87 of the overall number of foundations however still pose the greatest risk. Most foundations receive funds below 1million THB (nearly 95%).

142. *Criterion 8.1(b)* - Under the risk scoping initiatives on NPO sector; Thailand considered the nature of threats to high-risk NPOs broadly. It was found that high-risk NPOs based in the southern border provinces collect funds from home and abroad for use in campaigning for insurgency activities.

143. *Criterion 8.1(c)* - In its risk scoping initiatives on NPO sector Thailand did not review the adequacy of sufficiency of laws and regulations to deal with identified high-risk NPOs. This is an on-going task of the DPA in cooperation with AMLO to review the sufficiency of existing laws and regulations concerning the risk of NPOs being used for FT and their ability to prevent its abuse. A joint working group has been established between DPA and AMLO in order to revise the law and bring it into line with the international standard. However, it is noted that in response to the 2012 NRA, AMLO amended section 16/1 of the AMLA to empower AMLO to compel documents or information regarding financial transactions from NPOs, they may temporarily freeze suspicious transactions and enter NPO premises on suspicion of TF. DPA issued a circular letter to provincial registrars to closely monitor potential abuses of NPOs particularly those with high-risk features.

144. *Criterion 8.1(d)* - while the depth and scope of assessments is discussed above, Thailand has periodically reassessed the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities. This is done in the NRA process and via other inter-agency process focusing on combating TF. High-risk NPOs are monitored closely with onsite inspections every year and are reviewed in monthly meetings of security agencies in the southern border provinces.

Sustained outreach concerning terrorist financing issues

145. *Criterion 8.2 (a)* - Thai authorities (DPA and DOE) have articulated clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs through the establishment of an NPO database containing up to date and accurate information. Foundations and associations are obliged to report their objectives, activities, expenses, income, sources of income, donation, property, list of executive board, and balance sheet. There is an NPO award for good governance. More substantively, requirements contained in the C&C and other laws promote governance, management and the termination of foundations in the event of non-compliance.

146. Clause 2 of the Rule of the Committee on entry of foreign NPOs state that the Office of National Security Council shall consider internal security policy for foreign NPOs. The NIA, Armed Force Security Centre Supreme Command Headquarters and the Special Branch Bureau Commissioner shall consider internal security and look after behaviour of the foreign NPO and aliens permitted for operation in Thailand.

147. *Criterion 8.2(b)* – The DPA organizes annual training programs to educate associations and foundations on how to comply with the law as per the direction of Ministry of Interior. These are held in Bangkok and other provinces. AMLO has held one training program to educate NPOs on AML/CFT. There were four NPO workshops held from 2012-2013, in 2014, DPA, in collaboration with AMLO and the League of Foundation and Association conducted 10 seminars with NPO attendees from 42 provinces totalling 1,023 persons. Training included an overview of AMLA, CTF Act and the risk of abuse NPO for TF. Since 2014, DPA continues work with AMLO and the League of Foundation and Association to conduct seminar with NPOs including topic on AML/CFT.

148. *Criterion 8.2(c)* – DPA and AMLO conducted several outreach programs for NPOs covering CFT laws and risk of abuse of NPOs for TF. Guidance has been provided for foreign NPOs and is published on the website of the Alien Worker Management Bureau.

149. *Criterion 8.2(d)* - Foreign NPOs are required to show particulars concerning budget, revenue and financial sources. As for Thai NPOs, Clause 13 of Part 3 of the Ministerial Regulations of Regulations, Operation and Registration of the Foundation B.E. 2545 (2002) obliges foundations to report their performance , including financial statement or copy of bank books, to the Registrar as well as submit related evidence, by March every year. Under section 78 and section 112 of C&C Code, associations and foundations must keep accounts. There is no requirement for NPOs to use regulated financial channels.

150. *Criteria 8.3* - DPA generally monitors the NPOs activity quarterly and shares the information with AMLO, NIA, security authorities. Generally this involves an examination of the profiles and conduct of persons who sit in the committee of associations or foundations. High-risk NPOs are subject to yearly onsite inspections as opposed to those considered lower risk who are examined according to their perceived risk level. DoE examine the previous activities of foreign NPOs while renewing the license biannually. Security authorities in the three southern border provinces and AMLO coordinate with each other to identify the target of their examination/investigation which supports a risk-based approach to oversight and monitoring.

151. *Criteria 8.4 (a)* - The monitoring activities of DPA is risk-based given the increased focus on NPOs working in the southern province with active support from security intelligence agencies. The additional allocation of resources for monitoring assists TF risk mitigation strategies.

152. *Criterion 8.4 (b)* - While NPO regulators have enforcement powers, the range of sanctions are not sufficiently effective, proportionate and dissuasive for violations by NPOs or persons acting on behalf of these NPOs. DPA and DoE have very limited financial sanction authority that is not effective, proportioned and dissuasive for regulatory violation by NPOs. Statutory reforms are being pursued to rectify this gap. Under the MOI Rule on entry of Foreign NPOs, non-compliance with the provisions of the Rule enable the Committee to notify the NPO in writing to comply with the Rule. Sustained non-compliance within the period specified by the Committee or in the event the violation is considered severe, the Committee has the power to suspend the operation of the NPO either wholly or partly, or they may terminate the implementation of any activity, provided that the competent agencies shall comply with the resolution of the Committee (Clause 21).

153. *Criteria 8.5 met. 8.5 (a)* – There is close cooperation and coordination between DoE, DPA and other agencies involved in regulating and overseeing NPOs. In addition, the Steering Committee on Measures Regarding IGO and NGO operating in the southern border provinces is a special coordination mechanism responding to key risks and consists of MFA RTP, DOE, DPA, NIA, NSC, Ministry of Defence, AMLO etc. it has met quarterly since May 2016. In its investigation, there is information-sharing and coordination among the DPA, AMLO, RTP and related provincial offices where the information on the association or foundation is kept. DPA and AMLO conduct joint annual training on associations and foundations.

154. *Criterion 8.5 (b)* – AMLO, RTP, NIA, NSC and other agencies have relevant investigative expertise, capability and powers to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

155. *Criterion 8.5 (c)* – investigating authorities can obtain full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation. Section 16/1 of the AMLA authorizes the AMLO to request associations and foundations to declare their transactions or to temporarily suspend transaction that is suspected of being used in TF. Under section 16/1 of AMLA, AMLO has the authority to seek an explanation from NPOs on any transaction deemed suspicious and can enter the establishment of NPOs during sunrise and sunset to conduct examination.

156. *Criterion 8.5(d)* - the FIU and TF investigation functions of AMLO, plus the inter-agency information and intelligence sharing involving NPO regulator, LEAs and security intelligence agencies appropriate mechanisms to ensure that relevant information is promptly shared with competent authorities in the event of misuse of an NPO, in order to take preventive or investigative action.

157. *Criteria 8.6* - The DoE is responsible for providing information on foreign NPO operating in Thailand but no clear direction to share information relating to domestic NPOs with foreign counterparts. AMLO, NSC and various other players may also be involved in the provision of information for international requests. Thailand could however improve on the procedures to respond to requests and identified points of contact

Weighting and conclusion

158. There are some weaknesses with assessments of the NPO sector and related TF risks, and the risk-based approach needs to be deepened to go beyond the southern border provinces. There are weaknesses with the range of available sanctions for NPO regulators. Given the moderate shortcomings, Thailand is rated partially compliant with recommendation 8.

Recommendation 9 – Financial institution secrecy laws

159. In its 2007 MER Thailand was rated compliant with former recommendation 4, based on the authority under section 38 of AMLA allowing AMLA to lift any secrecy restrictions. The contents of this recommendation have not changed.

160. *Criterion 9.1* - Confidentiality requirements are set out at sections 154 and 155 of the FIBA and extend to banks, finance companies and credit foncier companies. For performing its duties as FI and supervisor, s. 38 of AMLA empowers AMLO's Secretary General, the Transaction Committee, or assigned competent officers to collect information of any account held in by FIs regardless of any secrecy provision. Section 154 also provides for confidentiality provisions to be lifted for the

purpose of supervision, investigations or court proceedings. There are no impediments to sharing such information between authorities in such cases.

161. There are some limitations on FIs ability to overcome confidentiality restrictions to share information required by Rec 13, 16 or 17. The second paragraph of S. 154 of the FIBA allows FI to overcome confidentiality controls when they share relevant information with a company in the same financial business group or with the consent of a client (which is regularly sought). It is notable that in the Thai context intra-group business is common. S.154(10) allows for lifting of secrecy for 'purposes of compliance with laws', which Thailand argues would extend to obligations for CDD under the MR CDD, including obligations on FIs to obtain information related to wire transfers, correspondent banking and CDD by 3rd parties. However, assessors have concerns that the MR CDD or guidelines do not expressly support this interpretation and it is not clear that the lifting of secrecy provisions in such circumstances has been communicated to FIs.

Weighting and conclusion

162. The ambiguity of FI's ability to overcome confidentiality restrictions to share information required by rec 13, 16 and 17 is a minor shortcoming. Thailand is rated largely compliant with recommendation 9.

Recommendation 10 – Customer due diligence

163. In its 2007 MER, Thailand was rated non-compliant on former recommendation 5 (CDD requirements). The main deficiencies related to a general lack of obligations for several categories of FIs, lack of regulations for imposing requirements for FIs (e.g. life insurance companies) covered by the AMLA whose financial supervisor had not issued regulations or other enforceable means, no provisions on FIs in relation to when CDD was required or failure to complete CDD ; thresholds in respect of occasional transactions were excessive; exemptions from AMLA's requirements were permitted for certain transactions without performing any ML/TF risk assessment, other than for securities companies there were no requirements in law or regulation regarding ongoing due diligence, and there was no requirement to perform EDD for high-risk customers or obtain information on purpose and intended nature of business relationship.

164. Thailand imposes varying CDD obligations on different categories of REs. For the purposes of this report, the predominant CDD obligations arise out of the AMLA; enforceable instruments include the MRs and Notifications (issued by both AMLO and the Prime Minister's Office). Guidelines issued by AMLO and other regulators support the obligations contained in the various enforceable instruments, but are not directly enforceable.

Enforceability

165. Section 4 of the AMLA provides a basis for the PM to appoint officials and issue ministerial regulations, rules and notifications for the execution of the AMLA.

166. The MR CDD references section 4 of the AMLA and relevant constitutional provisions. There are penalties in the principal law at section 62 of the AMLA and these penalties reference CDD obligations (e.g. sections 20, 20/1). As such, obligations in the MR CDD are enforceable. Certain AMLA MRs contain provisions for details of obligations to be set out in rules or further instructions. AMLO Notifications issued pursuant to provisions are considered enforceable as a lawfully issued extension of enforceable provisions in the MRs. Similarly, Prime Minister's Office Notifications issued pursuant to enforceable provisions in the AMLA are enforceable.

167. The sanctions at section 62 of the AMLA apply to non-compliance with the broader obligations included in the MRs and relevant notifications. The sanctions in the law are approximately USD28,571 + USD 285 per day and may not be considered adequately dissuasive. BOT and SEC indicate that administrative sanctions (e.g. suspension or removal of managers/directors) are available to sectoral regulators to enforce compliance, may be applied to breaches of MRs issued under the AMLA. AMLA, BOT and SEC are able to issue enforceable notices under sectoral laws, including the AMLA and laws governing the licensing and operation of the various REs.

Financial institutions covered under AML/CFT preventive measures

168. The AMLA and Ministerial Regulations set out the definitions of 'financial institutions' and designated 'professions and businesses'. The AMLA takes a combined approach of category based definitions and activity based definitions.

169. The scope of 'financial institutions' are defined in section 3 of AMLA and Ministerial Regulation with reference to institutions licensed or operating under particular sectoral statutes. The activities of each of the types of FI governed by their sectoral statutes. Section 3 of the AMLA defines financial institutions to include: commercial banks, finance companies, credit financiers; securities companies; life and general insurance; cooperatives with operating capital exceeding two million THB (equivalent to USD57,142) and having operations relating to acceptance of deposits, lending of loans, mortgage, pawning or acquiring asset; and a juristic person carrying business relating to finance as prescribed in Ministerial Regulation. AMLA MR No. 1 (2000) prescribes the definition of FIs by reference to licensed entities under sector specific statutes, which include: (1) ad hoc juristic persons conducting securitization of assets; (2) businesses permitted to conduct foreign currency payments and currency exchange control (i.e. money transfer agents, money changers); (3) the FI asset management corporations; and (4) the asset management companies. MR No. 11 (2011) adds two more categories in the FI definition, namely (5) juristic persons engaging in futures contract businesses (i.e. derivatives trading companies) and (6) juristic persons engaging in futures trades (i.e. futures trading companies) both under futures contract business law.

170. Section 16 of the AMLA takes an activity-based definition of certain categories of FIs, but only in the case of professions who are not financial institutions undertaking those activities and are not otherwise licensed or authorised under sector-specific statute referenced at AMLA section 3. Section 16 is limited to 'professions' (who may be natural or juristic persons), when they undertake six of the financial activities covered in the FATF definition of a 'financial institution'. The six financial activities include: a) providing of investment advice or being an investment advisor (under the law governing securities and stock exchange); b) personal loans (under MOF Notification and relevant law); c) electronic money cards (under MOF Notification and relevant law); d) credit cards (under MOF Notification and relevant law); e) e-payment (the law governing the supervision of electronic payment service business); and f) foreign exchange (under the law on exchange control), but only in the case where the business poses a risk, according to risk assessment, of being abused for ML/TF, as prescribed by the MR.

171. It should be noted that the six categories of FIs at section 16 of the AMLA are all covered under AMLA s.3 in the definition of licensed financial institutions.

172. Overall, there is a scope gaps of three categories of FIs which are not included in the definitions of FIs and are not subject to Thailand's AML/CFT regime:

- cooperatives with operating capital less than two million THB
- non-depository leasing companies

- pawn shops

173. The significance of the scope gap for FIs needs to be understood in context, in particular the economic activity and funds under control of these sectors. Leasing companies represent 769 licensed entities accounting for 2% of financial sector assets, which is not insignificant. The economic activity of cooperatives with operating capital of less than USD57,142 appears to be relatively narrow and low volume, although there are 3,748 across the country. Pawn shops represent 0.2% of all financial sector assets, which is a very low portion. There are concerns regarding unlicensed pawn shops.

174. All of the FIs and the 'professionals' listed at AMLA ss.3 & 16 are required to report STRs and other transactions to AMLO. There are collectively referred to as reporting entities (REs) throughout the report.

175. The requirements of the MR CDD only relate to FIs included in the AMLA s.3 definition (and related MR) and unlicensed professional investment advisors and e-payment providers (AMLA 16(1) & (9)). Collectively, these FIs are referred to as CDD reporting entities (CDD REs).

176. The overall scope gaps with covered FIs and the minor scope gap with those REs that are not subject to MR CDD applies across each of the criteria unless otherwise stated.

General requirements

177. *Criterion 10.1* - Art. 6 of the MR CDD prohibit CDD REs establishing a business relationship, maintaining or transacting with anonymous customers or those using fictitious names. However, as discussed above, there is a gap in the scope of FIs covered by the MR CDD in Thailand.

178. *Criterion 10.2* - AMLA section 20 requires all REs to identify customers prior to conducting any transaction. The MR CDD at article 18 and section 20/1 of AMLA require CDD REs to apply CDD measures when:

- i. establishing business relationship;
- ii. carrying out (i) a single or several occasional transaction(s) with possible link exceeding 100,000 Baht³¹;
- iii. carrying out wire transfers or electronic payment transaction each exceeding 50,000 Baht;
- iv. there is suspicion of ML/TF;
- v. there are doubts about the veracity or adequacy of previously obtained identification data of the customer or the ultimate beneficial owner(s).

179. Whilst the MR CDD sets out the situation where CDD measures takes place, it does not prescribe the expected actions to be taken by FIs when they have doubts about the veracity of CDD information provided. There is a gap in the scope of FIs covered by the MR CDD in Thailand.

180. *Criterion 10.3* - Section 20 of the AMLA and the PMO Notification on CDD require basic identification information to be collected by all REs. This includes the requirement to collect full name, date of birth, personal ID number, address, occupation and contact information. These requirements extend to customers who are legal persons or legal arrangements. The PMO

³¹ The threshold was lowered from 700,000 to 100,000 THB effective from August 2016.

notification requires measures to verify identification information and the supporting evidence against original documents, certified copies and other reliable sources of information.

181. The more comprehensive CDD requirements are only placed on CDD REs. Article 19(1) of MR CDD requires CDD REs to identify the customer and verify the customer's identity using documents, data or information from publicly accessible reliable sources in addition to those obtained from the customer." The identification and verification requirements of the customer are further prescribed in Notifications to various sectors including the PMO Notification on Customer Identification which requires certain identification documents (personal identity card, passport, registration certificate issued by the Registrar, etc.) to be provided. Article 7 of the PMO Notification on Customer Identification requires that identification of customers and occasional customers made with supporting information and evidence must be verified against the original document, additional reference information, certified copies and other reliable sources of information including an electronic database.

182. The OSEC Notification on risk management requires securities companies to conduct CDD processes on clients and ultimate beneficial owners using reliable sources of information including identification documents bearing the customer's photo.

183. *Criterion 10.4* - CDD REs are required to verify that any person purporting to act on behalf of the customer is authorized to do so and to identify and verify the identity of that person in accordance with the CDD measures (Art 20 of MR CDD). They shall do so in accordance with Article 19 (1), (2) and (3) which outlines the steps that must be taken.

184. *Criterion 10.5* - MR CDD requires CDD REs to identify the ultimate beneficial owner ("UBO") and take appropriate measures to verify the UBO's identity (Article 19 & 22). However, the obligation does not extend to using relevant information or data obtained from a reliable source such that the FI is satisfied that it knows who the beneficial owner is.

185. Article 3 of the AMLO Notification on CDD and UBO provides further clarifications on the obligations to verify UBO under article 19(2) of the MR CDD. It requires CDD REs to acquire information sufficient to prove that the UBO is an existing natural person. However, it is not sufficiently clear how to determine who is the natural person ultimately has a controlling ownership interest in the legal person, there is also no explicit requirement that the sufficiency should be based on relevant information or data obtained from a reliable source (Art. 19 MR CDD). Taken together with the "AMLO CDD Guideline for banks" (which guides banks on customer identification, customer acceptance and CDD processes) there is no explicit requirement or clarity around this important concept. The AMLO CDD Guidelines for banks does not provide any clarity around the types of reliable documents that should be obtained to identify beneficial owners. (p.15 & 16 of the AMLO Guideline for CDD).

186. *Criterion 10.6* - The MR CDD meets the standard. Article 19(4) of MR CDD requires CDD REs to obtain information from the customer on the purpose and intended nature of the business relationship and section 31 of the OSEC notification on risk management stipulates that securities companies shall be aware of the customer's purposes to invest or perform transactions.

187. *Criterion 10.7* - Articles 13 and 19(5) of the MR CDD requires CDD REs to (i) check the financial movement or transactions and information on the conduct of business relationships and transactions undertaken throughout the course of relationship to ensure they are consistent with the purpose of the business relationship, transactions stated by the customer, the customer's business and risk profile. (ii) check the customer data especially their source of funds to ensure they are up-

to-date; (iii) take regular action to ensure that documents, data or information collected for identification and risk management is kept up-to-date and relevant until the business relationships with customers are ended. However, there is no guideline supporting implementation such as the scope and information to be obtained for regular reviews (Art. 13 & 19(5) MR CDD).

188. *Criterion 10.8* - The MR CDD meets the standard. Article 21 requires CDD REs to identify and verify customers that are legal persons or legal arrangements and understand the nature of their business and its management ownership and control structure.

189. *Criterion 10.9* - The MR CDD meets the standard. Article 22 requires CDD REs to subject legal persons and legal arrangements to identification requirements as set out in R.10.9. The PMO Notification on Customer Identification provides further guidance to CDD REs on the types of identification that may suffice.

190. *Criterion 10.10* - CDD REs shall identify and take reasonable measures to verify the beneficial owner's identity (see c.10.5 above). The definition of the "beneficial owner" provided at Art. 22(2)(a) MR CDD includes the elements of the controlling ownership interest (as set out in the sub-criterion 10.10a), the control through other means (as set out in the sub-criterion 10.10b) and the relevant persons who hold the position of senior managing official (as set out in the sub-criterion 10.10c). For securities companies, the intermediaries are required to undertake the KYC/CDD in order to verify the customer true identity and the beneficial owner (Clause 30 and 31 of the OSEC notification on risk management). However, both MR CDD and OSEC notification on risk management did not specify the minimum threshold of the percentage of shareholding for determining the controlling ownership interest. For investment management companies, though detailed guidance was prescribed, this was not consistent with the Standard (no identification of the beneficial owners is required unless the shareholding exceeds 30% of the total shares and similar principle applies to the 2nd layer of the ownership structure unless the shareholding exceeds 50%) (Clause 6 (2) (d), AIMC CDD guideline). Thailand revoked this Notification in end August 2016.

191. *Criterion 10.11* - Article 22(2)(b) of the MR CDD set outs most of the requirements provided in R10.11, i.e. CDD REs are required to undertake CDD in relation to legal arrangements as per the requirements in R10.11. However, the MR CDD does not cover the case of a customer that is a foreign trust whereby the CDD REs should obtain sufficient information concerning the beneficiaries designated by class or characteristics to satisfy that the CDD REs will be able to establish the identity of the beneficiary at the time of the pay out or when the beneficiary intends to exercise vested rights.

192. No regulation or guideline has set out any specific requirements concerning what information or types of documents to be obtained to identify and verify the parties connected to the trust.

193. *Criterion 10.12* - Article 27 and 28 of the MR CDD reflect the requirements contained at R10.12. However, there is a gap which is the absence of a requirement for FIs to undertake the additional CDD measures "as soon as the beneficiary is identified or designated".

194. *Criterion 10.13* - Article 29 of MR CDD covers life insurance policies and requires CDD REs to include the beneficiary of an insurance policy as a relevant factor in risk management and carry out enhanced due diligence.

195. *Criterion 10.14* - The MR CDD meets the standard. Article 19 of MR CDD prescribes that CDD REs shall complete CDD before or during the course of establishing a business relationship with customers unless a delay in such conduct is necessary to prevent an interruption to the normal conduct of business, in which case it shall be completed as soon as practicable after establishing a

business relationship with the customer, providing that ML/TF risks are effectively managed, and the delay does not affect the asset freezing requirements set out in the Counter Terrorism Financing Act. Securities companies or intermediaries are required to verify customer and beneficial owners before establishment of business relationship or conducting transactions, review and update the customer information in the appropriate duration (Clause 9 of Notification Sor.Thor. No. 35/2557 and Clause 30 and 31 of Notification Tor.Thor. No. 35/2556). This rectifies the issue that the verification could be completed after the first transaction.

196.*Criterion 10.15* - while REs are required to manage AML CFT risks in the case of delayed verification, there is no requirement for REs to institute risk management procedures under which a customer may utilise the business relationship prior to verification.

197.*Criterion 10.16* - CDD REs shall conduct CDD measures to new and existing customers. Article 26 (1) & (2) of the MR CDD sets out some situations for CDD REs to conduct CDD measures on existing customers, however, some situations were not based on materiality and ML/TF risk.. For example, the MR CDD sets out 3 factual scenarios rather than a principled approach on the basis of materiality and risk of the relationship as determined by the institution to do the due diligence and risk assessment.

198.*Criterion 10.17* - The MR CDD meets the standard. CDD REs are required to establish the degree of CDD measures to be performed for each customer consistent with his or her ML/TF risks (Art. 12 MR CDD). Examples of EDD measures to be applied are at Article 15 of the MR CDD and include but are not limited to:

- i. Obtaining additional information or evidence on customer's business, sources of funds/income, intended nature of the relationship, or reasons for intended/performed transactions, etc.
- ii. Obtaining the approval of senior management, including approving the result of information verified during the CDD process.
- iii. conducting enhanced examination and monitoring of the financial movements of high-risk customers, by increasing the frequency of monitoring transactions and the frequency of examination and verification of customer's or beneficial owner's identity. (Art. 15 of MR CDD). If the risks are lower, simplified CDD measures may be applied.

199. Further identification procedures are prescribed in the PMO Notification on Customer Identification for CDD REs and the AMLO CDD Guideline for banks. However, the AMLO CDD Guideline suggests identification procedures for conducting occasional transactions with natural persons, legal persons and legal arrangement not only under a face-to-face situation, but also a non-face-to-face one. Non-face-to-face relationships could be established with both individuals and the legal persons and legal arrangements. (Art. 6 PMO Notification on CDD, para. 2.2, 3.2, 4, 4.1 & 4.2 of the AMLO CDD guideline for banks).

200.*Criterion 10.18* - requirements on simplified CDD are prescribed in Article 12 and 16 of MR CDD where CDD REs are allowed to adopt a simplified CDD approach to all types of customers who were assessed low-risk. Factors in considering whether customers are low-risk were set out in AMLO Notification Concerning Guidelines for Prescribing Factors for Consideration for Low-risk Customer.

201. Article 16 of MR CDD prescribes the simplified CDD measures include reducing (i) the identification requirements of customers, (ii) the requirements of examination and review of

movements of transactions or business relationships; and (iii) the verification requirements of the customer's current information.

202. The PMO notification allows REs to provide low ML/TF risk service or transactions to non-face-to-face with (i) customers or (ii) occasional customers without applying enhanced CDD, but rather applying reduced CDD. This is not based on an adequate analysis of risks by Thailand or the REs.

203. Article 6 of the PMO Notification on Customer Identification requires that where a relationship is not established face to face, CDD REs should consider the ML and TF risk of the financial product or service provided in the relationship in accordance with the MR CDD. For low-risk products or services, the minimum threshold of information set out in Article 3 is required. For high-risk products or services, further information is required prior to approval to conduct the first transaction. Whilst risk-based CDD is contemplated, for the high-risk products, the information required for EDD in the MR CDD still does not apply.

204. The provision in MR CDD 2013 (i.e. allowing CDD REs to reduce the customer identification and verification requirements for low-risk customers), to identify the ultimate beneficial owners without verification being based on a reliable source, and the inconsistent requirements for identification and verification of beneficial owners in the AMLO CDD Guideline does not provide sufficient clarity around the technical requirements of E.C 105. (identification of beneficial owners is required for all risk types of customers, but allowing using simplified measures on verification of the customers and beneficial owners (FATF IN10(21)) (Art. 16(3) MR CDD).

205. *Criterion 10.19* - The MR CDD meets the standard. Article 23 provides a general obligation to FIs to refuse to establish a business relationship or to perform the transaction, or terminate the business relationship with the customer and shall consider filing a suspicious transaction report to AMLO where CDD measures cannot be performed under Article 19. For the securities sector, members are required to deny the provision of services to clients if there is doubt about the reliability, correctness and sufficiency of the client information and documents and report any suspicious transactions to AMLO. (Clause 32 of Notification Tor.Thor.No.35 /2556, SEC, ASCO, Clause 4(2) and 5.2 of the Letter Bor.Lor. No. 219/2558, clause 25 of Notification Sor. Jor. Kor. No. 1/2550, AIMC).

206. *Criterion 10.20* - CDD REs under article 13 and 16 or any person shall not reveal or act in any way that may cause a customer or third party to be aware of CDD or the reporting of transaction or the dissemination of any other information sent to AMLO, except it is otherwise permitted by law (section 21/1 AMLA). In addition, MR CDD, Article 8 stipulates that where FIs suspect that a transaction relates to ML/TF, they shall take particular care in performing the CDD process. If there are reasonable grounds to believe that performing CDD process will tip off the customer or potential customer, they may choose not to pursue that process and file an STR to AMLO. For securities sector, this criterion was assessed in 2007 ME and the result indicated that companies must establish a proper measure to prevent their employees from tipping off of disclosing information concerning suspicious transactions or other reporting made to customers or unrelated parties.

Weighting and conclusion

207. Thailand has taken considerable steps since the last MER regarding core CDD requirements. However, of the three sectors FIs out of scope of the AML/CFT system in Thailand, the leasing sector is materially significant. In addition, a relatively narrow set of professionals conducting a number of financial activities covered by the FATF definition of a financial institution were not covered by the detailed CDD obligations set out in the MR CDD.

208. There are shortcomings with identification and verification requirements of legal persons and beneficial owners, risk management procedures for delayed verification, categorization of low-risk type customers, establishing relationships with customers under non-face-to-face situation or occasional customer without applying adequate due diligence. From these, the shortcomings in beneficial ownership identification and verification requirements are afforded particular weight, but are overall minor shortcomings taking into account the totality of Rec 10. Thailand is rated largely compliant with Recommendation 10.

Recommendation 11 – Record-keeping

209. In its 2007 MER, Thailand was rated partially compliant (PC) with former recommendation 10, largely because of a lack of obligations to keep transaction records or identification data except in relation to transactions that have been reported to the AMLO under the AMLA. AMLA has since strengthened the record keeping requirements in Thailand.

210. *Criterion 11.1* - Section 22 of AMLA contains a requirement for REs to keep records of transactions under section 21 for a period of five years from the date of transaction. 'Reporting entities' are not separately defined, but the term is used in relation to the full set of FIs and DNFBPs that are subject to STR reporting obligations in the AMLA, i.e. all of the FIs and DNFBPs included in sections 3 and 16 of the AMLA and MR no.1. Obligations to maintain transaction records are further elaborated in Article 4 (4) of The Ordinance of the AMLB prescribing rules, procedures for record keeping of information from CDD B.E. 2559 (2016), which is issued subsequent to the MR CDD and is an enforceable instrument.

211. *Criterion 11.2* - Section 22(1) of the AMLA requires reporting entities to retain information relating to customer identification for a period of five years from the date the account was closed or of the termination of relationship with the customer. Section 22/1 also requires that reporting entities to keep due diligence records for ten years from the date the account closed or relationship terminated. Article 8 of AMLB Ordinance prescribing rules, procedures for record keeping of information from CDD B.E. 2559 (2016) sets out more detailed requirements to keep the required CDD information. Neither the AMLA nor the Ordinance covers requirements to keep business correspondence. The minor gap with respect to coverage of FIs applies.

212. *Criterion 11.3* – Article 6 & 7 of the AMLB Ordinance prescribing rules, procedures for record keeping of information from CDD B.E. 2559 (2016) sets out the form and level of detail of record keeping for transactions and CDD. This extends to keeping transactions and related records sufficient to permit reconstruction of individual transactions for purposes of investigations and prosecutions

213. *Criterion 11.4* - Article 8 of AMLB Ordinance prescribing rules, procedures for record keeping of information from CDD B.E. 2559 (2016) requires FIs to keep CDD information in an accurate and complete manner by safe and reliable means and able to retrieve or submit the information as requested by requesting authorities.

Weighting and conclusion

214. The requirement to keep business correspondence is a minor gap, along with the minor scope gaps of FIs covered by the AMLA requirements. Thailand is largely compliant with recommendation 11.

Recommendation 12 – Politically exposed persons

215. In its 2007 MER, Thailand was rated non-compliant with former Recommendation 6. A number of additions have been made to the FATF standards on PEPs since that time.

216. The 2013 MR CDD defines and covers requirements for both domestic and foreign PEPs. Further details of the requirements related to PEPs are included in AMLO Notification Concerning Guidelines for Issuing Policy and Procedures for Assessment and Management of Risk Related to ML/TF (2013). PEP-related obligations in these instruments are enforceable (see write up at R.10 on enforceability of the MR CDD). The 2013 AMLO Notification concerning politically exposed persons elaborates the scope of 'high ranking officials', 'family members' and the timeframes of the application of the PEPs controls on those who have left a position. Article 3 of the MR CDD provides a clear basis for AMLO to issue notifications determining the meaning of key terms in the definition of PEPs, which would include the definition notifications in the scope of enforceable requirements.

217. Further to the findings in R10, there technical gap in the scope of FIs that are subject to PEP requirements compared to the FATF standard, albeit a minor one. The team finds the materiality of the scope gap to be minimal. However, the gap remains a shortfall for Thailand's implementation of R.12.

218. *Criterion 12.1 - R.12.1 (a)* the definition of PEPs covered by Thai requirements applies to both domestic and foreign PEPs and in keeping with the FATF standards.

219. Thailand requires FIs to put in place risk management systems to determine if a customer, or their beneficial owner, is PEP. Article 4 of the MR CDD requires FIs to have policies and procedures and to implement those procedures to manage ML/TF risks, including conducting CDD. Article 14 of MR CDD requires FIs to consider customer risk factors including whether the customer or beneficial owner is a PEP. Article 14 of the MR CDD requires PEPs to be classified as high-risk customers. A mandatory requirement applies for FIs to positively identify a PEP and classify them as high-risk, which is in keeping the requirement of R12.1(a).

220. *Criterion 12.1 (b)* – Article 15 of MR CDD requires FIs to obtain approval of senior management to commence or continue business relationship with PEPs.

221. *Criterion 12.1 (c)* – Article 15 of MR CDD requires FIs to obtain information regarding sources of funds or income of customers, however this does not clearly extend to encompass the requirement to take reasonable measures to establish the source of wealth. Thai authorities note that the MR CDD at s.19(5) covers business profile, which AMLO clarified in Thai more accurately translates as 'including the economic information', which more closely approaches the concept of 'wealth'. In addition, clause 31 of the SEC (Notification of the Capital Market Supervisory Board, No. TorThor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating Systems, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries) extends to both source of income and 'financial status', which in the Thai version may cover more elements of 'wealth'.

222. *Criterion 12.1 (d)* - Article 15 of MR CDD requires FIs to conduct enhanced examination and monitoring of the financial movements of high-risk customers. This includes increasing the frequency of examination and verification of identification including for beneficial owners. Enhanced monitoring should occur regularly.

207. *Criterion 12.2* - The obligations on PEPs apply equally to domestic and foreign PEPs. Thailand goes beyond the recommendation for 12.2(b) in that in all cases involving PEPs, enhanced due diligence methods are employed rather than on a higher risk basis as required by 12.2(b).

208. *Criterion 12.3* - The Article 3 definition of PEPs encompasses family members or close associates of PEPs and the obligations apply equally to them. The scope of what constitutes family or a close relationship is further elaborated in the AMLO notification concerning PEPs.

223. *Criterion 12.4* - Article 29 of MR CDD requires FIs to include the beneficiary of an insurance policy as a relevant factor in risk management. Where the beneficiary is a PEP or where a PEP is designated by characteristics or by other means as a beneficiary, a FI shall apply stringent procedures to establish the relationship between the policy holder and beneficiary who is a PEP and obtain senior management approval for the pay-out. In the event of a ML or TF suspicion the FI should consider filing a STR with AMLO.

Weighting and conclusion

224. The minor shortcomings are the small gap in the scope of FIs covered obligations not covering the full scope of source of wealth. Thailand is largely compliant with recommendation 12.

Recommendation 13 – Correspondent banking

225. In its 2007 MER Thailand was rated non-compliant with former recommendation 7. The main deficiencies were lack of enforceable correspondent obligation for the banking sector. The controls on correspondent banking were significantly enhanced by the MR CDD as it imposed additional measures on the due diligence required when establishing the correspondent relationship, the handling on “payable-through” account and prohibition for entering relationship with shell bank.

226. Assessors confirmed that the small gap in the scope of covered FIs is not material to this recommendation. Neither leasing companies nor small cooperatives can undertake correspondent banking or similar activities. Larger leasing companies are generally in group arrangements with banks and do not enter into separate correspondent banking style arrangements.

227. *Criterion 13.1 (a) and (b)* - When entering into a business relationship with a respondent FI, FIs are required to identify and obtain information from the respondent FI (Article 19(1-3)). This requires FIs to conduct CDD, identify UBOs and screen for TFS. FIs are required to verify the trustworthiness of the respondent FI and consider the reliability of the agencies responsible for its AML/CFT supervision (Art. 43 MR on CDD). Whilst there is not a clear requirement to assess the respondent FIs controls, the FI shall consider refusing to enter into a business relationship or conduct a transaction if a respondent FI does not have in place effective AML/CFT controls or the respondent bank's UBOs are involved in ML/TF activities (Art. 45 MR for CDD). It is not clear if ‘verifying the trustworthiness of the FI’ extends to determining from publicly available information the reputation of the institution and quality of its supervision including whether it has been subject to any regulatory action.

228. *Criterion 13.1 (c) and (d)* - There is no requirement for FIs to obtain approval from senior management before establishing new correspondent relationships or to clearly understand the respective AML/CFT responsibilities of each institution.

229. *Criterion 13.2* - MR CDD, Article 44 requires FIs to conduct risk management and CDD on the customers having direct access to accounts of the correspondent financial institution when

establishing a business relationship with a respondent financial institution with respect to payable-through accounts. The FI is required to be able to provide relevant risk management and CDD information upon request to the correspondent financial institution. This provision does not require FIs to be satisfied that the respondent bank will perform CDD on its customers that have direct access to the correspondent bank account and is able to provide relevant CDD information upon request.

230. *Criterion 13.3* - FIs are required to refuse to enter into or discontinue a correspondent banking relationship or to conduct a transaction with the respondent FI which is authorized but is not physically located within the authorizing country or physically located in the authorized country but conducting no business and not in a position to be supervised (Art. 42 MR CDD).

Weighting and conclusion

231. Thailand has put in place some of the requirements for R13. However, the required information to be collected from the respondent FIs are not sufficient for risk assessment and the requirements for accepting a respondent FI to have payable through accounts are not consistent with the Standard. Given the moderate shortcomings, Thailand is rated partially compliant with recommendation 13.

Recommendation 14 – Money or value transfer services

232. In its 2007 MER Thailand was rated partially compliant with special recommendation VI. There was a lack of enforceable means regarding CDD, transaction monitoring or internal controls. It was noted that a large number of unregulated operators offer their services to the informal sector.

233. Supervision on MVTs service providers was enhanced with the passage of the Royal Decree Regulating on Electronic Payment Services B.E. 2551 (2008) on 17 August 2008.

234. *Criterion 14.1* – For domestic MVTs where a license is required to obtain under Royal Decree on E-payment. The Royal Decree Regulating on Electronic Payment Services (2008) (“Royal Decree”) covers 3 types of service providers (List A, B & C). Applicant under List B or C shall be a legal entity. According to the Annex, the service providers of List A, B and C are required to either (i) send notification to; (ii) register with; and (iii) to obtain license from the Governor (section 7 – 9, Annex Royal Decree). Activities of List A service providers do not fall under the FATF definition of MVTs as their function relates solely to payments for certain goods or services and the products offered by List A service providers are closed-loop cards.

235. For cross-border MVTs where license is required to obtain under Royal Decree and Exchange Control Act (ECA) and related Ministerial Regulation No.13 issued under the ECA. To undertake the electronic payment service, the service provider is required to notify, register, or obtain a license from the BOT. Article 27 of the MR no.13 under the ECA confirms the requirement for license to be obtained from the BOT.

236. *Criterion 14.2* - BOT, as the registration / licensing authority, works with the RTP to identify persons carrying out MVTs business without registration or license and to take sanctions against them. Thailand was able to demonstrate that both regulatory agencies and LEAs seek to identify cases on their own and also seek information from licensed remitters on possible case of illegal remittance in the market.

237. There are penalties for failure to (i) notify or register with; and (ii) obtain a license from a competent official for operating electronic payment transactions are one year imprisonment and a

maximum of 100,000 THB (approx. USD2,857), and 2 year imprisonment and 200,000 THB (approx. USD5,714) respectively. If an offence relating to (i) or (ii) is committed by the juristic, the person participating in the operation of that juristic person (e.g. manager or representative) shall also be liable to such offence, unless such person can prove that he/she did not know about such offence or did not participating in committing such offence (section 44, 45 & 46 Electronic Transaction Act B.E. 2544 (2001)). Section 8 of the ECA also prescribes that any person who contravenes or fails to comply with the Ministerial Regulations, Notifications or Directions issued under the ECA shall be liable to a fine not exceeding 20,000 THB (approx. USD571) or imprisonment of not exceeding 3 years or both. Available sanctions are not proportionate or dissuasive.

238. In 2012, Thailand arrested a juristic person of a MVTS business, who was sentenced to 1 month imprisonment and a fine of 5,000 THB (USD142). As of December 2016, Thailand was still processing 3 cases where businesses were suspected to illegally provide e-payment services, all these 3 cases are in the process of Electronic Transaction Committee for consideration. It is not apparent that Thailand has applied proportionate and dissuasive sanctions to unlicensed MVTS.

239. *Criterion 14.3* – both domestic and foreign MVTS providers are subject to monitoring and supervision for AML/CFT by the AMLO (see Rec. 26). The AMLA, combined with MR No. 1, includes both domestic and cross-border MVTS in the definition of FIs which are subject to AML/CFT obligations. Both categories are subjected to the full range of AML/CFT obligations in the AMLA and the MR CDD, etc. and AMLO has commenced risk-based monitoring and supervision. In addition, BOT conducts monitoring and supervision of the sectors which includes some residual elements of AML/CFT (fit and proper, record keeping, etc).

240. *Criterion 14.4* - The ECA requires each of the cross-border MVTS providers (including each location) to apply directly for a license and as such does not provide for a separate agent network. The Central Department Store Company Limited and Thailand Post Company Limited are some of the cross-border MVTS businesses with a wide network. Under this arrangement each of their branches has to apply for a license. Western Union is a network provider utilised by the licensees and their use of the network system is subject to AML/CFT controls. Western Union is not licensed as one of the cross-border MVTS or an agent and is not required to obtain a license. Thailand allows domestic MVTS service providers to appoint agents and BOT's Notification No. SorNorSor4/2559(2016) Re: Rules for Agent Supervision for Electronic Payment Service Providers requires domestic MVTS service providers to maintain a current list of its agents to be reported to BOT every six months and on a case by case basis.

241. *Criterion 14.5* - Under SorNorSor4/2559(2016), section 4.2.1 (1) domestic MVTS are required to supervise the operation of their agents and persons or juristic persons appointed or subcontracted by the agents, for all involving parties, to comply with regulations include the agents in their AML/CFT programmes.

Weighting and conclusion

242. While there are generally comprehensive controls on MVTS, the minor shortcoming is that Thailand does not have sufficient application of proportionate and dissuasive sanctions for cases of unlicensed operation of MVTS, which is a minor shortcoming. Thailand is rated largely compliant with recommendation 14.

Recommendation 15 – New technologies

243. In the 2007 MER Thailand was rated non-compliant with former recommendation 8 due to a lack of enforceable requirements. Since the last mutual evaluation, Thailand introduced the AMLO Notification Concerning Guidelines for Prescribing Risk Mitigation Measures in Relation to Possible ML/TF Prior to Introduction of New Product New Service or Use of New Technology” (“AMLO Notification on New Products/Technology”). The AMLO Notification includes enforceable obligations as it is issued under Article 5 of the MR CDD which provides that mandatory obligations to complement the article can be set down in guidelines issued by the AMLO.

244. For banking sectors, BOT amended its guideline, “BOT Notification “No.SorNorSor, 7/2559 Re: Guidelines on Acceptance of Deposits or Money from Customers” in July 2016 to encourage FIs to effectively provide financial services using a variety of innovations under the sound risk management framework. According to this Notification, opening accounts to accept deposits or acceptance of money from customers through electronic channels or other means apart from those specified in this Notification is considered as a service through new channel of distribution for which FIs need to submit an application to BOT for consideration.

245. Thailand has in recent years launched new products and businesses³² through the use of new technologies.

246. *Criterion 15.1* - Articles 4 and 5 of the MR CDD require CDD REs to implement written policies and procedures for the assessment and management of ML and TF risk. This shall include measures for assessing risks that may arise prior to the introduction of new technology, new service or new product. This is supplemented by the AMLO Notification on new products and technology which requires CDD REs to set out internal rules in examination and assessment of the ML & TF risk prior to the introduction of new product & service and existing information technology, they shall also set out a plan for the review and development of risk mitigation measures in the use of information technology and equipment to ensure it is up-to-date and effective. (Art. 2 AMLO Notification e on New Products/Technology”).

247. Joint agency processes between AMLO and BOT have, in a relatively limited way, helped to identify and assess ML and TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. However, this is not regularly or comprehensively done. BOT requires banks to seek its approval prior to using any new system or equipment utilizing new technologies. During the approval process, BOT and AMLO held discussions with FIs and financial service providers (e.g. e-payment service providers).

248. *Criterion 15.2* – CDD REs are required to set out internal rules in examination and assessment of relating to the ML & TF risk prior to the introduction of new product & service and existing information technology. They are also required to plan for the review and development of risk mitigation measures for the use of information technology and equipment to ensure it is up-to-date and effective. (Art. 4 MR CDD and Art. 2 AMLO Notification on New Products/Technology).

³² New products or new business practices using new technologies include Virtual Teller Machine (VTM) services (an automated machine making financial transactions including account opening via the Bank’s video call system) offered by banks in Thailand (in 2015); Samsung Pay (an innovative digital wallet launched in October 2016); and PromptPay (a new interbank payment system launched in January 2017)

Weighting and conclusion

249. CDD REs are obliged to assess and address ML/TF risks of new technologies and products. However, Thailand has not comprehensively assessed risks associated with new technologies. There is a small scope gap of FIs. Given the minor shortcomings, Thailand is rated largely compliant with recommendation 15.

Recommendation 16 – Wire transfers

250. In its 2007 MER Thailand was rated non-compliant with the former special recommendation VII due to non-existence of law, regulation or other enforceable means for regulating wire transfers other than operational rules for the THBNET system which do not comprehensively address the requirements of SR. VII. In the MR on CDD Thailand included the wire transfer requirements under Article 33 to 40.

251. *Criterion 16.1* - Article 33 of MR CDD is almost a mirror of the requirements set out in criterion 16.1. Articles 33 and 34 of MR CDD requires that the originator's identification information to be verified for accuracy in case of cross-border wire transfers of THB50,000 or more (approx. USD1,428). This verification requirement however, does not apply to those originators who are not the customer of the ordering FI.

252. *Criterion 16.2* - Article 33 requires FIs to include the originator's account number or unique reference number if the batch file contains required and accurate originator information and full beneficiary information that is traceable within the beneficiary country.

253. *Criterion 16.3* - Thailand sets a *de minimis* threshold of 50,000 THB (approx. USD1428) or more under article 33 of MR CDD. There is no provision set out in any regulation regarding transactions below the *de minimis* threshold. Notice of the Competent Officer under the Exchange Control Act allows authorized money transfer agents to process any cross-border wire transfers of not exceeding USD2,000 for family support, travelling, studying or any other service expense provided that supporting documents for those expenses are obtained from customers, and the agents are required to submit a cross-border transfer report (as an ordering FI) indicating certain details including the name, identity number and address of its customer (i.e. the originator) and the name and address of the beneficiary without including the beneficiary's account number or an unique reference. (clause 11(2) and 13, Notice of the Competent Officer: Rules & practices regarding the undertaking of authorized money transfer agents).

254. *Criterion 16.4* - There is no explicit requirement on ordering FIs to verify the information pertaining to its customer where there is a suspicion of ML/TF in case of utilizing *de minimis*. Article 34 of MR CDD requires FIs to verify the customer's identification information before sending a wire transfer to the beneficiary FI but this provision only applies to transactions exceeding 50,000 THB.

255. *Criterion 16.5* - CDD REs are required to include both originator's information (name, account number, unique reference number and address) and beneficiary's information (i.e. name and account number) in a domestic wire transfer for all transactions exceeding 50,000 THB. It does not apply to transactions below this threshold.

256. *Criterion 16.6* - Article 35 of MR CDD requires beneficiary FIs to include customer information as set out in Article 33 of MR CDD in a wire transfer unless that information could be made available to the beneficiary FI by other means. Article 35 further requires that, at the request of the beneficiary FI or on the order of AMLO, the ordering FI shall obtain and send customer information that remains to

be sent to the beneficiary FI or AMLO as the case may be within three working days. This provision only allows AMLO to have access to the information accompanied in a domestic wire transfer, such right of access does not extend to other competent authorities.

257. *Criterion 16.7* - Section 22 of AMLA requires FIs to maintain customer information for five years.

258. *Criterion 16.8* - there are no requirements for ordering FIs not to execute the wire transfer if it cannot comply with the requirements specified at criteria 16.1-16.7.

259. *Criterion 16.9* - whilst some obligations are in place for intermediary FIs, there is no specific provision that requires the intermediary institutions to ensure that all originator and beneficiary information that accompanies a cross-border wire transfer is retained with it.

260. *Criterion 16.10* - Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, Article 36 of MR CDD requires that a record shall be kept, for at least five years, by the receiving intermediary FI of all information received from the ordering financial institution. There is however no requirement to keep a record for five years of information received from another intermediary FI which is not in line with the standard.

261. *Criterion 16.11* - paragraph 3 of Article 36 of MR CDD requires intermediary FIs shall have in place measures to examine cross-border wire transfers that lack required originator or beneficiary information.

262. *Criterion 16.12* - Paragraph 4 of Article 36 of MR CDD requires intermediary FIs to put in place guidelines and procedures in accordance with AML/CFT risk management policy by establishing procedures for the rejection or suspension of the wire transfer and taking appropriate follow-up action where a wire transfer lacks the required originator or beneficiary information. However, these procedures do not cover a determination of when to execute the wire transfer.

263. *Criterion 16.13* - Beneficiary FIs are required to take reasonable measures to identify cross-border wire transfers that lack required originator and beneficiary information, such measures may include real-time or post event monitoring (Article 37 of MR CDD). However, there is no detailed guidance as to what risk factors the FI should consider when it carries out post-event monitoring procedures.

264. *Criterion 16.14* - Beneficiary FIs are required to verify the identity of the beneficiary before payout under the wire transfer if the identity has not been previously verified according to Article 38 of MR CDD. Section 22 of AMLA requires FIs to retain the customer identification for a period of five years. However, if the beneficiary is not a customer of the beneficiary FI, the record keeping requirements shall not apply.

265. *Criterion 16.15* - where a wire transfer lacks the required originator or beneficiary information, the beneficiary FI shall have in place guidelines and procedures in accordance with the AML/CFT risk management policy by establishing procedures for rejecting or suspending the wire transfer and appropriate follow-up action. However, these policies and procedures do not cover any determination as to when to execute the wire transfer (Article 39 of MR CDD).

266. *Criterion 16.16* - MVTS service providers who provides international payment services are categorized as FIs under s.2 of MR No. 1 (2000) while the MVTS providers offering domestic wire transfer services are categorized as a business and profession under s.16(9) of the AMLA, and

therefore these MVTS are obliged to follow all requirements including wire transfer requirements set out in MR CDD.

267. *Criterion 16.17* - Article 40 of the MR CDD requires CDD REs including MVTS providers to examine fact and information on the wire transfer transactions from both the originator and beneficiary sides to determine whether an STR is to be made.

268. *Criterion 16.18* - all financial institutions are obliged to implement targeted financial sanctions, including in relation to wire transfers, under the terms of the CTPF act (see Rec 6). AMLO is responsible for raising awareness and monitoring and supervising implementation of these obligations, including during the conduct of wire transfers. AMLO outreach and supervision has focused on screening transactions, including wire transfers for sanctions lists.

Weighting and conclusion

269. The requirements to verify originator's information are in place, although they do not apply to an originator who is not customers. There are 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. There is a lack of requirements for FIs not to execute the transactions if there is suspicion of ML/TF risks. The intermediary FI and beneficiary FI are required to have policies and procedures for handling those wire transfer lack information but such procedures do not cover the determination as to when to execute the wire transfer. For cross-border wire transfers, there is no specific provision to require intermediary institution to ensure all originator's and beneficiary's information to be accompanied in the wire transfer. Given the moderate shortcomings, Thailand is rated partially compliant with recommendation 16.

Recommendation 17 – Reliance on third parties

270. In its 2007 MER Thailand was rated non-compliant with former Recommendation 9. Regulation on the use of third party introducers only applied in the securities sector. The issuance of MR on CDD has addressed these issues.

271. *Criterion 17.1* - Article 47 of MR CDD allows FIs to rely on third parties in verifying the customer identification in keeping with conditions mentioned in the Rec 17.

272. *Criterion 17.2* - Article 47(4) of MR CDD requires FIs, when relying on third parties subject to rules of many countries, to give consideration to the reliability of those countries based on their level of ML/TF risk.

273. *Criterion 17.3* - in the case where a third party is a financial institution that is part of the same financial group and such financial institution apply CDD measures and record-keeping requirements, and act in line with Articles 49-51, (Internal Controls and Policies for Foreign Offices, Branches or Subsidiaries), and where the effective implementation of those requirements is supervised through competent authority, the FI may apply measures under Article 47 (3) and (4) through its group program.

Weighting and conclusion

274. Thailand is rated Compliant with recommendation 17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

275. In its 2007 MER Thailand was rated partially compliant with former recommendation 15 and non-compliant with former recommendation 22. Thailand has since issued the MR CDD to cover many of these requirements.

276. *Criterion 18.1* - CDD REs are required (i) to have a plan for the development and improvement of policies and procedures for ML/TF risk assessment and management, and have an independent internal audit mechanism for monitoring observance of the AML law; (ii) to have in place procedures for recruiting staff and for ongoing staff training to work under effective AML/CFT policies or measures; (iii) to appoint an executive officer to supervise observance of the AML law. There is no explicit requirement or formal programme to implement adequate screening procedures for employees to ensure high standards or that include the type and extent of measures to be taken should be appropriate having regard to the risk of ML/TF and the size of the business (Art. 48 MR CDD). There is a minor scope gap for covered FIs.

277. *Criterion 18.2* - CDD REs require their foreign offices, branches or majority-owned subsidiaries to strictly implement ML/TF risk management policies and apply CDD measures as appropriate to the business category. They are required to adopt policies and procedures for sharing information with their foreign offices, branches or subsidiaries to fulfil the objectives of implementation of preventative measures. Such policies should include CDD and ML/TF risk management including customer information, transactions, financial movements, or results of customer risk assessment and analysis. The requirement extends to adequate safeguards on the use and confidentiality of information exchanged (Art. 49 MR CDD). However, there are no specific requirements concerning the provision at group-level compliance, audit, and/or AML/CFT functions of the information and this falls short on a group-wide policy as envisaged under the Standard (i.e. IN 18(4) of FATF REC requires that group-level compliance, audit and or AML/CFT functions should be provided with customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. Adequate safeguards on the confidentiality and use of information exchanged should be in place).

278. *Criterion 18.3* - MR CDD Article 50 prescribes that where the AML/CFT requirements of the host country are of different strictness from those of Thailand, foreign offices, branches or subsidiaries of CDD REs shall implement those requirements that are more stringent. Where their foreign offices, branches or subsidiaries are unable to implement legal requirements of the host country, CDD REs are allowed to consider closing down their operations in the host country. Obligations under BOT and SEC notifications and binding licensing conditions require REs to notify home supervisors when they have concerns with AML/CFT implementation amongst their foreign branches and subsidiaries. A minor gap relates to requirements to take additional steps to manage risks.

Weighting and conclusion

279. Measures are in place to meet most of the essential criteria with regard to reporting entities internal controls; however there are 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. Thailand is rated largely compliant with recommendation 18.

Recommendation 19 – Higher-risk countries

280. In its 2007 MER Thailand was rated non-compliant with former recommendation 21 due to a lack of enforceable obligations.

281. *Criterion 19.1* - the AMLO Notification Concerning Guidelines for Prescribing Factors for Customer Risk Consideration in Relation to Area or Jurisdiction (8/11/2013) (“High-risk Country Notification”) prescribes the relevant guidance. Article 2 requires CDD REs to carry out risk assessments While Article 12 requires them to conduct enhanced CDD when risks are identified as being higher, with Article 3 and 4 of the AMLO Notification (8/11/2013) provides factors to be considered for classifying high ML/TF risk areas or jurisdictions. Article 3 (the high ML/TF Risk factors indicated in article 3 are jurisdictions listed in the FATF public statement, whereas article 4 requires the areas under State of Emergency Notification and areas prescribed by the AMLO as high ML/TF risk. CDD REs shall therefore carry out enhanced CDD in accordance with Article 12 of the MR CDD (including obtaining additional customer information such as source of funds, intended nature of the business relationship in high-risk situations, obtaining senior management approval, increasing the frequency of examination and verification of customer identification and beneficial owners). There are no specific requirements concerning whether the enhanced CDD should be proportionate to the risks, to business relationships and transactions with natural and legal persons from which this is called for by the FATF (Art. 12 & 15 MR CDD). AMLO Notification (8/11/2013) then allows the CDD REs to consider other factors that may alter the risk level of areas or jurisdictions which was assigned in accordance with article 3 requirements.

282. *Criterion 19.2* - AMLO has issued the High-risk Country Notification which requires CDD REs to undertake ML/TF risk management with every customer, to set out appropriate CDD measures and to classify areas or jurisdictions listed in the FATF Statement as not apply or insufficiently apply FATF Standard or those areas prescribed in Art. 4 & 5 of the High-risk Country Notification as high ML/TF risk areas or jurisdictions with respect to enhanced CDD applied to high-risk customers. As a result of such a notification, CDD REs are required to apply enhanced CDD measures (Art. 14(2) & 15 MR CDD). However Thailand had not issued any Notification to list a high ML/TF risk area or country. There are also no other counter measures in place to mitigate the risk.

283. *Criterion 19.3* - There are no measures in place to ensure the FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. AMLO has only sporadically upload FATF announcements re country risks to the AMLO website. AMLO indicated that it does include discussion of high-risk countries during outreach activities to draw the attention of REs to updated lists of high-risk countries.

Weighing and conclusion:

284. Although Thailand has specific requirements to apply enhanced due diligence, the EDD measures were not applied proportionate to the risk and there was a lack of other-measures to mitigate the risks. Thailand lacks regular measures to ensure that REs are advised of concerns about the weaknesses in the AML/CFT systems of other countries. Given the moderate shortcomings, Thailand is rated partially compliant with R19.

Recommendation 20 – Reporting of suspicious transaction

285. In its 2007 MER Thailand were rated partly complaint with both former Recommendation 13 and Special Recommendation IV largely due to the fact FIs outside of the definition in the AMLA were not required to report STRs, gaps in coverage of predicate to ML, gaps with the obligation for the TF-

related STRs and no requirement to report attempted transactions. The AMLA was amended and the CFT Act was passed to address the gaps.

286. *Criterion 20.1* - Section 13(3) and 14 of AMLA requires financial institutions to report suspicious transaction to AMLO when there are reasonable grounds to believe that a transaction is:

- (a) conducted to avoid application of the AMLA; or
- (b) a transaction connected or possibly connected with the commission of a predicate offence or terrorist financing offence,

Notwithstanding the transaction being single or multiple, and shall include an attempt to conduct such a transaction’.

287. Thai authorities confirmed that the second limb of the definition would cover any dealings with proceeds of predicates or TF. It follows that there is a gap arising from the lack of comprehensive coverage of smuggling of migrants and lack of inclusion of tax offences. It should be noted that the new CPTF Act (2016) introduces an STR reporting obligation related to proliferation financing to complement the new asset freezing regime discussed at Rec 7.

288. The minor gaps in the criminalization of TF identified at Rec 5 extend a very minor limitation on the scope of suspicion of reporting of STRs. It is not clear that the STR obligation extends 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.

289. MR No.5 excludes STR reporting obligations for those transactions where both parties to the transaction are government agencies or state owned entities; and those involving certain Royal foundations. This creates a further moderate shortcoming, given the risks and context of Thailand.

290. *Criterion 20.2* - the definition of suspicious transaction covers the attempted transaction, regardless of the amount of the transactions. The scope gap with coverage of FIs required to submit STRs applies to this criterion.

Weighting and conclusion

291. There is a small gap in coverage of FIs required to submit STRs (leasing companies, pawn brokers and small cooperatives). There are gaps with the coverage of three categories of predicate offences including two which represent key risks in Thailand. There are also exemptions for certain transactions involving state owned enterprises. Given the moderate shortcomings, Thailand is rated partially compliant with Recommendation 20.

Recommendation 21 – Tipping-off and confidentiality

292. In its 2007 MER Thailand was rated partially compliant with former Recommendation 14 as tipping off was not prohibited and the previous section 21 of the AMLA appeared to have the effect of tipping off the customer. The AMLA was amended in 2015 to ensure the confidentiality of STRs.

293. *Criterion 21.1* - Section 19 of AMLA state that in the case where reports made under Sections 13-16 are made in good faith by the RE, if the report causes injury to any person, the RE shall not be responsible. However, this protection does not clearly extend to the directors of FIs and whilst this constitutes protection from financial liability as to damage caused, it is not clear that this protects against civil liability.

294. *Criterion 21.2* - Reporting entities are prohibited by section 21/1 of AMLA from disclosing or acting in any way that may cause a customer or third party to know of the conduct of customer due diligence or the reporting of transactions or the dissemination of any other information to AMLO.

Weighting and conclusion

295. The minor shortcoming is that safe harbour provisions do not clearly extend to protection from civil liability. Thailand is rated largely compliant with Recommendation 21.

Recommendation 22 – DNFBPs: Customer due diligence

296. In its 2007 MER Thailand was rated non-compliant with former Recommendation 12 due to the non-existence of legal framework to cover any kind of DNFBPs. Casinos were and are prohibited in Thailand. Amendments to the AMLA included real estate agents and dealers in precious metals and stones.

297. Accountants, lawyers, notaries, other independent legal professionals and trust and company service providers are not covered under AMLA.

298. Shortly after the ME onsite visit, Thailand issued the MR CDD for DNFBPs which extends CDD obligations to real estate agents and dealers in precious metals or stones. The MR CDD DNFBP also extends the CDD obligations to a small number of additional FIs (see Rec. 10) and two other professions beyond DNFBPs. They are professions trading or hire-purchase of cars; and professions trading antiques (law governing selling by auction and trading of antiques).

299. *Criterion 22.1* - While casinos are illegal in Thailand, there is a scope gap with those DNFBP sectors covered by the AMLA. Section 20/1 of AMLA indicates that covered DNFBPs shall undertake CDD when the first transaction is carried out and periodically reviewed until the account is closed or relationship has been terminated. However as with FIs, the AMLA leaves the detailed obligations to be set out in ministerial regulation. The MR CDD for DNFBP includes more comprehensive CDD obligations in keeping with the strengths and weaknesses identified at Rec 10, but it had not entered into force at the time of the ME onsite visit.

300. *Criterion 22.2* - section 22 of AMLA requires REs to retain transaction and CDD information for a period of five years. There are minor gaps with the record keeping requirements (see rec 11) and a scope gaps with missing DNFBP sectors.

301. *Criterion 22.3* - Section 20/1 of AMLA requires REs to issue AML customer acceptance and risk management policies with some exceptions. The MR CDD for DNFBP includes more comprehensive PEPs obligations in keeping with the strengths and weaknesses identified at Rec 12, but it had not entered into force at the time of the ME onsite visit.

302. *Criterion 22.4* - new technology requirements applicable for the covered DNFBPs in the MR CDD for DNFBP are as per the analysis of Rec 15, but had not entered into force at the time of the ME onsite visit.

303. *Criterion 22.5* - Reliance on third party for CDD requirements applicable for the covered DNFBPs in the MR CDD for DNFBP had not entered into force at the time of the ME onsite visit.

Weighting and conclusion

304. There are a number of gaps in relation to the scope of DNFBPs covered and the details of CDD and related requirements are included in the MR CDD for DNFBP which only entered into force after the time of the ME onsite visit. Given the major shortcomings, Thailand is rated non-compliant with Recommendation 22.

Recommendation 23 – DNFBPs: Other measures

305. In its 2007 MER Thailand was rated non-compliant with former Recommendation 12 due to a lack of STR obligations for DNFBP. DNFBPs were not required to develop programs against ML and TF and they were not required to give special attention to business relationships and transactions with countries that do not, or insufficiently apply, the FATF Recommendations as required by former R.21. Amendments to the AMLA covered some of these measures and increased coverage of DNFBPs, however accountants, lawyers, notaries, other independent legal professionals and trust and company service providers are not covered under AMLA.

306. *Criterion 23.1* - Section 16 of AMLA requires the covered DNFBPs to report suspicious transactions as per the analysis at Rec 20.

307. *Criterion 23.2* - Internal control requirements applicable for the covered DNFBPs in the MR CDD for DNFBP had not entered into force at the time of the ME onsite visit.

308. *Criterion 23.3* - Higher-risk countries requirements applicable for the covered DNFBPs in the MR CDD for DNFBP had not entered into force at the time of the ME onsite visit.

309. *Criterion 23.4* - Tipping-off and confidentiality requirements applicable for the covered DNFBPs in the MR CDD for DNFBP had not entered into force at the time of the ME onsite visit.

Weighting and conclusion

310. There are a number of gaps in relation to the scope of covered DNFBPs. STR reporting obligations apply to all covered DNFBPs but the other measures are included in the MR CDD for DNFBP which only entered into force after the time of the ME onsite visit. Given the moderate shortcomings, Thailand is rated partially-compliant with Recommendation 23.

Recommendation 24 – Transparency and beneficial ownership of legal persons

311. In its 2007 MER Thailand was rated partially compliant with former Recommendation 33 due to a number of deficiencies: legal persons were not required to report or hold beneficial ownership information and no mechanisms in place to identify the beneficial owner of bearer shares nor measures in place to ensure that bearer shares are not used for ML. The FATF standards have substantially changed since the last assessment.

312. DBD has issued a number of rules/notifications including “Rules of Office of the Company Limited and Partnership Registration about registration of partnership companies B.E. 2554 (2011)”, the “Notification of Office of the Central Company and Partnership Registration No. 205/2555 on partnerships and limited companies establishment in the case of foreign is authorized to sign the joint partnership and limited company on November 22, B.E. 2555 (2012)”, the “Notification on requiring additional entry in the register of shareholders and a copy of the list of limited company shareholders in September 30, B.E. 2557 (2014)”, the “Notification of Office of the

Central Company and Partnership Registration No. 38/2558 on the criteria and registered and amended documentation for partnership or limited company which aims to be lottery sale representative on February 20, B.E. 2558 (2015)", and the "Notification of Office of the Central Company and Partnership Registration No. 66/2558 on the criteria and registered and amended documentation for partnership or limited company on March 24, B.E. 2558 (2015)".

313. From a review of a summary for each Rule/Notification, it appears that they intend to strengthen the beneficial ownership disclosure requirements for legal persons in an effort to address the deficiencies identified by the 2007 MER. From a reading of the summary, it is unclear whether all legal persons are required to report and maintain the beneficial ownership information.

314. In particular, the "Notification of the Department of Business Development on the Specification of the Additional Entries in Register of the Shareholders and a Copy of the names of the Shareholders of the Limited Company, B.E. 2557 (2014) (the "2014 Notification") issued in 2014 by the DBD, appear to respond to the other deficiencies in relation to the bearer shareholders issue. The 2014 Notification, per the summary, obliges the companies that issued bearer shares to add to the bearer shares certificates the information on the owners or beneficiaries of such bearer shares, in an effort to identify the beneficial owner of bearer shares.

315. *Criterion 24.1* - The C & C Code provides the basis for creation of legal persons except for public limited companies which are governed by the Public Limited Companies Act. The types of legal persons able to be formed in Thailand and their legal basis are as follows:

- a. *For profit under the Civil and Commercial Code:*
 - Partnerships (both ordinary and limited partnerships), these are formed under the C&C Code;
 - Limited Companies (private companies) which are formed under the C & C Code;
- b. *For profit under the Public Limited Company Act:*
 - Public Limited Companies
 - Legal persons operating in Thailand under international law as set out in section 4 of the Foreign Business Act.
- c. *Not for profit*
 - Trade associations under the Trade Association Act;
 - Chamber of Commerce complying with the Chamber of Commerce Act

316. The DBD has a range of online resources that identify and describe the different types, forms and basic features of legal persons in Thailand and the processes for the creation of those legal persons, and for obtaining and recording of basic ownership information. This information is publicly available in both Thai and English.

317. *Criterion 24.2* - Thailand has included a limited assessment of risk posed by juristic persons in the 2012 NRA, however it is not apparent that Thailand has conducted a thorough and substantial assessment of the risks posed by juristic persons or what the bases for the findings were.

318. The 2012 findings of risks posed by juristic persons were contradictory and not well supported. In its 2012 NRA Thailand considers legal persons as having an inherent low-risk of ML. Thailand conclude that the higher scale of public companies and companies owned or controlled by non-residents, the presence of higher risk owner types of juristic persons and the perceived higher likelihood that juristic persons are identified frequently in ML typologies. Public companies,

international or foreign companies, those that have issued bearer shares or legal arrangements and NPOs established or controlled by non-residents are assessed as having a lower risk of ML.

319. *Criterion 24.3* - Once legal persons are registered pursuant to the C&C Code and the Public Limited Companies Act (1992), the required registration information will be sent to the Registrar and it is stored on DBD Business Data Warehouse which is available online. Limited companies, public limited companies and associations are obliged to provide information in accordance with the requirements in recommendation 24.3.

320. The Public Limited Companies Act requires basic ownership information be retained. For limited companies, only basic ownership details of the directors and shareholders are required. For partnerships, basic details of partners must be provided, and for public limited companies promoters must provide a list of names, descriptions and addresses of subscribers and directors. For associations, the names, addresses and occupations of at least ten would-be members of the association are to be attached to the application for registration.

321. The information required on registration of partnerships is in conformity with the requirements of 24.3.

322. *Criterion 24.4 - Limited companies:* Any interested person may obtain from the company its memorandum and registration (section 1116). Section 1138 of the C & C Code requires every limited company to keep a register of shareholders containing names, addresses and occupations of shareholders, a statement of their shares, distinguishing each share by its number and the amount paid or agreed to be considered as paid. This is required to be kept at the registered office of the company, which information is kept with the Registrar and the company must provide an updated list at least once a year to the registrar. This does not include a requirement to record the nature of the shareholders associated voting rights.

323. Section 1139 Paragraph 2 of the C&C Code requires that directors of legal persons send to the Registrar, at least once a year and “no later than on the fourteenth day after the ordinary meeting”, a copy of the list of all persons who are shareholders at the time of such meeting and of those who have ceased to be shareholders since the date of the last ordinary meeting.

324. Public limited companies: are required to keep a register of shareholders (section 61 PLC Act) which must at least contain the following particulars – names, nationalities and addresses of the shareholders, the types, value, reference number and number of shares; and the date on which each person was entered in the register as a shareholder or having ceased to be a shareholder. The PLC is obliged to keep this register along with supporting evidence at its principal business office or it may entrust any person to keep the register on their behalf as long as the Registrar is notified of the holder. A PLC must file with the Registrar a list of shareholders existing not the date of the annual ordinary meeting, within one month of the date of the meeting.

325. For foreign companies the 2014 Notification requires legal persons to provide to the Registrar the certificate(s) of owners or beneficial owners. As stated above, this Notification was not provided, and therefore, compliance with criterion cannot be fully assessed.

326. *Criterion 24.5* - Sections 1145 and 1146 of the C&C Code disallow companies to change certain registration information once the companies are registered. Section 1157 imposes the duty on a new company to be registered with the Registrar within fourteen days from a special resolution. Section 1228 mandates that a limited company must report to the Registrar within fourteen days where the company’s capital is increased or decreased due to the value or numbers of the company

shares by a special resolution. Section 1254 governs the dissolution of a partnership or company, requiring that such dissolution and the liquidator's information be registered with the Registrar within fourteen days after the dissolution. Section 1139 Paragraph 2 of the C&C Code requires the directors to send the Registrar a register of their shareholders at least once a year. As such, any change in the shares occurred between annual ordinary meetings cannot be reflected or maintained by the Registrar.

327. As stated above, the 2014 Notification appear to require legal persons to provide the Registrar with the owners or beneficial owners' certificate information. However, there is a lack of to ensure such information is accurate and current.

328. *Criterion 24.6* - Thailand does not require companies to maintain or register the beneficial ownership information as considered in 24.6(a) or (b). However, following 24.6(c) MR CDD for FIs requires FIs to conduct CDD on beneficial ownership of their customers (including customers who may be beneficially own or control a legal person) and to make such CDD information available to competent authorities on request. At the time of the onsite visit, such CDD obligations did not extend to DNFBPs³³ and there were certain gaps in the scope of CDD requirements on the covered FIs (see Rec 10). The PMO Notification on Customer Identification for FIs adds additional obligations for basic CDD, including for dealers in precious metals and stones and real estate agents and brokers, including for customers who are legal persons (at Article 4).

329. *Criterion 24.7*- The requirements on FIs to keep CDD information on customers beneficial ownership up to date has limitations, as the requirement to periodically update CDD may result in an FI waiting a number of years to update CDD in the absence of a risk event to trigger updating CDD, rather than updating CDD whenever beneficial ownership changes. At the time of the onsite visit CDD requirements did not extend to DNFBPs.

330. *Criterion 24.8* - Companies have obligations for resident directors. However, noting that legal persons are not required to maintain beneficial ownership information, they are not required to nominate a company representative to provide all basic information and available beneficial ownership information, and give further assistance to the authorities.

331. *Criterion 24.9* - Record keeping obligations in the AMLA apply to covered FIs and DNFBPs (see Rec 11). Additional record keeping requirements apply to the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company), including section 17 of the Accounting Act (2000) and Section 1271 of the C&C Code, which apply for at least five years. The scope of information subject to record keeping requirements has gaps as outlined above.

332. *Criterion 24.10* - There are wide powers to allow LEAs access to relevant information held by agencies, the Registrar, or any other relevant person. AMLO may access any information (using AMLA section 38) from the Registrar or from any person for the purpose of performing AMLA's duties under the act. This would apply to REs, the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company). The PACC may call for an official statement, document or the submission of evidence or any other document for the purpose of an investigation under the Executive Measures in the OAC. DSI may obtain any relevant information under section 24(3) of the Special Case Investigation Act which includes a statement or the production of documents. RTP may obtain such information via a court order under the CPC. The NACC may seek the production of documents or evidence in corruption inquiries which would

³³ The MR CDD for DNFBPs was issued in November 2016

include a request to a legal person directly for information or to the Registrar or any other person holding relevant information (s250AC).

333. *Criterion 24.11* - Bearer shares are permitted under the C&C Code in certain circumstances, however in September 2014 DBD issued a Notification obliging companies that issued bearer shares to add to the bearer shares certificates the information on the owners or beneficiaries of such bearer shares. This complements Section 1134 of the C&C Code which provides that “certificates to bearer may be issued only if authorized by the regulations of the company and for shares which are fully paid up. In such case the holder of a name certificate is entitled to receive certificate to bearer on surrendering the name certificate for cancellation.” Section 1134 also prescribes the penalties for unauthorized issuance of bearer shares. The issuing company will be fined up to 20,000 THB and the Board of the company or any one responsible for primary operation of the company will be fined up to 50,000 THB. Thailand does not undertake any of the methods outlined in 24.11 to mitigate the risk of bearer shares and the risks of bearer share warrants had not been effectively mitigated.

334. *Criterion 24.12* - Thai law does not allow designated nominees to act on behalf of a juristic person, however the practice is not explicitly prohibited. Despite the lack of an explicit prohibition for Thai nominees (Thai person holding shares for another Thai person), DBD pursues cases of nominees as matters of fraud. DBD has a verification mechanism as it requires submission of a copy of the Identification Card and such person must identify themselves and sign in the registrar’s presence or before the authorized notary such as Administrative Officer or High Ranking Police Officer or Members of the Thai Barrister or Certified Public Accountant. DBD has the power to revoke registration in cases of fraud, in accordance with Administrative Procedure Act (1996) and there are criminal liabilities under Section 137 and Section 267 of the Penal Code.

335. In the case of foreign companies with nominee arrangements, a juristic person or a partnership having foreign managing shareholder or manager is regarded as foreign juristic person or partnership under Section 4 of the Operation of Business for Foreigner Act (1999) and subject to additional controls.

336. *Criterion 24.13* - Sanctions available to competent authorities to enforce compliance with obligations on legal persons are generally not proportionate or dissuasive. Both legal and natural persons are subject to criminal penalties for failures. The “Act Determining Offences Relating to Partnerships, Companies, Associations and Foundations (1956), the “Public Limited Company Act and the Foreign Business Act (1999) and the “Accounting Act (2000) prescribes penalties for violations, but they are no longer proportionate or dissuasive. More comprehensive sanctions are available against FIs for failing to collect or make available CDD information on UBOs.

337. *Criterion 24.14* - Foreign competent authorities are able to access basic information directly from DBD. Online searches of DBD data are readily available in English and Thai languages. English version of the DBD database only provides basic information (e.g. registration number, company name and address), however the Thai language searches allows users to obtain the names of directors and financial statements. Powers available to the AMLO, NACC and SEC allow the exchange of information on shareholders and beneficial owners (where available), including CDD data obtained by REs. Those same competent authorities, plus RTP and DSI, are not prohibited from using their investigative powers to obtain beneficial ownership information if there is suspicion of a relevant criminal offence and have demonstrated their experience in applying such measures.

338. *Criterion 24.15* - AMLO monitors the quality of cooperation it receives in relation to requests for basic or beneficial ownership information from foreign counterparts.

Weighting and Conclusion

339. Thailand has conducted a risk assessment for juristic persons in the 2012 NRA, albeit to a limited extent. While there are suitable obligations for registration of basic ownership information for legal persons, in the case of private limited companies, this data is not kept up to date. Available sanctions are not well applied to ensure compliance with registration obligations. Beneficial ownership details are to be obtained by FIs when conducting CDD and can be obtained by authorities in those cases. CDD was not required to be done by DNFBPs at the time of the onsite, so information on customers who may be legal persons could not be obtained. Given the moderate shortcomings, Thailand is rated partially compliant with Recommendation 24.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

340. In its 2007 MER Thailand former Recommendation 34 was rated not applicable, as a domestic trust cannot be established in Thailand. The FATF standards have substantially changed since the last assessment.

341. Thai law prohibits the formation of express trusts or other types of legal arrangements with similar structures or functions to be formed or otherwise governed under Thai law. Thailand has a legal framework for statutory trusts and another for usufructs. Each of these are a form of investment trust or leasing contract and are not express trusts or legal arrangement with a similar structure or function.

342. Foreign trusts in Thailand need to be registered under domestic law. However, Thailand was not a signatory to The Hague Convention until April 1, 2016. The assessment team has not been provided any information regarding any registration made by foreign trusts after April 1, 2016.

343. *Criterion 25.1 (a) and (b) are not applicable.* Thai law does not provide for express trusts or other types of legal arrangements with similar structures or functions to be formed or otherwise governed.

344. 25.1(c) - Most FIs are subject to CDD obligations which extend to obtaining and maintaining details of parties to a foreign express trust, beneficiaries and those exercising effective control over the trust. There are no TCSPs in Thailand. Lawyers and accountants may otherwise act for foreign trustees however neither profession is covered by the CDD obligations. Requirements exist for basic CDD (including customers who are legal arrangements) under the PMO Notification on Customer Identification and this extends to all covered FIs and DNFBPs. Full CDD requirements extended to all covered FIs at the time of the onsite visit, but not to those covered DNFBP (real estate, jewellery/gold dealers). Only FIs are required to retain documents for 5 years from the date the account was closed or relationship terminated.

345. *Criterion 25.2 - In relation to the category of FIs who are subject to CDD requirements under the MR CDD (see R.10.7) the requirements on FIs to keep CDD information on customers beneficial ownership up to date has limitations, as the requirement to periodically update CDD may result in an FI waiting a number of years to update CDD in the absence of some risk event, rather than updating CDD whenever control arrangements changes (Art. 13 & 19(5) MR CDD).*

346. *Criterion 25.3 - There is no requirement for trustees of express trusts (i.e. foreign trusts) to disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out the occasional transaction above the threshold.*

347. *Criterion 25.4* - Trustees of foreign trusts are not prevented from providing competent authorities with information relating to the trust, or from providing FIs and DNFBPs, upon request, information on the beneficial ownership and the assets of the trust during CDD processes.

348. *Criterion 25.5* - AMLO has powers, under the AMLA, to ensure timely access to CDD and other information from REs. This extends to any trustee (professional or not) that may be a customer or conducting an occasional transaction with an RE or providing trust services for foreign trusts. At the time of the onsite visit there was a gap in the coverage of DNFBPs as lawyers, notaries, accountants, and TCSPs were not covered as DNFBPs. The depth of CDD obligations applying to covered DNFBPs was not sufficiently comprehensive.

349. *Criterion 25.6* - Thailand is able to provide international cooperation in relation to CDD information obtained by FIs relating to parties to trusts. This can be done as agency to agency or within MLA requests or under existing MOUs or other arrangements with foreign competent authorities, as described under R.37 and R.40.

350. *Criterion 25.7* - Sanctions under criterion 25.7 relate to the obligations contained at 25.3. There are no sanctions applicable in Thailand for trustees who do not declare they are trustee of a foreign trust.

351. *Criterion 25.8* - Sanctions contained at 25.8 relate to the obligation at 25.1(c). Section 38 of AMLA authorizes AMLO to request additional information from REs, government agencies and any concerned party, and to summon any person to give a statement or furnish written explanation or any account, documents or other evidence for examination or analysis.

352. Section 38 of AMLA authorises AMLO to request additional information from REs, government agencies and any concerned party and to summon any person to give a statement or furnish written explanation or any account, document or other evidence for examination or analysis.

Weighting and conclusion

353. Thai law does not recognise the formation or governance of express trusts or legal arrangements. As such, many aspects of R.25 are not applicable in the Thai context. The absence of measures to ensure that (foreign) trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction is given some weight as, it is clear that foreign trusts are a feature in the Thai economy and that DNFBPs are involved in forming and managing foreign trusts in Thailand. In that same context, the lack of powers to obtain information from certain DNFBPs is a gap. Given the moderate shortcomings, Thailand is rated partially compliant with Recommendation 25.

Recommendation 26 – Regulation and supervision of financial institutions

354. In the 2007 MER Thailand was rated partially compliant with the former Recommendation 23.

355. *Criterion 26.1* - AMLO is the competent authority and has been designated as the AML/CFT supervisory authority of AMLO since the amendment of AMLA in 2013 and the AMLA (NO.5) (2015). Sections 40(3/1) and (4) of AMLA prescribe that AMLO is the main state authority entrusted with AML/CFT regulation and supervision in Thailand to “examine, monitor and evaluate the implementation of this Act” in cooperation with the sector specific supervisors (i.e. BOT, SEC and OIC). There is a small scope gap in covered FIs (leasing, small cooperatives and pawn shops) (Section 3 AMLA, Art.3 MR CDD).

356. *Criterion 26.2* - FIs conducting all other financial activities covered in the standards for FIs are covered by registration/licensing requirements. The BOT licenses commercial banks, SEC securities sector intermediaries and the OIC licenses the life and non-life insurance sectors. The licensing function for commercial banking, SFIs, finance, credit foncier, money transfer, money changers, e-money card and credit card businesses is under the purview of both MOF and BOT. Businesses including personal loan companies, e-payment service providers and assets management companies are licensed by the BOT. Licenses for securities companies, fund management securities companies and special purpose juristic persons for securitization are granted by both MOF and SEC whereas derivatives trading business licenses are given by SEC only. Life and non-life insurance companies need to obtain a license from both MOF and OIC. Ministry of Agriculture and Cooperatives are the licensing authorities for all types of cooperatives. Leasing companies need to obtain a license from both DBD and MOC for operating their business.

357. The FIs act ensures that shell banks cannot be approved or continue to operate.

358. *Criterion 26.3* - Prudential regulators have legal and regulatory procedures in place to prevent criminals or their associates from holding a significant or controlling interest, or holding a management function in banks, securities, insurance. Controls on cooperatives have greater gaps.

359. FIs must not appoint directors, managers or persons with power of management who are engaged in the business of a financial institutions (i.e. commercial banking, finance, foncier companies,) if these parties have any prohibited characteristics which include bankruptcy, imprisonment for property related offences, dismissal, etc. as set out in Section 24 FIBA. Other than imprisonment for a property related offence, the characteristics do not include other criminal records; there are for example no procedures prescribed in FIBC or other regulation that a criminal check should be made by respective supervisors. BOT implemented a new procedure in 2017 (after onsite visit by assessment team) to require the applicants (i.e. directors, managers or persons with management authority) to self-declare criminal convictions which, BOT will verify against records kept by RTP. Prior approval from BOT should be sought for the new or re-appointment of these parties. However, these requirements do not extend to the major shareholders (holding or possessing 10% or more shares of the FI) of the FIs (Section 18 & 24 FIBC and BOT Annex 11 Approval Criteria). BOT submitted that such requirements have been extended to major shareholders since their "Notification No.SorNorSor. 58/2551 RE: Rules for Approval to Hold or Possess 10% or more of Shares of a FI" allows BOT to permit a person to hold or possess 10% or more shares of an FI and that person is approved on a case by case basis. However, it is unclear whether approval on a case by case basis includes the application of prohibited characteristics or self-declaration requirements.

360. For the securities sector, the fit and proper requirements for appointment of directors, managers, any person with power of management or and advisor are set out in the Securities Exchange Act BE 2535 (Section 103 of Securities and Exchange Act B.E. 2535). The disqualified characteristics of major shareholders are prescribed in the Clause 4 of the Notification of the Ministry of Finance Re: Prescription of Conditions for Securities Company to Apply for Approval of Person to be Major Shareholders (B.E. 2543). However, there is no regulation or notification prescribing the ongoing fit and proper check requirement for the directors, managers, persons with power of management or major shareholders.

361. *Criterion 26.4* - Responsibility for the regulation and prudential supervision of banks and securities companies rests with the BOT and SEC and are centred on the Basel and IOSCO core principles. Thailand reports that AML/CFT supervision with AMLO is coordinated with this approach. Thailand has made some progress towards core principles being subject to supervision

on a risk-sensitive basis, but ML/TF risks are not sufficiently taken into account when determining AML/CFT supervision. Consolidated group supervision is done for AML/CFT compliance.

362. All other financial institutions are subject to AML/CFT supervision with the exception of leasing companies, pawn shops and cooperatives with capital <2 million THB.

363. *Criterion 26.5* - ML/TF risks play a limited, though increasing role when determining the frequency and intensity of on-site and off-site AML/CFT supervision. AMLO has limited written documentation to support institution specific ML/TF risk assessments that could form the basis for a classification of reporting FIs and entities based on ML/TF risks.

364. AMLO's supervision plan was, up until late 2016, based on the relatively light-touch ML/TF risk assessment of each sector contained in the 2012 NRA. The NRA results allow AMLO to assess each sector of REs as either high, medium or low-risk (e.g. banking sectors, cash deposit business, financial service business, foreign exchange business, money transfer business and E-money business are high-risk, securities sector is medium-risk and the insurance sector, small FIs, pawnshops, trusts³⁴, commodity future trading brokers, construction business cooperatives and credit unions are low-risk). Pursuant to the plan all commercial banks are subject to annual examination whereas the frequency of the examination of other FIs varies according to their risk assessment result. The sectoral assessment was basic and relied on the limited information in the NRA report and the response to the questionnaires. It is not evident whether a more detailed and formal analysis has been undertaken. In the absence of a reliable formal risk assessment, including a risk assessment of reporting FIs and entities, Thailand does not appear to have a comprehensive basis to decide the frequency and intensity of on-site and off-site AML/CFT supervision.

365. *Criterion 26.6* - AMLO has only limited documentation and information to support institution specific ML/TF risk assessments, including the ML/TF risk profile of individual FIs. Thailand has done some individual assessments of FIs from particular sectors.

Weighting and conclusion

366. There are a number of gaps in relation to the depth of fit and proper controls over FIs. AMLO does not sufficiently base its AML/CFT supervision on ML/TF risk, although this is developing. There is a scope gap (leasing companies and smaller cooperatives) along with limited supervision of certain sectors (cooperatives) is a concern given the ML/TF risks posed by these sectors. Given the moderate shortcomings, Thailand is rated partially compliant with Recommendation 26.

Recommendation 27 – Powers of supervisors

367. In its 2007 MER Thailand was rated partially compliant with the former recommendation 29.

368. *Criterion 27.1* - AMLO is the main authority entrusted with the AML/CFT regulation and supervision in Thailand. The AMLO monitors and supervises AML/CFT for all RE sectors in cooperation with the sector specific supervisors. AMLO also acts as coordinator on policies and practices, financial intelligence exchange for both domestic and international level, including AML/CFT supervision and monitoring. Other sectoral supervisors (namely BOT, SEC and OIC) have continued to supervise the FIs and REs including in relation to some elements of CDD, risk

³⁴ There is a limited assessment on trusts and similar legal arrangements in the 2012 NRA

management and record keeping. Cooperatives with capital less than 2 million THB, pawn shops and leasing companies are not subject to AML/CFT supervision.

369. *Criterion 27.2* - AMLO's powers to perform on-site inspections of FIs are in the AMLA (section 40(3)/1 & 40(4)). BOT's on-site inspection powers are set out at Section 85 of FIBC. For securities companies, the power of inspection is contained in Section 264 of the SEC Act and Section 103 of Derivatives Act to examine operation, assets and liabilities and to inspect accounts of securities companies or institutions. OIC has power under s. 48 of the Life Insurance Act B.E. 2535(1992) to examine business activities and financial conditions of insurance companies. Electronic payment services are regulated by BOT and AMLA through section 4 of Royal Decree Regulating on Electronic Payment Services (2008).

370. *Criterion 27.3* - AMLA (s. 38) authorizes competent officials to enter places of business and summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration. Other FI supervisors namely BOT, SEC and OIC are authorized under the relevant Acts (s. 85(1) FIBA, Section 20 Royal Decree, Section 109 SEA, section 103 of the Derivative Act, section 48(3) & (4) Life Insurance Act) to empower their officials to require the employees of FIs, e-payment businesses, securities companies and brokers or insurance brokers to submit the required documents.

371. *Criterion 27.4* - The AML/CFT regulation of CDD REs are governed by AMLA which imposes criminal liability on reporting entities but the spectrum of sanctions is insufficient. The AMLA imposes (1) a fine (1 million THB and an additional daily fine of not exceeding 10,000 THB until rectification is made) on any persons; and (2) a fine not exceeding 500,000 THB on any reporting entities for their failures to comply with AMLA requirements; (3) imprisonment for not exceeding 2 years or a fine of 50,000 to 500,000 THB on any persons presenting a false statement; imprisonment for not exceeding 1 year or a fine of 20,000 THB or both on any persons who failed to provide statements, written explanation, accounts or documents under the Criminal Procedure Code (s.62, 63, 64 and 66 of the AMLA).

372. AMLO is entrusted with powers in the AMLA to impose disciplinary and financial sanctions for AML/CFT failures although these powers do not include the revocation of licenses or issuances of written warnings. Other supervisors (BOT, SEC & OIC) rely on general provisions set out in sectoral legislation; SEC and OIC have powers to revoke licenses from securities and insurance companies respectively. In particular, SEA entrusts SEC with powers to revoke the license if any securities company does any act or omits to do any act which is specified in the SEC notification, which prescribes the AML/CFT requirements relating to customer due diligence. BOT has power to issue written warnings, removal of FI directors and management, requiring FIs to rectify the conditions and/or to reduce or increase its capital. In the event of non-compliance with a BOT order, the BOT may order the closure of a regulated FI. BOT may also propose to the MOF to withdraw the FI's license in cases where the condition or operation of that FI may cause damage to public interest (s.83, 89, 90 FIBA, c.16 MR Concerning Granting of Approval for Undertaking Securities Business B.E. 2551, s.143 – 146 SEA, s.111 Derivatives Act, s.64 Life Insurance Act, s.59 Non-life Insurance Act). In practice, supervisors (i.e. SEC, BOT and AMLO) issued warning letters to and imposed fines on FIs to require them to take remedial actions. Among the supervisors, SEC has made a wider use of sanctions in the past five years (see table at para. 425).

Weighting and conclusion

373. The minor shortcomings include (i) a lack of proportionate and dissuasive sanctions against all FIs and (ii) the inspection power on some FIs. The minor scope gap in relation to covered FIs applies

to R.27. Powers of AMLO to apply sanctions do not extend to revocation of licenses or issuances of written warnings. Thailand is rated largely compliant with Recommendation 27.

Recommendation 28 – Regulation and supervision of DNFBPs

374. In the 2007 MER, Thailand was rated non-compliant with former recommendation 24. The main deficiencies related to the illegal operation of casinos throughout Thailand and lack of supervisory regimes for AML/CFT requirements on DNFBPs. The supervisory regime of three categories of DNFBPs, namely real estate agents, dealer in precious metals and dealer in precious stones has been enhanced. The AML/CFT regulation of those DNFBPs is governed by AMLA, however detailed regulations for preventive measures did not apply to DNFBPs at the time of the onsite. Both lawyers and accountants remain outside of the AML/CFT framework.

375. *Criterion 28.1* - Casinos are prohibited from operating in Thailand albeit there is evidence that many illegal casinos were operating in Thailand.

376. *Criterion 28.2* - AMLO is the AML/CFT supervisor for all covered DNFBPs in Thailand, namely estate agents and dealers in precious metals and dealers in diamonds and gold. All covered DNFBPs are required to report transactions exceeding certain threshold and STRs to AMLO. The provisions set out in section 20/1 of the AMLA are not clear which may lead to inconsistent application of measures by REs.

377. *Criterion 28.3* - AMLO is designated to monitor and enforce compliance with AML/CFT requirements.

378. *Criterion 28.4 - 28.4(a)* – AMLO has adequate powers to supervise for compliance (see R.27). Section 16/1, 40(3/1) & (4) provide adequate powers to AMLO to perform its monitoring functions.

379. *28.4(b)* - Lawyers are subject to licensing and oversight by a self-regulatory body. Under the Accounting Profession Act B.E. 2547 (2003) (APA 2003) accounting practitioners are required to register with and obtain a license from the Federation of Accounting Professions (FAP). However, it appears that neither APA 2003 nor the FAP has imposed any rule to require accounting professions to comply with AML/CFT requirements. For accountants registered with FAP, the FAP has prescribed mandatory ethical and professional standards for its members. FAP members are required to comply with a code of professional conduct. However, the FAP does not have any specific AML/CFT role and no specific AML/CFT provisions apply to auditors and accountants.

380. *28.4(c)* - The sanction regime is same as that of the FIs (see c.27.4); the major deficiencies are lack of proportionate and dissuasive sanctions and the cumbersome and resource intensive nature of the settlement process in lieu of a fine.

381. *Criterion 28.5* - AMLO supervision plan is based on sectoral ML/TF risk assessments conducted with the results from the NRA (2012 edition). The assessment for individual sectors was however very simplistic, i.e. relying on the limited information in the NRA report and the response to the questionnaires. AMLO have so far conducted examinations on seven gold traders and five real estate agents in 2016.

Weighting and conclusion

382. The absence of an AML/CFT regime for some DNFBPs is an important scope issue for R.28. In addition, supervision is not carried out on the basis of ML/TF risk, and sanctions are not

proportionate and dissuasive. Given the moderate shortcomings, Thailand is rated partially compliant with Recommendation 28.

Recommendation 29 - Financial intelligence units

383. In its 2007 MER Thailand was rated partly compliant with former R.26. The FATF standards on FIU were significantly strengthened in 2012. Thailand has made a number of amendments to the AMLA relevant to the FIU in regard to its role and responsibilities, administration and its level of independence from government.

384. *Criterion 29.1* - AMLO is the competent FIU authority under Section 40 of the AMLA. The Financial Intelligence Division of AMLO has been established under Part 4 of Ministerial Regulation Ordinance of the Anti-Money Laundering Office Concerning the Anti-Money Laundering Office's Administration, B.E. 2556 (2013) with responsibility for activities consistent with the requirements of Criterion 29.1.

385. *Criterion 29.2 (a)* - AMLO is the competent FIU authority under Section 40 (2) of the AMLA to receive STRs by REs. The Financial Intelligence Division of AMLO has been established under Ministerial Regulation Ordinance with responsibility for activities consistent with the requirements of Criterion 29.2.

386. The AMLA and Ministerial Regulations outline a wide range of other information and transaction reports reportable to AMLO, which are consistent with the requirements of 29 (2) (b) and include cash transactions, asset transactions and transactions involving moveable assets over 700,000 THB that involve the transfer or payment of money through electronic channels in cash.

387. *Criterion 29.3* - section 38 of AMLA authorizes AMLO to request additional information from the REs, and government agencies and any concerned party, and to summon any person to give a statement or furnish written explanation or any account, documents or other evidence for examination or analysis.

388. Furthermore, AMLO has direct and indirect (through MoUs with other government agencies) access to a wide range of information to enable AMLO to properly undertake its functions. In this regard the requirements of Criterion 29.3 (a) and (b) have been satisfied.

389. *Criterion 29.4* - the Financial Intelligence Division of AMLO has been established under Part 4 of Ministerial Regulation Ordinance of AMLO concerning AMLO's Administration with responsibility for both operational and strategic analysis consistent with the requirements of Criterion 29.4. The requirements to conduct strategic analysis include specific powers regarding analysis of both ML and TF trends.

390. *Criterion 29.5* - Section 40 (3) empowers AMLO to receive or disseminate reports or information for the execution of the AMLA or other laws or under an agreement made between domestic or foreign agencies. Though not explicitly stated, competent authorities may request information from AMLO that relate to ML, TF and associated predicate offences. MoUs between AMLO and other agencies are authorised under section 40 (3), which empowers AMLO to receive or disseminate reports or information for the execution of AMLA or other laws or under an agreement made with domestic or foreign agencies.

391. The Rule on Maintenance of Official Secrets B.E.2544 (2001) and the Official Information Act B.E.2540 (1997) apply to all government agencies including AMLO and specify how classified

information shall be disseminated outside the agency. This includes documents being packed in two tiers of opaque envelopes or containers. AMLO officials confirmed they adhere to these requirements.

392. *Criterion 29.6(a)* - Section 66 of AMLA confirms the requirement for confidentiality of information obtained in the course of a person's duties under the Act and confers a penalty of up to 5 years imprisonment for a breach of confidentiality. The Rule on Maintenance of Official Secrets B.E.2544 (2001) and the Official Information Act B.E.2540 (1997) apply to all government agencies including AMLO and includes clauses handling of classified information. In addition AMLO have detailed standard operating procedures in place that cover a wide range of FIU operations including procedures for handling, storage, dissemination, and protection of, and access to, information.

393. *Criterion 29.6(b)* - AMLO must recruit pursuant to the provisions of the Civil Service Regulations. All AMLO's incoming employees undergo background checks and a security clearance which includes criminal record checks and interviews to ensure that the appropriate security measures are in place to maintain the integrity of the AMLO's operations.

394. *Criterion 29.6 (c)* - The AMLO S-G is responsible for the retention and utilization of all information held by the AMLO (section 38 of AMLA). The AMLO receives over 95 percent of reports electronically with the remainder by fax or mail. The AMLO maintains a highly secure physical environment and has put into place all the physical security measures to protect against unlawful access or dissemination of information that they collect and store. Further, the AMLO utilizes advanced computer software to protect information held on databases from external hackers. The system in place also logs the activity of the AMLO employees who are using the corporate systems or accessing the databases where reports are stored. AMLO Ordinance on AMLO good governance 2002 clause-39 requires AMLO officials and competent authorities under AMLA to strictly act in accordance with relevant laws and strictly maintain confidentiality.

395. *Criterion 29.7 (a)* - There have been a number of changes to the Ministerial oversight of AMLO since the last ME. Section 40 of the AMLA states "there shall be an Anti-Money Laundering Office, called in short "AMLO", as an office not under the Prime Minister Office, Ministry, or Sub-Ministry, to function independently and neutrally...".

396. However, Section 41 of the AMLA states "there shall be a Secretary-General who is responsible for general supervision of official affairs of the Office, and shall be the supervisor of Government officials, government employees and contingent workers of the Office, directly answerable to the Prime Minister. Furthermore, the AMLB, though broadly represented and governed by detailed requirements as to its composition and appointment, appears to wield significant power over the Transaction Committee, the Office and the Secretary-General under Section 25 of the AMLA.

397. Together, the two paragraphs create some ambiguity regarding elements of the independence of the AMLO that would satisfy 29.7 (a). It is noted that there are severe penalties that the Prime Minister, a Minister or a person holding political positions could incur if they direct AMLO to take action to harm another without proper evidence and similar penalties for officers of AMLO that follow such direction. Section 11 of the AMLA set in place heavy penalties for malfeasance in office that apply to both public officials and politicians.

398. *Criterion 29.7(b)* - Section 40 (3) of the AMLA satisfies the requirement of 29.7 (b) and enables AMLO to make arrangements to engage independently with other domestic competent authorities and foreign counterparts on the exchange of information. 29.7 (c) - . Section 40 of the AMLA clearly

establishes AMLO as an independent agency not within the structure of another authority and Criterion 29.7 (c) is therefore not relevant.

399. *Criterion 29.7(d)* - In relation to criterion 29.7(d) 'the allocation of manpower framework from the Office of the Civil Service Commission (OCSC) has not been provided to the team. However, section 41 of AMLA stipulates that there shall be a Secretary General who is responsible for general supervision of official affairs of the Office and shall be the supervisor of government officials, government employees and contingent workers of the Office...' which would appear to satisfy compliance with this criterion. There is no overt evidence of any undue political, government or industry influence or interference, which might compromise its operational independence. The Financial Intelligence Division has 38 AMLO personnel and 3 additional support officers and a further 17 in the International Engagement Division as well as other personnel throughout AMLO to complement its FIU responsibilities.

400. *Criterion 29.8* - AMLO has been a member of Egmont Group since June 2001.

Weighting and conclusion

401. The only minor shortcomings relate to sufficient operational independence. Thailand is rated largely compliant for Recommendation 29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

402. In its 2007 MER Thailand was rated partly compliant with former recommendation 27, primarily due to a lack of effectiveness and related statistical evidence. Thailand has made amendments to the AML/CFT framework to strengthen laws, build capacity (expertise, resources and establish proper organizational structures) and enforcement of ML and FT laws and other preventative measures.

403. *Criterion 30.1* – LEAs have been designated with responsibility for ensuring that ML, associated predicate offences and TF offences are properly investigated are in place. The RTP is responsible for investigating predicate offences, ML and TF. Other LEAs such as RTC (customs offences), ONCB (narcotics offences), DSI (special cases) and NACC (corruption) also have the authority to conduct investigations in relation to various predicate offences and may refer asset seizure and confiscation investigations to AMLO. Only RTP and DSI undertake ML investigations, the other agencies do not. AMLO play a key role in relation to asset seizure and confiscation work. Whilst it is not a competent authority able to investigate ML or predicate offences, it assists the RTP to carry out investigations in relation to TF and also assists other LEAs in obtaining financial evidence to assist predicate investigations.

404. *Criterion 30.2* - RTP and DSI are the only competent officials able to investigate ML. As different divisions of the RTP investigate most predicate offences, they are also able to investigate the ML offence in parallel. LEAs other than the DSI or RTP (including the NACC) may refer the ML investigation to those two agencies by the filing of a criminal complaint. Based on its sources and information, AMLO are able to file a criminal complaint of ML with the RTP if they suspect ML behaviour. AMLO would continue to provide support for the investigation by obtaining further evidence if asked by the LEA.

405. *Criterion 30.3* - Chapter 6 of AMLA designates AMLO and provides relevant powers to trace and initiate asset restraint. Whilst AMLO are dedicated to asset restraint and forfeiture work, other agencies such as the NACC, ONCB, DSI, RTP and RTC have respective powers to seize and freeze

assets that may be suspected of being proceeds or instruments of crime. Those agencies mostly seize and forfeit assets for the purpose of criminal confiscation whereas AMLO's focus is civil forfeiture.

406. *Criterion 30.4* - All regulatory agencies have power to conduct financial investigation for crimes under their mandates including the SEC for market manipulation and insider trading matters. If there is potential ML or TF in relation to the offence, the case will be referred to AMLO or the RTP. This includes the Revenue Department, despite the fact that tax offences were not a predicate offence to ML at the time of the onsite visit³⁵.

407. *Criterion 30.5* - the NACC and the PACC are not competent authorities to investigate ML offences. Cases are divided between NACC and PACC based on the rank of the accused. In the event of potential ML activity the NACC would file a criminal complaint to the RTP or the DSI in relation to ML. However, the NACC has powers to identify, trace, and initiate freezing and seizing of assets and is authorized to use the powers of AMLB and the Transaction Committee, to proceed in the same manner under paragraph 4-5, Section 37/2 of the OAC.

Weighting and conclusion

408. Thailand is compliant for Recommendation 30.

Recommendation 31 - Powers of law enforcement and investigative authorities

409. In its 2007 MER Thailand was found largely compliant with the former recommendation 28. Competent authorities did not effectively use available powers to pursue criminal investigations of ML and TF. Thailand has made many amendments to the AML/CFT framework since the 2007 MER.

410. *Criterion 31.1 (a)* - Section 38(1) and (2) of the AMLA empowers the Secretary General, the Transaction Committee or a competent official entrusted with power to summons a FI, government agency, State organisation, state enterprise or any person to provide a statement or furnish written explanations or any account, document or evidence for examination. An administrative or police official has the power under the Criminal Procedure Code section 17 to conduct investigation in criminal cases which include a search for facts and evidence in accordance with his power and duty in order to preserve public order and to ascertain the particulars of an offence. This includes the power in section 132(3) to issue a summons to a person to produce a document. Power is given in narcotics matters to require any person concerned to give statements or explanations in writing or to submit any account, document or evidence for examination. This includes examination by the banks, the Securities Exchange and FIs. In corruption matters, the NACC may notify any agencies or FI to allow a member of an inquiry sub-committee to gain access to data relating to the alleged culprit (section 25/1 OAC).

411. *Criterion 31.1 (b)* - Section 38 of AMLA allows a member of the Transaction Committee, the Secretary-General or competent officials to enter a dwelling place or vehicle that is suspected to have evidence of an offence of ML or an asset connected with the commission of an offence of ML kept therein (for search of premises only and only related to ML). An inquiry official may examine the person of an injured person or the alleged offender, search for articles, the possession of which constitutes an offence or which may have been used in the offence or may constitute evidence (s132 Criminal Procedure Code). Further, they may summon to appear before them a person where there

³⁵ NB that tax offences were included as predicate offences as of 2 April 2017, which was outside of the timeframe for consideration in ratings in this report.

is reason to believe their testimony is useful to the case. For corruption matters, the NACC may enter any dwelling place for gathering evidence and inspecting assets under section 25(2) of the OAC. The DSI, under the Special Case Investigation Act, may enter and search a dwelling place and also search a person or vehicle (sections 24(1) and 24(2)). In matters regarding drugs, the ONCB may enter and search any dwelling place to conduct an investigation or seizure of asset relating to drugs offences (section 25(3) the Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics).

412. AMLO may only search premises when there is a suspected offence of ML. For predicate offences, the RTP may utilise powers of search of persons and premises under the Criminal Procedure Code (also available to DSI members), the ONCB may in narcotics matters enter and search a dwelling place.

413. *Criterion 31.1(c)* - AMLO authorised under section 38(2) to take witness statements. Other investigating agencies have powers to investigate and gather evidence in relation to predicate offences relevant to their functions, implicit in it is the power to take witness statements.

414. *Criterion 31.1(d)* - Section 132(4) of the Criminal Procedure Code allows all items obtained under searches to be detained. The ONCB may seize and attach evidence including financial records under section 25(1) and (2) of the Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics. AMLA and the NACC also have powers of seizing and obtaining evidence.

415. *Criterion 31.2 - 31.2(a) - Undercover operations* - section 27 of the SCIA and Section 46/1 of the AMLA, allow DSI and AMLO respectively to undertake undercover operations in relation to assets related to predicate offences, ML and TF investigations.

416. ONCB officials are able to undertake undercover operation by conducting a 'sting operation' under Drug Case Procedure Act 2007 section 7 having obtained the required written permission. A sting operation means any action the status or objectives of which are kept confidential and which is carried out in the manner deviating the understanding of another or concealing the truth about the performance of public duty of the authority. The evidence obtained by the authorities through their sting operations are admissible. RTPs power to conduct undercover investigations is not expressed. However, Thailand confirms that the power contained in the AMLA allows competent officials to disguise themselves in an investigation and RTP officials are able to be deemed a competent official under the AMLA by the Minister. RTP officials can also be designated as competent officials under the DSI Act by the Minister. Finally, the Transnational Organised Crime Act allows RTP officials to undertake undercover operations. A slight scope gap may arise if the RTP are investigating a case of smuggling of migrants which isn't covered by the AMLA but may come under the Transnational Organised Crime provisions.

417. *Criterion 31.2(b) - Intercepting communications*. AMLO, ONCB and DSI have a legal facility to gain access to communications information. However, it is not clear whether this includes live wire taps and surveillance or whether it is limited to post facto collection. DSI has a power under the Special Case Investigation Act section 25 via an ex parte application to the court. ONCB competent officers authorised by the ONCB Secretary General may intercept communication via internet and telephone on conditions under section 14 of the NCA. The RTP have the power to require traffic data from service providers under the Cyber Crime Act 2007 (as amended in January 2016). RTP officers may be deemed a competent official under the AMLA and employ the powers of AMLO officials in an investigation and likewise under the Special Case Investigation Act.

418. *Criterion 31.2(c) - Accessing computer systems* - AMLO may intercept computer systems with an order of the court under section 46 of AMLA. ONCB has power to apply to the court to obtain information from computers. DSI may apply to the court for an order to access computer systems under s25 SCIA. The RTP has an expressed power to access computer systems under the Transnational Organised Crime Act. The Cyber Crime Act of 2007, amended in January 2016, allows competent officials (RTP) under that Act to access computer systems. The power may be used for offences under that Act or other criminal offences where computer systems are employed as part of the offending.

419. *Criterion 31.2(d) - Controlled delivery*. Sections 6 and 8 of the Narcotics Procedure Act B.E. 2550 (2007) enable the ONCB, DSI, RTP and RTC to undertake controlled deliveries. The Transnational Organised Crime Act also allows the RTP to conduct controlled delivery for all crimes of a transnational nature.

420. *Criterion 31.3* - AMLO is authorized under the Section 38 of the AMLA to compel the production of necessary information for the investigation and to gather evidence related to the asset connected with the commission of offences, ML and TF offence, including information of ordinary person and legal entities. Section 14 of the Narcotics Control Act empowers the ONCB to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration. NACC has a power under Section 25/1 of the OAC to request information from financial institutions in the interests of countering corruption.

421. - *Criterion 31.3 (b)* - NACC has the power to examine the assets of suspicious persons without notification to the asset owner. AMLO has the power to seek information from land and vehicle registries.

422. *Criterion 31.4* - Section 40 (3) empowers AMLO to receive or disseminate reports or information for the execution of the AMLA or other laws or under an agreement made between domestic or foreign agencies. Whilst there is not an explicit statement that authorities can request information from AMLO, in practice there is no bar to the request. The CPC further allows the RTP to apply to the court for information however in practice this is not required as generally a request under AMLO will suffice. Numerous cases have demonstrated an open exchange of information between AMLO and LEAs.

Weighting and conclusion

423. There are minor shortcomings the RTPs powers to go undercover or intercept communications are reliant on designation as a competent officer under other legislation. This may restrict their powers in relation to some investigations that are not covered by that legislation. Thailand is rated largely compliant with Recommendation 31.

Recommendation 32 – Cash Couriers

424. In its 2007 MER Thailand was rated non-compliant with former Special Recommendation IX.

425. The legislative framework governing cross-border movement of currency involves a combination of currency exchange legislation, ministerial regulation and the Customs Act: with different requirements for Thai currency, foreign currency and varying obligations depending on the national border concerned. The link between the currency legislation and the Customs act is found in Section 8 bis of Exchange Control Act B.E. 2485, which in effect provides that for the purposes of

prevention and suppression of unauthorized exportation and importation of currency and foreign currency, it shall be deemed that currency, foreign currency, foreign bank notes, and Thai or foreign securities are articles under the Customs laws. Further, enforceability is achieved in circumstances where a failure to comply with the Ministerial Regulations, Notifications and Directions issued under the Currency Exchange Control Act B.E. 2485 will be considered exportation or importation of restricted articles, which is unlawful under the Customs laws. The threshold for foreign currency is equivalent to USD50,000 and it does not apply to bearer negotiable instruments³⁶. Furthermore, there are no declaration or disclosure requirements at all on the importation of Thai currency into Thailand from anywhere. Since the onsite, amendments have been implemented which now require the declaration of Thai currency and BNI being bought into Thailand. Relevant legislation that link to the Customs Act include:

- Exchange Control Act B.E. 2485
- Ministerial Regulation No.13 B.E. 2497
- Ministry of Finance Notification on Currency Exchange Control
- Ministry of Finance Notification on Restriction on Importation and Exportation of Foreign Currency
- Notification of Currency Exchange Control Officer: Currency Declaration (Departure)

426. *Criterion 32.1* - Ministry of Finance notifications issued under the Money Exchange Control Act (1942) set a threshold of USD20,000 or equivalent. Any person physically carrying foreign currencies either in bank notes or coins over that amount into Thailand is required to declare in the form specified by the Minister of Finance to a customs officer.

427. For Thai Currency there are no requirements to declare or disclose currency imported into Thailand. Approval is required from the BOT to export 50,000 THB or more to countries other than, Lao PDR, Cambodia, Myanmar, Malaysia, Vietnam and People's Republic of China (only Yunnan province). A declaration must be made to Customs where 450,000- 2 million THB is exported to Lao PDR, Cambodia, Myanmar, Malaysia, Vietnam and People's Republic of China (only Yunnan province). Approval must be given by the BOT to export 2 million THB or more to Lao PDR, Cambodia, Myanmar, Malaysia, Vietnam and People's Republic of China (only Yunnan province).

428. The provisions do not cover BNIs and exceed the threshold specified in the recommendation. There is also a question as to whether any of the obligations to declare cash apply to cross-border mail and cargo channels.³⁷

429. *Criterion 32.2* - In the limited circumstances outlined in 32.1, there is a requirement to declare foreign currencies coming in or going out of Thailand. For foreign currency exceeding USD20,000 or equivalent being imported or exported, a truthful declaration in writing shall be made. In relation to the exportation of Thai currency to the Yunnan province of the People's Republic of China, or the CMLV jurisdictions in excess of THB2 million, permission must be obtained from the BOT. In case of cash exceeding THB450,000 in those circumstances, written declarations must be made to Customs Officers.

³⁶ BNI reporting obligations were included as of December 2016, which was outside of the timeframe for consideration in ratings in this report.

³⁷ Via MOF Notification re: Exchange Control on 25 February 2017, Thailand amended their cross-border requirements to include the requirement to declare money bought out of the Kingdom or sent in currency or BNI over the value of THB450,000(USD12,857) or foreign currency over the value of USD15,000 or equivalent.

430. *Criterion 32.3*– Thailand utilises a declaration system.

431. *Criterion 32.4* - Section 114 of the Customs Act states that any competent official may demand the production of any invoice, manifest, bill of lading, receipt book, record, or other documents in relation to any goods passing or passed through the Customs, for the purpose of inspecting or verifying against any shipment entry, certificate, statement, or particulars submitted to the Customs Department and if the production is refused, such person who has wilfully refused to comply with the demand of the competent official shall be liable to a fine not exceeding one hundred thousand THB.

432. *Criterion 32.5* - Section 8 bis of Exchange Control Act B.E. 2485 deems that currency, foreign currency, foreign bank notes, and Thai or foreign securities are articles under the Customs laws. Where no permit has been obtained or no declaration made, as the case may be, an offence will have been committed. Section 27 of the Customs Act (1926) stipulates a fine equivalent to four times the value of the currency will be applied, and allows for an imprisonment penalty not exceeding 10 years.

433. In addition, if a declaration has not been made, money can be seized and held. If it can be proved that the currency comes from a legitimate source a fine (THB20,000, ie approx. USD570) will be issued for not declaring that money. The rest of the money would then be returned. If the legitimacy of the currency cannot be determined Customs will refer the case to the police for further action. However, as stated above, there limitations in what has to be disclosed to authorities. As discussed at IO8, the sanctions for false declarations or disclosures are not adequately dissuasive particularly in light of the risk and context of Thailand.

434. *Criterion 32.6* - Section 15/1 of the AMLA stipulates that when a Customs official receives a declaration relating to transportation of currency, whether Thai or foreign, under the law on exchange control, into or out of the Kingdom, with total value up to or above the threshold prescribed by the Board, such Customs official shall compile and deliver the declaration to the Office. The threshold of currency should not be below the value the transporter is required to declare under the law on exchange control.

435. The Electronic Cross-border Cash Transaction Reporting System (ECB) was established by AMLO to receive cross-border currency declaration reports from the Customs relating to the importation/exportation of foreign currency under the Notification and Regulation of the Ministry of Finance. The AMLO investigators are authorized to access through ECB for the analysis of the information and disseminate to relevant authorities, i.e. AMLO litigation divisions, the ONBC, the Royal Thai Police or the Customs.

436. RTC stores declaration forms for analysis and reporting. RTC has also set up the “Declaration of Foreign Currency System” to store the information electronically which facilitates the retrieving of past information and direct linkages with the AMLO for its further analysis.

437. RTC utilises electronic reporting to share declaration with the AMLO. Foreign currency declarations collected at Customs checkpoints are captured in the Electronic Reporting System under the Customs Procedure Code (2013). This system is directly linked to the AMLO via the Electronic Cross-border Cash Transaction Reporting System (ECB). Declaration data is shared with the AMLO within the day on which the declaration is made.

438. RTC gathers and keeps the currency declaration form for no less than five years. The Investigation and Suppression Bureau submits currency declaration reports to the Ministry of

Finance. The Investigation and Suppression Bureau is responsible for investigating and charging currency declaration offences and is required to make quarterly reports to the Ministry of Finance.

439. *Criterion 32.7* - RTC and LEAs participated in developing the AML/CFT National Strategy and NRA. At an operational level, there is co-ordination among related LEAs, under Prime Minister Office Ordinance on the Coordination in compliance with the AMLA 1999, 2001, including, RTC and the Immigration Bureau.

440. Moreover, the Notification of the Prime Minister Office no.0805/18010, dated 1 April (2005) issued by the National Security Council (NSC), prescribing the Exchange Control on Large Amount of Currency Transportation requires the Customs to inform the AMLO, the ONCB and the NSC about the case relating to large amount of money.

441. AMLO has obtained reports on persons avoiding declaration regulation or cross-border transportation of currency from RTC and RTP. This information is analysed and disseminated back to relevant authorities, e.g. the RTP for further investigation. AMLO signed MOU with the Immigration Bureau to enhance cooperation regarding travel information.

442. RTC issued an internal regulation requiring the Customs officers to make a record on the detail of currency that has been declared, detail of the currency declaration and the arrest record, which allows relevant agencies to gain access to all necessary information: (1) statistic report, including the detail on the arrest in form of document to AMLO and the ONCB for further action as soon as there is an arrest and (2) quarterly statistic report, including the detail on the arrest in form of document to Ministry of Finance.

443. *Criterion 32.8* - Section 24 of the Customs act allows the seizure of any article liable to forfeiture under the Act. Section 27 of the Customs Act provides for the forfeiture of goods which include restricted Goods. Currency has been deemed a restricted good for the purposes of the Customs Act (per the Exchange Control Act). Consequently, customs officers can seize currency sought to be imported or exported that has not been declared to authorities. This does not apply to BNI. Customs officers may also seize any item on the basis of suspicion of terrorism under section 58/1 (goods that are in connection with or used for terrorism). The general power to seize currency or BNI on suspicion of ML or predicates is not provided for in the Customs Act.

444. *Criterion 32.9* - While there are weaknesses with the scope of declaration obligations, the systems in place for retaining captured information support future international cooperation.

445. *Criterion 32.10* - The rule on Maintenance of Official Secrets B.E.2544 (2001) applies information collected through the declaration system in place in Thailand and puts in place controls to ensure proper use of the information. The declaration system does not appear to restrict freedom of capital movement.

446. *Criterion 32.11* - See analysis and question for criterion 32.5. In addition to that, section 8 bis of the Exchange Control Act stipulates that currency, foreign currency, foreign bank notes, and Thai or foreign securities are articles under the Customs laws. Any exportation or importation of currency, foreign currency, foreign bank notes or Thai or foreign securities that violates or fails to comply with the Ministerial Regulations, Notifications and Directions issued under this Act including any attempt to conduct such activity, or any assistance or involvement in such activity shall, regardless of means, be considered exportation or importation of restricted articles which is unlawful under the Customs laws as well. If a customs officer suspects that a person is importing or exporting currency exceeding the limit allowed by law without declaration or permission is charged as an offender under section

27 of the Customs Act and fined four times the amount of the goods or imprisonment for a term not exceeding 10 years, or both.

447. Any suspicion of false declaration or disclosures to the authorities can also lead to charges under section 27 and 99 of the Customs Act.

Weighting and Conclusion

448. At the time of the onsite there were moderate shortcomings including 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 is no requirement to declare Thai currency coming in to Thailand. Most of these gaps were rectified after the onsite. There are gaps with powers to stop and restrain currency on the basis of suspicion of ML or predicate offences. Thailand is rated partially compliant for Recommendation 32.

Recommendation 33 - Statistics

449. In its 2007 MER, Thailand was rated partially compliant with former Recommendation 32. The assessment team found that other than STR related statistics maintained by AMLO, there is a lack of comprehensive national statistics on AMLC/CFT.

450. *Criterion 33.1* - Thailand maintains a comprehensive statistics on STRs received; ML/TF investigations, prosecutions and convictions; and mutual legal assistance or other international requests for cooperation made and received. There are some gaps in the way statistics are kept on property frozen, seized and confiscated; and TF charges and prosecutions under section 135/2 of the penal code.

451. *Criterion 33.1(a)* - Thailand maintains statistics regarding STRS and has provided statistics dating back to 2011. Those statistics include STRs received and disseminated to different agencies.

452. *Criterion 33.1(b)* - Thailand maintains comprehensive statistics on ML cases including information on petitions filed to RTP for ML cases, investigations, prosecutions and convictions. While Thailand maintains comprehensive statistics for investigations of the standalone TF offence, comprehensive statistics were not well maintained for investigations of TF-elements of the Penal Code offence.

453. *Criterion 33. (c)* - AMLO maintains comprehensive statistics on asset freezing, seizing and confiscation. While RTP, DSI, ONCB, RTC and NACC keep statistics relating to property restraint and forfeiture, there are some gaps in the comprehensive maintenance of such statistics.

454. *Criterion 33.1(d)* - Thailand maintains comprehensive statistics in relation to MLA and extradition. Statistics are broken down into agencies and the informal requests they received and responded to. AMLO was able to provide comprehensive statistics of agency to agency international cooperation, but this is not so comprehensively maintained by all LEAs.

Weighting and Conclusion

455. Thailand maintains good statistics, although there are minor shortcomings in relation to the maintenance of comprehensive statistics for provisional measures, confiscation and agency to agency international cooperation by LEAs. Thailand is rated largely compliant with Recommendation 33.

Recommendation 34 – Guidance and feedback

456. In its 2007 MER Thailand was rated partially compliant with former recommendation 25.

457. *Criterion 34.1* - AMLO has the authority to issue guidelines on compliance with AMLA by REs. AMLO has issued (a) Guidelines on Compliance with AMLA on Transaction Reporting and Customer Identification addressed to 20 sectoral REs;³⁸ (b) Guidelines on Conducting Customer Due Diligence;³⁹ and (c) Guidelines for the REs to Undertake Actions to Prevent FT in accordance with the CFT Act.⁴⁰ AMLO devised two types of feedback on STRs received. It's Supervision and Examination Section is responsible for providing quantitative feedback to REs to ensure the completeness of transaction reports. Its Financial Intelligence Analysis Section is responsible for giving qualitative feedback to REs. AMLO conducts a monthly analysis of STRs received to identify circumstances that should be monitored and the patterns of crime that are prevalent on a specific period. The findings are disseminated to FIs, REs, and relevant agencies. AMLO crafted Domestic Feedback and International Feedback forms.⁴¹ Supervisory agencies, such as BOT, SEC, OIC, Cooperative Promotion Department, issued their own guidelines on AML/CFT in line with AMLO's guidelines.

458. AMLO has also issued various guidelines in relation to elements of CDD and related preventive measures, implementation of TFS and other key AML/CFT obligations. During the course of 2016, AMLO issued guidance in relation to risks from possible PF and preparing for the implementation of related TFS. There is however a need for greater guidance in relation to risk and for the new TFS obligations relating to PF.

Weighting and Conclusion

459. AMLO has issued some guidelines on compliance however there are minor shortcomings with a need for further guidance in relation to risk, and the new TFS obligations under the new CTPFA. Thailand is rated largely compliant with Recommendation 34.

Recommendation 35 – Sanctions

460. In the 2007 MER, Thailand was rated partially compliant with former Recommendation 17 due to a lack of application of sanctions for preventive measures.

461. *Criterion 35.1* - Section 6 of the CFT Act provide the relevant penalties including for persons in possession of assets belonging to a designated person (imprisonment not exceeding 3 years or a fine not exceeding 300,000 THB (USD8,571) or both). REs are subject to a fine not exceeding 1,000,000 THB as well as a daily fine of 10,000 THB until rectification is made. Failure of a RE to comply with section 6(3), (to inform AMLO of a customer or former customer who is listed as a designated person or has conducted transaction with such a person) renders them liable to a fine not exceeding 500,000 THB and a daily fine of 5,000 THB until rectification is made.

462. Per the findings of R.8, sanctions for breach of requirements by NPOs are not proportionate or dissuasive.

³⁸ Annex AMLO 41.

³⁹ Annex AMLO 42.

⁴⁰ Annex AMLO 48.

⁴¹ Annexes AMLO 45 & 46.

463. *Preventive measures* – Sanctions for FIs and DNFBPs who breach requirements of the AMLA are provided for in sections 61 – 66 of the AMLA. The small gap with coverage of FIs and lawyers and accountants is relevant. At the time of the onsite visit DNFBPs were not subject to comprehensive CDD obligations.

464. The bulk of sanctions are provided for in section 62 of AMLA which covers the AMLA preventative measures including those requirements contained in the MR CDD and Notifications issued pursuant to it. The penalty for breach is a fine not exceeding THB1 million (approx. USD29,000) and an additional amount not exceeding THB10,000 (USD285) for each day until rectification is made. The enforceable means setting out sanctions for breaches gain their enforceability from either the AMLA or the MR CDD. The sanctions contained in section 62 of AMLA outlined above cover provisions in the AMLA that reflect the requirements in R.10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22 and 23. The reliance on a ‘settling’ mechanism to implement criminal sanctions via an agreed process involves significant resources and creates delays, which may render this quasi-administrative application of fines ineffective.

465. The Exchange Control Act prescribes penalties for a failure to comply with R.14, along with the Electronic Transaction Act BE2544. It is noted in R.14 that sanctions are not proportionate or dissuasive for breaches of MVTs requirements.

466. Section 63- 65 of the AMLA set out proportionate and dissuasive sanctions for failing to report STRs or CTRs, failing to follow a freezing or production order, concealing or destroying records.

467. *Criterion 35.2* - Section 61 of the AMLA provides that any juristic person who commits offences under Section 5, Section 7, Section 8 or Section 9 shall be liable to a fine of two hundred thousand THB to one million THB. Director, manager or person responsible for the conduct of business of the juristic person who commits an offence is subject to a one to ten year imprisonment term or a fine of THB20,000 to THB200,000 (approx. USD571 – 5174) or both, unless they can prove non-involvement in the commission of the offence. Section 14 of the CFT Act provides that reporting entity which fails to comply with Section 6 (1) or (2) shall be liable to a fine not exceeding one million THB as well as a daily fine of ten thousand THB until rectification is made. Where failure under paragraph one or paragraph two has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person responsible for the operations of the legal person, such person shall be liable to a term of imprisonment not exceeding three years or a fine not exceeding three hundred thousand THB or both.

Weighting and Conclusion

468. Whilst sanctions are present and the requirements of R.6 and 8-23 are present in enforceable means, sanctions are not proportionate or dissuasive. At the time of the onsite visit there were significant scope gaps with coverage of DNFBPs and a small gap with categories of FIs. The settling mechanism used to overcome a lack of administrative fines is resource intensive and creates long delays and may render sanctions ineffective. Thailand is rated partially compliant with Recommendation 35.

Recommendation 36 – International instruments

469. In its 2007 MER Thailand was rated partially compliant with former recommendation 35.

470. *Criterion 36.1* - Thailand has ratified the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption, and the Terrorist Financing Convention.

471. *Criterion 36.2 - Implementation of CFT Convention:* The Terrorist Financing Convention has been implemented via the previous Terrorism Financing Act, more recently the CTPF Act. Thailand's implementation of the terrorism financing offence is further discussed at R.5.

472. *Implementation of Palermo Convention:* Thailand implemented the Anti-Participation in Transnational Organised Crime Act (APTOC) to comply with their treaty obligations under the Palermo Convention. Whilst Thailand has largely implemented the Palermo Convention, some gaps in implementation remain. For example, there is a gap in certain designated predicate offences⁴². However, Thailand considers they are able to provide international cooperation on the basis of those missing offences, for example for a tax related ML offence, authorities would consider this a domestic fraud offence. Thailand provided a case example when they have applied this consideration. Subsequent to the onsite, Thailand deemed tax offences a predicate offence to ML. At the time of the onsite, there was no requirement to declare BNIs cross-border⁴³.

473. *Implementation of Merida Convention (UNCAC):* In order to comply with the UNCAC (Merida Convention), Thailand enacted the Organic Act on Counter Corruption in 2015. In relation to the domestic bribery and corruption offences, Thailand relies on the Penal Code and the Organic Act on Corruption. The amendments to the Organic Act in 2015 included bribery of foreign public officials. The corresponding provisions in the Organic Act on Counter Corruption are sections 123/1 and 123/5. In terms of domestic bribery and corruption, section 149 of the Penal Code is the bribery offence and requires evidence of the accused receiving a benefit. Section 157 is a broad misconduct in office offence which doesn't require proof of the accused benefitting from the offence. In relation to the ML requirements of the Merida Convention, the shortfalls at Recommendation 3 are noted, particularly in relation to the absence of some key predicate offences. At the time of the onsite Thailand had also not enacted provisions addressing Article 14 of the Merida Convention (implementation of cross-border declarations of substantial quantities of cash and BNI). Some gaps identified at R.16 above in relation to wire transfers are also noted as shortfalls in implementation of the Merida Convention.

Weighting and conclusion

474. There are minor shortcomings with the absence of a requirement of cross-border declaration of BNI and Thai currency and gaps in the coverage of predicate offences. Thailand is largely compliant with Recommendation 36.

Recommendation 37 - Mutual legal assistance

475. In its 2007 MER Thailand was rated partially compliant with both former recommendation 36 and special recommendation V.

476. The Act on Mutual Assistance in Criminal Matters Act (MACM) provides a legal basis for mutual legal assistance in Thailand. The provision of legal assistance extends to requesting countries which have no international treaties with Thailand on the principle of reciprocity. Thailand amended the MACM in 2016 to allow for asset sharing which was previously a gap in their legal framework. However, asset sharing is only allowed when Thailand has specific asset sharing agreements with

⁴² Tax offences were deemed a predicate offence to ML after the onsite.

⁴³ NB that BNI reporting obligations were included as of December 2016, which was outside of the timeframe for consideration in ratings in this report.

other jurisdictions, and none have yet been agreed. Given Thailand's requirement for dual criminality, the gaps in the coverage of predicate offences identified in R. may impede Thailand's ability to provide assistance on such matters. Thailand can otherwise provide a wide range of assistance in relation to ML, TF and related proceedings.

477. *Criterion 37.2* - The Office of Attorney General (OAG) is legislated to act as the central authority (section 6). Jurisdictions that have a treaty or agreement with Thailand may seek assistance directly through the OAG. Jurisdictions that don't have a treaty with Thailand are required to use the diplomatic channels, once accepted through the diplomatic channels, a request will then be handled by the OAG. The OAG has a case management system to keep track of the requests and has processes in place to manage and monitor incoming and outgoing requests.

478. *Criterion 37.3* - Thailand has placed some conditions on the provision of MLA, none of which are unduly restrictive or unreasonable. These are contained at section 9 of the MACM Act.

479. *Criterion 37.4* - Section 9 of the MACM Act clearly states four particular considerations for MLA, among these four considerations, assistance may only be refused under the principle of dual criminality, national sovereignty concerns or if the request relates to a military offence. Thailand has clear laws enabling authorities to access records of FIs and DNFBPs, which also apply to MLA requests.

480. *Criterion 37.5* - Section 39(2) of the MACM requires requesting agencies to comply with Thailand's commitment towards the confidentiality of information. Thailand advises that where treaties are in place, they contain confidentiality clauses. The leaking of confidential information by Thai government employees is criminalised under Thai laws.

481. *Criterion 37.6* - Section 9 of the MACM Act explicitly requires dual criminality when considering a MLA request except where there is a mutual assistance treaty between states that otherwise specifies. This requirement applies whether or not a coercive action is involved or requested.

482. *Criterion 37.7* - Thailand adopts an open approach to providing mutual assistance. Whilst a clear requirement for dual criminality is present in the legislation, authorities advise that in practice they consider the elements of the offence rather than the title or category of the offence. Thailand advises they have never refused a request for assistance on the basis of dual criminality. Case samples confirmed Thai authorities practice of considering the underlying conduct of the offence when considering whether to grant assistance.

483. *Criterion 37.8* - The MACM Act grants wide possibility for investigative powers to be used while conducting mutual legal assistance. Section 12 provides that the central authority shall transmit requests for assistance from a foreign state to the relevant competent authorities including the RTP, OAG, Corrections department. The respective powers of those agencies then apply to the provision of assistance. The powers of these agencies are further discussed under R31.

Weighting and conclusion

484. The gaps with respect to predicate offences (tax, people smuggling and trafficking in stolen goods) are given particular weight. The only other technical gap is Thailand's inability to provide non-coercive assistance in the absence of dual criminality which is of less significance. Given the minor shortcomings, Thailand is largely compliant with Recommendation 37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

485. *Criterion 38.1* - Thailand may apply to the Thai court for an order forfeiting or seizing property the subject of a request for mutual legal assistance. Property may only be forfeited if there is a final forfeiture judgment in a foreign court or by a foreign competent authority and the property is forfeitable under Thai laws. It should be noted that conviction based forfeiture (Penal Code) is available for tax offences and elements of people smuggling and smuggling stolen goods. If a final forfeiture order is not available, the Thai court may make an order seizing the property only if it is able to be seized under Thai laws. Property the subject of a request may be seized in Thailand if it is able to be seized under Thai laws and Thailand's regime of asset seizure is discussed at R.4. The amended MACM Act now allows the central authority to forward a foreign request to the authority or competent officer under another law for action. This means AMLO and other LEAs may also execute foreign requests for assistance using powers under their respective legislation. Recommendation 4 noted that the powers of Thai LEAs to freeze seize and confiscate are largely compliant with the FATF recommendations.

486. *Criterion 38.2* - As Thailand provides assistance in circumstances where the property is forfeitable under Thai laws, then it would be able to give effect to non-conviction based confiscation orders, as long as it is a final confiscation order of the requesting jurisdictions court. In the event of flight or death of a perpetrator the request would be provided to AMLO to apply the civil confiscation provisions under the AMLA. The identity of the perpetrator is not required in order for AMLO to take action against property.

487. *Criterion 38.3* - The AGO coordinates all seizure and confiscation actions with other countries and authorities have developed close working relationships with other jurisdictions particularly when dealing with complex matters. This was evidenced in many cases submitted to the team. As stated in R.4, Thailand has significant strengths in their management of seized and forfeited assets. With amendments to the MACM Act, competent authorities are able to rely on their own legislative powers to manage assets seized or forfeited on behalf of foreign authorities.

488. *Criterion 38.4* - Amendments to the MACM Act in April 2016 addressed the identified gap to enable Thai authorities to share proceeds of crime confiscated on request from other jurisdictions. However, the legislation indicates that the ability to share assets is premised on a 'mutual legal treaty' between Thailand and the requesting state. At present there are no such treaties in place and authorities advised that current MLA treaties will not satisfy the amended legislation. Thai authorities insist that this does not require a formal treaty, but rather a case by case agreement (MoU or some such document of agreement).

Weighting and conclusion

489. Thailand is compliant with Recommendation 38.

Recommendation 39 – Extradition

490. In its 2007 MER Thailand was rated partially compliant with former recommendations 39 and special recommendation V.

491. *Criterion 39.1* - The Extradition Act (2008) prescribes that extraditable offences are those that are criminal offences in both the law of the requesting state and Thailand that are punishable by a term of imprisonment of not less than one year (section 7(1)). Given the minimum terms of imprisonment, both the ML and TF offences are extraditable offences under the Extradition Act. It is noted that offences punishable by less than one year may be subject to an extradition order if it relates to an offence for which extradition has been granted, whether or not the request is made at the same time or afterwards. The Extradition Act notes that when considering dual criminality, it does not matter whether it is an offence of the same designation under the law of both states.

492. Thailand confirms that extradition can be progressed in a relatively expedient manner.

493. In light of the dual criminality requirement, the gaps in relation to certain predicate offences identified at R.3 may impede Thailand's ability to provide MLA in relation to some circumstances of ML.

494. *Criterion 39.1(b)* - The OAG as the Central Authority has a case management system used to register and track progress of MLA requests. The authorities demonstrated to the assessment team processes to ensure requests are dealt with in a timely manner.

495. *Criterion 38.1(c)* - Thailand does not place any unreasonable or unduly restrictive conditions on the execution of requests. Extradition can be provided whether or not an extradition treaty exists between the states or upon the consent of a person to extradition.

496. *Criterion 39.2* - Section 12 of the Extradition Act allows for extradition of Thai nationals if the following requirements are met: (1) where provided for in an extradition treaty between the two states, or (2) the person agrees to be extradited, or (3) on the condition of reciprocity between Thailand and the requesting state.

497. In circumstances where Thailand may not extradite its nationals, for example where domestic criminal proceedings are underway, consideration of the extradition request is deferred pending conclusion of the domestic criminal proceedings (s14). Section 25 of the Act requires that where there is no extradition to the requesting state, the Central Authority shall consider notifying the competent authority with a view to taking further criminal action against that person under Thai law. Thailand may also initiate domestic criminal proceedings on request of a foreign state under s31 of the MACM.

498. *Criterion 39.3* - As stated above, section 7 of the Extradition Act confirms the underlying conduct of the offence is taken into account when considering dual criminality. Case examples further confirmed that in practice the authorities consider the underlying conduct of the offence in order to satisfy the principle of dual criminality.

499. *Criterion 39.4* - A person may agree to be extradited in which case the matter proceeds in a more simplified and expeditious manner. Under the Act, the Court will normally make an order confirming extradition the same day the public prosecutor brings the person before the court. Their extradition then shall be completed within 90 days (s22 Extradition Act). Thailand may also accede to a request from a foreign state for provisional arrest and detention of the person sought (section

15 Extradition Act). This may occur whether or not the requesting state has an extradition treaty with Thailand. In the event of such request, Thailand reverts to section 14 of the Act which sets out the basis upon which it considers normal extradition requests.

Weighting and conclusion

500. Minor shortcoming to full cooperation on extradition relates to the gap in predicate offences to ML discussed in Recommendation 3. Thailand is largely compliant with Recommendation 39.

Recommendation 40 – Other forms of international cooperation

501. Thailand was largely compliant with Recommendation 40 in the 2007 ME. The legal mechanisms in place remain largely unchanged.

502. *Criterion 40.1* - Thailand LEAs generally have powers to enable international exchange of information both formally and informally. AMLO is the central agency responsible for international exchange of AML/CTF information and has 47 MoUs in place with other countries as well as the use of Egmont channels. DSI, whilst not having a specific provision can exchange on the basis of reciprocity or under an MOU, ONCB may also exchange information without any legislative prohibitions. NACC has express provisions allowing it to exchange information and RTC may also exchange information on the basis of an MOU or without an MOU to members of the WCO through the RILO. RTP regularly uses Interpol for the rapid exchange of information internationally. RD regularly exchanges information with their counterparts under the convention and through MOUs. The power to exchange information is contained in the double tax agreement, which overrules the secrecy provisions under the Revenue Code which enables them to exchange information without restriction. Section 264(1) of the SEC Act allows the SEC to exchange information with foreign counterparts, they may also exchange pursuant to the IOSCO MOU.

503. Authorities confirm that under Thai law, in the absence of provisions prohibiting the exchanging information, the presumption is that you may exchange on a reciprocity basis.

504. *Criterion 40.2(a)* - Not all LEAs have a legislative basis for the exchange of information. The Government Secrets Act BE 2544 (1991) and section 11(5) of the NCA provides a basis for the ONCB exchange of information and the OAC provides for the NACCs authority to exchange. AMLA section 40 allows AMLO to receive or disseminate information under agreements made with foreign agencies. Other agencies fulfil the exchange of information via MOUs on the basis of reciprocity or via international organisations to which Thailand is a member. RTP is a member of Interpol and exchange information internationally under provisions of the Ministerial Regulations on RTP Work Unit (2005). Thailand indicated that this regulation allows them to coordinate with foreign agencies in relation to all police matters including investigation, however a copy was not provided to the team.

505. *Criterion 40.2(b)* - competent authorities are able to use efficient means to cooperate. Many agencies formalise the agreement to share information via a MOU which sets some parameters for the efficient cooperation between agencies. Sample MOUs were provided to the team.

506. *Criterion 40.2(c)* - AMLO utilise the Egmont Secure Web (ESW) system for exchange of information with counterpart FIUs and the RTP utilises Interpol channels. For other agencies clear and secure gateways are used depending on the classification of information that is being shared. Thailand authorities must adhere to the Official Secrecy Act. Overall, outside AMLO and the RTP the team accepts that authorities do apply a measure of security to the correspondence but these

measures were not set out in practices or procedures. However, Thailand authorities must adhere to the Rule on Maintenance of Official Secrets B.E. 2544 (2001).

507. *Criterion 40.2(d)* - AMLO has SOPs outlining the timing of requests, if there is an urgent request they should respond within certain periods of time. Other agencies apply prioritisation depending on the urgency or level of complication involved in the request. More established guidelines apply to exchanges through Interpol and the WCO.

508. *Criterion 40.2(e)* - The ESW channels utilised by AMLO ensure safeguarding of the information. All other authorities including supervisory and regulatory authorities rely on secrecy and confidentiality provisions within their respective legislation which imposes penalties on the unlawful disclosure of relevant information such as the Rule on Maintenance of Official Secrets Act (2001). Interpol, Egmont and exchanges through the WCO have safeguards in place for information.

509. AMLOs systems to protect information were discussed in the 2007 MER. Secrecy provisions prohibiting unauthorised disclosure govern other Thai competent authorities.

510. *Criterion 40.3* - Competent authorities in Thailand appear to have the legal basis to enter into MoUs with counterparts and have agreements with a wide range of foreign counterparts. Sample MOUs have been provided to the team and it is apparent that Thailand actively pursues MOUs to facilitate information exchange. It is difficult to assess the timeliness of reaching these agreements and it depends on the respective parties to the MOU. However, authorities indicated that MOUs are generally entered into within a reasonable timeframe.

511. *Criterion 40.4* - AMLO use standard Egmont protocols in relation to feedback. Thailand also uses the Interpol secure channel to communicate feedback. RTC uses the Customs Enforcement Network as a clear process for feedback. Authorities indicate that feedback has previously been provided on request.

512. *Criterion 40.5* - There do not appear to be any unreasonable constraints on competent authorities in Thailand responding to requests under any of the qualifications specified under Criterion 40.5.

513. *Criterion 40.6* - MOUs established between competent authorities in Thailand and their foreign counterparts establish appropriate controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. Sample MOUs provided to the team demonstrate this. In addition, Egmont processes adhered to by AMLO put in place appropriate controls. Clause 8 of the Rule on Maintenance of Official Secrets provides that classified information may only be used for the task entrusted only.

514. *Criterion 40.7* - The obligation to applies appropriate confidentiality for any request for cooperation and the information exchanged, consistent with both parties' obligations concerning privacy and data protection - largely through confidentiality provisions contained in legislation prohibiting disclosure of confidential information that a person acquires through the performance of their duty. These provisions can be found at section 316 of the SEC Act and section 66 AMLA. Thailand also confirmed that specific clauses within various MOUS contain relevant provisions. For example, the MOU between the NACC and its foreign counterparts contains confidentiality clauses including a prohibition on using the information without the prior consent of the disclosing party.

RTC also places similar provisions in MOUs signed with foreign counterparts. AMLO exchanges information via standard Egmont MOUs which include confidentiality provisions.

515. *Criterion 40.8* - RTC and DSI advise they are able to investigate on behalf of foreign counterparts under an MOU. AMLO may conduct enquiries on behalf of foreign counterparts if the criminal matters relate to predicate offences as listed in the AMLA including like conduct that occurs abroad. Other agencies are subject to the requirements contained in their respective laws. The SEC has legislative authority to provide assistance and collect and analyse data to use for the purpose of considering whether the action is a violation of a law related to securities and exchanges or other similar law of foreign countries.

516. Under Section 48 of Life Insurance Act 1992 and Section 51 of Non-Life Insurance Act 1992, OIC can examine the business and financial status of the insurance companies. There is however no specific provision specifying OIC's ability to conduct enquiries on behalf of a foreign counterpart.

517. *Criterion 40.9* - Section 40 (3) of AMLA, AMLO provides the legal basis for providing cooperation on information for the execution of the AMLA or other laws on the basis of an agreement between foreign agencies.

518. *Criterion 40.10* - AMLO is a member of the Egmont group of FIUs and is obliged to follow Egmont Group procedures and the obligations under the MoUs in place with other countries in relation to feedback.

519. *Criterion 40.11* - The AMLA provides a legal basis for the AMLO to exchange (a) all information required to be accessible or obtainable directly or indirectly by the FIU; and (b) any other information which they have the power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity.

520. *Criterion 40.12* - AMLO have powers to exchange information with counterparts, however specific agreements are required and no details of such agreements were provided. SEC has specific legislative authority to exchange information with foreign counterparts. BOT has an enabling clause (154(4)) lifting secrecy for international cooperation and they have a regular practice of basing foreign cooperation on an agreed MOU. Section 20 of the Insurance Commission Act allows the OIC to make agreements and cooperate with overseas organisations or agencies in relation to an affairs associate with the operations of the office.

521. *Criterion 40.13* - As stated in 40.12 above, it appears there are no legal impediments to financial supervisors exchanging information available to them domestically.

522. *Criterion 40.14* - There do not appear to be any constraints for AMLO and other financial supervisors exchanging regulatory, prudential and AML/CFT information when relevant for AML/CFT purposes, in particular with other supervisors that have a shared responsibility for financial institutions operating in the same group. However, Section 24 of the Government Information Act B.E. 2540 (1997) which provides that agencies cannot reveal personal information of a person in the absence of written permission from the information owner may be an impediment to information sharing. For BOT, the FIB Act section 154(4) provides a legal basis (by lifting bank secrecy) for BOT to share information with foreign counterparts. For AMLO, it's the same as the FIU, ie 40(13). The 'agreement' that AMLO needs is not at a very formal level and is a power available to the AMLO SG which is able to be delegated to the Director of Supervision.

523. *Criterion 40.15* - AMLO can use its broad supervisor to do supervision based on a foreign request (therefore conduct inquiries on behalf of foreign authorities). Foreign regulators are not prohibited to conduct onsite in Thailand. Authorities advise that it is very commonly done and findings are shared with BoT and other regulators here. The same applies to SEC regulated entities.

524. *Criterion 40.16* - BOT has a master MoU which it uses as a template. This includes comprehensive provisions covering disclosure to ensure that they have the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes, unless the requesting financial supervisor is under a legal obligation to disclose or report the information. SEC follows IOSCO MMOU and SEC's approach follows the FATF requirement. For AMLO supervisors, agreements require foreign supervisors to seek AMLO's consent to further use/release information and to notify if the court requires use of the information.

525. *Criterion 40.17* - AMLO and other LEAs have an adequate legal basis to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences or terrorist financing, including the identification and tracing of the proceeds and instrumentalities of crime.

526. *Criterion 40.18* - LEAs rely upon and utilise channels such as Interpol, WCO (through RTC) and Egmont (through AMLO) to exchange information and the associated parameters and governance required by those channels apply.

527. *Criterion 40.19* - Thai LEAs are able to form joint investigative teams in relation to domestic investigations under the CPC (PMO on Cooperation and Coordination). Legislative provisions allowing joint investigative teams with foreign counterparts were not provided. However, Thai authorities did discuss cases where joint investigative teams have operated with neighbouring jurisdictions for example in relation to passport fraud.

528. *Criterion 40.20* - Section 40 of AMLA enables the FIU to provide information to other agencies.

Weighting and conclusion

529. Thai authorities have wide abilities to exchange information with foreign counterparts. However, not all LEAs have legislative provisions allowing for the exchange of information and joint investigations with foreign counterparts. The use of clear and secure gateways for transmission of information was not sufficiently proscribed in practice and procedure. These were minor gaps. Thailand is largely compliant with Recommendation 40.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Exemptions for AML/CFT have not been applied based on proven low risk. There are no requirements that higher risks be addressed by either: (a) requiring REs to take enhanced measures to manage and mitigate the risks; or (b) requiring REs to ensure that this information is incorporated into their enterprise risk assessments Requirements in the AMLA including those to take measures based on NRA and certain risk factors, do not apply to DNFBPs and a small group of FIs.
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Thailand has not updated its national AML/CFT strategies to take into account findings of the two NRAs and other assessments of risk.
3. Money laundering offence	LC	<ul style="list-style-type: none"> There is a gap in covered categories of predicate offences for ML including tax offences, smuggling of migrants and the illicit trafficking in stolen and other goods.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> There is no provision to void actions that prejudice the authorities' ability to confiscate property.
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> There is no criminalisation of contributing to the commission of one or more TF offences by a group of persons acting with a common purpose. No criminalisation of aiding, abetting or directing an attempted TF offence. Thailand is not yet a party to all the required UN Conventions on terrorism which narrow the scope of the TF offence, although elements of financing those same offences are covered in the Penal Code offence. Thailand has not legislated against the financing of travel of individuals to another state for terrorist purposes.
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> There are minor shortcomings in relation to procedures to submit delisting requests and provisions or procedures relating to false positives. Further clarity is required on the access to funds by designated persons in accordance with UNSCR 1452 and 1373.
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> There are minor shortcomings relating to notify attempted transactions, mechanisms to resolve false positives and detailed provisions for access to funds. However, the law had not entered into force and effect at the time of the onsite visit.
8. Non-profit organisations	PC	<ul style="list-style-type: none"> There are weaknesses with assessment of the NPO sector and related TF risk. The risk-based approach to supervision of NPOs needs to go beyond the southern border provinces Weaknesses in the range of available sanctions for NPO regulators.
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> Secrecy obligations are not clearly lifted, outside intra-group scenarios, to support information sharing relating to wire

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		transfers, correspondent banking and reliance on 3 rd parties.
10. Customer due diligence	LC	<ul style="list-style-type: none"> • There is small gap in the scope of FIs covered for CDD under AMLA. • A narrow set of professionals conducting financial activities covered by the FATF definition of a FI are not covered under the CDD obligations in the MR CDD. • Shortcomings with the identification and verification requirements of legal persons and beneficial owners. • Gap in risk management procedures for delayed verification.
11. Record keeping	LC	<ul style="list-style-type: none"> • There is no requirement to keep business correspondence. • There is a scope gap in FIs covered by the requirements on record keeping in the AMLA.
12. Politically exposed persons	LC	<ul style="list-style-type: none"> • There is a small gap in the scope of FIs covered by the obligations. • Obligations for PEPs only cover the source of funds and income but not the full scope of source of wealth.
13. Correspondent banking	PC	<ul style="list-style-type: none"> • The information to be collected from respondent FIs is not sufficient for an assessment of risk. • The requirements for accepting a respondent FI to have payable through accounts are not consistent with R.13.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> • There is not sufficient application of proportionate or dissuasive sanctions for cases of unlicensed operation of MVTS.
15. New technologies	LC	<ul style="list-style-type: none"> • Thailand has not comprehensively assessed risks associated with new technologies.
16. Wire transfers	PC	<ul style="list-style-type: none"> • The requirements to verify originator information do not apply to originators who are not customers. • There are no provisions for transactions below the de minimis threshold. • The requirement to maintain originator and beneficiary information only applies to originators and beneficiaries who are customers of ordering or beneficiary FIs respectively. • There is no provision requiring FIs not to execute transactions if there is a suspicion of ML or TF. • Intermediary and beneficiary FIs procedures in relation to transfers that lack required information do not cover when to execute the wire transfer. • There is no specific provision to require intermediary institutions to ensure all originator and beneficiary information is accompanied in a cross-border wire transfer.
17. Reliance on third parties	C	The recommendation is fully met
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> • There are 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.
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • Enhanced due diligence measures are not applied proportionate to the risk. • There is a lack of other counter-measures to mitigate the risk. • There are no regular measures to ensure REs are advised of concerns in relation to weaknesses in AML/CFT systems of other

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		countries.
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> There is a small gap in coverage of FIs required to submit STRs. There are gaps with coverage of high-risk predicate offences. STR exemptions for transactions between government, state-owned enterprises and/or certain government foundations narrow the STR obligation.
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> Safe harbour provisions do not clearly extend to protection from civil liability.
22. DNFBPs: Customer due diligence	NC	<ul style="list-style-type: none"> DNFBPs were not covered for CDD requirements at the time of the onsite visit.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> STR reporting obligations apply to all covered DNFBPs but more comprehensive measures contained in the MR CDD did not apply to DNFBPs at the time of the onsite visit.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> Thailand's assessment of risk in relation to juristic persons requires greater detail. Data on the registration of basic ownership information in private limited companies is not kept up to date. Sanctions available to enforce compliance with transparency and reporting obligations are not adequate. The absence of beneficial ownership obligations on legal persons or CDD requirements for DNFBPs undermines the availability of beneficial ownership information for authorities.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> There is no obligations to ensure that trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction which is given weight. The absence of beneficial ownership obligations on foreign legal arrangements operating in Thailand or CDD requirements for DNFBPs undermines the availability of beneficial ownership information for authorities.
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> There are a number of gaps in relation to the scope and depth of fit and proper controls over FIs. AMLO does not sufficiently base its AML/CFT supervision on ML/TF risk. There is a small scope gap in covered financial institutions (leasing companies, pawn brokers and small cooperatives) There is limited supervision of certain sectors (cooperatives).
27. Powers of supervisors	LC	<ul style="list-style-type: none"> The scope gap in relation to covered FIs. Powers of AMLO to apply sanctions do not extend to revocation of licenses or issuances of written warnings.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> The absence of an AML/CFT regime for lawyers and accountants is a moderate scope issue. Supervision of DNFBPs is not carried out on the basis of ML/TF risk
29. Financial intelligence units	LC	<ul style="list-style-type: none"> There are potential issues relating to the independence of AMLO.
30. Responsibilities of LEAs	C	The recommendation is fully met
31. Powers of law enforcement and	LC	<ul style="list-style-type: none"> RTPs powers for undercover operatives and interception of

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
investigative authorities		communication are reliant on RTP being designated as a competent officer under other legislation.
32. Cash couriers	PC	<ul style="list-style-type: none"> • There was a lack of coverage of BNIs and reporting obligations for Thai currency. • Reporting thresholds are above the FATF standard. • Limitations on RTC's ability to seize items suspected of being involved with ML or predicate offences.
33. Statistics	LC	<ul style="list-style-type: none"> • Statistics relating to RTP financial investigations of TF, provisional and confiscation by all LEAs and LEA international cooperation are not comprehensively maintained.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> • There is a greater need for guidance in relation to risk, and the new TFS obligations under the new CTPFA.
35. Sanctions	PC	<ul style="list-style-type: none"> • Sanctions are not proportionate or dissuasive for preventive measures. • Scope gap with coverage of DNFBPs overall and detailed preventive measures and their enforcement. • The settling mechanism to implement fines in lieu of a criminal prosecution is resource intensive creates delays and may not allow for effective sanctions.
36. International instruments	LC	<ul style="list-style-type: none"> • Gaps in the cross-border declaration regime (Thai currency and BNIs). • Gaps in the scope of predicate offences to ML
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • Gap with respect to predicate offences including tax offences, trafficking in stolen goods and people smuggling • Thailand is unable to provide non-coercive assistance in the absence of dual criminality.
38. Mutual legal assistance: freezing and confiscation	C	The recommendation is fully met
39. Extradition	LC	<ul style="list-style-type: none"> • Gap in coverage of predicate offences as discussed at R.3
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • Not all Thai authorities had legislative provisions expressly allowing the exchange of information. • Gaps in procedures or practices for the use of secure gateways to transmit information.

Technical compliance

TABLE OF ACRONYMS

AMLA	:	Anti-Money Laundering Act (1999)
AMLB	:	Anti-Money Laundering Board
AMLO	:	Anti-Money Laundering Office
ARIN-AP	:	Asset Recovery Interagency Network (Asia Pacific)
BOT	:	Bank of Thailand
CAD	:	Cooperative Audit Department
C&C Code	:	Civil and Commercial Code
CDD	:	Customer Due Diligence
CTF Act	:	Counter-Terrorism Financing Act (2013)
COJ	:	Court of Justice
CTPF Act	:	Counter Terrorism Proliferation of Weapons of Mass Destruction Financing Act
CPC	:	Criminal Procedure Code
CPD	:	Cooperative Promotion Department
DOE	:	Department of Employment
DBD	:	Department of Business Development
DPA	:	Department of Provincial Administration
DSI	:	Department of Special Investigation
FIU	:	Financial Intelligence Unit
FIs	:	Financial Institutions
KYC	:	Know-Your-Customer
MACM	:	Mutual Assistance in Criminal Matters Act
MFA	:	Ministry of Foreign Affairs
MLA	:	Mutual Legal Assistance
MOC	:	Ministry of Commerce
MOF	:	Ministry of Finance
MR	:	Ministerial Regulations
NACC	:	National Anti-Corruption Commission
NIA	:	National Intelligence Agency
NPO	:	Non-Profit Organization
NSC	:	National Security Council
OAG	:	Office of the Attorney General
OIC	:	Office of Insurance Commission
ONCB	:	Office of Narcotics Control Board
PACC	:	Public Sector Anti-Corruption Commission
PEPs	:	Politically Exposed Persons
PMO	:	Prime Ministers Office
RD	:	Revenue Department
RE	:	Reporting entities
RTP	:	Royal Thai Police
RTC	:	Royal Thai Customs
SEC	:	Securities and Exchange Commission
SFIs	:	Specialized Financial Institutions
SRB	:	Self-Regulatory Body
STR	:	Suspicious Transaction Report
UNSCR	:	United Nations Security Council Resolution
WMD	:	Weapons of Mass Destruction



© APG 2017

www.apgml.org

December 2017

Anti-money laundering and counter-terrorist financing measures – Thailand

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/countering the financing of terrorism (CFT) measures in place in Thailand as at November 2016. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Thailand's AML/CFT system, and provides recommendations on how the system could be strengthened.