

**PROBLEMS OF MONEY LAUNDERING WITHIN FOREIGN
BANKS IN THAILAND AFFECTING THE CONFIDENCE OF
FOREIGN INVESTORS**

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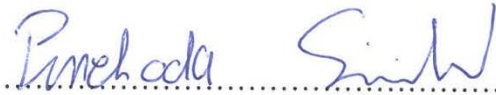
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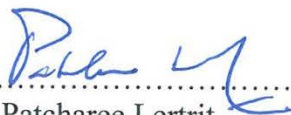
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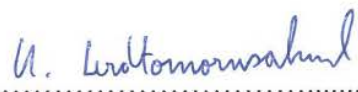
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PROBLEMS OF MONEY LAUNDERING WITHIN FOREIGN BANKS IN THAILAND AFFECTING THE CONFIDENCE OF FOREIGN INVESTORS

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ABSTRACT

The goals of this study were to explore the current situation of anti-money laundering (AML) within foreign banks in Thailand resulting in hesitation among foreign investors and to seek effective countermeasures and adaptations to combat money laundering in the public and private sectors. This qualitative study was conducted in Thailand in which documentary research and in-depth interviews were used for collecting data. The subjects of this research were 15 experts in the field of anti-money laundering (AML) selected by snowball and purposive sampling methods.

The research results showed that Thailand's current anti-money laundering (AML) regime in its banking system was vulnerable and its efficacy uncertain, although foreign banks' anti-money laundering was commonly believed to be reliable and well-secured. This was because the money laundering situation in Thailand had become more severe due to the increase in crimes and the country's high exposure to money laundering, and the current money laundering laws and regulations, including the law enforcement, were still immature and ineffective in many respects. Therefore, Thailand still needs to enhance the countermeasures and policy adaptations to combat money laundering within foreign banks, from both the public and private sectors, regularly in order to increase confidence among foreign investors, for example, stricter enforcement of the AML agencies, cooperation between all AML stakeholders, the raising of public awareness about money laundering, law modifications, and risk-based management. In addition, further studies should include minor foreign banks as well as a greater number of foreign banks. Future studies should also focus on the more vulnerable sectors such as Thai local banks and 'shell' companies.

KEY WORDS: MONEY LAUNDERING / FOREIGN BANKS / CONFIDENCE / FOREIGN INVESTORS / THAILAND

161 pages

ปัญหาการฟอกเงินในธนาคารต่างชาติในประเทศไทยที่ส่งผลกระทบต่อความเชื่อมั่นของนักลงทุนต่างชาติ
PROBLEMS OF MONEY LAUNDERING WITHIN FOREIGN BANKS IN THAILAND AFFECTING
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บทคัดย่อ

จุดมุ่งหมายของงานวิจัยชิ้นนี้คือศึกษาสถานการณ์การป้องกันและปราบปรามอาชญากรรมการฟอกเงินภายในธนาคารต่างชาติในประเทศไทยที่ส่งผลกระทบต่อความเชื่อมั่นของนักลงทุนต่างชาติในปัจจุบันและค้นคว้ามาตรการการป้องกันและการพัฒนาในด้านต่างๆในการต่อสู้กับการฟอกเงินสำหรับทั้งภาครัฐและภาคเอกชนอย่างมีประสิทธิภาพ งานวิจัยชิ้นนี้เป็นงานวิจัยเชิงคุณภาพที่ใช้วิธีการวิจัยเอกสารและการสัมภาษณ์เชิงลึกในการเก็บข้อมูล โดยกลุ่มตัวอย่างในงานวิจัยคือผู้เชี่ยวชาญด้านการป้องกันการฟอกเงิน 15 ท่าน ที่ได้รับการคัดเลือกจากวิธีการสุ่มตัวอย่างแบบลูกโซ่และการสุ่มกลุ่มตัวอย่างแบบเจาะจง

ผลการวิจัยชี้ให้เห็นว่า ถึงแม้ว่าการป้องกันการฟอกเงินในธนาคารต่างชาติในประเทศไทยนั้นได้รับการพิจารณาว่ามีความน่าเชื่อถือและความปลอดภัยสูง แต่สถานการณ์การป้องกันการฟอกเงินในภาคการธนาคารในประเทศไทยก็ยังคงมีความสับสนและมีความไม่แน่นอนในเรื่องของประสิทธิภาพ ทั้งนี้เป็นเพราะประเทศไทยเป็นประเทศที่มียอดการก่ออาชญากรรมสูงและมีปัจจัยที่ก่อให้เกิดความเสี่ยงต่อการฟอกเงินอยู่เป็นจำนวนมาก นอกจากนี้ กฎหมายและกฎระเบียบด้านการป้องกันและปราบปรามการฟอกเงินในปัจจุบันยังอยู่ขั้นตอนการพัฒนาและยังคงมีจุดบอดอยู่หลายจุดด้วยกัน ดังนั้น ประเทศไทยจึงมีความจำเป็นที่จะต้องพัฒนามาตรการและนโยบายป้องกันและปราบปรามการฟอกเงินภายในธนาคารต่างชาติอย่างต่อเนื่องทั้งสำหรับภาครัฐและภาคเอกชนเพื่อเพิ่มความเชื่อมั่นในหมู่นักลงทุนต่างชาติที่มุ่งหวังจะเข้ามาลงทุนในประเทศไทย เช่น กระตุ้นให้หน่วยงานป้องกันและปราบปรามการฟอกเงินต่างๆมีการบังคับใช้กฎหมายอย่างเข้มงวดมากขึ้น ได้รับความร่วมมือด้านการป้องกันและปราบปรามกับการฟอกเงินจากทุกฝ่าย สร้างจิตสำนึกต่อต้านการฟอกเงินในหมู่ประชาชน แก้ไขปรับปรุงบทกฎหมายที่จำเป็น และบริหารจัดการความเสี่ยงต่อการฟอกเงิน สำหรับงานวิจัยในอนาคต ควรมีการศึกษารายการต่างชาติที่มีขนาดเล็กและขยายจำนวนธนาคารที่ต้องการศึกษา รวมถึงการศึกษาภาคส่วนที่มีความเสี่ยงมากกว่า เช่น ธนาคารท้องถิ่น และบริษัทเปลือกนอก

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CHAPTER I

INTRODUCTION

1.1 Background and Rationale

About 40 years ago, the United Nations defined the concept of 'transnational crime' as certain illegal activities which overwhelm national jurisdictions and territories (Massari, 2003). In these past four decades, transnational crimes and economic crimes have actually become more dangerous than traditional crimes, like street crime, as they have greater impacts on economic and social development. Major transnational crimes such as drug trafficking, arms trafficking, and human smuggling and trafficking have the same ultimate goal of money-making, which naturally leads to one of the most threatening economic and instrumental crimes confronting the modern world - money laundering.

Money laundering is the process of disguising the source of money gained from illegal channels, such as all of the above major transnational crimes and the illicit businesses which feign legality in order to conceal their illegal background operations. The main purpose of money laundering is to change illegally acquired money into creditable funds that can be expended and invested without the fear of detection by the authorities. Money laundering is often carried out with success through the utilization of hidden bank accounts, foreign enterprises, and securities and financial instruments issued by foreign banks and 'foreign laundries' (OECD, 2009). A report presented by the United Nations Office on Drugs and Crime (UNODC) states that illegal funds which added up to 3.6% of worldwide GDP, with approximately 2.7% (equivalent to USD 1.6 trillion) were laundered in 2009 (Iacolino, 2013). This number is close to the International Monetary Fund's estimation that 2% to 5% of the annual worldwide economy is constituted by laundered money (Khalil, 2010). These numbers show that the amount of money laundered annually is about 2.6 trillion dollars, or the equivalent

of the total amount of the size of France's economy¹. The statistics show that worldwide illicit activities annually make significantly more money than many developed nations and multinational corporations combined.

Indirectly, this affects the financial sector heavily. Due to the fact that money laundering could not be managed smoothly without the complicity of insiders (employees or officers of financial institutions), banks, or non-banking financial institutions, for example, private money lenders, have been losing customer trust. National banks' capital resources may have been corrupted, and their means of allocating investments may also be unreliable. Since investors perceive this as a risk, and no longer believe in the self-sustainable economic development plans which many countries attempt, investors remove their capital from risky institutions. This removal of capital harms these financial institutions, demonstrating a chain-reaction of money laundering's overwhelming effect on large financial institutions. Everything from the real estate business, import and export trade, and international capital flow are now impacted as it is easy to circulate laundered money in these activities. Evidently, the target countries for most money laundering activities are those with weak governance, instability, and poor anti-laundering policies. Such nations are a safe haven for people who are looking for a safer route to clean up their proceeds of dirty deeds (Tavares, 2013).

Thailand is one of the most attractive havens for financial criminality, secrecy and tax evasion due to its socio-economic conditions and geo-political situation. Thailand is considered as a major transit point for money being wired to banks in more established markets. During 1999-2007, the Anti-Money Laundering Office (AMLO) of Thailand² claimed that it had seized assets relating to money laundering offenses up to an amount of 4,124.8 million baht (about USD 117.85 million by that time) in the kingdom. The seized assets included land, bank accounts, gemstones, cash, vehicles and so forth (AMLO, n.d. a). Historically, according to John

¹ The number is derived from nominal GDP in 2011, according to the IMF

² Thailand's arm fighting against money laundering and the financing of terrorism established in 1999

Walker Crime Trends Analysis³, Thailand was ranked as the 12th most common origin of laundered money and the 14th most common nation for the flow of laundered money (Walker, 1998). Interestingly, at the time these statistics were compiled in 1998, Thailand was the only South-East Asian nation that was shown on the list, while most of the other countries were developed countries. This shows that Thailand is perceived as a perfect place to turn dirty money into usable funds. Some possible reasons for this are that Thailand has experienced positive feedback regarding its social and economic advancement, it hosts much international capital flow, and receives much international investment due to its well-known tourism industry and other markets. At the same time, Thailand also has far fewer mechanisms to suppress money laundering, compared to most Financial Action Task Force (FATF)⁴ member countries which allow for the easy occurrence of money laundering within them (Walker, 1998). Therefore, it is not a surprise that many foreign and domestic Thai criminal organizations choose to conceal and cleanse illegal profits in casinos, luxury car dealerships, resorts, insurance firms, bars and non-banking financial institutions, like check-cashing business or currency exchange houses, and other underground businesses in Thailand. This harkens back to the situation in the Baltic States in the early 1990s. During this period, there was a huge wave of illegal money crashed into a number of banks in the Baltic States. This brought about their downfall, due to the large number of withdrawals prompted by customers' recognition of tainted funds and a general absence of customers' confidence (United Nations Department of Public Information, 1998). This could be Thailand's future if there is no proper response from both the public and private sectors. It is important to note that Thailand is classified as a highly-concerned country in terms of money laundering by the USA Government in 2006 (Bureau for International Narcotics, 2006).

³ A consultancy service founded John Walker, a famous research criminologist with the Australian Institute of Criminology who was ranked as the 25th most cited criminologists in the world's major international journals since 1985, and the top 3 in Australia

⁴ Financial Action Task Force (FATF), an inter-governmental body that sets standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system

According to Basel Institute on Governance (2012), Thailand was ranked the world's 49th most at-risk country in terms of money laundering and terrorist financing in 2012. Therefore, in the same year, Thailand was added into FATF's blacklist of nations failing to meet international standards over money laundering (Lorenzo, 2012). Fortunately it was removed from the blacklist in July 2013, but Thailand will not be able to be officially removed from the grey list until 2015 (Pattaya Daily News, 2013; Piniyarakarn, 2013). This blacklisting and subsequent grey-listing creates serious consequences for Thailand, as financial transactions are subject to more intense investigation, increasing the difficulty of conducting international business for the Thai government and people. Although Thailand has signed several legislative and administrative measures including the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics (1991), the Ministerial Regulations, and the Money Laundering Control Act (1999), the FATF requires a new version of all this legislation to be passed which meets its standards, as well as new legislation to combat international terrorism paralleling international standards, for example, the G-20⁵'s standards (Mookjang, 2001). Thailand blacklisting has serious implications for the national economic system and investment sector. The confidence of foreign investors has been affected. In the short-term, this may not seem like a serious issue, however, in the long-term, this could yield far-reaching effects. Additionally, exporters and importers will be required to provide more documents to verify their international transactions, which will affect their competitiveness and increase their cost of doing business (Limsamarnphun, 2012).

The issue of blacklisting over money laundering furthermore contributes to Thailand's perceived economic and political instability, particularly when the ASEAN Economic Community (AEC)⁶ opening is approaching. One frequently asked question is, "Are Thailand's international finance sectors ready?" As Thailand would like to be the strategic center of the Association of Southeast Asian Nations (ASEAN)⁷ in terms

⁵ Group of Twenty Finance Ministers and Central Bank Governors, a group of finance ministers and central bank governors from 20 major economies: 19 countries and the European Union

⁶ ASEAN regional integration for economic cooperation by 2015

of economics, the country should increase its controls over the economy, including strengthening law-enforcement over money laundering. Preparation of the Prevention and Suppression of Money Laundering Law and Other Legal Provisions should be done within 2015 which is the deadline to achieve AEC, noted Pol. Lt. Col. Aim-Orn Chaibuadang, a Thai specialist in Law Enforcement Policy (Thailand's Bureau of Public Relations, 2012). The reason for this timeframe being ideal is that the AEC presents an opportunity for Thai businesses to grow and succeed outside the country. Thus would allow Thailand to strengthen its competitiveness by expanding its market, principally its investor base. Hence, it is important for Thailand to get rid of the major obstacles like money laundering and its related policies and regulations, which hinder competitiveness, particularly from the perspective of foreign investors'.

One of the major financial institutions struggling with a money laundering problem is foreign banks. These off-shore or cross-border banks with high capital flows and multinational clients have been increased dramatically owing to globalization and internationalization. Banks usually open a foreign branch to serve their multinational customers; however, opening a foreign branch bank may be tremendously complex due to the dual banking regulations that the foreign branch has to follow (Bhattacharya, 1994). This will be clearly illustrated once the AEC begins, as the banking and investment systems in ASEAN will be united. There are two major types of foreign banks - those that serve their home clients (so-called traditional or classical banks), and the opportunists who come looking for profit (short or long-run) opportunities in the host countries (Tschoegl, 2003). The main functions of this kind of bank, excluding the traditional operations, are trade finance, payments, correspondent banking, and foreign exchange transaction. This means that foreign banks have higher capital flow and more liquidity, and may underperform domestic banks (especially among developing countries) in emerging markets (Bhattacharya, 1994). Importantly, in the long run, the regulatory treatment of the entry of foreign banks is likely to improve significantly following regional integration in 2015, but unfortunately this treatment is still obscure in the short-term. In terms of money laundering, off-shore

⁷ A geo-political and economic organization of ten countries located in Southeast Asia (Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Burma (Myanmar), Cambodia, Laos, and Vietnam) formed in 1967

banks are very attractive for criminals because these banks are usually located in low tax jurisdictions that provide financial and legal advantages such as greater privacy (called bank secrecy), tax havens, and easy access to deposits. In addition, the Anti-Money Laundering Office (AMLO) reported that they could not do much about foreign banks' refusal to process financial transactions with Thai local banks, especially the US banks, while Thailand is still in the FATF's watch-list (Thamnukasetchai, 2012).

For this reason, the study of money laundering within foreign banks in Thailand and its effects on foreign investment is urgently needed as time is ticking. The results from this study may also become guidelines or suggestions for the Thai government, the AMLO, and related institutions (i.e. the foreign banks themselves) to formulate proper reactions in accordance with the views of foreign investors on money laundering and its related policies.

1.2 Research Objectives

1.2.1 To examine the current problems of anti-money laundering (AML) within foreign banks in Thailand resulting in hesitation among foreign investors

1.2.2 To examine the existing AML regulations and banks' AML policies

1.2.3 To seek effective countermeasures and adaptations to combat money laundering in the public and private sectors

1.3 Research Questions

This research primarily focuses on the problems of anti-money laundering within foreign banks in Thailand affecting the foreign investment, which can be assessed by the documentary research, and in-depth interviews of anti-money laundering experts and top executives who are responsible for money laundering protection of foreign banks in Thailand. The following are the research questions for this study.

1. What is the current situation of anti-money laundering in foreign banks in Thailand?

2. What are the effective policies and regulations that should be implemented by the government and foreign banks as a means to lessen the money laundering problem and stimulate foreign investment in Thailand?

1.4 Conceptual Framework

This research will be conducted on the qualitative basis, as seen in the following framework:

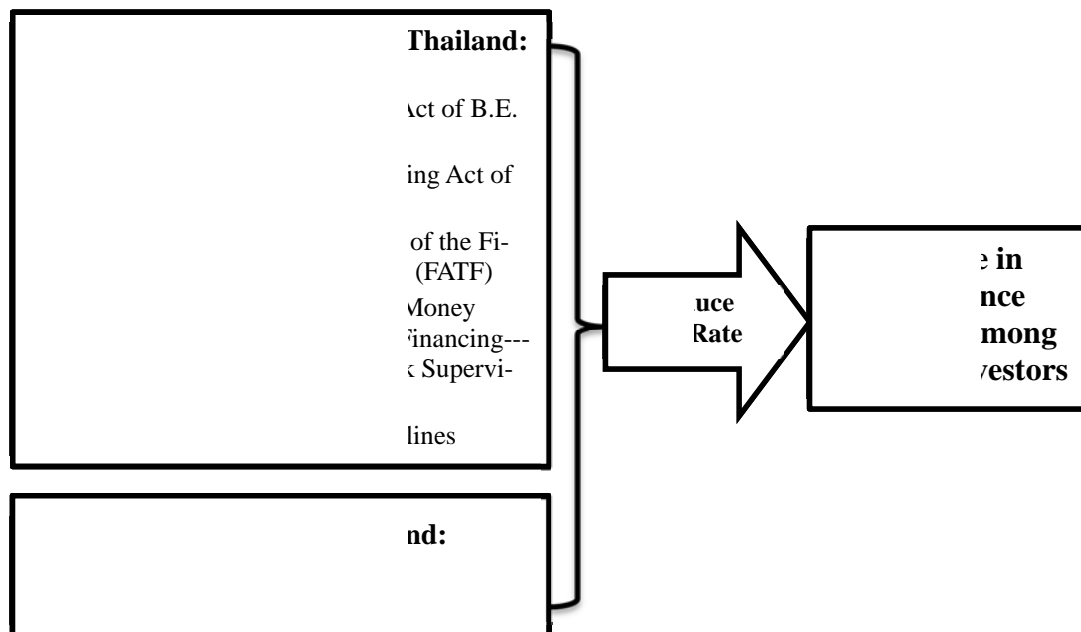


Figure 1.1 Conceptual Model

1.5 Scope and Limitations

The study focuses on the examination of the confidence of foreign investors regarding money laundering within foreign banks in Thailand. Therefore, the research has to concentrate on the foreign banks in Thailand only. The scope for the target study group is derived from the Populations and Samples section in Chapter 3. There are some limits on this study, as there are many foreign banks in Thailand, varying in type and size. As the size and type of banks affects them differently with regards to the money laundering issue, the author has decided to focus on foreign bank

branches that are ranked at the top, in terms of total assets (that can be referred to their economic influence and power). Furthermore, some of the selected interviewees are anti-money laundering experts with ideas and information that can answer the research questions effectively.

Hence, the research presented in this thesis will represent information obtained from documentary research and in-depth interviews of AML experts and top executives who are responsible for protecting money laundering in foreign banks in Thailand. The results of these studies will be utilized to develop countermeasures against money laundering within foreign banks in Thailand.

The review of literature in the following chapter of this thesis will allow for a better understanding of money laundering globally. Analysis of literature on the subject will allow for a better understanding of why the past initiatives against money laundering, especially within foreign banks, are not working or are working to a limited degree. This is necessary for the formulation and examination of a better approach in combating money laundering within international financial sectors. Furthermore, this literature review will set a basis for the investigation that will occur in the following chapters.

Chapter three of the thesis will focus on the methodology used in the analysis of the documentary research and in-depth interviews. The study will analyze the perspectives of the AML experts and the top executives who are responsible for money laundering protection from foreign banks to find out the causes and effects of money laundering within foreign banks affecting the confidence of foreign investors, and to set up the countermeasures against this issue.

Chapter four of this thesis is the discussion of the results of the analysis of the research methodology. This chapter summarizes and explains the results of the in-depth interviews in accordance with the research questions from the author's point of view.

Chapter five or the final chapter is the conclusion. The author extracts the conclusions from the analysis. The conclusion also presents a recommendation or suggestion which may come in the form of practices in fighting the forces that allow the potentiality of money laundering within foreign banks affecting the confidence of foreign investors.

1.7 Operational Definitions

Banks' Policy, as used in this research paper, is defined as a policy or guideline made and maintained by both domestic and international bank's supervisors in Thailand.

Confidence, as used in this research paper, is defined as an economic indicator that measures the amount of optimism or pessimism that investors feel about the prospects of Thailand's economy.

Foreign Bank/Offshore Bank, as used in this research paper, is defined as a kind of commercial banks licensed to operate commercial banking business in Thailand. A foreign commercial bank is located outside its home country and obligated to follow the regulations of both the home and host countries; the host country is Thailand in this case.

Foreign Investors, as used in this research paper, are defined as either individuals or organizations from or registered in a country outside Thailand in which they are currently investing.

Money Laundering, as used in this research paper, is defined as any act or attempt to conceal or hide the identity of unjustifiably gained funds in the form of legitimate sources.

Regulation, as used in this research paper, is defined as a rule or directive made and maintained by Thai authorities for combating money laundering.

CHAPTER II

LITERATURE REVIEW

2.1 Introduction

This chapter, consisting of a review of literature, describes money laundering for its better understanding, as well as the other terms that necessarily have to be explained in order to answer the research questions about the problems of money laundering within foreign banks in Thailand which affect the confidence of foreign investors. This chapter also talks about the related theories and previous studies that outline the basis of this research.

2.2 Literature Review Section

2.2.1 General Knowledge about Money Laundering

2.2.1.1 Definition of Money Laundering

According to International Criminal Police Organization (INTERPOL)¹, money laundering is any any act or attempt to conceal or hide the identity of unjustifiably gained funds in the form of legitimate sources (INTERPOL, 2013). Unlawfully gained funds are laundered and moved around the world through the use and abuse of shell corporations, intermediaries and money transmitters. Thereby, the illicit funds remain concealed and are integrated into legal business and economy. Examples of crimes that generate money laundering are illegal arms smuggling, drug trafficking, bribery, prostitution, embezzlement, and computer fraud.

According to Joseph Albin (1971), organized crime is defined as any criminal activity involving two or more parties using certain methods to reach the ultimate goal found in the businesses of the particular group. Money laundering

¹ An intergovernmental organization facilitating international police cooperation

today has been mostly categorized as an organized crime due to its 'collective nature' and 'profit-seeking motivation' as explained below.

First, money laundering is defined as an organized crime due to the fact that business people often work with organized criminals as unions and then launder money in the commercial banks. Organized crime is a crime within organizations run by criminals for the purpose of engaging in illegal activity. In other words, it is usually committed by large number of individuals acting collectively. Through the collaborations and action planning, the culprits are usually able to escape because of the lack of evidence. Most of the time, the authorities could only arrest the offenders by posing the predicate offences such as drug or human trafficking.

Second, money laundering is defined as an organized crime since the ultimate goal of participating in this illegal activity is to seek (monetary) profits through the money laundering processes. In other words, the money launderers are motivated by the desire to maximize the profits (or survival in some cases). Economics plays a huge role in human behavior so that crimes become more and more common today. Countries where inflation, poverty, low employment rate and so on are common, for instance, Thailand, have higher chances to face with economic crimes. The need for money laundering arises along the boom of these crimes as the dirty deeds derived from crimes should appear legitimate to the prying eyes of law enforcement. An example of these illicit activities is bank fraud. Criminals usually launder their dirty funds through the illegal transactions within the off-shore banks and that becomes one of the most severe crimes challenging the AEC vision which is tightly related with flows of capitals and investment.

However, it should be noted that money laundering can be committed both by a group of criminals and an individual, but it is usually committed in the form of organized crime in which individuals can be perceived as co-conspirators of money launderers. Based on a study entitled "Legal Problems Concerning the Operations of Anti Money Laundering Office: A Case Study on Accessing to the Suspicious Transaction Data" written by Bootsara Metta (2008) suggests the application of 'Conspiracy Theory' and 'Aiding and Abetting Theory' to understand the cause of participation as well as to prevent and reduce the number of criminals so-called 'co-conspirators' committing money laundering offences.

According to the conspiracy theory, money laundering is usually committed when several parties performing as links in one long chain-like criminal organization. Each party is, hence, obliged to be legally accountable and responsible for every action of every stakeholder in the chain. To illustrate, money laundering can be processed through either intentional or unintentional cooperation from the criminal organizations, gangs, etc. to financial institutions to retail economies and then to laundered money users. So, this kind of crimes does not begin by those who distribute the laundered money only and it does not end with the ordinary users either. Even though a laundered money distributor launders some amount of money individually, s/he would have gained those dirty deeds from another criminal or criminal organization; this should be implied that s/he is a co-conspirator in an organized crime scene. The case of a laundered money user should be explained in the same manner in which any person who makes use of laundered money must be punished as a co-conspirator of money launderer(s).

On the other hand, in terms of the aiding and abetting theory, to use the black money that is obtained from money laundering means the users are supporting and promoting the money launders and should be prosecuted as co-conspirators. In brief, the law enforcement entities should promote the concept of 'risk' needed to be known and feared by the potential co-conspirators, including the money users, for example, fear of prosecution under the conspiracy charge.

2.2.1.2 Characteristics, Processes and Techniques of Money Laundering

The 1993 UN Report states that the basic features of money laundering, which are also the characteristics of organized and transnational crimes, are its universal nature, flexibility and adaptability in terms of procedures, the utilization of the newest technological methods and professional support, the inventiveness of its conductors, and the huge resources available for their usage (Steel, 2006a). Another characteristic that should not be disregarded is the persistent pursuance of interests and the extension into new fields of criminal activity. In short, money laundering can be characterized as borderless economic crime that is facilitated smoothly by the aid of innovations and technical advancement.

The Bank of Thailand has classified money laundering into 5 characteristics (Mookjang, 2001):

1. Cash carrying across borders

Criminals often carry illegal funds (particularly in cash) with them while traveling abroad to use them in foreign countries because these funds gained from criminal activities can be tracked by police authorities if the transaction is complete through financial institutions.

2. Deposits with local financial institutions

The modernized banking scheme has assisted criminals to deposit their illicit money in financial institutions. The common operation of financial institutions is partly foresight since the bankers are obliged to keep all information under their hats.

3. International wire transaction

The rise of satellite communication ushers in a new age in which people from all over the globe, including Thai citizens, are linked by a united telecommunications system. This gives rise to a large number of new ways to dramatically enlarge Thailand's telecommunication competency and heighten its opportunities of achieving a position as the region's telecommunication center. Because electronic footprints favor policing entities, contemporary international banking systems favor criminals. It is troublesome and not worthy enough for the authorities to pursue the document trail across international boundaries. Hence, criminals use regular international transactions to conceal the original source of the funds. With the arrival of satellite communication and advanced information systems, criminals have easily laundered the proceeds of their illegal money throughout the last ten years, and this trend will keep blooming unstoppably.

4. Front companies

Criminals surely hide their unlawful money and the possession of such tainted funds to keep away from being inspected by policing authorities. They set up front companies in tax-friendly countries and develop with lending money or merchandising expensive commodities to their corporations with immense interest rates or great costs with the true purpose to cleanse the illegal money into legitimate funds.

5. Others

Whilst money laundering can be achieved by many kinds of legal firms, it should be noted that some local businesses have features which lead to profitable laundering performances. Companies that generally face a high rate of waste or other deprivation of products also have a high exposure to money laundering. Restaurants, car rentals, and money exchange houses are good examples, since some decline of resources is anticipated during the business operations. If the firm is taken over, a huge volume of illegal funds will be inserted into the business and reported in the form of general revenues as if they have been obtained from clients. Deceitful financial statements are made from some modes of products or other fragile articles. They are distributed to these businesses by other criminal-owned or criminal-controlled enterprises who act as suppliers.

There are three major stages of the money laundering process - placement, layering, and integration. Placement is the first stage in this cleansing cycle. Generally, the money is placed into the financial institutions or retail economic sector or is smuggled abroad in order to convert them into assets by removing the cash from the location of acquirement while avoiding investigation from the authorities. Layering stage involves the creation of complex layers of financial transactions that would obstruct the audit process as much as possible. This is a transit point for the criminals to turn the illegal funds into lawful funds. Integration stage is the final stage where the illegal funds are fully integrated into the legal economic and financial systems. It is very difficult to distinguish those funds from legitimate assets (Steel, 2006b).

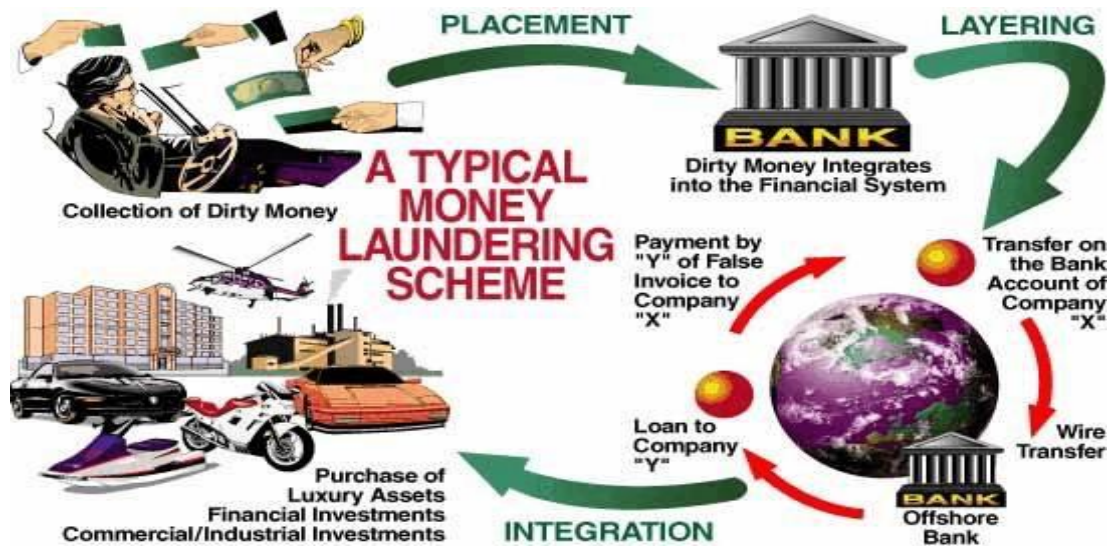


Figure 2.1 Money Laundering Process

Source: UNODC.org

There are also several popular methods to launder the tainted money during these stages such as 1) to establish unidentified enterprises in states where the right to secrecy is promised. Then, the criminals are able to award themselves loans out of the cleaned funds in the form of a prospective lawful transfer. Moreover, to escalate their earnings, they will demand tax alleviation on the loan compensations and accredit themselves profit on the loan, 2) to send the fake import-export invoices exceeding products permits the criminal to transfer money from one enterprise/country to another with the invoices providing to justify the source of the funds located in financial institutions, and 3) to transfer the funds (via electronic funds transfer²) to a legal bank from another bank possessed by criminals, since ‘off the shelf banks’³ are often bought in low tax jurisdictions (Steel, 2006b).

In addition, criminals always seek new techniques to launder money. Presently, the EURO denomination banknote is easy to move and carry around so that the criminals tend to exchange the currencies with Euro in order to avoid the investigation. Smart cards and E-Money technologies allow money to transfer from

² EFT is the electronic exchange, transfer of money from one account to another, either within a single financial institution or across multiple institutions, through computer-based systems.

³ A company which has already been registered by an accountant or lawyer, and which is ready for sale to someone who wants to set up a new company quickly

one place to another without a medium and to be changed to another currency or used without limitation. Therefore, the trial is almost impossible.

2.2.2 Global Money Laundering Issue

2.2.2.1 Current Situation of Money Laundering Worldwide

It should be noted again that the current total magnitude of global money laundering is estimated between 2-5% of the worldwide gross domestic product (GDP). In 2012, the money vanished from developing states to tax evasion by multinational enterprises was found to be equal to US\$160 billion. This amount of money could be enough to save the lives of more than 1000 children every day (Marriage, 2012). Just like the cases of other transnational organized crimes, the main problems and obstacles in eradicating money laundering are the lack of knowledge, personnel, and budget resources among law enforcement authorities, as well as their limited power. It is clear that national blueprints are innately deficient in response to the threats constituted by money laundering, as launderers cross multiple borders, involve a large number of areas of authority and a variety of laws. The hasty innovations of transnational organized crimes like money laundering, and the complexity of examining them, require a global reaction. Today, the propositions adopted to combat money laundering are not only limited to national rather than international policies, but also differ from one state to another. Therefore, there should be an increase in global collaboration between the world law enforcement agencies and more development of instruments which will help them effectively counteract money laundering.

The most recent and infamous case in 2012 is the report about money laundering within Hong Kong & Shanghai Banking Corporation Bank (HSBC)⁴, one of the world's largest banking and financial service organizations serving some 60 million customers in more than 80 countries. The report found out that HSBC Mexico (HSMX) had prominent customers engaged in drug trafficking, millions of dollars of skeptical bulk travelers' checks, and closing-accounts linked to

⁴ A British multinational banking and financial services company headquartered in London, United Kingdom. As of 2012, it was the world's third-largest publicly held bank and sixth-largest public company, according to a composite measure by Forbes magazine.

suspicious activities. This was discovered right after the UK-based HSBC bank was fined almost US\$2 billion for being unable to cease criminals using its banking systems to cleanse money. Moreover, the report also notes that the bank is dealing with Iran, who is facing economic sanctions (as the country is listed as FATF's super blacklist), and even some terrorist groups. For example, an internal audit by the bank found that HBUS carried out 28,000 unrevealed responsive transactions during 2001-2007. The majority of those transactions, worth \$19.7 billion, involved Iran. Furthermore, the report claims that after 9/11, evidence emerged that Al Rajhi Bank, Saudi Arabia's largest financial institution, and some of its owners, had links to financial organizations incorporated with terrorism (Financial Transactions and Reports, 2012).

2.2.2.2 History of Money Laundering Regulation from the Global Perspective

Criminal investigation of money laundering has been occurring since 1919, and it began its first drugs investigation of an opium trafficker in Hawaii in the twenties. At the time, tax evasion was the only other thing that could be charged. Millions of dollars were laundered through financial institutions, untaxed and used to buy legitimate funds. There was no document audit trail at financial institutions other than bank account records if the money was deposited, as there was no obligation for banks to report their huge quantities of currency transactions (Mckenzie, 2011).

Being aware of the issue, the United Nations (UN) adopted the 'Vienna Convention, 1988 against the Illicit Traffic in Narcotics, Drugs, and Psychotropic substances'⁵, which was the first international treaty to levy the charge of money laundering. After that, the Financial Action Task Force (FATF)⁶ was passed in 1989 by the G7 summit in Paris, in order to set up international standards, and to flourish and stimulate policies, both at national and international levels, to combat

⁵ One of three major drug control treaties currently in force

⁶ An inter-governmental body established by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

money laundering and the financing of terrorism (Financial Crimes Enforcement Network, n.d.). The report, published in 1990, included the Forty Recommendations⁷, the internationally approved universal standards against money laundering and subsidizing terrorists. They enlarge transparency and empower states to effectively intervene illegal use of their financial systems. The Convention against Transnational Organized Crime was also adopted by the UN in November 2000, and was available for signature by member states one month later. It demands member countries to additionally strengthen and stabilize their measures against money laundering (Financial Services Authority, 2011).

In 2012, the Forty Recommendations was modified to fortify worldwide protections and further shield the unity of the international financial system by equipping governments with stronger instruments to combat money laundering. Simultaneously, these recent standards will pinpoint new high-priority fields of financial crime such as corruption, proliferation of weapons of mass destruction, and tax crimes. There is more adaptability for simplified measures to be used in low risk areas. This risk-based approach will permit financial institutions and other indicated divisions to employ their resources to higher risk areas. Anti-money laundering legislative measures are different from other anti-crime measures as they must be universal and able to be used everywhere in the world due to the fact that money laundering is conducted collectively by criminal organizations all around the world, using universal access points and processes.

⁷ The 40 Recommendations provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation (See Appendix B).

1988	Introduction of Vienna Convention
1989	Establishment of Financial Action Task Force by the G7 summit
1990	Introduction of Forty Recommendations
2000	Introduction of Convention against Transnational Organized Crime
2012	Modification of Forty Recommendations

Figure 2.2 Anti-Money Laundering Timeline

2.2.2.3 Effects of Money Laundering Worldwide

Money laundering is not only a policing dilemma, but it also constitutes a severe national and international security challenge. This is because it challenges the world's leading financial markets and off-shore bases, including in emerging markets. Therefore, any state incorporated into the international financial system is at risk. Here are the negative economic impacts of money laundering:

1. *It weakens the legitimate private sector.* Money launderers frequently exploit front companies, which blur the interests of illegal actions with legal money, to conceal their illicit gains. Moreover, some front companies can supply goods at prices below the products' original manufacturing costs. This puts some burdens on lawful business to contest with front companies using subsidies. Consequently, the private economic sector becomes crowded with criminal organizations.

2. *It undermines the credibility of financial markets.* Financial institutions that depend on the interests of crime have further problems in sufficiently organizing their assets, liabilities and business activities. To illustrate, huge amounts of laundered money may reach at a financial institution but then vanish unexpectedly, without any warning, owing to non-market determinants, like policing operations. This leads to the failure of a great number of banks all over the world⁸.

⁸ The failure of the first Internet bank, the European Union Bank, and some financial crises of the 1990s such as the fraud, money laundering and bribery scandal at BCCI and the 1995 collapse of Barings Bank

3. *It leads to deprivation of control of economic management.*

Money laundering and financial crimes may cause incomprehensible transitions in money-demand and extended uncertainty of international capital movements, interest, and exchange rates. The inconsistent nature of money laundering, associated with the deprivation of policy control, decreases a government's ability to control and create successful economic policies.

4. *It brings about economic irregularity and imbalance.*

Money launderers are not concerned with investments but rather in protecting their interests. That is why they invest their money in operations that are not economically profitable to the state. Hence, money laundering and other financial crimes usually shift funds from healthy investments to inferior or short-term investments that can disguise their interests. This severely impacts economic growth.

5. *It leads to decline of revenue.* Money laundering decreases government tax revenue and obliquely damages sincere taxpayers due to increasingly complex government tax collection methods, or higher tax rates.

6. *It increases the risk of privatization efforts.* Whilst privatization initiatives are economically profitable, they can be used for laundering money. Criminals have been able to buy hotels, car rentals, casinos, and banks to conceal their illegal interests and their criminal activities.

7. *It increases the risk of damaging a state's or institution's reputation.* Countries and financial institutions cannot maintain positive international reputations and if they are soiled by money laundering. This disrepute diminishes legal opportunities and sustainable growth, while it also attracts criminals to place more funds into the already-broken systems.

8. *It drives up social costs.* Money laundering increases the cost of governance, according to the requirement for stronger policing and health care expenditures to fight this crime's serious consequences (McDowell & Novis, 2001).



Figure 2.3 Impacts of Money Laundering

2.2.3 Money Laundering in Thailand

2.2.3.1 History of Money Laundering and its Legal Countermeasures in Thailand

Money laundering in Thailand is a notable issue because the country is vulnerable to transnational crimes as it is an economic and transport hub of South East Asia. Even though some modifications could have been carried out long ago to strengthen current legislation, Thailand was considered a successfully maintained anti-money laundering (AML) regime until it appeared on the FATF's blacklist in 2012 due to its high prevalence of money laundering and high risk of financing terrorism. Thailand is one of the FATF's associate members, owing to its obligation as a member of the Asia/Pacific Group on Money Laundering (APG)⁹. It is important for Thailand to join other AML institutions because most Thai trading partners are developed countries, and the G20 is concerned about money laundering within their financial systems. Moreover, the lack of AML enforcement may lead to a

⁹ An international organization (regionally focused) consisting of 41 members and a number of international and regional observers including the United Nations, IMF, FATF, Asian Development Bank, ASEAN Secretariat, Pacific Islands Forum Secretariat and World Bank

greater perceived unreliability of Thailand and an increase in non-tariff barriers (Prempooti, 2005).

The greater part of proclaimed money laundering prosecutions in Thailand is drug-related. Money launderers exploit banking and non-banking financial institutions as well as private companies to circulate money from drug trafficking and other criminal corporations. Money laundering impacts Thailand quite severely. Currently, correspondent banks which are Thai trading partners in foreign countries perceive banks in Thailand as high-risk hubs for laundered funds, and Thai customers are listed as high-risk as well. As money laundering threatens financial strength and national security of the Kingdom, the Thai Government has expressed its genuine obligation to fight against money laundering by legislating the Anti-Money Laundering Act of B.E. 2542 (1999) (See Appendix C). The Act establishes the Anti-Money Laundering Office (AMLO), a law enforcement agency with unique investigatory jurisdictions. The AMLO is empowered to authorize the search of locations and vehicles, restrain and seize assets, seek the confiscation of assets through legal measures, and is responsible for the supervision, administration, and demolition of seized and forfeited assets (Prempooti, 2005).

In addition, the AMLO has amended the Act to adjoin additional 8 predicate offenses in the matter of 1) the misemployment of natural resources, 2) the Money Exchange Control Act, 3) market manipulation, 4) unauthorized gambling, 5) arms trafficking, 6) unjust practices in public acquisition, 7) labor fraud, and 8) offenses concerning the Excise Law. In the meantime, the Bank of Thailand and the AMLO have demanded all commercial banks and financial institutions to timely report the suspicious transactions that may be related to terrorism (Prempooti, 2005).

Thailand, as in most other nations, has a Financial Intelligence Unit (FIU). Founded in 1999, the Thai equivalent of an FIU is actually an agency under the AMLO, equipped with the Information and Analysis Center. Its main functions are described as shown below:

(1) To acquire and retain electronic transaction reports obtained from financial institutions and other sources

(2) To primarily study and inspect financial records, especially suspicious transaction reports, and related data

(3) To perform its role as the principle administration in Thailand for the exchange of financial data, together with the contract of the Memorandum of Understanding (MOU) on financial information sharing, between other overseas FIUs

(4) To install and to keep up the AMLO database and ICT systems

In 2001, Thailand joined the Asia/Pacific Group on Money Laundering (APG). Every year, the APG conference prepares a principle for reviewing the pragmatic affairs related with the strategic plan of money laundering and terrorist financing preventive and suppressive measures. Since Thailand became a member of the APG, the country is obliged to follow the regulations and standards of Financial Action Task Force (FATF), the most well-known intergovernmental organization who is responsible for establishing policies to mitigate the risk of money laundering and terrorism financing. Thailand is also a part of the Egmont Group of Financial Intelligence Units, an unofficial organization comprising of Financial Intelligence Units from 94 countries. Additionally, the AMLO has exchanged and transferred information to the comparable overseas administrations (Prempoti, 2005).

In 2012, FATF decided to add Thailand to the blacklist of countries being unable to meet international standards, which absolutely impacted foreign investor confidence and affected Thailand as a whole. It must be noted that there are three levels of FATF's blacklist which are super black, dark grey and grey. The countries on the super black list, such as Iran and North Korea, are the most risky regarding the presence of money laundering, and face economic sanctions. Thailand was listed as dark grey in 2012 and had taken measures toward reforming its Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regulation, including accomplishing an AML/CFT risk assessment for its financial division. Thailand has been working on achieving its strategic plan to identify the remaining weaknesses, together with adequately criminalizing terrorist financing (Special Recommendation II), creating and carrying out sufficient schemes to address and withhold terrorist assets (Special Recommendation III), and additionally toughening

AML/CFT control (Recommendation 23) (Lorenzo, 2012). Besides that, Pol. Lt. Col. Aim-Orn Chaibuadang, a Thai specialist in Law Enforcement Policy stated that “the Preparation of Prevention and Suppression of Money Laundering Law and Other Legal Provisions should be introduced within 2015 before entering the AEC” (Thailand’s Bureau of Public Relations, 2012).

Fortunately, in 2013, Thailand was excluded from the "dark grey list" of the FATF after the Thai government brought its new legislation into effect and amended its laws to fight money laundering and terrorism (Pattaya Daily News, 2013). This includes the launch of Counter Terrorism Financing Act of B. E. 2556 (2013). According to the Act, terrorism is criminalized under the Criminal Code of Thailand and constitutes a predicate offence under the law against money laundering, including measures against the financing and funding of terrorism (See Appendix D). However, an anti-money laundering official noted that the course of removing Thailand from the dark-grey list will not be achieved until the FATF had approved that the amended laws are being positively enforced in June 2013. Furthermore, Thailand will not be officially removed from the grey list until 2015 (Piniiparakarn, 2013). The corrective actions according to the list-removal process would include:

1. To set new Ministry regulations specifying the degree of required knowledge about customers, in order to fully comply with international standards
2. To issue the Anti-Money Laundering Act (Amendment No. 5) in order to correct the Thailand's remaining legal deficiencies
3. To reinforce the Act of Money Laundering Prevention and Suppression and the Act of Financing of Terrorism Prevention and Suppression earnestly and efficiently
4. To harden and oversee financial institutions and financial sectors to facilitate practical and productive compliancy with the two acts, being stated above (Pattaya Daily News, 2013)

Another significant instrument regarding the joint role and close collaboration between the AMLO, the FIU, and Thai policing authorities in the fight against money laundering is the National Strategy for Combating Money

Laundering and the Financing of Terrorism, funded by the IMF. Under a policy put forth by the AMLO for making Thai the AML regime meet international standards, a national strategy has been introduced to cover a period of five years from 2010 to 2015, as Thailand prepares for the AEC. Its objectives in terms of regulations and policies are basically to amend current AML regulations, Customer Due Diligence policies, and financial or AML activities defined by the FATF (AMLO, 2011). In addition, the Counter Terrorism Financing Act of 2013 was also introduced to effectively manage financial transactions of Thai investors so that Thailand will be ready for the AEC (Sabhasri et al., 2013).

1999	1. Anti-Money Laundering Act of B.E. 2542 2. Anti-Money Laundering Office (AMLO) 3. Financial Intelligence Unit (FIU)
2001	Joined Asia/Pacific Group on Money Laundering (APG)
2012	FATF's blacklist
2013	1. Counter Terrorism Financing Act of 2013 2. Thailand was removed from the "dark grey list" but still in the grey list

Figure 2.4 Anti-Money Laundering Timeline in Thailand

2.2.3.2 Prevention System and Preventive Strategies within Financial Institutions in Thailand

Thailand has made several amendments to the Anti-Money Laundering Act 1999 (AMLA), including the ministerial regulations issued under this Act in 2003 and 2011. In the most recently modified version of the act, some key amendments have been introduced and discussed in order to detect and prevent money laundering activities in Thailand.

1. Reporting Institutions - Obligated legal authorities and the in-charge officers within those agencies are responsible to detect and prevent money laundering. This obligation should be expanded to cover subsidiaries in foreign countries (like banks or insurance companies), as well as persons with biggest share

ownership of financial institutions or who regulate overseas financial institutions that do not apply standards for preventing money laundering (Cindori, 2007).

According to recent amendments to the original 1999 AMLA (Anti Money Laundering Act), all transactions worth THB2 million or more must be reported by their respective financial institutions directly to the Anti-Money Laundering Office. Similarly, transactions involving property valued at THB5 million or more must also be declared to the Anti-Money Laundering Office. Electronic transfers and payments of money, including property transactions, involving over THB 100,000 in cash transfer must also be reported, as well as transactions involving movable property valued at THB 700,000 and above. (Clifford Chance, 2011).

2. Client Identification and Monitoring. Customer Due Diligence (CDD) should be detected soon after opening an account or the establishment of other modes of long-lasting business collaboration. CDD approaches demand banks to:

- Identify and validate the client's identity;
- Identify, where relevant, the client's profitable owner, and validate the advantageous owner's identity – it is important to understand the ownership and supervision structure of the client; and
- Acquire information on the objective and expected essence of the business relationship.

Banks are obliged to continually observe the business relationship, and must retain up-to-date documents and information gained for taking CDD measures (Financial Services Authority, 2011). For financial institutions in Thailand, the customer identity verification is required for transactions worth THB700,000 or more, or transactions involving electronic money services or electronic transfer payments worth THB50,000 or more (Clifford Chance, 2011).

Moreover, where the exposure to money laundering or terrorist financing is tremendous, banks must implement Enhanced Customer Due Diligence (EDD) measures and utilize an increased oversight system of their business relationship. The three scenarios where particular EDD measures must be practiced are:

- In respect to corresponding banking partnerships from non-EEA states
- In circumstances where the client is not physically present for identification
- Where the client is a Politically Exposed Person (PEP) whose notable status in society may shape them defenseless to corruption. This term also includes family members and close acquaintances of PEPs. Banks must create and sustain suitable and risk-based procedures and schemes to examine whether a client is a PEP customer (Financial Services Authority, 2011).

Foreign institutions are extremely likely to analyze transactions with vulnerable states with additional surveillance, and may even determine to eliminate their connections with business collaborators from those states. Therefore, an effective AML management system that meets international standards should not fail this analysis, as this would create costly impacts for domestic and international trade. Bank supervisors should implement an examination for all their branches to make sure that they adhere to the AML regulations of their home countries. If the host countries do not accept a bank branch's registration of its homeland regulations, the administrators in the home countries must be informed. A bank should receive adequate information about any correspondent bank, in order to comprehend the nature of its business, reputation, and the quality of its supervision (Financial Services Authority, 2011). In short, the bank's protocols in respect to foreign branch and affiliate operational activities should be reviewed and bank supervisors must cooperate with other AML agencies and institutions both at the administrative and operational level nationally and internationally.

According to "Preventing Money Laundering and Terrorist Financing," a bank's guide published by the World Bank, there are three organizational approaches for effective AML supervision in financial institutions which are "supervision by the bank supervisory division", "supervision by the FIU", and "joint supervision"; these each have their own strengths and weaknesses. Under the supervision of a bank supervisor, supervisory bodies are highly competent and well-informed about estimating risks in banks, the policies/procedures to deal with those risks, and how banks operate, as well as the products and services they provide

(Chatian et al., 2009). These supervisors also comprehend the distinctions between how small-scale domestic banks and big international banks perform. However, they may not consider AML as important as governments do, or may not have adequate resources to do anything about it. On the other hand, the FIU or other congruent entity has expertise in certain AML matters because data collection and analysis are its main responsibilities, and AML is its only responsibility. It also has straight entry to suspicious transactions reports (STRs) and relevant information. Still, an FIU may be unskilled both in financial investigations and in banking affairs (Ibid). So, the mutual administration embedded between the FIU and the bank supervisor has arisen as a new option, as staff, information, proficiency, and other resources are shared between the two bodies. In general, the nature and organization of AML/CFT supervision should sooner or later be improved, but this gives rise to numerous difficulties as it requires clear explanations of each entity's responsibilities, the coordination of investigatory activities, and a shared interpretation of the bank's AML obligations and available mechanisms for resolving disagreements.

Additionally, in the same bank guide, the World Bank recommends that foreign bank branches maintain their internal management. Banks should create and retain inherent schemes, protocols, and regulations to preclude money laundering (Chatian et al., 2009). Firstly, they must verify banking activities which include goods, services, clients, and geographic whereabouts that are more exposed to money laundering, and update the bank's risk profile. Second, they should caution the board of directors and top executive about compliance deficiencies, suspicious transaction reports (STRs), and countermeasures that should be taken. Third, they must establish risk-based customer due diligence action plans, approaches, and processes, and be equipped for sufficient inspections with surveillance systems for well-timed detection and reporting of any suspicious activity. This includes the sufficient supervision of staff members who deal with currency exchange transactions, publish reports, search for suspicious operation, or participate in any other action regarding AML controls (Financial Services Authority, 2011).

In 1998, Basel Committee on Banking Supervision published an AML risk-based guideline entitled "Risk Management for Electronic Banking and Electronic Money Activities". From the study, there are four major risks related to

money laundering which are operational risk, reputational risk, legal risk, and other risks. In terms of operational risk, customers may misuse products and services for laundering money. Money laundering can seriously affect reputation of banks. Concerning legal risk, electronic money systems may be highly appealing for money launderers because electronic banking can be operated remotely. However, to detect and prevent money laundering, Banks involving in online banking and electronic money operations can confront with legal risks due to customer declarations and confidentiality protection. Incompetency to provide sufficient privacy protection may lead to banks' regulatory sanctions in some states. Other risks such as credit risk, liquidity risk, interest risk, and market risk, should be taken in account as well. To prevent the risks, the research identifies a list of potential risk management measures such as the designation of customer identification and screening techniques, development of audit trails, designation of policies and procedures to detect and report suspicious activities, setting low load limits, periodic compliance reviews, compliance training, and development of contingency plans.

Another AML guideline for banks published by the Bank of Thailand (2005), Guidelines for On-site Examination on AML/CFT compliance, suggests that each financial institution should include basic international standards like customer due diligence or the 40+9 recommendations set by the FATF. Institutional policies must abide by regulations with sufficient organizational structure, authority indication, and follow-up management, including resource/budget management for such policy. However, this cannot be too prohibitive, as it would end up diminishing customer access to banking services.

In Thailand, the Financial Institution Business Act (2008) is another law regulating the financial institutions in Thailand, including foreign banks. A foreign bank is defined as "a branch of a foreign commercial bank licensed to run commercial banking business in Thailand". To be licensed by the Minister of Finance, foreign banks must be recommended by the Bank of Thailand, and they must be granted under a set of rules the Minister deems appropriate. Normally, the business of a financial institution must be held in confidence. The disclosures of such knowledge to other individuals shall be accountable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht or both. However, such

information can be disclosed to the supervisor of such financial institution or to the national and foreign law enforcement and/or anti-money laundering agencies who have powers and responsibilities to supervise such financial institution. In the same manner, foreign banks shall provide information to simplify the operations of those domestic and foreign authorities in comply with the agreements signed by them. This means all foreign banks in Thailand are obliged to inform and assist both domestic and foreign AML agencies whenever they ask for their support, for example, information from the Customer Due Diligence process. Otherwise, they will be prosecuted, and their banking licenses will be abolished.

Furthermore, each foreign bank in Thailand also has its own internal AML policies, for example, Citibank and Mizuho. The policies of foreign banks in Thailand are quite similar because they abide by their homelands' and Thailand's AML laws and regulations as well as other international standards such as those set by the FATF. Citibank, for instance, is concerned about money laundering which threatens confidence in the international financial system and presents a risk to the bank's reputation. Citibank has thus introduced AML policies and programs to monitor the suspicious activities within their global branches. These programs are subject to routine audits, both internal and external (Citigroup, 2013). In order to carry out its internal audits, Citibank has established a Compliance Division, one sub-group of which is the Anti-Money Laundering Compliance Unit. This AML Compliance Unit includes matters related to anti-social factors and the prevention of money laundering by monitoring, investigating, and detecting financial transactions and other information across Citibank to ensure due diligence (i.e. through CDD and KYC processes) (Citibank Japan, 2013). At the moment, there are 700 global anti-money laundering compliance officers around the world. The unit also collaborates with the CITI Security and Investigative Services (CSIS), a full service protective and investigative agency that secures the assets, coherence, and image of the bank and its customers across businesses and regions (Citibank, 2012).

Similarly, Mizuho bank also recognizes the significance of AML programs and policies; hence, it creates appropriate policies complying with international and domestic standards, and stipulates responsibilities and internal regulations within the bank. The bank implements and maintains proper measures to

apply customer due diligence (CDD), affirm assets which are frozen in respect to terrorist activities, and handle suspicious transactions, and trains employees in matters related to the prevention of money laundering so that employees can implement immediate and appropriate measures for customer due diligence, confirming assets frozen in relation to terrorist activities, and handling suspicious transactions. It also implements and maintains measures for handling suspicious transactions, and timely reports suspicious transactions to relevant legal bodies. In addition, Mizuho Bank inspects the adequacy of the Anti-Money Laundering Policy and compliance with the policy, and continuously improves internal controls based on the results of the inspection (Mizuho Bank, n.d.).

2.2.3.3 Thailand's Major Entities in Charge of Combating Money Laundering in Foreign Banks

Anti-Money Laundering Office (AMLO) of Thailand

The Anti-Money Laundering Office (AMLO) was established in 1999 as an enforcement agency permitted to authorize the search of places and vehicles and granted permission to acquire court approval to operate electronic surveillance when the sign of money laundering appears. This agency is tasked for the custody, management, and disposal of seized property. Moreover, AMLO plays a financial intelligence role by operating the Information Technology and Financial Investigation Bureau (or Financial Intelligence Unit) who manages the enormous amount of information inputs from financial institutions and other reporting entities. It can access to database and has responsibility to analyze the financial data and circulate it to other capable domestic and/or international authorities for further investigation (AMLO, n.d.).

Department of Special Investigation (DSI)

Under the Ministry of Justice of Thailand, the Department of Special Investigation (DSI) founded in 2002 is independent of the Royal Thai Police (whose priorities are maintaining peace and social order and investigating street crimes) and responsible for investigating certain special cases such as serious, complex and sophisticated criminal cases affecting national security (for example,

transnational crime, particularly economic crimes or white collar crimes, and human trafficking) and those involving domestic and international organized criminal organizations (especially those relating to high-ranking government officials or police officers). It basically operates through data collection and technology base (Sookying, 2004).

Economic Crime Suppression Division (ECD)

Established under the Royal Thai Police in 2005, Economic Crime Suppression Division (ECD) is obliged to prevent, investigate and suppress all types of economic crimes such as credit card, banking and tax frauds, intellectual property infringements and other new kinds of economic crimes like call center scams throughout the country (ECD Police, n.d.; Wechsler, 2012).

Bank of Thailand (BOT)

The Bank of Thailand (BOT) was set up in 1942 to take care of all central banking functions, establish a mechanism to prevent and protect against economic crisis, including economic crimes, and ensure good governance and transparency in the organization. More specifically, the BOT is required to create monetary stability and enact monetary policies, implement banking facilities for the financial institutions, and supervise and inspect the financial institutions (Bank of Thailand, 2011).

2.2.3.4 Effects of Countermeasures against Money Laundering in Thailand

The countermeasures against money laundering in Thailand have both advantages and disadvantages, particularly in terms of economics, the state sector, and financial institutions. The author has summarized these effects in the table below.

An example of the effects of countermeasures against money laundering within foreign banks is that, for foreign direct investment, if a fund's legitimacy cannot be clarified during the CDD process, the money must be held for at least 5 days in the correspondent bank, causing it to become a delayed transaction, creating even more costs for re-transaction.

Effects on	Advantages	Disadvantages
Economics	Investors' trust, capital investment flow, liberal competitive market, decrease in inflation, decrease of expenditures of safety	In short-term, less (laundered money) capital investment flow
State Sector	Less expenditures on preventing crimes and social problems, increase the State's income by seizing the laundered money or the properties of criminals	More expenditures on AMLO and its activities
Financial Institutions	Fair competitiveness, good image for the institutions	More expenditures, time/opportunity costs, less amount of transactions, less income/profits

Table 2.1 The Effects of Countermeasures against Money Laundering in Thailand

2.2.4 Money Laundering and its Countermeasures in Foreign Countries

The information in this section is mainly based on the study of Banker's Academy (2012), a leading worldwide provider of training programs and materials to the financial neighborhood, except the information regarding European Union which is based on a research written by Cynthia Tavares, Geoffrey Thomas, and Mickaël Roudaut (2010).

Japan

Money laundering in Japan is a continuing dilemma. Even though Japan has a healthy Anti Money Laundering (AML) system, it still confronts considerable exposure of money laundering posed by criminal organizations as well as other internal and external factors. The main origins of cleansed money are drug trafficking and economic crimes, usually connected to Japan's criminal networks. Drug-relevant money laundering began to be criminalized under the Anti-Drug Special Law that had been enforced since July 1992. Furthermore, this law commissions the record of

suspicious transaction reports for questionable interests of drug offences, and authenticates regulated drug distributions. The law also establishes a system to seize illegal funds obtained from drug felonies. The confiscation are potentially imposed to visible and invisible assets, direct illicit proceed, substitute articles, and illegally-gained property that has been mixed with lawful assets. Japan extends its money laundering legislation beyond drug trafficking by including other offences, for instance, murder, assault, blackmail, fraud, and kidnapping, when it executed the 1999 Anti-Organized Crime Law. The law enlarges the scope of confiscation jurisdictions by increasing the additional money laundering signified felonies and value-based confiscations. The electronic monitoring system over the members of criminal organizations is put into use, and the suspicious transaction reporting system is administered. Moreover, the Financial Services Agency (FSA) under the Japanese government is in charge of reviewing financial institutions and securities transactions. The FSA categorizes and examines data acquired from financial institutions' suspicious transactions reports in which banks and financial institutions in Japan are legally obliged to document and declare the identity of clients who carry out the enormous currency transactions. The Japan Financial Intelligence Center (JAFIC) is responsible for publishing an annual report about money laundering in Japan (Banker's Academy, 2012a).

China

Within mainland China, it is evaluated that approximately 200 billion Yuan is lost due to money laundering each year. Money laundering remains a major problem for China who is reforming her economy. Chances for criminals increase significantly as the economy becomes more refined and globally linked. At the moment, most money laundering cases that have been reviewed involve profits gained from corruption and bribery, drug trafficking, counterfeiting, fraud and other economic crimes. Moreover, money obtained from tax evasion and recycled through overseas enterprises usually return to China camouflaged as offshore investment which receives some tax benefits and works as another source of laundered money. Since 2006, China has improved its Anti Money Laundering (AML) system. After conducting researches on how to toughen the regime, the People's Bank of China (PBC) and the State Administration of Foreign Exchange (SAFE) developed an array of AML legislative

measures for financial institutions. The results as “the Rules for AML by Financial Institutions” which took effect in 2007 and requires all financial institutions located in China to carry out training programs to fight against illegal transactions from being conducted within the country (Banker’s Academy, 2012b).

United Kingdom

The United Kingdom (UK) has always tried hard to preserve its intensive Anti-Money Laundering (AML) regime, and financial institutions in the UK must report suspicious transactions. Since 2004, business sectors have been more and more depended on official suspicious transaction reporting requirements. To illustrate, the European Union’s two directives on the prevention of the use of the financial institution for money laundering as well as the Financial Action Task Force (FATF) 40 + 9 Recommendations are conducted in the UK. In addition, the Proceeds of Crime Act 2002 took effect in 2003. It requires the disclosure of suspicious transactions in the sense of every crime, not just drug or terrorism-related offences. Along with the jurisdiction came an extension of investigative authorities related to huge flows of cash in the country. The 2007 UK Money Laundering Legislation took effect in the years after. Banks are supervised according to the requirements of the Financial Services Authority (FSA). The main function of FSA is to ensure the safety and durability of the financial institutions under its control. The FSA also plays a significant role in suppressing money laundering by exercising its power to reconsider the renewal of the banking license and examine money laundering activities within banks (Banker’s Academy, 2012c).

United States

Approximately, half of the global laundered money is laundered through banks in the United States. Since the 9/11 incident, the country has taken enhanced countermeasures to fight against money laundering and terrorist financing. The USA revised Bank Secrecy Act requires all financial institutions to set up Anti-Money Laundering (AML) programs to prevent, inspect, and suppress money laundering and financing terrorism. According to the law, Suspicious Activity Reports (SARs) must be sent to the Financial Crimes Enforcement Network (FinCEN), the USA’s Financial Intelligence Unit (FIU), whenever a large or suspicious transaction appears. Financial institutions are also obliged to implement strict customer identification programs in

order to verify the true identity of each client and rule out money laundering. The Federal Reserve, the Central Bank of the USA, is responsible for ensuring the safety and stability of the national banking and financial systems, including monitoring money laundering situation in the country (Banker's Academy, 2012d).

European Union

Every European Union (EU) member country is obliged to establish a financial intelligence unit (FIU) as a central national unit. These units are responsible for obtaining, requesting, analyzing and circulating information related to money laundering or terrorist financing to the related authorities. Each state must provide their FIUs with adequate resources to complete their tasks. The suspicious transactions must be reported without delay to these units when they notice or suspect money laundering or terrorist financing behaviors. The fact that the information has been transferred to the FIU may not be disclosed to the customer or to other third parties. The units must preserve the documents for at least five years. The member countries must collaborate with each other in which the financial institutions located in neighbor countries must comply with the collective, universal rules of the EU (Tavares et al., 2010).

Australia

Money laundering in Australia is a big concern. The Government of Australia has sustained a comprehensive Anti-Money Laundering (AML) regime to investigate, prevent, and combat financial crimes and terrorist financing. With the legislation of the Proceeds of Crime Act 1987, Australia considered money laundering related offenses as serious crimes. It was replaced by two Acts that came into force in 2003. The Proceeds of Crime Act 2002 permits the civil seizure of criminal profits, and strengthen the existing conviction-based forfeiture regulation which is a part of Proceeds of Crime Act 1987. It also includes the implementation of articles under the UN International Convention for the Suppression of the Financing of Terrorism and resolutions of the UN Security Council relevant to the confiscation of terrorism-related property. The AML/CTF Act 2006 received Royal Assent was introduced in 2006, following a long process of consultation (Banker's Academy, 2012e).

ASEAN

Cambodia is a money laundering hub due to its high exposure to human trafficking, drug trafficking and corruption. The capability of the National Bank of Cambodia (NBC) is still limited in terms of investigating a rapidly expanding banking sector and fighting against serious money laundering risk. Nevertheless, thanks to the Law on Anti-Money Laundering and Combating the Financing of Terrorism 2007, Cambodia has established a foundation to combat money laundering and terrorist financing within the banking sector. The Cambodian Financial Intelligence Unit (CAFIU) is set up to supervise financial institutions and designated non-financial business such as casinos and real estates. The NBC is making steps to manage large or suspicious financial transaction (Banker's Academy, 2012f). Cambodia was ranked as the world's 3rd most at-risk state to money laundering in 2012 (Basel Institute on Governance, 2012).

Vietnam does not view money laundering as a major threat to its banking sector. Due to the current nature of the Vietnamese banking system, it is highly unlikely that money laundering dominates its financial institutions. In these past years, the Vietnamese government has established an Anti Money Laundering (AML) system in agreement with international standards. In 2005, Vietnam authorized the Decree on the Prevention and Combating of Money Laundering which poses measures on crimes committed by individuals or organizations to clean money or property obtained from criminal activities within banks and non-banking financial institutions. The State Bank of Vietnam (SBV) and the Ministry of Public Service are the main authorities in terms of preventing and suppressing money laundering. The AML Information Center was also established under the Decree (Banker's Academy, 2012g). Vietnam was ranked as the world's 38th most vulnerable country in terms of money laundering in 2012 (Basel Institute on Governance, 2012).

Malaysia has built an intensive Anti-Money Laundering (AML) system since 2000. Malaysia's National Coordination Committee to Counter Money Laundering (NCC) was established to supervise the formulation of Malaysia's Anti Money Laundering Act of 2001 and coordinate governmental AML programs. The act criminalizes money laundering and lifts bank secrecy provisions for criminal inspection. The jurisdiction also set up a Financial Intelligence Unit (FIU) located

within the Central Bank and tasked with collecting and analyzing data and/or suspicious transactions and sharing financial personnel between the law enforcement entities (Banker's Academy, 2012h). Malaysia was ranked as the world's 102nd most vulnerable country to money laundering in 2012 (Basel Institute on Governance, 2012).

Brunei does not concern much about money laundering as it is never known to be a money laundering center. In 2000, the Bruneian government adopted AML legislation called the Money Laundering Order and established the National Anti-Money Laundering Committee. The country also carried out an asset confiscation and forfeiture law, and the Criminal Conduct Order for recovering the proceeds. In 2002, the government criminalized the terrorism financing by introducing the Anti-Terrorism Order. Five years later, the government set up the Financial Intelligence Unit (FIU) in accordance with the Money Laundering Order of 2000 (Banker's Academy, 2012i). Brunei was ranked as the world's 82nd most at-risk country to money laundering in 2012 (Basel Institute on Governance, 2012).

In *Singapore*, money laundering is a significant issue. Singapore is a major international financial and investment hub. Due to the bank secrecy laws and the lack of regular transaction reporting requirements, Singapore has become an appealing destination for money laundering. The Corruption, Drug Trafficking, and Other Serious Crimes Act of 1999 criminalized both domestic and overseas money laundering. In 2002, Singaporean government introduced the Terrorism (Suppression of Financing) Act which criminalizes terrorism financing and requires banks to report any suspicious activity related to money laundering timely. In 2007, the Monetary Authority of Singapore issued "Prevention of Money Laundering and Countering the Financing of Terrorism" which points out the need for Enhanced Customer Due Diligence in every bank (Banker's Academy, 2012j). Singapore was ranked as the world's 127th most at-risk country to money laundering in 2012 (Basel Institute on Governance, 2012).

In *Indonesia*, money laundering is a significant problem due to its poorly regulated financial system, a lack of effective law enforcement and extensive corruption. Most money laundering cases in Indonesia is not related to drug crimes but to other crimes such as gambling, prostitution, bank fraud, piracy, and corruption. In

2002, Indonesia established a Financial Intelligence Unit (FIU) called the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) to combat money laundering (Banker's Academy, 2012k). Indonesia was the world's 64th most vulnerable state in terms of money laundering in 2012 (Basel Institute on Governance, 2012).

In the *Philippines*, money laundering is a serious issue. During these few years, the illicit drug trade in the Philippines contributes a lot to money laundering. The country also continues to face an increase in foreign criminal organizations from China, Hong Kong and Taiwan. Corruption is also a main source of laundered funds. The government established an anti-money laundering system by introducing the Anti-Money Laundering Act of 2001 which criminalized money laundering and enforced client identification, recordkeeping and reporting requirements on financial institutions controlled by the Central Bank. This legislation also founded a Financial Intelligence Unit (FIU) called the Anti-Money Laundering Council (AMLC). In addition to conventional FIU functions, the Council can engage in the investigation and prosecution of money laundering cases, and freeze assets related to money laundering or terrorism (Banker's Academy, 2012l). The Philippines was ranked as the world's 56th most at-risk country to money laundering in 2012 (Basel Institute on Governance, 2012).

Myanmar does not have a sufficient series of anti-money laundering provisions. Money laundering is not a criminal offense for crimes other than drug trafficking in the country. The Myanmar Central Bank does not provide adequate anti-money laundering regulations for financial institutions. Banks licensed by Myanmar are not legitimately required to get or maintain customer identification schemes, and are not obliged to record the financial transactions. These deficiencies have caused Myanmar to be considered as a non-cooperative state by the Financial Action Task Force on Money Laundering since 2001. Myanmar's insufficiency of supervisory or enforcement mechanisms objected to preventing and suppressing money laundering augments the exposure to money laundering in Myanmar financial institutions (Bureau for International Narcotics, 2012a). Myanmar was ranked as the world's 10th most sensitive country to money laundering in 2012 (Basel Institute on Governance, 2012).

Laos is vulnerable to money laundering since it is the intersection point of Southeast Asia region's drug trade as well as there is a weak legal and regulatory structure which makes it fragile to money laundering. Furthermore, the regime is incapable to cope with the rapid growth of its banking sector. Terrorist financing is also not criminalized, and there has never been money laundering investigation or prosecution in Laos (Bureau for International Narcotics, 2012b). In 2012, Laos was ranked as the world's 19th most at-risk country to money laundering (Basel Institute on Governance, 2012).

2.2.5 Related Theories

Money laundering is sometimes considered to be a 'modern crime' as it is a financial business crime with transnational perspective (Durrieu, n.d.). Just like any other financial crime, the motivation of money laundering is the 'Culture of Competition'. The culture of competition means, "Wealth and success are central goals of human endeavor which are part of a larger complex of beliefs". The offenders seek economic self-interest and try to catch up with their law-abiding fellows in the race to accumulate wealth and status, which are crucially important for them (International University College, n.d.). This idea can be supported by rational choice theory and deterrence theory. This kind of crime can also be said to evolve according to pattern set forth by routine activity theory.

Rational Choice Theory

Basically, 'rational choice theory' is based on economic theories derived from utilitarian philosophy. The theory assumes that human actions are based on 'rational' decisions; in other words, that people are informed about the consequences of their actions in advance (Lyman & Potter, 2007). Usually, people are motivated by money and by the possibility of making a profit (or any wants or goals that express their 'preferences'). Thus, they have to calculate the likely costs and benefits of any action before deciding what to do; this means individuals tend to determine their actions based on the information they have about the terms and conditions with which they should comply. Therefore, in terms of criminology, the objective of the offenders is to maximize payoff and minimize costs in order to create the greatest satisfaction (so-called 'economic analysis of crime') (Ibid). This can be applied to Thailand's

money laundering countermeasure in which the authorities can improve the rules and regulations in the way that the potential offenders may consider their actions no more worthwhile, for example, to make it more difficult or risky to launder money so that the potential offenders may look for the other ways to make some profits hopefully legitimately.

According to Melvin R. J. Soudijn (2012), money laundering is a perfect platform for exercising the set of rule and testifying the controllability of the nature of economic crimes. The study recommends that there should be the “super controllers,” whose position is higher than the regular controllers (i.e. security guards and managers) in the situational crime prevention pyramid who can implement or suggest policy that regular controllers will enforce. In this regard, the anti-money laundering office can cooperate with the bank as an external management team (external super controller) or collaborate with the internal executive of the bank (internal super controller) to combat money laundering. Moreover, the banking sector as a whole can be considered a super controller because every branch location in the banking sector has agreed to comply with the AML regulations. Those who do not obey the compliance rules can lose their accreditation status, leading to a loss of business.

Deterrence Theory

This argument is corroborated by the application of ‘deterrence theory’. According to this theory, the rational calculation of the pain of legal punishment offsets the motivation for crime, which thereby deters criminal activities (Lyman & Potter, 2007). So, the severity of an action or reaction must also depend on how much the offender would benefit from the action. Both rational choice and deterrence theories are influenced by the Classical School, which argues that a human being is a rational actor, and rationality involves an end/means calculation which can be controlled through the perception and understanding of pain or punishment (Ibid). Punishment will follow any violation of the ‘social contract’, and there are three key elements of punishment that control human behavior such as swiftness, severity, and certainty (Akers, 1990). If there is ‘always’ an ‘immediate’ punishment taking place whenever a criminal act is committed as well as ‘serious’ punishment like capital punishment, the motivation of committing crime is likely to be reduced, but if the investigation and prosecution processes are too slow, some crimes are ignored by the

public, or the punishment is not as severe as it should be from general point of view, the frequency of criminality would rise.

Presently, anti-money laundering regulations have been based on the deterrence theory (Akers, 1990). It should be noted that, to combat and prevent money laundering, laws should recognize all the stakeholders as co-conspirators, from the criminals to the mediums (i.e. banks such as those who cleanse tainted money, and retail enterprises) to the ordinary people who are the money users (Singer & La Fond, 1987). This is because if people refuse to use money that is laundered through the financial institutions, then the financial institutions will have to find a way to avoid having illicit money recycled in their sectors. Then, criminals will finally be unable to place their illegal funds into the legitimate financial sector. This could be considered as a deterrence strategy as “all of the co-conspirators are responsible for the crime and should be penalized on the same level as the main culprit” based on the Pinkerton Rule¹⁰ (Ibid). Therefore, to fight money laundering means to stop supporting and promoting the money launders by ending all association with money launderers.

A study conducted by M. Murat Özer and Halil Akbas (2009) suggests a similar conclusion in which modern criminology should not only focus on reducing the overall crime rates, but also protecting individual people and agencies from criminalization (involving in the crime) and victimization. Nonetheless, it is quite impossible to solve money laundering problems using only the deterrence approach. Another way to control money laundering effectively is by way of the compliance strategy. Financial institutions and the financial economy, both on the national and international scale, can reduce the number of money laundering opportunities by promoting law conformity, for example by creating corporate economic incentives that force people to obey the law, and setting up administrative agencies to oversee transaction activities, like the Anti-Money Laundering Office (AMLO) (Siegel, 2005: 302).

Another interesting study to be applied to this research is the principles of money laundering prevention measures appeared in “The fight against money Laundering: An Economic Analysis of a Cost-Benefit Paradox” written by Hans

¹⁰ A judicially created doctrine that imposes liability on a conspirator for all crime or offenses committed in furtherance of the conspiracy, the rule imposes liability on the conspirator even if those offenses are actually performed by co-conspirators

Geiger and Oliver Wuensch (2006). The authorities with the support from the banks should 1) confiscate the illegal assets and reduce the expected profit of a predicate criminal attempt, 2) increase of transaction costs; AML provisions lately lead to higher production and transaction costs of the predicate crime while criminals prefer to keep costs down and earnings up, and 3) the efforts of the money laundering combaters will ultimately increase the probability of criminals being detected and convicted (this will be further confirmed its effectiveness during the experts' interview period of this research). Moreover, it is necessary to pay attention to the fact that a money launderer is not always the same individual as the predicate offender; this means a possible conviction of the money launderer is not automatically a conviction of the predicate offender.

Routine Activity Theory

As of late, the usefulness of 'routine activity theory', or 'lifestyle theory', has become more and more widely accepted and commonly used for analyzing criminal victimization and offending patterns, including those of money launderers. Originally, the theory was formulated by Lawrence E. Cohen and Marcus K. Felson who conceptualized the theory in their 1979 article "Social Change and Crime Rate Trends: A Routine Activities Approach" (Cullen & Wilcox, 2010). The theory generally explains how crimes escalate due to profound changes in the availability of criminal opportunity. According to their theory, there are three necessary elements that induce a crime's occurrence. These are the presence of potential offenders, the presence of suitable targets, and the absence of capable and willing guardians. These three elements must encounter each other in the same time and space (Ibid). For the first element, the presence of potential offenders, Cohen and Felson describe potential offenders as people willing to break the law after assessing a situation. 'Motivated offenders' are potential offenders in the presence of suitable targets, in the form of vulnerable individuals or property (objects or places). These targets could be either tangible or intangible; offenders often prefer targets that consist of these factors: concealment, removability, availability, valuableness, enjoyableness and disposability, or items which are composed of mix of these "CRAVED". The absence of capable and willing guardians is described as "a lack of protection or supervision or individuals or devices able to ward off an offender" (Department of Attorney General and Justice,

2011). So, it can be inferred that these elements, targets and guardians in particular are not necessary only human beings, but also property or devices that can environmentally deter or control crimes.

Following this theory, money laundering crime scenes, especially those within foreign banks, enjoy the presence of all three of these elements. First, there is always a criminal agent or a group of criminals who has committed a criminal offense and would like to transform their 'dirty proceeds' into legal funds for either committing further crimes or using the 'clean money' for their daily survival (Durrieu, n.d.), so these people are considered as "motivated offenders". Second, foreign banks can be considered both suitable targets and ineffective guardians. This is because foreign banks are often located in low tax jurisdictions that provide financial and legal advantages such as greater privacy (so-called 'bank secrecy'), tax havens, and easy access to deposits (Blum et al., 1999). Therefore, these off-shore banks are very attractive for criminals to launder their money. Moreover, if the banks have none or few countermeasures against money laundering, the likelihood of money laundering is increased too. Third, if law enforcement authorities in the host country (Thailand in this research paper) are ineffective or do not pay enough attention to the issue, money launderers will capitalize on this; hence, this will be described as lack of guardianship.

Similar to deterrence theory, routine activities theory also demonstrates how situational crime analysis can identify circumstances which facilitate crime as well as potential countermeasures to reduce it, regardless of the motivation of offenders. Theoretically, it is possible to prevent crimes by keeping motivated offenders away from suitable targets at specific points in time and space or by increasing the presence of capable guardians, since a crime necessitates the spatial and temporal convergence of a motivated offender, a suitable target, and absence of a capable guardian (Kleemans, Soudijn & Weenink, 2012). The application of this theory shows that the prevention of money laundering within foreign banks requires an increase in the presence of capable guardians, which can be accomplished through joining anti-money laundering institutions such as FAFT and Wolfsburg's Group, and establishing anti-money laundering offices (AMLOs) and/or financial intelligence units (FIUs). Furthermore, we can reduce the number of suitable targets by limiting financial transactions involving property for which many cash transactions must be

reported. Simultaneously, we can also deter the potential offenders by monitoring and identifying clients through Customer Due Diligence (CDD).

Again, the study conducted by Ozer and Akbas mentioned earlier helps the researcher to conclude the principles of routine activities theory that can be further applied into the AML measure model (the expected by-product of this research) as follows: the opportunity-reducing measures should 1) involve the systematic and permanent management, design or manipulation of the immediate environment, 2) make money laundering more laborious and dangerous, or less rewarding and excusable as considered by a wide range of offenders. The second principle can be subdivided into 1) increase the effort that makes money laundering more difficult to commit, 2) increase the risk of detection before, during, and after a crime, 3) reduce the possible reward that can be obtained from engaging in a crime, 4) remove excuses or justifications that the offenders might use, and 5) remove stimulants that can provoke unplanned criminal activities (the following table summarizes the opportunity-reducing techniques designed by Ronald V. Clarke; this will be used as a checklist for banks and authorities' current countermeasures against money laundering during the experts' interviews). So far, there are 206 studies all around the world suggest that 75% of Situational Crime Prevention model applications reported significant crime reduction.

Increasing Perceived Efforts	Increasing Perceived Risks	Reducing Anticipated Rewards	Removing Excuses
1. Target Hardening	5. Entry/Exit screening	9. Target removal	13. Rule Setting
2. Access Control	6. Formal Surveillance	10. Identifying Property	14. Stimulating Conscience
3. Deflecting offenders	7. Surveillance by employees	11. Reducing Temptation	15. Controlling Disinhibitors
4. Controlling facilitators	8. Natural Surveillance	12. Denying Benefits	16. Facilitating Compliance

Table 2.2 Sixteen Opportunity-Reducing Techniques

Source: Situational Crime Prevention: Successful Case Studies (Ronald V. Clarke, 1997)

In summary, rational choice theory, deterrence theory, and routine activity theory are basic theories useful for gaining a better understanding of money laundering. It is also important to note that, at the 11th ESC Conference in 2011 organized by Australian Institute of Criminology, Dr. Russell G Smith, a principal criminologist in Australia, also mentioned routine activity theory in the discussion called “Anti-Money Laundering and Counter-Terrorism Financing Regimes across the Globe”, in terms of its applicability for qualitative criminological research in offender decision-making, behaviors of financial institutions, and the utilization of financial intelligence by law enforcement authorities (Smith, 2011). This is evidence that routine activities theory as well as its origins, like rational choice theory and deterrence theory, is currently an accepted method for analyzing money laundering. If Thailand would like to become an economic leader, the country should promote more awareness and responsibility about money laundering issues within its financial institutions, including the foreign banks which are high-risk organizations, and encourage both the public and private sectors to use these theories as a basis for implementing strategies to fight against money laundering. However, this could not succeed without the examination of current regulations regarding money laundering in Thailand and policy adaptation by the Thai public and private sectors. The figure below explains the relationship between the theories in terms of money laundering:

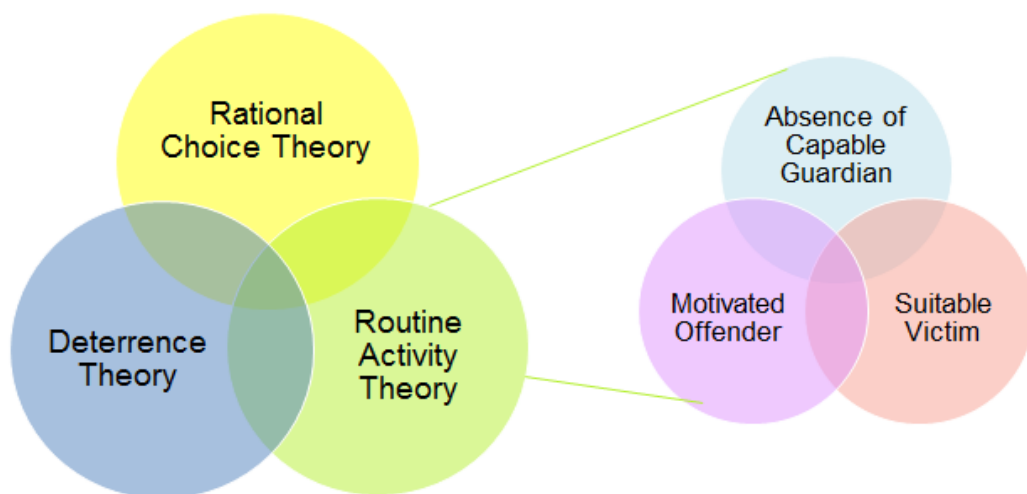


Figure 2.5 Related Theories in the Field of Money Laundering

2.2.5 Previous Studies

Lim (2011) studied anti-money laundering programs from all over the world, particularly in the Southeast Asian region, and the problems brought upon the legal profession. According to his study entitled *Anti-Money Laundering Initiatives: Ramifications on the Legal Profession*, the FATF recommendations do not work effectively, especially the Customer Due Diligence (CDD). This is because financial institutions are not allowed to disclose that they have sent a suspicious transaction report to the appointed financial intelligence unit. Lawyers and other professionals are responsible for managing due diligence compliance programs and secretly handing in suspicious transaction reports, but most of the time, they neglect these responsibilities.

Asian Banker Research (2010)'s study entitled *Identifying Anti-Money Laundering Issues in Chinese Banks* found out that commercial banks in China regard AML primarily as a wasteful mode of risk management since it is a major cost driver. It can negatively affect profits, as it would scare away customers due to more complicated and comprehensive Know Your Customer¹¹ procedures, and because customers are afraid of a relaxation of bank secrecy policy. Plus, inflexible AML specifications may limit business opportunities. The study recommends the information exchanging reforms between banks, supervisors, and other official data sources. With an AML risk-based procedure, banks can monitor high risk clients intensively and spend less time and efforts on low risk customers. A variety of other determinants should also be considered, such as the type of customer or business or product, and expected financial activity. Risk-based customer identification procedures need to be standardized across all bank branches.

Levin and Coburn (2012) conducted a study about the causes of HSBC's failure regarding money laundering. In their research entitled "*U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History*," the first cause is longstanding and severe AML deficiencies, along with an inadequate AML surveillance system for account and wire transfer activities, the illegitimate accumulation of 17,000 uninspected signals, deficient staffing, improper country and

¹¹ Due diligence activities that financial institutions and other regulated companies must perform to ascertain relevant information from their clients for the purpose of doing business with them. The term is also used to refer to the bank regulation which governs these activities.

client risk evaluations, and late or disappeared suspicious activity reports. Another cause is taking on high risk affiliates. HBUS failed to evaluate the AML risks related with HSBC subsidiaries before opening corresponding accounts for them, did not mention high risk subsidiaries, and never recognized HBMX as a high risk account holder for many years. The bank also overlooked terrorist connections. Third, the bank has removed suspicious bulk traveler checks. The research recommends that there should be screenings for high risk affiliates, respect for Office of Foreign Assets Control (OFAC)¹² prohibitions, closure of accounts with banks exhibiting terrorist financing links, a revamp of travelers check AML controls, a boost of information-sharing among affiliates, an elimination of bearer share accounts, strengthened AML examinations, actions regarding multiple AML problems, the treatment of AML deficiencies as a matter of safety and soundness, and an increase of HBUS' AML resources.

Mihaescu (2012) conducted a study entitled *The Anti-Money Laundering Complex in Canada – A Private-public Approach to Governance* and found that, in Canada, the engagement of private entities in public policy is not a new phenomenon. Banks are one of the first lines of defense against money laundering since they are responsible for implementing policies as well as maintaining records of their clients and monitoring their financial transactions, and then reporting suspicious transactions to the authorities at both international and national levels. Although the Financial Transactions Reports Analysis Centre of Canada must implement the AML scheme, it does not have the capabilities to fulfill this commission on its own, and needs reporting bodies like banks to process financial information in advance. Nevertheless, so far, the banks are provided with only ambiguous guidelines on how to determine which accounts or customers should be reported. There is still a lot of room for the reexamination of the existing risk-based approach that allows financial institutions to create their own AML policies. In the future, more responsibilities should be imposed on private actors like banks as the legislation has transformed them into an arm of the

¹²An agency of the United States Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign states, organizations, and individuals.

state. Financial institutions are required to monitor and report their customers whenever transactions considered suspicious. However, AML policies can threaten citizens' individual rights and privacy. Private sector institutions must find the right balance between the customer due diligence approaches and the protection of their customers' privacy.

Mookjang (2002) conducted a study entitled "Measures to Prevent and Suppress Transnational Organized Crime, Focus on Money Laundering" to find out proper countermeasures against money laundering. He found out that Thailand's anti-money laundering program is still in the primary stages of implementation. The legislative frame work is considerably consistent to international anti-money laundering standards. Money laundering Control Act B. E. 2542 (1999) still has some loopholes that prevent it from effectively combating money laundering. The study suggests some proper countermeasures against money laundering that should be applied Thailand as follows: 1) the predicated offenses for the regulation of money laundering should not be limited to seven offenses but should include gambling, illegal arm trafficking, offence against natural resources, terrorism and transnational crimes, 2) countermeasures defined in the United Nations Convention Against Transnational Organized Crime should be applied in Thailand, for example, special investigative techniques like controlled delivery and undercover operation, 3) the Anti - Money Laundering Operation should be subsidized, and 4) Measures for public collaboration should be encouraged, for instance, rewards for the informants who give clues about money laundering or suspicious financial transactions.

Chuesunthornsophon (2001) studied Thailand's money laundering law in his research entitled "Money Laundering Act B. E. 2542: A Case Study of a Suspicious Transaction". He wrote, Money Laundering Prevention and Suppression Act B.E. 2542 (1999) has been well designed to prevent and suppress the money laundering by identifying reporting technique to track down the money laundering route. Any institution or organization such as financial institutions related to an operation or a giving of advice in making a transaction that involves investment are obliged to report any transaction in consistence with the conditions specified in the Ministerial Regulations to Money Laundering Prevention and Suppression Office, including suspicious transaction. The study suggests that the characteristics of suspicious

transaction are not clearly described or established. Hence, it causes the lack of standard decision to report the suspicious transaction to Money Laundering Prevention and Suppression Office. Furthermore, the study states that the authorities regarding the AML program should (1) to be suspicious in any behavior, (2) paying an attention to any transaction, (3) observe carefully for suspicious behavior of any person or the organization that perform a transaction, and (4) monitor particular action or other circumstances and factors.

2.3 Conclusion

Money laundering occurs worldwide and constantly, especially when capital flows from one country to another. It finds its way into financial institutions no matter what measures are taken to hinder it. According to accepted theories, it can be said that anyone is at risk of handling laundered money since the dirty funds are undetectably cleaned within the financial system. Usage of laundered money is a form of supporting money laundering. Thus, financial institutions, especially foreign banks, become the major victims of laundering, as they are the unintentional international transit point of transforming illegal funds into legitimate money. The main preventive measures for banks to take against money laundering are recording or reporting and Customer Due Diligence policies, which are the basic approaches used in the majority of jurisdictions. Nevertheless, there are a lot of problems with these methods, for example the principles of bank secrecy and confidentiality, and these problems cannot be solved without banks themselves expanding preventive policies and technologies.

To date, the AEC is approaching Thailand, where money laundering is a big issue, in the same way as many of its neighbors in the Southeast Asian region. It is reasonable for ASEAN members to compete with each other over the prize of becoming the region's economic center. Thailand may be seen as a centrally located and upper-middle-income Southeast Asian country, but this is confounded by its extremely porous border and high risk as a locale for money laundering. Foreign capital flow and investment are very important for the up-coming AEC; however, the AEC cannot be facilitated smoothly without confidence and trust in the financial system, particularly in foreign banks. At the macro level, Thai banking regulations

safeguard financial institutions adequately, but struggle to supervise over less formal operations like those of the foreign banks. Fortunately, Thailand's criminal justice system, whose capacity to deal with this challenge is quite low, is improving. Cooperation between foreign banks and law enforcement authorities for the improvement of AML prevention should be stabilized in order to increase and maintain the confidence of foreign investors, and for the AEC's bright future.

CHAPTER III

METHODOLOGY

3.1 Introduction

The objective of this study is to examine the confidence of foreign investors regarding the money laundering issue within foreign banks in Thailand, as well as the causal factors that shift the level of confidence and can be used to determine possible solutions. This research is carried out primarily using documentary research and in-depth interviews.

3.2 Documentary Research

Documentary research is conducted through the study of:-

1. The current situation of money laundering and its countermeasures/related laws and regulations within foreign banks in Thailand
2. The current prevalence of money laundering that affects the confidence of the foreign investors both in and outside of Thailand

3.3 In-depth Interview

Since this study is qualitatively approached research, interviewing is a significant source of information. Therefore, the researcher interviews 13 people experienced in the money laundering field, preferably focusing on foreign banks, and another 2 top managers who are responsible for money laundering protection in any bank ranked in the top 5 foreign banks in Thailand.

3.4 Population and Samples

The population of the study is people who have professionally experienced and deeply acknowledged about anti-money laundering not less than five years, and the top executives who have been responsible for money laundering protection of foreign banks in Thailand for five years or more.

The researcher has divided the anti-money laundering (AML) experts into five groups as follows:

1. High-ranked officers in the Bank of Thailand
2. High-ranked officers in the Anti-Money Laundering Office (AMLO) of Thailand
3. High-ranked officers in the Department of Special Investigation (DSI)
4. High-ranked officers in the Economic Crime Division
5. Economists/Criminologists whose expertise is relevant to money laundering

For the top executives from foreign banks in Thailand, we first have to consider certain facts about foreign banks. In Thailand, there are 15 foreign banks with a fully operational branch, all of which are located in Bangkok. These banks account for almost 15% (approximately \$36.1 billion) of all commercial bank assets (Deloitte Center for Financial Services, 2012). The top foreign banks ranked by their total assets in 2006 are:

Rank	Name	Total Asset
1	The Bank of Tokyo-Mitsubishi (Japan)	US\$ 7.3 billion
2	Citibank (US)	US\$ 5.7 billion
3	Sumitomo Mitsui (Japan)	US\$ 5.6 billion
4	Mizuho (Japan)	US\$ 4.4 billion
5	HSBC	US\$ 3.7 billion
6	Others	US\$ 3.8 billion
	Total	US\$ 36.1 billion

Table 3.1 Foreign Banks Ranked by total asset as of Dec 31, 2006¹

The researcher used the rankings of the top foreign banks according to the Table 3.1 to determine the top five foreign banks in Thailand, which are:

¹ Information acquired from Bank Accounts Co (updated 30 October 2014)

1. The Bank of Tokyo-Mitsubishi (Japan)
2. Citibank (US)
3. Sumitomo Mitsui (Japan)
4. Mizuho (Japan)
5. HSBC

The first sample group is selected by snowball sampling technique in which the executives of the organizations where the experts work (as the researcher contacted some interviewees through their workplaces) or informants contacted via their social networks to refer the author to other individuals who could potentially participate in or contribute to the research. There are four interviewees from the Anti-Money Laundering Office (AMLO) of Thailand, three from the Department of Special Investigation (DSI), three criminologists, two from the Economic Crime Division (ECD), and one from the Bank of Thailand. For the top executives who are responsible for money laundering protection in foreign banks, the researcher selects two samples from two banks listed above according to the economic influence of the banks (their total assets) as well as the fact that both of them have the most transparent and outstanding anti-money laundering systems compared with other banks in the list described above, and let each bank appoint the appropriate officers for the interviews.

3.5 Data Collection Tool

The data collection tool for this study is interview questions. The questions used in the interview are guideline questions which were built on the basis of related literature, on the condition that the questions cover the study objectives. As the content of the interview questions is built to cover the subject matter of the study, the interview focuses on the following topics (See Appendix A for Interview Schedule):

1. The current money laundering situation in Thailand
2. Opinions on the money laundering control and countermeasures both in Thailand and foreign countries, especially the ASEAN neighbors (advantages/disadvantages)
3. Opinions about the issue of the Financial Action Task Force's watch list

4. Confidence of foreign investors regarding money laundering within foreign banks in general as well as factors that affect their confidence the most

5. Difficulties and obstacles caused by money laundering within foreign banks

6. Recommendations for proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand that should be carried out by legal bodies (i.e. police, government, AMLO) and banks themselves

3.6 Data Collection Procedures

The researcher makes arrangements with each expert and top executive who is responsible for money laundering protection for an individual interview. In the meantime, the sample interviewees have been informed about the objectives and the directions of the interview questions. Each interview takes at least 30 minutes, but not over two hours.

3.7 Problems and Obstacles in Collecting Data

Due to the fact that the schedules of the experts and the top management in the study were often too occupied for an interview, some arrangements were cancelled which led to delayed process of in-depth interviewing. Moreover, the number of experts from each organization identified in Section 3.4 (Populations and Samples) is varied because some organizations asserted that they had given enough information, so there was no need to further interview another officer. In addition, the representatives from foreign banks do not allow the author to state their banks' names in this research, so the author has to refer to the foreign banks' anonymously.

3.8 Period of Collecting Data

4 months

3.9 Data Analysis

After obtaining comprehensive information about the confidence of foreign investors over the issue of money laundering within foreign banks in Thailand, the researcher then combines his/her viewpoints with those extracted from the documentary research to examine the level of foreign investors' confidence in the banks' responses to money laundering and discover the factors that affect their level of confidence as well as the proper responses to this issue that should be carried out by the Thai authorities and the foreign banks themselves, since foreign investors are their major customers.

CHAPTER IV

RESEARCH FINDINGS

This chapter reveals the research results from in-depth interviews among 15 experts in the field of anti-money laundering (AML): four interviewees from the Anti-Money Laundering Office (AMLO) of Thailand, three from the Department of Special Investigation (DSI), three criminologists, two from the Economic Crime Division (ECD), two representatives from selected foreign banks, and one from the Bank of Thailand. The chapter focuses on the data collection among the researcher's interviews with the experts who are experienced in money laundering protection in foreign banks. The findings are reported in accordance with the interview topics as identified in Section 3.5, Chapter 3. The interview topics are designed to answer the research questions and to respond the objectives as mentioned in Chapter 1.

4.1 Findings

4.1.1 Research Question 1: What is the current situation of anti-money laundering in foreign banks in Thailand?

4.1.1.1 The Current Money Laundering Situation in Thailand

Money laundering in Thailand has recently become an extremely serious concern. The number of money laundering prosecutions rises every year. An explanation for the rise can be found in the theory that the more crimes exist in any society, the more appetite there is for laundering the funds acquired from those crimes. Another common argument used to explain the rise in money laundering prosecutions is that Thailand is highly vulnerable to being used as a site for money laundering. Thailand is a communication and transportation hub of the Southeast

Asian region, and an enormous amount of money and properties are regularly moved in and out of the country, and the broader region. Additionally, the patronage system in Thailand accommodates corruption, which is one of the main money laundering predicate offences. Education and public awareness concerning money laundering and its countermeasures have also not been adequately fostered within Thailand. Moreover, banks and the money service sector have been evaluated as highly exposed to money laundering, even though the anti-money laundering system is generally perceived to be well-secured. The following section will explain the research results supporting these facts in detail.

First, the research results show that the money laundering situation in Thailand has become increasingly dire in recent years. Eight interviewees stated that the number of prosecutions having to do with money laundering increases every year, especially money laundering cases related to the drug trade. Five research participants agreed that 90% of money laundering in Thailand involves drug-related charges. Recently, other crimes such as the trafficking of natural resources and fraud have been increasingly observed by the anti-money laundering authorities, including new and emerging money laundering channels like stocks and insurances. The rise of these predicate offences directly reflects the increase in money laundering because criminals need to clean up the revenues of their illegal activities through money laundering in order to use and obtain their gains and make themselves appear to be funding themselves legally. One of the interviewees who is a famous criminologist from the Royal Police Cadet Academy explained the current money laundering dilemma by saying, “Every ten years’ time, crime trends unavoidably change. Right now, we are advancing from street crimes to organizational crimes. There is more cooperation between criminal organizations along the borders. When the AEC begins, there will be more movements of both legal and illegal businesses and funds, including people. So, we will need more AML efforts definitely (personal interview, 19 March 2015).”

Secondly, all of the research participants admitted that Thailand has a particularly high chance of being exposed to and used as a site for money laundering. The nature of the country allows criminals to conveniently launder their funds. One of the interviewees (personal interview, 10 February 2015) stated that

as a communication and transportation hub, particularly due to its major international airports, Thailand experiences a large number of constant capital movements across its borders, compared to its neighboring countries. Similarly, as Thailand's economy has regularly been expanding for decades, more legitimate capital has been flowing into the country, alongside the dirty or laundered money camouflaged along the way. Besides these facts, the patronage system in Thailand strongly favors the culture of corruption, which is inherently linked to money laundering. Patronage is defined as a system of favoring supporters, especially by government officials and bureaucrats. Patronage is related to corruption in that the patronage system favors incompetent or purely self-interested persons who perform favors to others in exchange for payments. This phenomenon occurs at the expense of more capable potential government employees, and at the expense of a more efficient and functional government structure and political regime. Those who come to power aiming for illegitimate private gains tend to cleanse their money through money laundering processes. Another research participant, a famous criminologist from the Office of the Narcotics Control Board, noted that "there is a high amount of corruption in Thailand which can be proved by either previous records or statistics. The VIP taxpayers list¹ also exists. There are the cases that law enforcement officers were summoned by high-ranked politicians. They were interrogated, and some were even demoted (personal interview, 10 February 2015)".

Third, Thailand is a developing country where the public concern on money laundering is absent due to the fact that a large number of citizens live under the poverty line and lack opportunities to create livelihoods for themselves. People can be lured into involvement with money laundering process unintentionally. This is because criminals tend to disguise themselves in the name of legitimate businesses or law abiding persons who they select to assist with the money laundering process. People are commonly hired to open bank accounts for criminals and shell companies. Due to poverty, as well as the lack of life opportunities, a number of Thais become money launderers' conspirators on their own volition. Commonly, Thai women are married to foreigners to help them launder money. This phenomenon

¹The VIP taxpayers list refers to the certain taxpayers' records which are equipped with the alarm that is triggered when accessed. It shows who has been looking, so the person who makes the access is often called in to justify the enquiry.

makes it difficult for the investigators to distinguish such illegitimate international marriages from legitimate marriages. The interviewee from the Royal Police Cadet Academy, clarified:

Thai people tend to be easily lured by foreigners. They do not care much about their background but the capital they bring in. Notably, foreign criminals normally take advantage of Thai relaxed enforcement and corruption. Weapons and accommodations are easy to find here at the same time. The worst scenario is when the criminals, the authorities, and the banks cooperate with each other (personal interview, 19 March 2015).

Accordingly, even though Thailand's anti-money laundering system is generally perceived as sound, six interviewees believe that it is still in a precarious state. As stated by an interviewee (personal interview, 19 March 2015), around 100 billion Thai Baht has been laundered in Thailand in the last decade. That is an extremely large amount of money compared to the country's Gross Domestic Product (GDP). The research participants from the Anti-Money Laundering Office (AMLO) further clarified this argument by bringing up a study to exemplify it. According to the National Risk Assessment, conducted by the AMLO in 2012, there is a higher risk of money laundering and terrorist financing in Thailand compared with most other nations in the region. Specific areas with risks and vulnerabilities are also identified in the AMLO's research. The chance of money laundering being attempted is much higher too, as well as the risk that perpetrators of money laundering are not caught or sanctioned adequately. Another interviewee, an officer from the Anti-Money Laundering Office, talked about the country's vulnerabilities in terms of money laundering, as appears below:

Our weaknesses are the law enforcement agencies (LEAs). Their efforts to detect and investigate money laundering are still insufficient. This includes the absence of power to deprive illicit assets from some groups of criminals, for example, corruption. In addition, there is a lack of transparency of legal persons in our country. In terms of counter-financial terrorism, we cannot control transactions effectively. We do not have practical legal frameworks such as provisional measures and confiscations, prosecutions and sanctions against financial terrorism (personal interview, 9 February 2015).

The National Risk Assessment (2012), mentioned above, found that banks and money services sectors such as commercial banks, money remitters, and transfer agents, have the largest exposure to money laundering and financial terrorism. In turn, the insurance sector and other smaller financial institutions have the lowest risk of exposure to such crimes. Interestingly, non-political organizations are also at high risk. The same officer from the Anti-Money Laundering Office rationalized this fact in the same manner:

Even though the banking sector has the best AML controls, the amount of dirty money still overwhelms the capacity to investigate all of them. Banks, money remitters, and securities firms are likely to be contaminated by money laundering, followed by both licensed and unlicensed non-political organizations. Pawnshops, trust and company service providers (TCSPs), futures brokers, building societies, cooperatives and credit unions, agents, brokers, and companies operating in the insurance sector are safe and sound (personal interview, 9 February 2015).

According to the research participants from the AMLO, the National Risk Assessment will be carried out again in 2016.

4.1.1.2 Opinions on the Current Money Laundering Control and Countermeasures both in Thailand and ASEAN member countries

Thailand's current money laundering laws and regulations, particularly within foreign banks operating with its borders, are in need of much development and improvement. The evidence for this argument is Thailand's blacklisting by the FATF in 2012 and the numerous challenges noted by the research participants. New and amended laws and regulations were adopted to cope with complex and technology-based patterns of crime, but there are still some legal deficiencies according to the research results. To begin with, the AML agencies in Thailand, including the Anti-Money Laundering Office (AMLO), are considered incapable of managing their increasingly difficult job. These AML organizations also have distinct perceptions and definitions of money laundering, as well as other differences which lead to their differing levels of effectiveness, and their failure to collaborate properly. The causes of these problems are Thailand's underground

financial system, the patronage system, and conservatism in the public sector. Compared to other ASEAN member countries, Thailand's AML system is acceptable, but not as good as the top ASEAN nations'. The following section will certify the above arguments based on the research results as follows.

First, two interviewees mentioned that, in general, the current money laundering laws and regulations are still in their early stages and only those who are in related fields such as bankers and some related agencies acknowledge them. This is because Thai citizens tend to have very little understanding and awareness of money laundering, and often ignore the issue entirely due to the lack of anti-money laundering public education. It is also difficult to assess the effectiveness of the controls and countermeasures which are in place, because the authorities do not know which aspects must be prioritized for the evaluation, such as the frequency of anti-money laundering reports and efforts to increase public awareness. The other research participants also confirmed that, consequently, new laws and regulations were implemented to catch up with fresh crime patterns which are more complex and hi-tech. This includes the current situation of increasingly diverse predicate offences which underlie money laundering and terrorist finance activities. An interviewee from Economic Crime Suppression Division pointed out that "Now, every business is suspicious. We have found a lot of cases in real estate enterprises, car dealers, educational institutions or even temples. These kinds of trade-based money laundering are hard to trace the real source of money. Money laundering and cybercrime are also mutually existed (personal interview, 31 March 2015)".

Presently, there are 25 predicate offences to money laundering identified in Thailand. In 2003, the country had around 8-9 predicate offences. The new predicate offences such as terrorism, natural resource trafficking, and human trafficking, were added to the list in 2013. The predicate offences must be both international and culturally based according to the local situation in Thailand. The laws must clearly identify the penalty for each predicated offence, while they must also be flexible for amendments on a case-by-case basis. Another interviewee (personal interview, 31 March 2015) said, to illustrate, in the case of gambling, if there are fewer than 100 players, it will not be considered as a predicate offence. Simultaneously, non-profit organizations, especially religious places, are highly

overlooked. In Thailand, funds for “good” purposes are not expected to be a part of predicate offences. The history of money laundering control and countermeasures in Thailand also represents the perseverance of the Thai government to cut the cycle of criminals funding themselves through money laundering. The anti-money laundering laws and regulations in Thailand have been developed since the adoption of Vienna Convention, the very first international standard against money laundering. Two interviewees stated that the AML measures modified in 1999, including Anti-Money Laundering (AML) Act B.E. 2542 were the most modern AML laws in Asia at the time. The law enlarged the list of predicate offences, introduced new reporting entities, and strengthened the overall supervision. According to the act, the Anti-Money Laundering Office (AMLO) is assigned to be the host agency in terms of combating money laundering. The officers from the Economic Crime Suppression Division (ECD) stated that the AMLO’s intention to halt money laundering is satisfactory. The imposition of civil penalties is effective because the burden of proof now goes to the suspects². However, there are a number of problems that still obstruct the agency’s enforcement of its mandate, including ineffective imposition of criminal penalties, the low amount of cooperation between the related agencies, and both an inadequate workforce and budget. Another interviewee, an officer from the Department of Special Investigation, stated:

The most well-known duty of the AMLO is to impose the civil penalties such as fine and asset seizure. However, the agency should be more responsible for imposing criminal penalties. Right now, the DSI and the Royal Police (ECD) are known for imposing criminal penalties, but that is not easy because we are the ones who hold the burden of proof and need to search for enough evidence to accuse the suspects. Moreover, the DSI has not received much feedback from the AMLO, even though we have reported them a lot (personal interview, 24 March 2015).

Other examples of the AMLO’s weaknesses include the lack of capacity of the AMLO’s authority and its slow tracking system, which lead to enforcement deficiencies. An interviewee (personal interview, 10 February 2015) said that, currently, the AMLO has not yet been facilitated by the law to monitor financial

²The suspects have to prove that they have no intention to commit the crime by themselves.

transactions as intensively as they need to. The tracking system which exists is quite slow since there is no e-database, and it is impossible for banks to report suspicious transactions every single morning. This also has notable effects on the asset seizure process. The AMLO officers' relaxed interpretation of policies and laws is also noticeable, even when they work in cooperation with other agencies or institutions. Participant C commented about this problem based on his experience as a banker.

During the last meeting, we were answering the questionnaires conducted by the AMLO. In the questionnaires, we had to make a note about suspicious activities occurred in our financial system process. It is a common knowledge that the regulatory threshold of 2 million baht must be declared. As a banker, I suspected multiple 1.9-million THB transactions made by a single customer, and informed that to the AMLO officers. However, they seemed to ignore the fact. They said, the amount did not reach the regulatory threshold, so there was no need to check that. May be some officers were too careless (personal interview, 9 February 2015).

Ever since the FATF's blacklist issue in 2012, Thailand has been facing a lot of international pressure to reform its AML systems. The deficiencies of Thailand's anti-money laundering system were pinpointed, including the issue of terrorist financing, the lack of competency of authorities, and other institutional measures. Thailand was forced to formulate new laws to meet international requirements, such as an anti-terrorism act and anti-human trafficking act. Thus, in 2013, the Counter Terrorism Financing Act was issued as well as the ministerial regulations on Customer Due Diligence (CDD) in order to meet the international standards. One of the participants described the articles that needed modifications as follows:

Back to that time, we had AML/CFT (anti-money laundering and counter-financing terrorism) deficiencies under the recommendations R23, SRII, and SRIII. SRII and SRIII are concerned with the terrorist financing and financing of proliferation while R23 focuses on the regulation and supervision of financial institutions. The Counter Terrorism Financing Act 2013 criminalizes the financing of terrorism, adopts designating and delisting procedures for terrorism-related entities, and sets up a mechanism for freezing without delay their assets (personal interview, 9 February 2015).

According to the expert from the Bank of Thailand, integration of the Fund Business Act and the Commercial Business Act occurred in 2008; the newly integrated act is called the Financial Institution Business Act (see Chapter 2). This brand new law strengthens risk management and the security of banks. Participant H, a representative of the Bank of Thailand, insightfully explained, as detailed below:

Following by the new act, different declarations related to money laundering were introduced, for example, the Bank of Thailand announcement Sor Nor Sor. 77/2551 which recognizes macroprudential regulations³ such as the “Know Your Customer (KYC)” and “Customer Due Diligence (CDD)”. Another announcement, Sor Nor Sor. 13/2552 and 14/2552 requires the disclosure of the committee and blacklisted shareholders’ information so that we can check whenever any suspicious persons would like to buy or dominate any banks (personal interview, 20 February 2015).

There are two major types of AML regulators who act as the center of anti-money laundering regulation: one is the Central Bank Type, an example of which can be found in Malaysia, and another is the Anti-Money Laundering Office Type. Normally, the Financial Action Task Force (FATF) assesses the prudential measures from both AML authorities. One of the interviewees (personal interview, 20 February 2015) stated that the AMLO should not be the only acknowledged AML regulator, but also the Bank of Thailand (BOT). This is because foreign banks are also financial institutions established under the Financial Institution Business Act B.E. 2551. The BOT acts as the regulator of all national banking and financial institutions, and is responsible for promoting and monitoring monetary stability, so the organization is also equipped with anti-money laundering tools and expertise. Six other responsible agencies are listed by an expert from the AMLO, such as the Office of Insurance Commission, Securities Exchange Commission, Office of Attorney General, Ministry of Interior, Ministry of Foreign Affairs, Royal Thai Police, Department of Special Investigation, Office of Narcotic Control Bureau, and Royal Thai Customs. These agencies have diverse levels of knowledge and experiences as well as distinctive views and definitions of money laundering and related activities.

³An approach aims to mitigate the systemic risk (the risk of the financial system) as a whole

Compared to the AMLO, these agencies are responsible for different tasks and have lesser authority and fewer AML instruments. An interviewee from the Department of Special Investigation discussed this from his perspective:

Most of the DSI cases are related to public cheating and fraud and stock speculation in which sometimes do not relate to money laundering because speculating money would just lead to the loss of money; in other words, there will be no assets seized. We are usually coping with the cases under the Securities and Exchange Act and Drug Trafficking Act while the National Anti-Corruption Commission takes care of corruption cases only. We need an accusation before beginning the investigation. Unlike the AMLO, we are the one who holds the burden of proof not the suspects (personal interview, 23 March 2015).

Additionally, an interviewee (personal interview, 6 February 2015) listed a few more anti-money laundering problems which have occurred in terms of the unsettled cooperation between related organizations both in the public and private sectors. The descriptions of laws and regulations as well as their enforcement procedures have been unclear and vague for both those who are in charge of enforcement and the private sector, even until today. There should be more communication between the government and the people, and between public and private organizations, in order to create an improved overall understanding of AML. Another research participant agreed that the law enforcement agencies have yet to figure out how to properly cooperate and collaborate. As an officer from the Office of the Narcotics Control, he experienced problems regarding inter-cooperation with the AMLO. He said, “When there is a case of drug-related money laundering activity, the asset forfeiture division of the Office of the Narcotics Control Board will be responsible for imposing both civil and criminal penalties, and that would end up as a conflict with the AMLO’s tasks (personal interview, 10 February 2015).”

At the end of the day, Thailand still has inadequate AML measures, on top of its underground financial system which favors cash and does not have transactions records, making the whole system exceedingly hard to investigate. Thai businesses commonly have two or more bank accounts in order to avoid taxation, and some businesses choose to use this channel for money laundering too. An interviewee (personal interview, 10 February 2015) asserted that Thailand is a tax

haven. The country lacks legal mechanisms to combat tax evasion, and also exhibits ineffective enforcement of tax law. Those who are responsible do not record their financial transactions or even use the window dressing method to make their accounts look financially and legally satisfactory. This allows their dirty criminal proceeds to contaminate the broader financial system. However, it should be noted that this does not mean all unrecorded transactions are illegal. It is very difficult to distinguish between legal unrecorded transactions and illicit ones. Another interviewee (personal interview, 31 March 2015) also brought up the fact that Thailand's patronage system and rampant conservatism within the public sector, exhibited by the widespread anxiety over the increase of the AMLO's authority, are obstructing the advancement and reform of Thailand's legal instruments. He admitted that the committee of the Office of the Council of State of Thailand is conservative. This office is a law-making agency, but is afraid of AMLO's extended power. Its members believe that AML could become a political instrument while, in fact, the laws affecting politicians have historically always been cancelled. This makes it hard to implement new measures that support the authorization of the AMLO. For the AMLO's 2013 modification, it was fortunate for the AMLO that the Bank of Thailand supported them at the time.

This happened in the same way as the addition of new predicate offences. However, an interviewee (personal interview, 10 February 2015) looked upon this issue from a different viewpoint, which might explain the worries of people who oppose some expansions of law enforcement in Thailand. The extension of the predicate offences list must be done with strong consideration the nature of each national government. Specifically in Thailand, the scope of law enforcement must be very carefully calculated, because Thai enforcement officers tend to overuse their authority for self-interest, and are even known to use their power for revenge, or attacking opposing groups. For example, unfair asset seizure and embezzlement can cause immense public discredit to people, especially in the current era in which mass-media dominates the public flow of information.

According to seven research participants, ASEAN member countries use a common legal framework set up by the United Nations, but each of them still has different national laws regarding money laundering. Compared with other ASEAN neighbors, Thailand is viewed as a mid-level nation in terms of the

development of its domestic AML legal framework. For Cambodia, Laos, Myanmar, and Vietnam (CLMV), Thailand is their role model and guest speaker whenever there is an AML workshop. Although the actual contents of Thailand's AML laws are similar to Singapore and Malaysia, both of those countries are considered to have better enforcement due to their comparatively low levels of patronage, and the decisiveness of their authorities. They have been members of the FATF for a longer time than Thailand has, and their governments are more serious about combating money laundering. A research participant from the Anti-Money Laundering Office, speaking about the Singaporean and Malaysian AML systems, stated:

Even though it is a common belief that Singaporean financial and banking systems are similar to the Swiss system which favors money laundering, Singapore has better AML enforcement, for example, Singapore has more predicate offences than us. Similarly, Malaysia has strict enforcement like harsh punishments that create the fear to commit crimes among its citizens. Clearly, they have developed the AML system before us. Nevertheless, both Singapore and Malaysia still regard the importance of customers' privacy (personal interview, 6 February 2015).

4.1.1.3 Opinions about the Issue of the Financial Action

Task Force's Watch List

The FAFT's 2012 assessment mainly focused on the anti-money laundering system and national laws in Thailand only. It impacted the country's reputation and trade opportunities to a large degree, and disrupted the operations of domestic and foreign banks, particularly financial transactions. Although money laundering within foreign banks in Thailand is not perceived as particularly severe, some banks decided to toughen their AML policies vigorously. If this trend continues, it would affect the country's competitiveness, particularly after the launch of the AEC. The FATF's planned 2016 re-assessment is likely to focus on the self-recognition and responsibilities of the anti-money laundering authorities and financial institutions, including general public awareness of money laundering, as well as the partnership between the public and private sectors. The below section will thoroughly explain the above statements.

In 2012, when the Financial Action Task Force came to assess Thailand's anti-money laundering situation and its countermeasures, the task force paid attention primarily to the AML procedures and national laws, but overlooked the effectiveness of enforcement in Thailand. One of the interviewees (personal interview, 10 February 2015) explained that three years ago, the FAFT only asked for legal modifications, for example, the amendment of the Anti-Money Laundering Act, the implementation of anti-terrorism act and human trafficking act, the increase of predicate offences like financial scams, and stricter enforcement of these new laws. Aside from its effects on law enforcement, the watch list incident impacted Thailand's reputation and its international trade. After being categorized as a 'high risk' country (a second-tier group) by the Financial Action Task Force (FATF), the country lost international trade opportunities, because FATF rankings are an indicator of a country's overall reliability. One of the interviewees (personal interview, 7 April 2015), a famous criminologist and a professor in the Department of Political Science at Chulalongkorn University, stated that in order to regain its position in the world trade, the Thai government should pay more serious attention to the issue of its 'high risk' rating, and do more than simply filing their country's status as 'monitoring'. Thailand and its financial institutions cannot maintain positive international reputations in the long term if they continue to be tainted by money laundering.

Moreover, due to the blacklisting, there are more complex processes required during financial transactions in Thailand than before. Additional conditions and documents were required for transactions due to new Customer Due Diligence and Know Your Customers Examinations. If the newly required documents could not be prepared, and the new conditions could not be met, transactions were frequently not accepted. For the banks themselves, more frequent reviews were requested during the transaction process, which led to an enormous loss of time and man-hours of work. An interviewee, a representative of a notable foreign bank in Bangkok, Thailand, said, "Especially for the customers who would like to open accounts abroad or link the overseas accounts to their accounts at our banks, we have to spend more time on examination and documentary preparation. This impacts our business a lot (personal interview, 22 January 2015)." Another interviewee also confirmed that there will be consequences of the FATF's blacklisting of Thailand when

the nation enters into a new free trade agreement, after the opening of AEC, when there will be more banks from other ASEAN countries. The competitiveness of Thailand will deteriorate because customers require smooth and easy capital circulation between banks and other financial institutions, and between countries. The blacklisting disrupts and complicates those processes.

However, one interviewee (personal interview, 1 April 2015), from his viewpoint as a foreign bank's representative, stated that no real problems were posed by the inclusion of Thailand on the FATF's watch list, though some banks have decided to become stricter on their AML policies. Foreign banks basically see no huge impacts due to the blacklisting issue, but some banks might not accept their credit cards, and their Letter of Credit (L/C) openings might be rejected. These phenomena spurred the creation of a more complex system of 'enhanced due diligence'. For the next round, the FATF's assessment criteria might be different from the last round in 2012. It is highly possible that the task force's committee will focus on the consciousness and responsibilities of the law enforcement authorities and financial institutions as well as the public awareness among the citizens. Therefore, the AMLO will need more cooperation from both public and private sectors. The interviewee from the Royal Police Cadet Academy forecasted the next FATF's assessment as follows:

We predict that the FATF will be concerned about the AMLO's inadequate workforce in comparison with the amount of tasks and time limit, and the ununiformed relationship between the Bank of Thailand, Banks, and the AMLO. Moreover, the authorization of the AMLO has not covered all over the country yet. We need more distribution of the AMLO's power at regional and provincial levels (personal interview, 19 March 2015).

4.1.1.4 Confidence of Foreign Investors Regarding Money Laundering within Foreign Banks

For the most part, foreign investors are confident in anti-money laundering systems in foreign banks, particularly those from the United States and European Union member states. This is because foreign banks in Thailand are

obliged to specific national laws and regulations even above the international standard. Moreover, they are monitored closely by the Bank of Thailand. Huge fines can also effectively dissuade people from laundering money in foreign banks. Despite investor confidence, the authorities should pay close attention to the situation, especially after the opening of the AEC, since there will be more foreign banks entering Thailand, some with potentially less stringent self-regulation, at which point the government's time and efforts to control and monitor them may be not sufficient. Additionally, other challenges such as the high cost of AML systems, the hesitation of banks to self-discredit in the case that they find money laundering occurring within themselves, the lack of cooperation among the AML authorities, and poor reporting capacity, are in need of further and deeper discussion. Furthermore, even though the available statistics show that money laundering within foreign banks in Thailand is still low, it is still unknown whether or not the country is truly safe from money laundering. This section will go into detail of the arguments mention above in accordance with the research results.

As confirmed by the interviewees, similarly to domestic banks, foreign banks have to deal with smurfing⁴ and syphoning⁵. These terms mean the frequent usage of small banknotes for each transaction, so authorities depend on foreign banks to self-report such transactions. Yet, such cases are very rare, occurring with a similar low frequency to fraud committed by financial institution administrators. In contrast, unfair stock trading is much more evident. Interestingly, ten research participants stated that foreign banks in Thailand are reliable in terms of AML quality and enforcement. They are obliged to follow specific laws that confirm their qualifications and standards in order to get their banking license. Customer Due Diligence (CDD) and Know Your Customer (KYC) approaches are required. Their regular inspection is complementary to these more stringent regulations and conditions. The interviewee from the Bank of Thailand noted that:

Foreign banks in Thailand are allowed to establish under the Financial Institution Act (2008). There are specific requirements that they need to hold in order to undertake the

⁴The process of splitting large transactions into many small transactions to avoid detection

⁵The process of transferring money illicitly from one place to another place

banking activities, so not every bank can automatically obtain the banking license. They must be qualified by the law first, so it is not worthy for them to allow the criminals to launder money in their system. Moreover, foreign banks are viewed as private companies, so they are doing businesses under the Securities and Exchange Act as well (personal interview, 20 February 2015).

Another research participant (personal interview, 7 April 2015) agreed with the fact that Thailand's anti-money laundering system has been strictly observed and supervised by the Bank of Thailand due to the country's national security policy. In order to protect the country from foreign domination, the Bank of Thailand monitors and controls the foreign banks' registration closely, so it is quite difficult to open a foreign bank branch in Thailand. The institution possesses full rights to ban those who cannot reach the legal standards. For foreign banks from the West, such as the United States and European countries, reliability is quite high, since they abide by their homelands' strict national laws which can be applied everywhere in the world, and have extremely thorough CDD. In contrast, Asian banks or other banks from developing countries tend to have more relaxed AML regulations. The interviewee from the Office of the Narcotics Control Board gave an example as below:

For instance, if Mr. X is blacklisted as an American money laundering suspect, the United States' law automatically forbids the business partnership with him wherever he goes. If Country A allows the businessmen in their territory to do a business with Mr. X, the US would ultimately ban its international trade with Country A. On the other hand, banks from other regions like Bank of China are not concerned much about money laundering. Still, it should be noted that even though the foreign investors from these banks do not care about money laundering, money laundering still affects their businesses either directly or indirectly anyway (personal interview, 10 February 2015).

Another interviewee from the Anti-Money Laundering Office (personal interview, 6 February 2015) certified the seriousness of the Western banks' AML enforcement due to the apprehension of fine impositions. He said, foreign banks, especially American banks, are afraid of huge fine impositions that could even lead to their own company's bankruptcy. There was a case in which a fine amounted to more than 10 billion dollars. A foreign bank even reduced both its branches and number of

customers in Thailand in order to strengthen its ability to properly monitor its clients. Another interviewee, who is a famous criminologist, also exemplified the frequent evaluations conducted in foreign banks as parts of the responsibility of foreign banks toward anti-money laundering policy from the bankers' standpoint. "Every 2 years, we have to go through the Wolfsberg questionnaires, conducted by Wolfsberg Group which is one of the major global banks associations. The questionnaires check our overview anti-money laundering policies and practices. So, it can be said that our AML capacity is assessed constantly," said the participant (personal interview, 1 April 2015).

In contrast, after the launch of AEC, foreign banks from countries with less strict domestic AML frameworks may come to open their branches in Thailand, drastically changing the situation. An interviewee (personal interview, 10 February 2015) claimed that foreign banks from more carefree states like CLMV will be obliged to Thailand's laws and regulations instead of their own national frameworks, which means their own effectiveness at combating money laundering and financial crimes will eventually depend on the effectiveness of Thailand's own AML system. Similarly, if foreign banks can open their banks' branches in the Thailand's neighboring countries, the tendency towards increased money laundering will accelerate. Furthermore, the degree of investor awareness of the issue of money laundering depends on the types of foreign investors. Not many foreign investors pay attention to money laundering issues, especially reliable investors from rich countries or government-supported investors. Any investors who invest through foreign funds must be checked by the KYC compliance as well. Simultaneously, the number of businessmen from neighboring countries lying within the high-ML risk group is still very small.

Another participant (personal interview, 31 March 2015) said, the investors who make the direct investment (foreign direct investment: FDI) usually have no problems with money laundering because they are supported by the Board of Investment (BOI) and receive a lot of privileges already, so it is not worthwhile for them to launder money. On the contrary, one interviewee noted that the foreign investors who thoroughly follow the AML trends and news, especially the workable limits of money launderers' excuses or justifications, are likely to be criminals who

open legal businesses as their facades. Moreover, speaking from the viewpoint of foreign banks, a research participant from a selected foreign bank justified the fact that foreign investors in general are not worried about money laundering by the fact that foreign investors' trust in foreign banks' AML systems, and that foreign banks have their own customer screening process, as described below.

Foreign investors who come to Thailand in the form of corporates are not anxious about money laundering; they believe that financial institutions must be responsible for AML and evaluate the security situation for them. Every foreign bank I know has compliance reviews. For example, the US Patriot Act, Article 311, demands the maintenance of records of the total amount of all transactions that are made outside the United States in high-risk countries in terms of money laundering. I do not know about other foreign banks, but our bank does not accept non-resident customers unless they have certain accommodation in Thailand and declare KYC (personal interview, 1 April 2015).

In addition, one key factor that leads to the difference between AML success and failure is the use of technology. To control and detect suspicious transactions effectively, most foreign banks prefer to use electronic systems instead of manual systems. An interviewee (personal interview, 1 April 2015) stated that, unlike electronic systems, problems usually occur with manual process because humans are likely to be misled by false information or their own carelessness. To illustrate, the national Interbank Transaction Management and Exchange (ITMX) system is an electronic payment system that facilitates fraud detection. Another interviewee (personal interview, 10 February 2015) brought up the Financial Crimes Enforcement Network (FinCEN) under the United States Department of the Treasury as an example of AML entities using advanced technology for detecting suspicious transactions. This organization possesses a variety of technological resources for anti-money laundering activities, including automated transaction monitoring systems based on risk profile.

Nonetheless, another research participant (personal interview, 24 March 2015) said that there is a huge amount of investment needed for installing anti-money laundering system such as tracking systems; that is a reason why only major local banks and foreign banks can implement sophisticated technological AML processes. The investment required to install a tracking system normally stands around

50 million baht. This high cost of implementing tracking systems results in the differing reporting capacities between different banks. The transaction reports are conducted according to the specifications made by the AMLO. The interviewees from the public sector claimed that the total number of transaction reports from some foreign banks is inadequately low. However, it seems that foreign banks believe that some specifications are overly complicated or inapplicable to them. Another interviewee who is a representative from a selected foreign bank said, “We would like to report with our best efforts, but there are too many requests and we need more capital to invest in our examination process. The AMLO should reduce the diversity of reports, and advise us which information is their priority (personal interview, 22 January 2015).”

Furthermore, one of the main problems is that financial institutions believe that their major role is to meet their customers’ needs, particularly their most powerful clients. When a conflict of interest between authorities and clients occurs, financial institutions will sometimes hesitate to cooperate with the authorities. Moreover, if a money laundering case occurs in a given bank, this occurrence is not something which the bank or financial institution wants to publicly announce, in order to avoid discrediting its own name. The interviewee from the Office of the Narcotics Control mentioned that:

It is a demand-supply relationship. Banks, including foreign banks, do whatever they need to do in order to keep their customers from running away. Bankers have to reach their deposit target for each customer in order to be promoted. Between 1986 and 1991, only big foreign banks were willing to cooperate with the authorities. There were not so many transaction reports from them. Even today, some suspicious reports are not sent to the AMLO (personal interview, 10 February 2015).

Another interviewee from the Department of Special Investigation justified the belief that not all foreign banks, especially the minor ones, are willing to cooperate with the authorities, by illustrating this problem from his experience as a DSI officer. Based on his experience, foreign banks rarely attend the meetings organized by the Bank of Thailand and the AMLO. Only the larger foreign banks participate. Nevertheless, the representatives from the foreign banks believe

there are no direct effects of money laundering in Thailand toward them yet. At the same time, the other research participants from the public sector said that Thailand still has very few foreign banks, so the statistics on the frequency of money laundering within them still appear to be quite low. An interviewee (personal interview, 6 February 2015) added that the public sector cannot accurately indicate the risk factors related to money laundering, because of the lack of relevant statistics. He revealed that it is doubtful whether some financial institutions have not been accused of money laundering because they really don't carry out money laundering activities, or whether this is due to other hidden power-plays lying beneath the surface of the issue. Correspondingly, another interviewee (personal interview, 31 March 2015) disclosed the suspicious fact that very few concrete money laundering cases within foreign banks have ever been sent to court. Until today, there have not yet been any solid money laundering prosecutions foreign banks. Officers have sent some skeptical cases to attorneys, but they have all been dismissed. Regardless of the reality of the money laundering situation in foreign banks, four interviewees believed that foreign banks are more accountable than Thai local banks in terms of anti-money laundering. One of the interviewees verified the lack of scrutiny of foreign banks from the anti-money laundering institutions, based on his experiences. "When I was training with the FATF in Tokyo, they did not mention foreign banks as a high-risk money laundering target. They seemed to focus more on the local banks of each area and shell companies," said the participant (personal interview, 19 March 2015).

4.1.1.5 Difficulties and Obstacles Caused by Money Laundering within Foreign Banks

The difficulties and obstacles caused by money laundering within foreign banks in Thailand can be split into two categories: the public sector and the private sector. For the public sector, money laundering within foreign banks leads to a huge increase in social problems, especially crimes. It also affects the country's tourism industry, the entire economy, and state policies and revenues. Money laundering in foreign banks could be used to finance terrorism as well. For the private

sector, money laundering within foreign banks can accelerate business and partnership risks, and cause related problems. This section will describe the challenges according to the research results as shown below.

A. Public Sector

At the macro level, apart from the image and reputation issues, eight research participants accepted that there is a tremendous increase in social problems, such as the prosperity of criminals, since criminality is often funded by money laundering, which in turn generates an escalation of the public sector's burdens. The range of criminal activities which money laundering in foreign banks augments includes not only street crimes like burglary, but also white-collar crimes such as bribery, corruption, fraud, and even terrorism in Thailand. Besides, money laundering within foreign banks affects tourism which is one of the main industries in Thailand. It draws more and more low-quality tourists to the country and undermines the economy altogether. An interviewee (personal interview, 6 February 2015) stated that Thai government as well as its citizens welcome any kind of tourists and do not consider their backgrounds, but the cash they carry across the border. Thus, instead of being considered as a stable financial and tourism hub, Thailand is viewed as a money laundering center and attracts money launderers from all over the whole its region, similarly to how Thailand has become famous for sex tourism.

Moreover, the laundered money circulating in Thailand's financial system distorts its economy realities, and state policies might be inappropriate for the real economic situations and issues the nation faces. This distortion of economic reality can lead to hyperinflation, uncontrollable capital costs for businesses, and greater risks associated with doing business. Most notably, if laundered money is used for financing terrorists both inside and outside of the country, the accompanying rise in terrorist activities could place the entire population at risk of physical harm. Another interviewee (personal interview, 9 February 2015) stated that money laundering can help terrorist groups amass their power and influence. This has huge impacts on national security and reduces the foreign aid needed to mitigate humanitarian issues in Thailand.

B. Private Sector

Besides lowered competitiveness of the financial sector, money laundering within foreign banks can also heighten business and partnership risks, especially when dealing with foreigners. An interviewee from the Anti-Money Laundering Office analyzed that:

We have seen a plenty of failed joint ventures between foreign and Thai investors and unsuccessful foreign investment. To illustrate, there was a joint venture between foreign and Thai investors for building a developed housing. However, once the AMLO found that the funds the foreign investor brought in were laundered before, the agency seized the complete housing development in view of the housing is the property purchased with illicit money. Another example is the confiscation of a condominium. The residents were forced to move out from the condominium invested by a criminal organization that used this channel for money laundering. Above all, these foreign investors tend to invest through foreign banks (personal interview, 6 February 2015).

Money laundering within foreign banks can cause difficulties for banks or other institutions when operating internationally as well. Further laws and regulations are inevitably demanded by the public sector, including demands leveled towards foreign banks, not to mention the cost these foreign banks need to invest to fulfill the requirements of each law and regulation. An interviewee (personal interview, 6 February 2015) said, in 2013, it was the public sector who called for the law modifications for anti-money laundering since money laundering caused difficulties for cross-border financial transaction processing. Even though they had to pay for more complicated monitoring systems, foreign banks were willing to follow the new laws. Similarly, another interviewee confirmed that anti-money laundering procedures like Customer Due Diligence (CDD) could hinder banks' ability to do business, as CDD requires a great amount of time to comply with, and impacts the banks' customer secrecy policies. CDD can affect customers' secrecy very heavily. It can lead to slower financial transaction processes and excessive screening of each individual customer. Banks can lose a huge number of their customers because of factors like these. To illustrate, when banks have to check each bill of lading, it takes an immeasurable amount of time. Above all, foreign banks are scared of countercharges by their customers if they report something affecting their secrecy. Another research participant

also talked about the meticulous Customer Due Diligence (CDD) process, institutionalized in her bank, and also the problems caused by this policy from a foreign banker's viewpoint. She said, "Our bank's customers have to pass through all processes from basic screening, questionnaires, interviews, and account's follow-up from time to time in order to register as our customers. Aside from monitoring transactions, we review their portfolio and observe them through the KYC channel annually (personal interview, 1 April 2015)". This makes a lot of customers run away from foreign banks, while the banks still need to invest a large amount of money to implement their intensive AML systems.

By the same token, money laundering within foreign banks can provoke unfair competition between businesses funded by dirty money and businesses without laundered money as a source for investment. Ultimately, this leads back to the problem in the public realm of the government losing the tax revenues that should be gained from the money launderers who successfully camouflage themselves as legitimate entities. The interviewee from the Office of the Narcotics Control remarked that:

It should be generally noticed that the subsidies obtained from money laundering process and used in shell companies or former illicit enterprises are illegal. If the things go on like this, the criminal organizations can empower themselves by using this kind of capital accumulation process. The government would not be able to control that while those businesses financed by tainted money could even take over the legal businesses by the power of money. One of the reasons why the United States, well-known for its Capitalist system, are so serious about anti-money laundering is that the country is afraid of the rich, powerful persons and corporates who can come to power or seize the presidency (personal interview, 10 February 2015).

Speaking from his perspective as a foreign banker, another interviewee (personal interview, 1 April 2015) agreed that money laundering within foreign banks may affect Thailand's economic competitiveness, and portrayed the possible future dilemmas the country may face. Both Thai and foreign investors may move imports and exports abroad in order to avoid contact with potential money laundering in the Thai banking system. Overall, fewer transactions are made due to this perceived risk. Some business and bank licenses issued by Thai government could

be suspended if linked to money laundering. The stakeholders most affected by money laundering in foreign banks in Thailand are not big corporations, but rather small and medium sized enterprises (SMEs).

4.1.2 Research Question 2: What are the effective policies and regulations that should be implemented by the government and foreign banks as a means to lessen the money laundering problem and stimulate foreign investment in Thailand?

4.1.2.1 Recommendations for proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand

The research results provide some suggestions for proper countermeasures to curtail money laundering and stimulate foreign investment in Thailand. For the public sector, legal definitions and descriptions of money laundering related terms must be clear, transparent, and just. Public education and public awareness about money laundering, and its countermeasures, must be raised among Thai citizens. Additionally, a greater and better workforce, more funding, and more advanced technology should be allocated to help combat money laundering. The money laundering databases in AML agencies and banks must be developed, and law enforcement must be improved. Better cooperation and communication among domestic AML authorities and between national and international AML agencies are required, as well as collaboration with foreign banks, and some related laws need to be amended. For the private sector, foreign banks must use proper risk management, blacklisting, and seizure systems to combat money laundering. Overall, enforcement of AML laws must be well-performed. There are also other recommendations for improving cooperation between foreign banks and Thai authorities, as well as other related institutions. This section will reveal the recommendations in detail, as follows.

A. Public Sector

First, the enforcement of anti-money laundering laws must consist of clarity, transparency, and fair control by legal entities. To achieve all of these requirements, five research participants essentially said that definitions and

descriptions which appear in anti-money laundering policies and regulations must be precise. An interviewee (personal interview, 24 March 2015) asserted that each resolution should be reinterpreted, and some unnecessary parts should be cut out, because currently the Thai interpretation of many laws differs greatly from the laws' initial intentions. For example, the definitions and descriptions of suspicious transaction reports are highly unclear. Another interviewee from the Anti-Money Laundering Office criticized Thailand's laws and regulations, voicing concern about the complicated definitions and descriptions of the roles and responsibilities of Thai authorities, as detailed below.

The roles and the scope of responsibilities of each agency, especially the AMLO, are not well-defined. For instance, it is still unclear about the different degrees of criminal penalties that should be imposed by the AMLO and other agencies. Unintentionally, the law does not identify the authoritarian functions of the AMLO, so the agency has to wait for the information of each specific law enforcement agency when there is a case that relates to other agencies, for example, fraud. Criminal penalties had not been usually imposed until 2012 (personal interview, 6 February 2015).

These facts should be publicly recognized by the government and this information should be made publicly available for the entire population to consider. An interviewee (personal interview, 19 March 2015) made a suggestion about the lack of anti-money laundering education in Thailand. He said, not only is there general public unawareness regarding the roles and responsibilities of each obligated public agency, but the public also does not know much about the methods of money laundering commonly practiced in Thailand. Some do not even understand what money laundering is, and participate in money laundering activities incidentally. Accordingly, public communication to the citizenry about the issue of money laundering must be promoted in Thailand. Hence, another interviewee (personal interview, 7 April 2015) proposed a countermeasure for combating money laundering based on raising public awareness about money laundering and its countermeasures. Raising public awareness is an approach which seeks to prevent money laundering at its earliest, first stages. For example, after receiving AML education, citizens will subsequently know when and how to socially sanction publicized money launderers

and their conspirators, like legal entities and banks. Above all, for both the public and private sectors, the successful analysis of financial transactions needs all of the available key resources such as an improved workforce, increased funding, and more advanced technology. Some problems still arise because of the lack of resources and conformity, like the incompleteness of the AML database. An interviewee from a selected foreign bank noted that:

Foreign banks need names and information of terrorists or suspects for examination from the authorities, but there is no direct data sharing system. Plus, the languages used in the public and private sectors' systems are different. When the foreign banks interpret names and information of the suspects by themselves, the data will be shown differently and there will be no universal acknowledgement of a suspect. For instance, the registered names of Thai companies are completely in Thai. We have been through a lot of problems when translating documents brought before court (personal interview, 22 January 2015).

To improve the database, the interviewee (personal interview, 6 February 2015) suggested that the information about the blacklisted persons and/or money laundering suspects, such as their multiple identities and new appearances, should be updated regularly, because some suspects and blacklisted individuals hold more than one passport and have undergone plastic surgery periodically. From a DSI officer's point of view, another interviewee (personal interview, 31 March 2015) recommended some other anti-money laundering tools to facilitate the DSI's work, such as the power to interception and seize property. Next, the interviewees from both the Department of Special Investigation and Economic Crime Suppression Division recommended that the AMLO should be stricter on criminal penalties and improve its investigation skills. A research participant (personal interview, 24 March 2015) advocated that the AMLO should focus more on criminal penalties, and not only on seizing assets and dealing with the nominees. The AMLO has less investigation experience than the Royal Police and the DSI, even though the organization has better knowledge and understanding about money laundering. Nonetheless, not only does the AMLO need to improve its knowledge of financial institutions and their systems, but so does every other legal entity in Thailand. Another interviewee from the Anti-Money Laundering Office (personal interview, 6 February 2015) pointed out that not many

law enforcement officers understand the systems used by financial institutions. Banks are willing to help authorities only when they are confident in the authorities' ability to understand the banks' financial systems, because banks do not want to waste their time explaining the most basic facts about their systems to law enforcement officers.

An interviewee from the Economic Crime Suppression Division (personal interview, 31 March 2015) cautioned that Thai laws and regulations must comply with the deterrence theory, which includes three main principles: swiftness, severity, and certainty. Both public authorities and foreign banks should avoid any relaxation of law enforcement and should impose immediate punishment upon perpetrators. The criminal justice process must also be operated swiftly so that it does not impact suspects' basic rights and the banks' abilities to do business. To clarify the issue, another interviewee from the Economic Crime Suppression Division (personal interview, 31 March 2015) illustrated a case study from his own experience related to the swiftness principle under the deterrence theory. He said that money and/or property is continually transformed while the AMLO waits for its attorneys to demonstrate probable cause in order to get seizure permission. But, often, the process takes too long, so in the end the agency cannot seize the asset.

Also, due to the unclear definitions and descriptions of roles and responsibilities, the public tends not to understand that anti-money laundering is mainly the mission of the AMLO alone. The international community, the FATF in particular, would like to see the presence of other agencies in the national effort to combat money laundering. Therefore, officers from the Department of Special Investigation suggested that better cooperation and communication between agencies could lead to better enforcement. This includes an increase of international collaboration and training. An interviewee from the Department of Special Investigation said:

For example, the DSI does not have any MOU linked with banks for investigating statements. Even though the AMLO has the MOUs, it is unlikely for them to share us the information. Most of the time, we need to find more supporting evidence by ourselves. It is also necessary to check how much criminal penalty has been processed by each agency, and compare the ratio between criminal and civil penalties that have been imposed so far. At least, such cooperation between DSI and the AMLO is needed for

confiscating money and assets from Wat Phra Dhammakaya (Phra Dhammakaya Temple) and its foundation which are suspected for their involvement in embezzlement scam, and auditing the fake bills of lading⁶ (personal interview, 23 March 2015).

An interview from the Department of Special Investigation (personal interview, 23 March 2015), made a recommendation about the collaboration between the Anti-Money Laundering Office and other agencies. He suggested that the AMLO must act as an advisor for other related institutions and establish a joint committee among them. Another interviewee (personal interview, 19 March 2015) also recommended integration between various AML agencies and other governmental departments which can help detect specific money laundering activities. For example, there should be integration between the customs administration and other AML authorities, in order to monitor taxation more meticulously. Another research participant (personal interview, 22 January 2015) added that the cooperation must include closer connections between foreign banks and related law enforcement agencies, particularly the Anti-Money Laundering Office. He stated that the AMLO should advise foreign banks in a more serious manner. For example, when the AMLO requests any information, the agency should state clearly which information within their request should be prioritized. If this is not done, banks simply have to do too much to work to provide the full extent of the requested information, which leads to the banks' unwillingness to work with the authorities.

From the viewpoint of foreign banks, an interviewee from a selected foreign bank (personal interview, 9 February 2015) recognized the importance of cooperation between banks and authorities in the same fashion. She suggested that the AMLO should give more examples and guidelines for reporting transactions. Otherwise, foreign banks will continue reporting defectively, or accidentally neglect some important information. Another interviewee (personal interview, 10 February 2015) remarked that international partnership between AML agencies in other ASEAN member countries and Thailand's AMLO is also necessary and should be supported by the ASEAN Vision 2020. At the moment, the AMLO has numerous multilateral and

⁶It is a document issued by a carrier which identifies a shipment of goods and titles that shipment to a particularized party

bilateral memorandums of understanding (MOU) with other foreign AML agencies. However, other related institutions such as the DSI and the Royal Thai Police do not have MOUs with any foreign entities, giving them fewer opportunities to access the newest internationally vetted information. Another intra-ASEAN measure which is relevant to international cooperation would be an extradition act. Integration of international penal codes and an international cooperation act should be proposed. To support the collaboration between agencies, another interviewee (personal interview, 6 February 2015) suggested the implementation of ministerial regulation promoting the cooperation and integration of AML organizations. He said, “We need an instrument supporting the integration between the AML agencies. I believe that a ministerial regulation prescribing rules and procedures for anti-money laundering law enforcement agencies’ cooperation is necessary.”

Some laws, like taxation and revenue laws, need to be modified regularly. Both organic law and model law must be studied. Investigations of predicate offences relating to public officials are often hindered. The government should set up a meeting and invite the AMLO and the National Anti-Corruption Commission (NACC) to join when implementing any mega-project in order to show its good intentions to fight against money laundering. A research participant (personal interview, 23 March 2015) advised that tax payments should be inspected. However, the taxation law is still limited. It does not allow any other departments besides the revenue department investigate the income of individuals or the revenue of organizations. Also, lower-ranking officers must be obliged to declare their property in the same way as high-ranking ones. Another participant (personal interview, 6 February 2015) indicated that it is important to revise some articles in Thai law, and well as other regulations, that are not suitable for Thailand’s social and/or economic circumstances such as unfit predicate offences. For example, on paper, Thailand does not need to list ‘casinos’ as a predicate offence, since casinos are not legalized in the country. However, it is well-known that Thailand does have illegal casinos within its territory. To make this industry transparent, Thailand should legalize casinos and tax their business activities so that the possibility of money launderers using casinos to cleanse their money would be diminished.

In the same manner, laws and regulations in Thailand should be revised in conformity with human rights. They should not violate the basic rights of Thai citizens, and promote the equal protection clause. An interviewee (personal interview, 1 April 2015) noted that before accusing a person, the authorities should first check his/her intentions. Frequently, customers do not intentionally avoid reporting or making suspicious transactions. They simply do so because they want to avoid additional costs during the monitoring process, since both banks and customers are penalized by the monetary and opportunity costs of the complex monitoring processes. All else considered, laws and regulations should not violate the sovereignty and autonomy of each countr. An interviewee from the Department of Special Investigation clarified this statement by bringing up the case of Financial Terrorism Act in 2013 as described below:

We have tried to avoid using ‘terrorism’ terminology in Thailand but rather recognized the situation as an internal insurgency. This is because terrorism is criminalized legally as a global concern, and international community can intervene in any country tainted with terrorist incidents. The intervention ranges from economic sanctions to military intervention. The Financial Terrorism Act 2013, forced to issue by the international pressure, is a gate for great powers to get involved in our state’s governance (personal interview, 24 March 2015).

Finally, any modification of the law should avoid any balloon effects. In other words, when the authorities attempt to deal with money laundering in one area, they should be careful of the possibility that the problem will simply move to another area. An interviewee (personal interview, 31 March 2015) commented that money laundering often moves to areas with relatively weaker surveillance systems. That is why more predicate offences must be added to the predicate offence list. In the United States, there are more than 100 predicate offences, and even Singapore and Malaysia have more predicate offences than Thailand. An interviewee from the host AML agency echoed the Anti-Money Laundering Office, making a conclusive comment about the adaptations of Thailand’s countermeasures against money laundering:

I would like to remind the country that although it is a general belief that we are forced to change this and that because we are an underdog of foreigners, we are really benefiting from the law modifications. At least, the cycle of criminal activities can be cut down somewhere along the way because it is hard or not worthy to launder money anymore. Lastly, if the public sector does not make any action, the private sector will not make any move as well (personal interview, 6 February 2015).

B. Private Sector

In terms of risk management, an expert recommended a set of guidelines, published by the Basel Committee on Banking Supervision in 2014 (as summarized in Chapter 2), that describes a risk management framework for banks relating to money laundering and the financing of terrorism. An interviewee (personal interview, 20 February 2015) suggested that there are four major risks related to money laundering mentioned in the guideline report which are operational risk, reputational risk, legal risk, and other risks. Every bank should carefully study the guidelines and each individual risk category. Another interviewee (personal interview, 6 February 2015) affirmed that it is necessary to have an intensive customer risk-rating process on top of the standardized blacklisting and seizure systems. This risk-rating process should take into account unusual or suspect financial activities. To illustrate, when arranging a loan, every foreign bank should set the maximum limit of approved credit (the so-called ‘overdraft (OD) limit’) for blacklisted persons at 50%, while normal customers should be able to extend their OD limit to 90%. Another research participant from the Department of Special Investigation suggested a method supporting the blacklisting and seizure frameworks for risk management mentioned above. He said, “First, we need to group the businesses based on their types of industry and then their money laundering magnitude. Then, we can move on to the risk management process designed for each business (personal interview, 24 March 2015).”

For foreign banks, four of the research participants suggested that everything must be declared; the sources of all funds must be identified. The top executives must not relax the banks’ enforcement for persons who do good business or have personal relationships with them. When possible, foreign banks should systematically collect and organize the statistics of suspicious transactions for AMLO.

An interviewee (personal interview, 19 March 2015) stated that foreign banks should not suggest or point out any legal or internal loopholes, like splitting large transactions into some small transactions to avoid disclosure, to their customers. On the contrary, they must inform the authorities when receiving or noticing any clues or evidence of money laundering activities. Furthermore, foreign banks should not issue any suspicious products that could be used for money laundering, such as certain types of insurance. Representatives from the selected foreign banks advised that the AMLO should reduce the diversity of suspects, and advise them which information is more or less important so that they can report the less significant information later and save both their own and the AMLO's time. An interviewee from a selected foreign bank said:

Sometimes, the AMLO asked us to find evidence when the case is not confirmed yet, and we, as a medium, do not know how to explain that to our customers since they are not officially accused. We cannot ignore their permission before disclosing their confidential information in that case. Unlike Thai local banks, we cannot assist the authorities 'informally'. Everything must go step by step in an official manner. The officers often ask for evidence for other unrelated crimes from banks' AML divisions and that is quite a bother (personal interview, 1 April 2015).

However, an interviewee insisted that the authorities cannot classify the priority information for foreign banks because every single piece of evidence is important to the law enforcement officers. He said, "What we can suspect is the tip of an ice mountain; we do not know which information is more or less important because a very small piece of data may lead to the indispensable evidence (personal interview, 31 March 2015)." To illustrate, many small transactions may look unsuspecting, but if they are processed in a short period of time, the authorities cannot overlook them.

Two interviewees remarked that the compliance between the Thai Banks Association and Foreign Banks Association is significant. An interview from the Bank of Thailand (personal interview, 20 February 2015) suggested that foreign banks and local banks should cooperate with each other and exchange their information regularly. Of course, the information should be handed to the authorities as well. Therefore, another interviewee (personal interview, 23 March 2015) also

advocated that foreign banks should increase the cooperation with the Thai authorities and customers to create mutual understanding. He stated that foreign banks should study Thai culturally-based regulations in order to establish a better comprehension for the Thai systems. Alternatively, the authorities need to study and use the banks' standards instead. It is also important for foreign bank officers to communicate with local people, so that they can adapt their ways of working to the local environment, and to Thai customers. To conclude, a research participant recommended that foreign banks reconsider their responsibilities as anti-money laundering prevention institutions rather than as money laundering facilitators for their customers. He said, "Financial institutions, including foreign banks, must acknowledge themselves as a significant channel or part of money laundering process, and try to prevent any participation in the crime at all costs in order to maintain their reputation as well as the national interest (personal interview, 6 February 2015)."

4.2 Conclusion

To sum up, this chapter presents the research results from the interviews with the AML experts from both the public and private sectors. First, the money laundering situation in Thailand has recently become more severe due to the overall increase of crimes and the country's comparatively high exposure to money laundering. The current money laundering laws and regulations, including the law enforcement are still immature and ineffective in many ways. Compared to other ASEAN member countries, Thailand's anti-money laundering system is considered to be moderately effective. In terms of the FATF's watch list issue, the Thai government revised numerous laws and regulations in 2013 in order to get the nation removed from the dark-grey list. However, the FATF will return in 2016 to observe and evaluate the country again. The research participants believe that, in foreign investors' general opinions, anti-money laundering systems within foreign banks are in good shape, and they do not worry about the issue. Still, money laundering causes numerous difficulties for Thai society, especially in terms of its impacts on the national economy and its international competitiveness. Therefore, the research participants recommended proper countermeasures to prevent and suppress money laundering

within foreign banks in Thailand for both the public and private sectors, such as law modifications, further development of law enforcement agencies, and risk-based management for foreign banks.

CHAPTER V

DISCUSSION AND CONCLUSIONS

Based on the research objectives which are 1) to examine the current problems of anti-money laundering (AML) within foreign banks in Thailand resulting in hesitation among foreign investors, 2) to examine the existing AML regulations and banks' AML policies, and 3) to seek effective countermeasures and adaptations of current policy to combat money laundering in the public and private sectors, this chapter concludes the research results from the in-depth interviews shown in Chapter 4 and discusses them in accordance with the documentary research presented in Chapter 2. It also introduces some recommendations for further studies in terms of combating money laundering within foreign banks in Thailand which affect the confidence of foreign investors.

5.1 Major Findings

To summarize, presented below is the research data collected from the in-depth interviews with 13 experts in the field of anti-money laundering (AML), focusing on foreign banks and 2 top executives who are experienced in fighting against money laundering in foreign banks.

First, the money laundering situation in Thailand has become a serious concern in recent years. The number of money laundering prosecutions is increasing each year, particularly the number of drug-related cases. The prosecutions of other money laundering related crimes such as natural resources trafficking and fraud have become more evident as well. This is because the more crimes occur in any society, the more demand there is for money laundering to cleanse the funds obtained from those crimes. Another reason is that Thailand has a high exposure to money laundering. It is an emerging economy, and a communication and transportation hub where a large amount of money and property constantly moves in and out, and has

been for a long time. Moreover, the patronage system in Thailand favors the culture of corruption, one of the major money laundering predicate offences, while it is also a developing country where education and public awareness regarding money laundering and its countermeasures have not been promoted properly. Furthermore, although Thailand's anti-money laundering system is considered acceptable, it is still highly vulnerable, especially in banks and money services sectors.

Second, Thailand's contemporary money laundering laws and regulations, within foreign banks in particular, are in urgent need of development despite the fact that it is extremely difficult to accurately identify the current effective and ineffective features in the anti-money laundering system. This is proved by the FATF's watch listing of Thailand in 2012, and the unsolved concerns brought up by the participants in this research. To a certain extent, new and amended laws and regulations, for example, the increase of new predicate offences, criminalization of terrorist financing, and reversing the burden of proof to the suspects' side, were implemented to match recent crime patterns which have become more complicated and furnished by advanced technology. However, some flaws in these measures are aptly demonstrated by the research results. In many instances, the AML agencies in Thailand are regarded as incompetent. For the main AML authority in Thailand, the Anti-Money Laundering Office (AMLO), there are numerous factors hindering its performance such as the ineffective imposition of criminal penalties, the low amount of cooperation with other related agencies, insufficient workforce and budget, relaxed enforcement of laws, the lack of absolute authority, and the slowness of the tracking systems which exist.

Simultaneously, beyond the different views and definitions on money laundering issues, the AMLO and other AML organizations also have differing levels of knowledge, tasks and responsibilities, supporting instruments, and experiences. This consequently leads to unsuccessful cooperation between them. The reasons behind these complications are Thailand's underground financial system, the patronage system, and conservatism in the public sector. In comparison with other ASEAN member countries, each of which has different national laws regarding anti-money laundering, Thailand's AML system is tolerable but not among the best. In terms of fighting against money laundering, Thailand is the role model for Cambodia, Laos,

Myanmar, and Vietnam, but its enforcement cannot compete with Singaporean and Malaysian AML regimes.

Third, the latest assessment conducted by the FATF focused primarily on the anti-money laundering procedures and national laws. The blacklisting in 2012 affected the country's reputation and trade opportunities tremendously. Also, it has been disturbing to see the operational practices, particularly the domestic and international financial transaction processes used by domestic banks and foreign banks. This is because even though money laundering within foreign banks is generally viewed as a minor concern in Thailand, some banks have independently decided to seriously tighten their AML policies. This trend is likely to continue and challenges the country's competitiveness, particularly after the opening of the AEC. It is predicted that the next round of FATF's assessment in 2016 will concentrate on the consciousness and responsibilities of the law enforcement authorities and financial institutions as well as the public awareness among citizens. Hence, in order to pass this assessment successfully, the cooperation from both the public and private sectors is required.

Next, in regard to the confidence of foreign investors in anti-money laundering scheme within foreign banks, it seems that foreign banks in Thailand are considered to be reliable, especially those from the United States and European Union members. The justifications behind this are the obligations toward specific national laws and regulations as well as international standards, for instance, the Customer Due Diligence (CDD) approach and the use of advanced technology to detect suspicious transactions. As financial institutions, they are carefully observed by the Bank of Thailand, which can cancel their business licenses. Huge fine impositions are another factor proven to be effective in reducing money laundering within foreign banks. However, it will be necessary to monitor the situation very closely when the AEC is launched, because foreign banks with more relaxed views on money laundering may flood Thailand, and controlling all of them requires much time and effort. Moreover, there are some problems that still need further discussion, such as the high cost of AML systems, the hesitation of banks to discredit themselves by reporting money laundering occurrences, the lack of cooperation with the AML authorities, and poor reporting capacity. Since the availability of statistics on money laundering within

foreign banks in Thailand is still inadequate, it is difficult to indicate the risks that may cause a deterioration of confidence among foreign investors.

The prevailing challenges caused by money laundering within foreign banks in Thailand are divided into the challenges arising from the public sector and those in the private sector. For the public sector, money laundering within foreign banks provokes an enormous increase in social problems, crimes in particular. It also attracts money launderers who are low-quality tourists to Thai territory, which weakens the country's tourism industry. Furthermore, when dirty money is circulated in the financial system, it is hard to observe and analyze the true status of the national economy. This restricts the capacity of the policymakers when designing state monetary and economic policies. Similarly, it is impossible for the state to tax and collect revenues from money launderers. More importantly, if laundered money is used for financing terrorists, the entire population may eventually be at risk of physical harm by terrorist attacks. For the private sector, money laundering within foreign banks can also increase the risks of doing business and complicate business partnerships, particularly when dealing with foreign investors. Examples of these kinds of problems are the side effects of CDD approach and unfair competition between legal and illegal businesses.

Lastly, the research results demonstrate some recommendations for proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand for both the public and private sectors. On the side of the public sector, the law enforcement structures must possess clarity, transparency, and fair control, and the definitions and descriptions appearing in anti-money laundering policies and regulations must be interpreted accurately and appropriately. This includes an increase in public education and public awareness regarding money laundering and its countermeasures. Other significant changes include upgrading key resources such as the AML workforce, funding, and technology. Before all else, a database on blacklisted persons and/or money laundering suspects and a tracking system for suspicious transactions needs to be developed, and the AMLO should be stricter on criminal penalties and improve their investigation skills and knowledge of financial institutions and their systems. Conceptually, Thai laws and regulations must also comply with the deterrence theory and ASEAN Vision 2020.

Better cooperation and communication among domestic AML authorities and between national and international AML agencies is required. Cooperation of foreign banks with other agencies also cannot be overlooked. Some laws like taxation and revenue laws need to be amended to keep up with the changing money laundering climate in Thailand. These modifications of the law must maintain respect for human rights and sovereignty of each country, and be designed to avoid violating these principles. For the private sector, foreign banks must apply risk management frameworks as well as the standardized blacklisting and seizure systems to cope with money laundering issues. AML enforcement must be strictly performed without any relaxation or hesitation. If possible, the AMLO should reduce its pool of suspects and prioritize the information they would like to obtain in order to save foreign banks' time and money. However, this is unlikely to happen because every single piece of evidence is important for the law enforcement officers. Similarly to the importance of cooperation between foreign banks and the Thai authorities, as well as their customers, collaboration between the Thai Banks Association and the Foreign Banks Association is also necessary.

5.2 Discussion

In reference to the research results from in-depth interviews combined with the reviewed literature, the author has answered the research questions of this study as follows.

Research Question No. 1: What is the current situation of anti-money laundering in foreign banks in Thailand?

By and large, foreign banks' anti-money laundering is considered well-secured and reliable. However, Thailand's ongoing anti-money laundering (AML) regime in its banking system is still vulnerable, and in need of further development and constant examination.

At the moment, it is commonly believed that correspondent banks which are Thai trading partners in foreign countries and foreign investors perceive foreign

banks in Thailand as high-risk hubs for laundered funds. Nonetheless, the majority of the participants in this study affirmed that foreign banks have not been affected by money laundering and its blacklisting issue very much, because they are obliged to follow specific national laws and regulations as well as international standards like the Customer Due Diligence (CDD) approach. They also use more advanced technology to detect suspicious transactions. Foreign banks in Thailand are also thoroughly monitored by the Bank of Thailand which can cancel their business licenses. Huge fine impositions are another factor that results in the reduction of money laundering within foreign banks. This fact is supported by the study conducted by Ozer and Akbas (2009) in which the principle of routine activities theory (“less rewarding and excusable as considered by a wide range of offenders”) can reduce money laundering effectively. It is also possible that some banks might not accept the credit cards of foreign banks, or their Letter of Credit (L/C) openings might be rejected. However, foreign banks can deal with these kinds of problems by installing more complex ‘Enhanced Due Diligence’ systems.

Furthermore, the Financial Services Authority (2011) noted that if the money laundering or terrorist financing risk is high, banks must apply Enhanced Customer Due Diligence (EDD) measures and use an advanced monitoring system to investigate their business relationships. This UK-based institution also upheld that foreign institutions must carefully analyze transactions transferred through vulnerable states with additional audit, and may determine to remove their business partnerships from those states when they are found to be conducting suspicious transactions or money laundering activities. A research participant supported this idea by bringing up a specific case. To illustrate, if a person is blacklisted as a money laundering suspect, some institutions automatically forbid business partnerships with him/her wherever s/he goes. If another country lets this blacklisted businessman into their territory to do business with him/her, institutions will ultimately ban international trade with that country as well. It was also found that, from the foreign investors’ perspective, foreign banks are reliable because of the trustworthy AML system and customer screening process.

On the other hand, from the author’s point of view, it is still doubtful that all foreign banks can fight against money laundering effectively. The first reason is

installing sophisticated anti-money laundering systems requires a huge amount of investment, so some smaller foreign banks might not be able to afford these systems, especially after the opening of AEC when a lot of new foreign banks from neighboring countries will enter Thailand. As a result, the reporting capacity of each bank is varied. Some foreign banks are unlikely to report to the authorities efficiently. Secondly, the research results show that some foreign banks are not willing to cooperate with the authorities. This can be explained by the fear of self-discrediting and by the customer secrecy principle. In brief, foreign banks in Thailand are evaluated as safe and secure concerning money laundering issues thanks to the strict enforcement of specific legal jurisdictions and international standards as well as the close monitoring of the Bank of Thailand and the banks' internal AML agencies. However, this occurs due to the willingness of banks to pay the hefty expense of running AML systems and having fewer overall customers. Therefore, some smaller foreign banks might not be able to combat money laundering as forcefully as major foreign banks.

Moreover, it should be noted that another main reason why research participants regard money laundering within foreign banks in Thailand as an insignificant issue is the lack of statistics available on this subject. There are very few concrete money laundering cases within foreign banks sent to the court, and all of those sent there in the past have been dismissed. The author is skeptical of the accuracy of the viewpoint that money laundering in foreign banks is not a major issue, because the anti-money laundering institutions' overlooking of them does not mean that there is no money laundering occurring within foreign banks. So far, there have been no direct effects of money laundering in Thailand towards foreign banks, but this trend could change if foreign banks and the authorities are not careful.

Anti-money laundering schemes in foreign banks still need to be developed and examined constantly due to the following reasons. Because Thailand is a significant hub of Southeast Asian communication and transportation, it has a large amount of inbound and outbound capital movements which allow the laundered money to be camouflaged along the way (Prempooti, 2005). Besides, there are a high number of prosecutions of money laundering matters, particularly drug-related cases, which account for 90% of the prosecutions, as confirmed by the participants in the study. Moreover, the research results explain specifically that Thailand is a hazardous

country in terms of money laundering due to its patronage system which influences corruption, one of the major money laundering predicate offences. Patronage refers to a spoils system in which a political party appoints governmental positions to its supporters, or friends and relatives, as a favor or a reward for helping them win their elections, while neglecting the means to achieve that goal. These illegitimate political appointments can increase the use of ill-gained power for illegitimate private monetary gains, which are likely to require laundering.

Additionally, Thailand is also a developing country where education and public awareness regarding money laundering and its countermeasures have not been developed properly. In addition, according to the National Risk Assessment, conducted by the AMLO in 2012, Thailand is still vulnerable to money laundering, especially in banks and money services sectors. Due the above facts, according to the Routine Activity Theory mentioned in Chapter 2, Thailand is a suitable target for money launderers. Because law enforcement authorities in Thailand are ineffective, money launderers can capitalize on this lack of guardianship. Therefore, it is clear that money laundering is threatening the financial stability and national security of the kingdom.

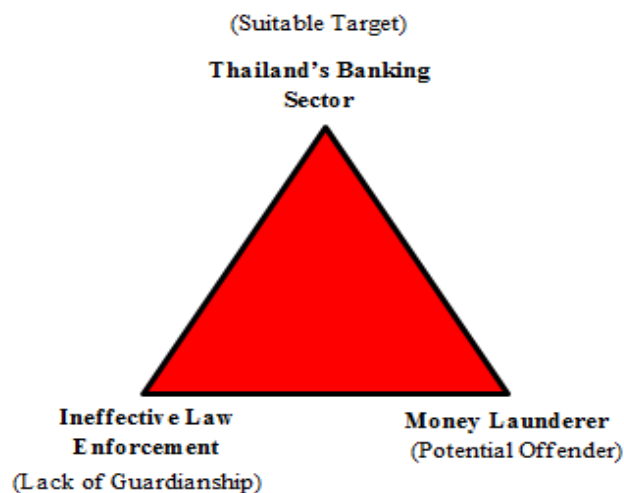


Figure 5.1 Applying the Routine Activity Theory to Money Laundering in Thailand's Banking Sector

According to Peeraphan Premputti (2005), the Thai government expressed their serious commitment to combat money laundering by issuing the Anti-Money

Laundering Act of B.E. 2542 (1999). This law used to be considered 'one of the most modern AML laws in Asia in the meanwhile', as certified by the research participants. From that time forward, Thailand was perceived to have good anti-money laundering (AML) governance; however, in 2012, it was blacklisted by the FATF due to its high prevalence of money laundering and high risk of financing terrorism. Thailand was listed as dark grey in 2012 and had taken measures toward modifying its Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regulation, including applying an AML/CFT risk assessment to its financial sector. Both Lorenzo (2012) and the research participants noted that some deficiencies were pointed out by the FATF, including inadequate jurisdiction related to the recommendations R23, SRII, and SRIII. SRII and SRIII are concerned with the terrorist financing, and R23 focuses on the regulation and supervision of financial institutions (See Appendix B).

To deal with the international pressure and mitigate the negative effects on the country, the Counter Terrorism Financing Act and Human Trafficking Act, which criminalize the financing of terrorism and human trafficking respectively, were adopted in 2013. Thanks to these acts, Thailand was removed from the "dark grey list" of the FATF. The ministerial regulations on CDD enacted to meet international standards were adopted as well. Another example of legal adaptation is the addition of predicate offenses; right now, there are 25 money laundering predicate offences in Thailand (See Appendix E). Interestingly, the research results show that, in 2013, it was the public sector who called for the law modifications for anti-money laundering since money laundering brings about issues during the financial transaction process across borders. That is why the public sector was willing to follow the new laws, even though they had to pay for more enhanced monitoring systems. Nevertheless, Thailand still needs to keep improving its anti-money laundering efforts since the FATF will reassess the country in 2016, particularly the law enforcement authorities and financial institutions' capacity to fight money laundering, inter-organizational and inter-agency cooperation, and public awareness among its citizens, which has been found to be ineffective and/or underdeveloped.

The lack of AML enforcement leads to a greater perceived unreliability of Thailand and an increase in non-tariff barriers because most Thai trading partners are developed countries, and the G20 is concerned about money laundering within their


financial systems (Prempooti, 2005). From the research results, apart from the image and reputation dilemmas, money laundering within foreign banks can provoke an enormous increase in social problems and crimes. It also weakens industries and the financial sector in Thailand, affects the government's decision making, and reduces the amount of potential taxation. Additionally, laundered money can be used for financing terrorists and exorbitant businessmen. For this reason, anti-money laundering schemes are vital. According to Table 2.1, shown in Chapter 2, the advantages of countermeasures against money laundering are, of course, the increase of investors' trust, competitiveness of the liberalized market, a decrease in inflation, and a decrease in expenditures on safety. AML countermeasures help the state by decreasing the necessary expenditures on preventing crimes and social problems, and increasing the state's income by seizing laundered money and the properties of criminals.

However, there are also some disadvantages of anti-money laundering countermeasures. As shown in the same table, AML countermeasures cause a decrease in capital investment flow through the financial system, though this is a short-term problem. On the other hand, the government has to spend more on the AMLO and its activities. The same problem arises in foreign banks, in which more capital expenditure, time, and opportunity costs are needed to adopt AML countermeasures and instruments. Fewer transactions and fewer profits are a real possibility; this would further affect the competitiveness of the banks. A study conducted by Asian Banker Research (2010) certified this fact as they found that Chinese commercial banks not only perceive AML primarily as a fashion of risk management, but also as a waste of time and resources. At the same time, more complicated and comprehensive Know Your Customer procedures can scare away customers, so foreign banks' business could be impacted a lot. In agreement with the research results, Lim (2011) stated that financial institutions are disallowed to reveal that they have reported the suspicious transactions to the named financial intelligence unit.

The opening of the ASEAN Economic Community (AEC) has also become a new issue for anti-money laundering policymakers. Pol. Lt. Col. Aim-Orn Chaibuadang, the AMLO's secretary-general and a Thai specialist in Law Enforcement Policy, stated that the preparation of laws to prevent and suppress money laundering

should be introduced before the country enters the AEC (Thailand’s Bureau of Public Relations, 2012). Correspondingly, the research results supports the fact that if Thailand desires to achieve a successful free trade agreement or integration with neighboring countries, for example, the AEC, the ease and agility of capital circulation across institutions and borders is mandatory. However, the blacklisting would complicate and slow down this process.

As gleaned from the research interviews, Thailand is ranked as moderate compared to other ASEAN member countries. For Cambodia, Laos, Myanmar, and Vietnam (CLMV), Thailand is their role model and key player in joint AML workshops. Although Thailand’s anti-money laundering jurisdiction is almost comparable to Singapore and Malaysia, both countries are considered to have better enforcement due to the low level of patronage system and well-disciplined authorities. According to the Anti-Money Laundering Index, published by the Swiss-based Basel Institute on Governance in 2012, Thailand is ranked the 49th most hazardous country to money laundering and terrorist financing. Its risk level is medium same as the Philippines and Indonesia which were ranked 56th and 64th, respectively, while Singapore, Malaysia, and Brunei were ranked 127th, 102nd, and 82nd in order. Concurrently, Cambodia and Myanmar were ranked among top ten at-risk countries, Laos was among the top 20, and Vietnam was ranked 38th (Basel Institute on Governance, 2012).



1 st	Singapore
2 nd	Malaysia
3 rd	Brunei
4 th	Thailand
5 th	The Philippines
6 th	Indonesia
7 th	Vietnam
8 th	Laos
9 th	Myanmar
10 th	Cambodia

Figure 5.2 ASEAN Members Money Laundering Risk Ranking

Research Question No. 2: What are the effective policies and regulations that should be implemented by the government and foreign banks as a means to lessen the money laundering problem and stimulate foreign investment in Thailand?

The current money laundering laws and regulations in Thailand, and the actual enforcement of these laws, are still immature and ineffective in some aspects. Staff are insufficient or ineffective, country and client risk evaluations are still lacking, and AML instruments are inadequate. The research results show that most of Thailand's longstanding and severe AML deficiencies are similar to the case of HSBC identified in the study written by Levin and Coburn (2012). This research proposes effective policies and regulations that should be implemented and/or amended by the government and foreign banks to lessen the money laundering problem and attract foreign investment as below.

There are a lot of recommendations for augmenting the competency of AML agencies and foreign banks' AML systems. One of Thailand's anti-money laundering problems is that the AML agencies in Thailand are regarded as incapable. Basically, in agreement with the literatures reviewed in Chapter 2, the research results state that Thai laws and regulations must comply with the deterrence theory which includes three main principles: swiftness, severity, and certainty. Both public authorities and foreign banks should avoid any loosening up of their enforcement of laws, and should impose immediate punishments. The criminal justice process must be operated in a timely and prompt manner so that it does not impact suspects' basic rights and the banks' businesses. The AML authorities must not relax their enforcement, and instead should improve their knowledge and investigating skills ; this is important because, as mentioned before, it is one of areas that the FAFT uses to assess the country. The FATF had asked law enforcement officers to prosecute the Act of Money Laundering Prevention and Suppression and the Act of Financing of Terrorism Prevention and Suppression seriously and productively, and supervise financial institutions to facilitate practical and effective compliancy with the two jurisdictions in order to have Thailand entirely removed from the watch list (Pattaya Daily News, 2013).

Cindori (2007) advised that foreign banks must be obliged to detect and prevent money laundering and apply Customer Due Diligence (CDD) to discover suspicious new clients at the time of the opening of an account or the establishment of other modes of business partnership. Legally, different declarations related to money laundering have already been introduced, for example, the Bank of Thailand announcement Sor Nor Sor. 77/2551 which recognizes the “Know Your Customer (KYC)” and “Customer Due Diligence (CDD)” and, Sor Nor Sor. 13/2552 and 14/2552 which require the disclosure of the committee and blacklisted shareholders’ information. However, these legal declarations depend almost solely on the foreign banks themselves to be enforced efficiently or at all.

Moreover, some suggestions are made to improve the cooperation between AML agencies in Thailand as well as between these AML agencies and foreign banks, as their integration is under-developed and highly problematic. According to Chatian et al. (2009), the AMLO and other related legal entities may have expertise in certain AML matters because the data collection and analysis are the bottom line of their functions, and AML is their only responsibility. Nonetheless, they may be unfamiliar with either financial investigations or banking operations. In contrast, bank supervisors are exceptionally competent and well-informed about money laundering risks in banks, the policies/procedures to deal with those risks, and how banks operate, as well as the products and services they provide. Still, they may not recognize AML as being as important an issue as authorities do, or may not have sufficient resources to do anything about it. Therefore, both sides, the governmental agencies and banks, should share personnel, information, expertise, and other resources to enhance the overall quality and organization of AML/CFT supervision.

Nevertheless, to achieve that goal, clear explanations of each entity's responsibilities are required, as well as the coordination of investigatory activities, and a shared interpretation of the bank's AML obligations and the available mechanisms for resolving disagreements. Mihaescu (2012) also reinforced the need for increased cooperation between the public and private sectors. Banks should realize their roles as the first line of defense against money laundering, retain records of their clients and inspect their financial transactions, and report suspicious financial operations to other

AML agencies. The research results advocate that foreign banks should study Thai culturally-based regulations more in order to establish common comprehension, while the AMLO should give more examples and guidelines for making effective transaction reports. International partnership between AML agencies in other ASEAN member countries and Thailand's AMLO is also proposed.

In addition, public awareness should be raised in order to fight against money laundering stimulated by Thailand's negative characteristics, such as its underground financial system, the patronage system, conservatism in the public sector, and lack of money laundering education. It should be noted that a money launderer is not inevitably the same individual as the predicate offender. In other words, a potential conviction of the money launderer is not equivalent to a conviction of the predicate offender. The research results show that due to their lack of relevant knowledge and poverty, Thai people tend to be easily lured by foreigners and choose to work with them illegally. They do not care much about the foreigners' background, but only the capital they bring in. It is also well-known that foreign criminals normally take advantage of Thailand's culture of corruption. Besides, the related laws and regulations are still in their early stages of development. Only banks and other related agencies have received money laundering education. Hence, the law enforcement officers must be careful when arresting money laundering suspects. To raise the necessary public awareness, the government should apply Aiding and Abetting Theory to its policies. Those who use dirty money obtained from money laundering are supporting and promoting the money launders and should be prosecuted as co-conspirators. By promoting this principle, the number of money laundering stakeholders should be reduced. An example of how public awareness can be raised is to inform citizens when and how to socially sanction publicized money launderers and their conspirators, like legal entities and banks.

Finally, some laws and regulations are recommended for amendment and/or inclusion in Thailand's constitution. First of all, the research results suggest that all definitions and descriptions in relation to money laundering issues must be precisely and clearly defined to avoid any conflicts in legal interpretation. For instance, Chuesunthornsophon (2001) noted that the characteristics of suspicious transactions are not clearly described or established, and that this causes a lack of

standardized decision making protocol when deciding whether or not to report potentially suspicious transactions to the Money Laundering Prevention and Suppression Office. The roles and responsibilities of each AML related agency must be detailed intensively. Second, according to the research results, predicate offences must be designated in line with international standards, but policymakers should not ignore cultural factors. The law must clearly identify the rates of penalty for each predicate offence while they must simultaneously be flexible on a case-by-case basis. Furthermore, the number of predicate offences should not be limited to the current amount, and this list needs to be increased and updated regularly.

Third, as suggested by both the reviewed literature herein and research results, risk-based management should be applied to anti-money laundering systems in both the public and private sectors. With a risk-based procedure for AML, authorities and banks can monitor high risk customers more actively, and spend less time and energy on low risk clients. The Basel Committee on Banking Supervision's Guideline (2014) is recommended to be applied to foreign banks' AML management. Thailand's AML instruments should also be further developed. Mookjang (2002) recommended that special investigative techniques like controlled delivery and undercover operations should be applied to AML. Likewise, the research results demonstrate that some law enforcement agencies also want special tools such as interception and power to seize property, in order to facilitate their work. Above all, advanced databases for detecting and tracking money laundering activities in the AMLO and foreign banks must be implemented and shared between other agencies' databases. In addition, the research results pointed out that other related laws like taxation and revenue laws need to be modified regularly with respect to human rights and sovereignty of each country.

Specifically regarding foreign banks in Thailand, Chatian et al. (2009) recommended that they must identify banking operations that are more vulnerable to abuse by money launderers and criminals, and update their bank's risk profile. They should ask for the cooperation of their boards of directors and senior management, and establish risk-based customer due diligence policies and procedures. The researchers also recommend foreign bank branches to maintain their internal AML controls. The good examples of banks' internal AML control divisions are Citibank's Anti-Money Laundering Compliance Units and Mizuho's Anti-Money Laundering Department. In

doing so, the participants in this study footnoted that foreign banks must reconsider their responsibilities as an anti-money laundering prevention institution rather than as a money laundering facilitator for their customers. Notwithstanding, to accomplish the goal, the AML authorities, and the AMLO in particular, should assist foreign banks, for example by helping them reduce the diversity of suspects as much as possible. Thai Banks Association and Foreign Banks Association can also play a significant role in this cooperative arena.

5.3 Conclusions

All in all, this research project studies the current situation of anti-money laundering in foreign banks in Thailand and the effective policies and regulations that should be implemented by the government and foreign banks as a means to decrease the problems caused by money laundering and stimulate foreign investment in Thailand. Since Thailand is an at-risk country in terms of money laundering, it is necessary to examine its status and countermeasures against this crime. As the banking sector is highly at risk to money laundering, and foreign investment is a significant source of Thailand's revenues, the author decided to focus on foreign banks in Thailand which exhibit high capital flows and have multinational customers who are the main foreign investors in Thailand.

This study found that Thailand's current anti-money laundering (AML) regime in its banking system is vulnerable and its efficacy uncertain, though foreign banks' anti-money laundering is commonly thought to be well-secured and trustworthy. Nonetheless, Thailand still needs enhanced countermeasures and adaptations to policy to combat money laundering within foreign banks, from both the public and private sectors, in order to increase confidence among foreign investors. This is because the money laundering situation in Thailand has become more severe due to the increase in crimes and the country's high exposure to money laundering, and the current money laundering laws and regulations, and law enforcement, are still immature and ineffective in many respects. The country must look for effective countermeasures against money laundering and implement them before the next FATF's assessment in 2016; otherwise, the confidence of foreign investors will be

tremendously decreased once again. According to the research results, a lot of proper countermeasures to prevent and suppress money laundering should be taken within foreign banks in Thailand. This should be done in order to facilitate the well-being of both the public and private sectors. Stricter enforcement of the AML agencies, cooperation between all AML stakeholders, the raising of public awareness about money laundering, law modifications, and risk-based management are all vital changes.

Up until now, previous studies of money laundering in Thailand have specifically addressed local banks, yet paid little attention to money laundering's effects on foreign investment. Therefore, my study is designed to remedy this specific blind spot by exploring the problems of money laundering within foreign banks in Thailand as well as their impacts on the confidence of foreign investors. From my point of view, the research results are surprising in several ways. First, foreign banks are perceived to be more reliable and well-secured in the research participants' opinions than I expected. Second, money laundering by foreign investors in Thailand has fewer negative impacts on foreign investors' confidence than I anticipated as well. However, it is doubtful to me whether foreign banks in Thailand are truly fully safe from money laundering, because the lack of statistics about money laundering within foreign banks in Thailand does not mean that there is no money laundering occurring within them. So, it is still important to regularly improve and update the existing AML regulations, banks' AML policies and enforcement, and the AML government agencies, in order to prevent this crime, because flaws and loopholes still exist within all these systems. Therefore, I believe that this study is beneficial as a pro-active guideline for both AML agencies and foreign banks, so that Thai people can shape the future of Thailand with their own hands, by coming up with ways to liberate the country from money laundering, or at least control the crime effectively, and create a future for Thailand which is free of dirty money.

5.4 Policy Recommendations

Based on the research results, the anti-money laundering (AML) agencies in Thailand and foreign banks should adopt the following policies in order to prevent and suppress money laundering within foreign banks in Thailand effectively.

1. The AML agencies and foreign banks should adopt internal regulatory enforcement policy for their anti-money laundering reforms. The policy aims to prevent, detect, and control the operations which may contaminate the reputation or the integrity of their law enforcement. The policy must possess the description of clear and transparent law enforcement structures and procedures as well as the punishments that all AML agencies and foreign banks must be abided by. The AML agencies and foreign banks are required by the policy to improve their investigation skills and knowledge of financial institutions and their systems through the use of AML training and educational programs.

2. The AML agencies and foreign banks should adopt both domestic and international inter-agency cooperation policy. Thai AML agencies should organize inter-agency training session with foreign banks and foreign AML institutions annually in order to sustain the cooperation and investigation capacity of each agency. In addition, they should form inter-agency databases for data sharing. The databases can be enhanced by the use of risk-based management in which sources of information should be provided from various AML agencies both inside and outside Thailand altogether.

3. The AML agencies and foreign banks should stimulate public awareness by conducting AML educational programs for Thai citizens. Such programs conducted annually would improve and update the knowledge about money laundering among Thai citizens. The programs should include the key issues in the field of anti-money laundering such as the definition of money laundering, money laundering processes, how to prevent money laundering, how to report a money laundering case to the authorities, and so on.

4. The AML agencies and foreign banks should conduct a forum discussing about the related laws and regulations that should be amended or developed. Since the patterns of crimes frequently change, the AML agencies and foreign banks should keep updating the laws and regulations toward group discussions

in which the ideas and results from the forum can lead to law amendments. The AMLO should host the forum in order to ensure the mutual understanding about the laws and regulations among the AML agencies and foreign banks annually.

5.5 Recommendations for Future Studies

As this research focuses on examining the confidence of foreign investors on the lack of money laundering within foreign banks in Thailand, I have found some significant limitations of this study, as follow.

1. There are many foreign banks in Thailand, varying in type and size, so the author has decided to focus on foreign bank branches that are ranked at the top of these lists, in terms of economic influence and the power they possess due to their large assets. This helps the author study the advanced anti-money laundering system and make some recommendations on effective policy and regulations productively. However, this method also neglects the anti-money laundering management in minor foreign banks which is likely to be less developed. Furthermore, there are 15 foreign banks in Thailand, but there are only representatives from two foreign banks' who participated in this study.

2. Foreign banks' anti-money laundering systems are considered to be well-designed, and carried out well, and thus do not pose any significant threat to Thailand.

Therefore, recommendations for the future studies are identified as below.

1. Further studies should include minor foreign banks as well as a greater number of foreign banks.

2. Further studies should shift their attention to the more unsound sectors such as Thai local banks and shell companies.

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APPENDICES

APPENDIX A

INTERVIEW SCHEDULE

Opening

My name is _____. I am doing a research in partial fulfillment of the requirements for the degree of Master of Arts in criminology at Mahidol University; I would like to interview you as a representative of _____.

I would like to ask you some questions about problems of money laundering within foreign banks in Thailand affecting the confidence of foreign investors.

We hope to use this information to find out effective countermeasures and adaptations to combat money laundering in the public and private sectors.

The interview will take at least 30 minutes, but not over two hours. You will not be presented in this interview anonymously, so you should not say anything about your personal information. Are you available to respond to the questions at this time?

(Transition: Let me begin by asking you some questions about the current money laundering situation in Thailand)

Body A The current money laundering situation in Thailand)

- What do you think about the current money laundering situation in Thailand? Why?

Body B Opinions on the money laundering control and countermeasures both in Thailand and foreign countries, especially the ASEAN neighbors

- What do you think about money laundering control and countermeasures in Thailand? Why?

- How about the ASEAN neighbors?

Body C Opinions about the issue of the Financial Action Task Force's watch list

- What do you think about the fact that Thailand was blacklisted by the FATF? Why?
- What is the current situation of the watch list issue?

Body D Confidence of foreign investors regarding money laundering within foreign banks in general

- What do you think about the confidence of foreign investors regarding money laundering within foreign banks in general? Why?
- What are factors that affect their confidence the most? Why?

Body E Difficulties and obstacles caused by money laundering within foreign banks

- What kind of difficulties and obstacles are caused by money laundering within foreign banks?
- What are their impacts on both public and private sectors?

Body F Recommendations for proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand that should be carried out by legal bodies and banks themselves

- Could you recommend proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand that should be carried out by the legal bodies?
- Could you recommend proper countermeasures to prevent and suppress money laundering within foreign banks in Thailand that should be carried out by the banks?

(Transition: Well, it has been a pleasure interviewing you. Let me briefly summarize the information that I have recorded during our interview.)

Closing

In your opinion, _____

I appreciate the time you took for this interview. Is there anything else you think would be helpful for me to know so that I can successfully present this interview in my research? Is there anything I miss?)

Thanks again. I look forward to introducing this marvelous interview to the public.

APPENDIX B

THE 40+9 RECOMMENDATIONS¹

The 40 Recommendations

Rec #	<i>Topic Covered</i>
1	Sufficient scope of the criminal offense of money laundering.
2	Proving the offence of ML is consistent with the standards set forth in the Vienna and Palermo Conventions.
3	Measures in place to allow authorities to confiscate money laundering proceeds
4	Ensure secrecy laws do not inhibit compliance with the FATF recommendations
5	Customer due diligence by financial institutions
6	Risk management and due diligence for politically exposed persons
7	Correspondent banking due diligence
8	Take measures to ensure new & developing technologies aren't used for money laundering
9	Relying on 3rd parties for customer due diligence
10	Recordkeeping (appropriate type of info & amount of time kept)
11	Financial institutions should pay attention to unusual or complex and large transactions
12	CDD and recordkeeping applies to designated non-financial businesses and Professions (DNFBP)
13	Suspicious transaction reporting to financial intelligence unit (FIU)
14	Suspicious reporting is protected by law; illegal to tip-off suspicious reporting
15	Financial institutions should develop programs against ML and TF (internal controls, compliance & audit)
16	Apply recommendations 13, 15 & 21 to DNFBP
17	Effective, proportional and dissuasive sanctions available for non-compliant persons (legal and natural)
18	Shell banks
19	Consider requiring all currency transactions above fixed amount to be reported
20	Consider applying recommendations to businesses/professions other than DNFBP
21	Attention & scrutiny to transactions & relationships in non-compliant countries
22	FIs should apply recommendations to branches and subsidiaries in other countries (esp. non-compliant ones)
23	Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations
24	Monitoring/oversight of DNFBP to ensure compliance Authorities establish guidelines & provide feedback to help entities apply domestic
25	AML/CFT measure
26	Establish FIU appropriately
27	Designated law enforcement authorities have responsibility for ML and TF investigations

¹ Adapted by Brandon James Reddington (2011)

Rec #	<i>Topic Covered</i>
28	Competent authorities should be able to obtain documents and information for use in ML investigations
29	Adequate powers of supervisors to monitor and ensure compliance by financial institutions with requirements to combat ML and TF, including the authority to conduct inspections.
30	Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources
31	Cooperation between domestic agencies
32	Statistics kept to enable review of country's effectiveness in combating ML and TF
33	Beneficial ownership (legal persons)
34	Beneficial ownership (legal arrangements)
35	U.N. conventions (Vienna, Palermo, TF) ratified/implemented
36	Mutual legal assistance (international cooperation)
37	Dual criminality
38	Foreign requests to freeze/seize/confiscate property
39	Extraditions
40	"Other" forms of international cooperation

The 9 Special Recommendations on Terrorist Financing:

SR 1 1999 U.N. TF Resolution ratified, UNSCR 1373 ratified
SR 2 Criminalization of financing of terrorism, terrorist acts & terrorist orgs
SR 3 Measures to freeze and confiscate terrorist assets
SR 4 Reporting suspicious transactions relating to terrorism
SR 5 International cooperation for TF matters
SR 6 Alternative remittance providers licensed/registered and subject to FATF recommendations
SR 7 Wire transfers - accurate & meaningful originator information required
SR 8 Ensuring non-profit organizations are not being misused for TF
SR 9 Cash couriers – detection and prevention of illicit cross-border transportation

APPENDIX C
ANTI-MONEY LAUNDERING ACT
B.E. 2542 (1999)²

BHUMIBOL ADULYADEJ, REX;
Given on the 10th Day of April B.E. 2542;
Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on anti-money laundering;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 35, Section 37, Section 48 and Section 50 of the Constitution of the Kingdom of

Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the Parliament, as follows.

Section 1 This Act is called the "Anti-Money Laundering Act, B.E. 2542 (1999)".

Section 2 This Act shall come into force after one hundred and twenty days as from the date of its publication in the Government Gazette.

Section 3 In this Act: "predicate offense" means any offense;

(1) relating to narcotics under the law on narcotics control or the law on measures for the suppression of offenders in offenses relating to narcotics;

(2) relating to sexuality under the Penal Code only in respect of procuring, seducing or taking away for an indecent act a woman and a child for sexual gratification of others, offense of taking away a child and a minor, offense under the

² Information translated by Anti-Money Laundering Office (latest revised on 18 February 2010)

law on measures for the prevention and suppression of women and children trading or offense under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offense relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;

(3) relating to public fraud under the Penal Code or offense under the law on loans of a public fraud nature;

(4) relating to misappropriation or fraud or exertion of an act of violence against assets or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions;

(5) relating to malfeasance in office or malfeasance in judicial office under the Penal Code, offense under the law on offenses of officials in State organizations or agencies or offense of malfeasance in office or corruption under other laws;

(6) relating to extortion or blackmail committed by claiming an influence of a secret society or criminal association under the Penal Code;

(7) relating to smuggling under the customs law;

(8) relating to terrorism under the Penal Code;

(9) relating to gambling under the law on gambling, limited to offenses relating to being an organizer of a gambling activity without permission and there are more than one hundred players or gamblers at one time, or the total amount of money involved exceeds ten million Baht.

“Transaction” means an activity related to an entry into a juristic act, a contract or the execution of any act with others in financial or commercial matters, or the operation in connection with assets;

“Suspicious transaction” means a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offense, notwithstanding the transaction being single or multiple.

“Asset connected with the commission of an offense” means:

(1) money or asset obtained from the commission of an act constituting a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offense under (8) of the definition of “predicate offense”

(2) money or asset 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)

Notwithstanding the number of times the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

“Financial institution” means:

(1) the Bank of Thailand under the law on Bank of Thailand, a commercial bank under the law on commercial banking and such banks as specifically established by law;

(2) a finance company and credit foncier company under the law on the operation of finance, securities and credit foncier businesses, and a securities company under the law on securities and stock exchange;

(3) the Industrial Finance Corporation of Thailand under the law on Industrial Finance Corporation of Thailand and a small industrial finance corporation under the law on small industrial finance corporations;

(4) a life insurance company under the law on life insurance and an insurance company under the law on insurance;

(5) cooperatives under the law on cooperatives, limited to a cooperative with operating capital exceeding two million Baht of total share value and having objectives of its operation relating to acceptance of deposits, lending of loans, mortgage, pawning or acquiring of money or asset by any means;

(6) a juristic person carrying on such other businesses related to finance as prescribed in the Ministerial Regulation.

“Fund” means the Anti-Money Laundering Fund;

“Board” means the Anti-Money Laundering Board;

“Member” means a member of the Anti-Money Laundering Board and shall also include the Chairman of the Anti-Money Laundering Board;

“Competent official” means a person appointed by the Minister to perform an act under this Act;

“Secretary-General” means Secretary-General of the Anti-Money Laundering Board;

“Deputy Secretary-General” means Deputy Secretary-General of the Anti-Money Laundering Board;

“Office” means the Anti-Money Laundering Office;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 4 The Prime Minister shall have charge and control of the execution of this Act and shall have the power to appoint competent officials and issue Ministerial Regulations, Rules and Notifications for the execution of this Act. Such Ministerial Regulations, Rules and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

General Provisions

Section 5 Any person who:

(1) transfers, accepts a transfer of or converts the asset connected with the commission of an offense for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or

(2) acts in any manner whatsoever 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 offense or the acquisition of rights therein, shall be said to commit an offense of money laundering.

Section 6 Any person who commits an offense of money laundering shall, even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

(1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;

(2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or

(3) the offender is an alien and the act so committed is an offense under the law of the State in whose jurisdiction the act occurs, provided that such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition.

For this purpose, Section 10 of the Penal Code shall apply *mutatis mutandis*.

Section 7 In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable:

(1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense,

(2) providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense.

In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

Section 8 Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.

Section 9 Any person who enters into conspiracy to commit an offense of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offense.

If the offense of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offense.

In the case where the offense has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offense to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

Section 10 Any official, member of the House of Representatives, senator, member of a local assembly, local administrator, Government official, official of a local government organization, public official, official of a State organization or agency, director or executive or official of a State enterprise, director, manager or any person authorized to manage the operation of a financial institution, or any member of an organ under the Constitution who commits an offense under this Chapter shall be liable to twice as much penalty as that provided for such offense.

Any member, member of a sub-committee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General or competent official under this Act who commits an offense under this Chapter shall be liable to three times as much penalty as that provided for such offense.

Section 11 Any member, member of a sub-committee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General, competent official, official or Government official who commits an offense of malfeasance in office or malfeasance in judicial office as provided in the Penal Code which is connected with the commission of the offense under this Chapter shall be liable to three times as much penalty as that provided for such offense.

A political official, member of the House of Representatives, member of the Senate, member of a local assembly or local administrator who conspires with a person under paragraph one to commit an offense, whether as a principal, instigator or supporter shall receive equivalent punishment as persons under paragraph one.

Section 12 In the execution of this Act, a member, member of a subcommittee, member of the Transaction Committee, Secretary-General, Deputy Secretary-General and competent official shall be an official under the Penal Code.

CHAPTER II

Report and Identification

Section 13 When a transaction is made with a financial institution, the financial institution shall have the duty to report that transaction to the Office when it appears that such transaction is:

(1) a cash transaction exceeding the threshold prescribed in the Ministerial Regulation;

(2) a transaction connected with the asset worth more than the value prescribed in the Ministerial Regulation; or

(3) a suspicious transaction, whether it is the transaction under (1) or (2) or not.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported by the financial institution, that financial institution shall report such fact to the Office without delay.

Section 14 In the case where there subsequently appears a reasonable ground to believe that any transaction already made without being reported under Section 13 is a transaction required to be reported by a financial institution under Section 13, that financial institution shall report it to the Office without delay.

Section 15 A Land Office of Bangkok Metropolitan, *Changwad* Land Office, Branch Land Office and *Amphoe* Land Office shall report to the Office when it appears that an application is made for registration of a right and juristic act related to an immovable asset to which a financial institution is not a party and which is of any of the following descriptions:

(1) requiring cash payment in a larger amount than that prescribed in the Ministerial Regulation;

(2) involving a greater value of an immovable asset than that prescribed in the Ministerial Regulation, being the assessment value on the basis of which fees for registration of the right and juristic act are levied, except in the case of a transfer by succession to a statutory heir; or

(3) being made in connection with a suspicious transaction.

Section 16 Professions stated below shall have the duty to report to the Office any transaction when it is carried out in cash of a value exceeding the amount prescribed in the Ministerial Regulation or is a suspicious transaction. However,

profession under (2), (3), (4) and (5) must be a juristic person, unless there is probable cause to suspect under reasonable evidence that such transaction is related or may be related to the commission of a predicate offense or money laundering offense with profession under (2), (3), (4) and (5) that is not a juristic person, the Office shall have the power to give a written order to such profession to report the transaction to the Office:

(1) Professions that undertake provision of advice or being an advisor in transactions relating to the investment or movement of funds, under the law governing securities and stock exchange, and that are not a financial institution under Section 13.

(2) Professions relating to trading of precious stones, diamonds, gems, gold, or ornaments decorated with precious stones, diamonds, gems, or gold.

(3) Professions relating to trading or hire-purchase of cars.

(4) Professions acting as a broker or an agent in buying or selling immovable property.

(5) Professions relating to trading of antiques under the law governing selling by auction and trading of antiques.

(6) Professions relating to personal loan under supervision for businesses that are not a financial institution under the Ministry of Finance Notification relating to Personal Loan Businesses under Supervision or under the law governing financial institution business.

(7) Professions relating to electronic money card that are not a financial institution under the Ministry of Finance Notification relating to electronic money card or under the law governing financial institution business.

(8) Professions relating to credit card that are not a financial institution under the Ministry of Finance Notification relating to credit card or under the law governing financial institution business.

(9) Professions relating to electronic payment under the law governing the supervision of electronic payment service business.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported under paragraph one, that person shall report such fact to the Office without delay.

Section 17 The report under Section 13, Section 14, Section 15 and Section 16 shall be in accordance with the form, period of time, rules and procedures prescribed in the Ministerial Regulation.

Section 18 Any transaction that the Minister deems appropriate to be exempted from reporting under Section 13, Section 15 and Section 16 shall be as prescribed in the Ministerial Regulation.

Section 19 In the case where the report under Section 13, Section 14, Section 15 and Section 16 has been made in good faith by the reporter, if the report causes injury to any person, the reporter shall not be responsible therefore.

Section 20 Financial institutions and professions under Section 16 shall require all customers to identify themselves prior to conducting any transaction as prescribed in the Ministerial Regulation, unless that customer has previously done so. There shall also be a measure to eliminate obstacles in identification procedures for the disabled or incapacitated.

The identification under paragraph one shall be in accordance with the procedure prescribed by the Minister.

Section 20/1 Financial institutions and professions under Section 16 (1) and (9) shall issue customer acceptance policy and risk management that may relate to money laundering and shall undertake customer due diligence when the first transaction is carried out and periodically reviewed until the account is closed or relationship has been terminated.

The scope of due diligence procedures under paragraph one shall be in accordance with the rules and procedures prescribed by the Ministerial Regulation on customer identification, customer due diligence, customer review and monitoring of customers' accounts that are named by the Office.

Section 21 In making a transaction under Section 13, a financial institution shall also cause a customer to record statements of fact with regard to such transaction.

In the case where a customer refuses to prepare a record of statements of fact under paragraph one, the financial institution shall prepare such record on its own motion and notify the Office thereof forthwith.

The record of statements of fact under paragraph one and paragraph two shall be in accordance with the form, contain such particulars and be in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

Section 22 Unless otherwise notified in writing by the competent official, a financial institution shall retain information as follows:

(1) relating to customer identification under Section 20 for a period of five years from the date that the account was closed or of the termination of relationship with the customer.

(2) relating to a financial transaction or a record of facts under Section 21 for a period of five years from the date the transaction or the recording of the facts occurred.

The contents of (1) above shall be applied to professions under Section 16.

Section 22/1 Financial institutions and professions under Section 16 (1) and (9) shall keep due diligence records under Section 20/1 for five years from the date the account was closed or relationship had been terminated, unless where there is a necessary and reasonable matter, the Secretary-General shall have the power to notify in writing to extend the period in respect of a specific customer for the benefit of executing this Act and shall report such act to the Board.

Section 23 The provisions of this Chapter shall not apply to the Bank of Thailand under the law on Bank of Thailand.

CHAPTER III

Anti-Money Laundering Board

Section 24 There shall be an Anti-Money Laundering Board, consisting of: the Prime Minister as Chairman, Minister of Justice and Minister of Finance as Vice Chairmen, Permanent Secretary of the Ministry of Justice, Attorney General, Commissioner-General of the Royal Thai Police, Secretary-General of the Narcotics Control Board, Director of the Fiscal Policy Office, Director-General of the Department of Lands, Director-General of the Customs Department, Director-General of the Department of Revenue, Director-General of the Department of Treaties and Legal Affairs, Governor of the Bank of Thailand, Secretary-General of the Office of Insurance Commission, Secretary-General of the Securities and Exchange Commission, President of the Thai Bankers' Association, and nine qualified experts appointed by the Council of Ministers from those who have expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act with the consent of the House of Representatives and the Senate respectively as members of the Board and the Secretary-General of the Office as a member and the secretary of the Board.

The Board shall appoint not more than two Government officials of the Office as assistant secretaries.

In the case where the Chairman or an *ex officio* member under paragraph one is unable to attend any particular meeting by reason of necessity, such person may entrust a holder of inferior office who possesses the knowledge and understanding of the Board's performance of duties to attend that meeting.

Section 25 The Board shall have the powers and duties as follows:

(1) to propose to the Council of Ministers measures for anti-money laundering;

(2) to consider and give opinions to the Minister with regard to the issuing of ministerial regulations, rules and notifications for the execution of this Act;

(3) to set rules pertaining to the returning of the assets in accordance with Section 49 and Section 51/1, the retention, sale by public auction, utilization of the assets, and the assessment of damage and depreciation costs under Section 57 and set rules pertaining to the Fund in accordance with Section 59/1, Section 59/4, Section 59/5 and Section 59/6; 11

(4) to promote public cooperation in connection with the giving of information for the purpose of anti-money laundering and set rules pertaining to the procedure on information or document to be used as evidence in the execution of this Act;

(5) to monitor and evaluate the execution of this Act;

(6) to perform any other acts prescribed in this Act or other laws or any other regulations in the execution of this Act.

Section 26 A qualified member appointed by the Council of Ministers shall hold office for a term of four years as from the date of appointment and shall serve for only one term.

Section 27 In addition to vacating office on the expiration of term under Section 26, a qualified member appointed by the Council of Ministers vacates office upon:

(1) death;

(2) resignation;

(3) being removed by the Council of Ministers with the approval of the House of Representatives and the Senate respectively;

(4) being a bankrupt;

(5) being an incompetent or quasi-incompetent person;

(6) being imprisoned by a final judgment.

In the case where a qualified member is appointed during the term of the qualified members already appointed, notwithstanding the fact that it is an additional or replacing appointment, the appointee shall hold office for the remaining term of the qualified members already appointed.

Section 28 In the case where qualified members vacate office at the expiration of term but new qualified members have not yet been appointed, the qualified members who have vacated office at the expiration of term shall perform duties for the time being until new qualified members have been appointed.

Section 29 At a meeting of the Board, the presence of not less than one-half of the total number of the members is required to constitute a quorum.

The Chairman shall preside over the meeting. In the case where the Chairman is not present at the meeting or is unable to perform the duty, the Vice Chairman shall preside over the meeting. If the Vice Chairman is not present at the meeting or is unable to perform the duty, the members present shall elect one among themselves to preside over the meeting.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote, except that the decision under Section 12 paragraph three shall be voted for by not less than two-thirds of the total number of the existing members.

Section 30 The Board may appoint a sub-committee for considering and giving opinions on any particular matter or performing any particular act on behalf of the Board, and Section 29 shall apply to a meeting of the sub-committee *mutatis mutandis*.

Section 31 A member of the Board and of a sub-committee shall receive such remuneration as prescribed by the Council of Ministers.

CHAPTER IV

Transaction Committee

Section 32 There shall be a Transaction Committee consisting of five committee members that the Board appoints from persons nominated one each by the Judiciary Commission, the State Audit Committee, the National Human Rights Commission, and the Committee of Public Prosecutors. If any of the said committees could not designate a person from the respective committee to be a Transaction Committee member within forty five days from the date notified by the Office, the Board shall appoint an appropriate person as a Transaction Committee member instead. A Chairman of the Committee shall be elected from among the designated committee members and the Secretary-General shall be a committee member and the secretary of the Committee.

The Transaction Committee shall have knowledge and expertise in economics, monetary affairs, finance, law or any other related fields beneficial to the execution of this Act

and shall possess and shall not have disqualifying attributes as follows:

- (1) Being of not over seventy years of age;
- (2) Being or, having in the past served as, a Government official in the position not lower than Level 10 or equivalent or being or, having in the past served, in the position not lower than a deputy head or equivalent of a State enterprise or State agency or being or, having in the past been, a lecturer in the field and holding or, having in the past been in, the position not lower than an assistant professor;
- (3) Not being a member of a political party or a committee member or an officer of a political party;
- (4) Not being a member of the House of Representatives, member of the Senate, member of a local assembly, local administrator or political official or board member of a State enterprise;
- (5) Not being a member of a committee of a public agency, unless approved by the Board;
- (6) Not being a director, manager, consultant or holding any other position with a similar nature of work, or having vested interest in a partnership, company or financial institution or engaging in any other occupation or profession or doing any act inconsistent with the performance of duties under the anti-money laundering law.

A member of Transaction Committee appointed by the Board under paragraph one shall serve a three-year term. A member of Transaction Committee

whose term has expired may be reappointed, but shall not serve more than two consecutive terms, and Sections 27 and 28 shall apply *mutatis mutandis*, except in the case of the termination from office in accordance with Section 27 (3) where the committee member appointed by the Board shall vacate the office upon removal by the Board

Section 33 Section 29 shall apply *mutatis mutandis* to a meeting of the Transaction Committee.

Section 34 The Transaction Committee shall have the powers and duties as follows:

(1) to examine a transaction or an asset connected with the commission of an offense;

(2) to give an order withholding the transaction under Section 35 or Section 36;

(3) to carry out the acts under Section 48;

(4) to submit to the Board and the National Anti-Corruption Commission a report on the result of the execution of this Act;

(5) to supervise the independence and neutrality of the Office and the Secretary-General;

(6) to perform any other acts as entrusted by the Board.

Section 35 In the case where there is a probable cause to suspect and sufficient evidence to believe that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offense, the Transaction Committee shall have the power to give a written order withholding such transaction for a fixed period of time which shall not be longer than three working days.

In case of compelling necessity or urgency, the Secretary-General may give a prior order withholding the transaction under paragraph one and report it to the Transaction Committee.

Section 36 In the case where there is convincing evidence that any transaction is connected or possibly connected with the commission of a predicate offense or money laundering offence, the Transaction Committee shall have the power to give a written order withholding such transaction for the time being for a fixed period of time which shall not be longer than ten working days.

Section 36/1 In the execution of Section 34, Section 35 or Section 36, the Transaction Committee or Secretary-General shall make written record in the minutes of each Transaction Committee meeting or in the order of the Secretary-General to indicate evidence and the requesting person, person who asked or ordered other person to undertake such act under the said provision.

Section 37 When the Transaction Committee or the Secretary-General, as the case may be, has given an order withholding the transaction under Section 35 or Section 36, the Transaction Committee shall report it to the Board and the National Anti-Corruption Commission.

Section 38 For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:

(1) to address a written inquiry towards or summon a financial institution, Government agency, State organization or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;

(2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;

(3) to enter any dwelling place, place or vehicle reasonably suspected to have the asset connected with the commission of an offense or evidence connected with the commission of an offense of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the asset or evidence, when there is an reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such asset or evidence to be moved, hidden, destroyed or converted from its original state.

In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorization and the identification.

The identity card under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.

All information obtained from the statements, written explanations, account, document or any evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organization or

agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilization.

Section 38/1 Under the Criminal Procedure Code, in the execution of this Act, the Secretary-General, Deputy Secretary-General, and competent officials assigned in writing by the Secretary-General shall have the power to arrest a person who committed a money laundering offense and record the person's statement as preliminary evidence and transfer the person to a police interrogator without delay but shall not exceed twenty-four hours.

Section 39 A member of the Transaction Committee shall receive such remuneration as prescribed by the Council of Ministers.

Section 39/1 For the purpose of performing duties under this Act, the Transaction Committee and the Secretary-General shall prepare a summary report of the execution under this Chapter to the National Anti-Corruption Commission every four months.

The report under paragraph one shall at least state the following details:

- (1) Persons whose transactions or assets were examined or whose transactions were restrained or whose assets were seized or frozen.
- (2) Evidence that was used against the person under (1).
- (3) Requesting person, person who asked or instructed someone to undertake such act.
- (4) Results of the act.

Details under this Section shall be treated as official secrets.

Section 39/2 The National Anti-Corruption Commission may appoint an expert to examine such report to establish the appropriateness of the action under this Act, and report to the National Anti-Corruption Commission.

The provision under Section 38 shall be applied to the examination under paragraph one.

In the case where the examination under paragraph one found out that there is

an act that is against this Act and the National Anti-Corruption Commission agreed with the examination findings, the report and the comment of the National Anti-Corruption

Commission shall be sent to the Transaction Committee for further action.

CHAPTER V

Anti-Money Laundering Office

Section 40 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, which shall have the powers and duties as follows:

(1) to carry out acts in the implementation of resolutions of the Board and the

Transaction Committee and perform other administrative tasks;

(2) to receive transaction reports submitted under Chapter II and acknowledge receipt thereof as well as receive reports and information related to transactions from other sources;

(3) to receive or send reports or information related to transactions in order to comply with this Act or other laws;

(4) to collect, compile, trace, examine, study, evaluate and analyze reports and information in connection with the making of transactions;

(5) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;

(6) to conduct projects with regard to the dissemination of knowledge, the giving of education and the training in the fields involving the execution of this Act, or to provide assistance or support to both Government and private sectors in organizing such projects; and

(7) to perform any other acts under this Act or under other laws.

Section 41 There shall be a Secretary-General who, with the duty to independently and neutrally exercise general supervision of official affairs of the Office, shall be directly answerable to the Minister of Justice and shall be the superior of Government officials of the Office. There shall also be Deputy Secretaries-General to assist in giving directions and performing official duties.

Section 42 The Secretary-General shall be an ordinary Government official appointed by the King upon the recommendation of the Council of Ministers and with the approval of the House of Representatives and the Senate respectively.

Section 43 The Secretary-General shall possess qualifications and shall not be under prohibitions as follows:

(1) having knowledge and expertise in economics, finance, public finance or law;

(2) serving in the position of Deputy Secretary-General or being an ordinary

Government official of the level not lower than Director-General or its equivalent;

(3) not being a director in a State enterprise or other State undertaking;

(4) not being a director, manager, consultant or holding any other position with a similar nature of work, or having an interest in a partnership, company or financial institution or engaging in any other occupation or profession or doing any act inconsistent with the performance of duties under this Act.

Section 44 The Secretary-General shall hold office for a term of four years as from the date of appointment by the King and shall serve for only one term. The Secretary-

General who has vacated office cannot be re-appointed, but the Office shall create a post of advisor to the Office to which the vacating Secretary-General can be appointed.

The Secretary-General shall be entitled to fringe benefits to ensure independence and neutrality at the rate that, when accumulated with the salary and stipend, is equivalent to the salary and stipend of a Permanent Secretary, until retirement.

Section 45 In addition to vacating office at the expiration of term under

Section 44, the Secretary-General vacates office upon:

(1) death;

(2) resignation;

(3) being disqualified or being under any prohibition under Section 43;

(4) the Council of Ministers passing a resolution removing him from office upon the recommendation of the Minister or at the proposal of the Minister upon the recommendation of the Transaction Committee due to his serious negligence of duty or incompetency or publicly demonstrable act of performing his duty in bad faith or partially or not freely. The aforesaid resolution shall state clearly the reasons for his removal with the approval of the House of Representatives and the Senate respectively.

Section 45/1 The former Secretary-General shall not be appointed as an executive of any Government agency, State enterprise or State agency except as an advisor to the Office.

The provision in paragraph one shall not be applied to a former Secretary-General who had left the Government service.

Section 46 In the case where there is sufficient evidence to believe that any account of a financial institution's customer, communication device or equipment or computer is used or may be used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an *ex parte* application with the

Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

In the case under paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as deemed appropriate, provided that the permission on each occasion shall not be for the duration of more than ninety days.

Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall render cooperation for the implementation in accordance with the provision of this Section.

Section 47 The Office shall prepare an annual report on the result of its work performance for submission to the Council of Ministers. The annual report on the result of work performance shall at least contain the following material particulars:

(1) a report on the result of the performance with regard to assets and any other performance under this Act;

(2) problems and obstacles encountered in the work performance;

(3) a report on facts or remarks with regard to the discharge of functions as well as opinions and suggestions.

The Council of Ministers shall submit the annual report on the result of work performance under paragraph one together with its remarks to the House of Representatives and the Senate.

CHAPTER VI

Asset Proceedings

Section 48 In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any asset connected with the commission of an offense may be transferred, distributed, moved, concealed or hidden, the

Transaction Committee shall have the power to order a provisional seizure or attachment of such asset for the duration of not more than ninety days.

In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the asset under paragraph one for the time being and then report it to the Transaction Committee accordingly.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedures prescribed in the

Ministerial Regulation.

The person having made the transaction in respect of which the asset has been seized or attached or any interested person in the asset may produce evidence that the money or asset in such transaction is not the asset connected with the commission of the offense in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the asset or ordered revocation thereof, the

Transaction Committee shall report it to the Board.

Section 49 Subject to Section 48 paragraph one, in the case where there is convincing evidence that any asset is the asset connected with the commission of an

offense, the Secretary-General shall refer the case to the public prosecutor for consideration and filing a petition to the Court for an order that such asset be vested in the State without delay.

In the case where the public prosecutor considers that the case is not so sufficiently complete as to justify the filing of a petition to the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the

Secretary-General thereof without delay for taking further action. For this purpose, the incomplete items shall also be specified.

The Secretary-General shall take action under paragraph two without delay and refer additional matters to the public prosecutor for reconsideration. If the public prosecutor is still of the opinion that there is no sufficient *prima facie* case for filing a petition to the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for referring the matter to the Board for its determination. The Board shall consider and determine the matter within thirty days as from its receipt from the Secretary-General, and upon the Board's determination, the public prosecutor and the Secretary-General shall act in compliance with such determination. If the

Board has not made the determination within such time limit, the opinion of the public prosecutor shall be complied with.

When the Board has made the determination disallowing the filing of the petition or has not made the determination within the time specified and action has already

been taken in compliance with the public prosecutor's opinion under paragraph three, the matter shall become final and no action shall be taken against such person in respect of the same asset unless there is obtained fresh and material evidence likely to prompt the Court to give an order that the asset be vested in the State. In such case, where there is no claimant to the restrained asset within two years from the date the Board decided not to file a petition or fails to issue the decision within the prescribed time limit, the Office shall transfer the asset to the Fund, and in the case where a claimant filed a petition under another law permitting the exercise of the rights to claim the return of the asset even though the two- year period has lapsed, the Office shall return the asset to the claimant. If the asset is in the condition that cannot be returned, payment shall be made from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund. Rules, procedures, in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the regulation prescribed by the Board.

Upon receipt of the petition filed by the public prosecutor, the Court shall order the notice thereof to be posted at that Court and the same shall be published for at least two consecutive days in a newspaper widely distributed in the locality in order that the person who may claim ownership or interest in the asset may file an application before the Court has an order. At the same time, the Court shall also order the submission of a copy of the notice to the Secretary-General for posting it at the Office and at the Police Station where the asset is located. If there is evidence of whosoever making any claim of ownership or interest in the asset, the Secretary-General shall notify in writing to that person for the exercise of the rights therein. The notice shall be sent by registered post with advice of receipt to such person's latest address as shown in the evidence.

In the case under paragraph one, if there is a reasonable ground to take such action as to protect the rights of the injured person in a predicate offense, the Secretary-

General shall refer the case to the competent official under the law which prescribes such offense in order to proceed in accordance with that law for preliminary protection of the injured person's rights.

Section 50 The person claiming ownership in the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may, before the Court gives an order under Section 51, file an application satisfying that:

(1) the applicant is the real owner and the asset is not the asset connected with the commission of the offense, or

(2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity.

The person claiming to be a beneficiary of the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

Section 51 When the Court has conducted an inquiry into the petition filed by the public prosecutor under Section 49, if the Court is satisfied that the asset to which the petition relates is the asset connected with the commission of the offense and that the application of the person claiming to be the owner or transferee thereof

under Section 50 paragraph one is not tenable, the Court shall give an order that the asset be vested in the State.

If the asset under paragraph one is cash, the Office shall forward one half to the

Fund and another half to the Ministry of Finance. If it is the other type of asset, rules of the

Council of Ministers shall be followed.

For the purpose of this Section, if the person claiming to be the owner or transferee of the asset under Section 50 paragraph one is the person who is or had, in the past, been associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such asset is the asset connected with the commission of the offense or transferred in bad faith, as the case may be.

Section 51/1 If the Court deems that the asset in the petition is not related to the commission of the offense, the Court shall order the return of the said asset. In such case, where there is no claimant to the restrained asset within two years from the date the Court made the return order, the Office shall transfer the asset into the Fund.

In the case where a claimant filed a petition under another law permitting the exercise of the rights to claim the return of the asset even though the two-year period has lapsed, the Office shall return the asset to the claimant. If the asset is in the condition that cannot be returned, payment shall be made from the Fund. If there is no claimant within twenty years, the asset shall fall into the Fund. Rules, procedures, in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the regulation prescribed by the Board.

Section 52 In the case where the Court has ordered that the asset be vested in the State under Section 51, if the Court conducts an inquiry into the application of the person claiming to be the beneficiary under Section 50 paragraph two and is of the opinion that it is tenable, the Court shall give an order protecting the rights of the beneficiary with or without any conditions.

For the purpose of this Section, if the person claiming to be the beneficiary under Section 50 paragraph two is the person who is or had, in the past, been associated with an offender of a predicate offense or an offense of money laundering, it shall be presumed that such benefit is the benefit the existence or acquisition of which is in bad faith.

Section 53 In the case where the Court has ordered that the asset be vested in the State under Section 51, if it subsequently appears from an application by the

owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of Section 50, the Court shall order the return of such asset or determine conditions for the protection of the rights of the beneficiary. If the return of the asset or the protection of the right thereto is not possible, payment of its price or compensation therefor shall be made, as the case may be.

The application under paragraph one shall be filed within one year as from the

Court's order that the asset be vested in the State becoming final and the applicant must prove that the application under Section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause.

Before the Court gives an order under paragraph one, the Court shall notify the

Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and file an objection to the application.

Section 54 In the case where the Court has given an order that the asset connected with the commission of the offense be vested in the State under Section 51, if there appears an additional asset connected with the commission of the offense, the public prosecutor may file a petition for a Court's order that such asset be vested in the State, and the provisions of this Chapter shall apply *mutatis mutandis*.

Section 55 After the public prosecutor has filed the petition under Section 49, if there is a reasonable ground to believe that the asset connected with the commission of the offense may be transferred, distributed or taken away, the Secretary-General may refer the case to the public prosecutor for filing an *ex parte* petition with the Court for its provisional order seizing or attaching such asset prior to an order under Section 51. Upon receipt of such petition, the Court shall consider it as a matter of urgency. If there is convincing evidence that the application is justifiable, the Court shall give an order as requested without delay.

Section 56 When the Transaction Committee or the Secretary-General, as the case may be, has given an order seizing or attaching any asset under Section 48, the competent official entrusted shall carry out the seizure or attachment of the asset in accordance with the order and report it together with the valuation of that asset without delay.

The seizure or attachment of the asset and the valuation thereof shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial

Regulation; provided that the provisions of the Civil Procedure Code shall apply *mutatis mutandis*.

Section 57 The retention and management of the asset seized or attached by an order of the Transaction Committee or the Secretary-General or the Court, under this

Chapter, as the case may be, shall be in accordance with the regulation prescribed by the Board.

In the case where the asset under paragraph one is not suitable for retention or will, if retained, be more burdensome to the Government service than its usability for other purposes, the Secretary-General may order that the interested person take such asset for his or her retention and utilization with a bail or security or that the asset be sold by auction or put into official use and a report thereon be made to the Board accordingly.

The permission of an interested person to take the asset for retention and utilization, the sale of the asset by auction or the putting of the asset into official use under paragraph two shall be in accordance with the regulation prescribed by the Board.

If it subsequently appears that the asset sold by auction or put into official use under paragraph two is not the asset connected with the commission of the offense, such asset as well as such amount of compensation and depreciation as prescribed by the Board shall be returned to its owner or possessor. If the return of the asset becomes impossible, compensation thereof shall be made by reference to the price valued on the date of its seizure or attachment or the price obtained from a sale of that asset by auction, as the case may be. For this purpose, the owner or possessor shall be entitled to the interest, at the Government Savings Bank's highest rate for a fixed deposit, of the amount returned or the amount of compensation, as the case may be.

The assessment of damage and depreciation costs under paragraph four shall be in accordance with the regulation prescribed by the Board.

Section 58 In the case where the asset connected with the commission of any offense is the asset in respect of which action can be taken under another law but no action has been taken against that asset under that law or the action taken under that law has failed to achieve its purpose or the action under this Act is more beneficial to the Government service, action shall be taken against that asset in accordance with this Act.

Section 59 Lawsuit under this Chapter shall be brought to the Civil Court and the Civil Procedure Code shall apply *mutatis mutandis*.

CHAPTER VI/I

Anti-Money Laundering Fund

Section 59/1 There shall be an Anti-Money Laundering Fund within the

Office for the purpose of anti-money laundering as follows:

(1) Facilitate the execution of investigation, prosecution, search, seizure or restraint, asset management, clue reporting, witness protection, or other matters related to anti-money laundering, including assisting other agencies, parties concerned and the public in the said actions;

(2) Enhance cooperation with other agencies, parties concerned and the public in provision and dissemination of information, meetings or training courses, domestic and international cooperation, and operation to support anti-money laundering measure.

(3) Carry out any other acts as necessary to achieve the objectives of this Act.

Under Section 59/6, the Board shall have the power to prescribe a regulation on disbursement procedures in accordance with the objectives in paragraph one.

Section 59/2 The Fund under Section 59/1 consists of assets as follows:

- (1) Asset forwarded to the Fund under Section 51;
- (2) Asset retained but not claimed under Section 49 and Section 51/1;
- (3) Asset that was donated;
- (4) Asset received from Thai or foreign Government agencies;
- (5) Interest accrued from asset under (1), (2), (3) and (4)

Section 59/3 The Fund under Section 59/2 shall be vested in the Office without having to be transferred to the State treasury.

Section 59/4 Receiving, spending, and retention of the Fund and retention of assets shall be in accordance with the regulation prescribed by the Board with the consent of the Ministry of Finance.

Section 59/5 The mandate in administration, management, utilization, disposal of asset and other matters related to the Fund's operation shall be in accordance with the regulation prescribed by the Board with the consent of the Ministry of Finance.

Section 59/6 Expenditure or any other remuneration payable to other agencies, other persons, competent officials, public officials or other officials performing duty, assisting or supporting the performance of duty to ensure efficient and effective execution under this Act shall be disbursed from the Fund in accordance with the regulation prescribed by the Board with the consent of the Ministry of Finance.

Section 59/7 Within six months from the end of each fiscal year, the

Secretary-General shall present a balance sheet and a report on expenditure of the Fund for the previous year, which were examined and endorsed by the Office of the Auditor-General, to the Board and the Minister.

CHAPTER VII

Penalties

Section 60 Any person who commits an offense of money laundering shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or both.

Section 61 Any juristic person who commits offenses under Section 5, Section 7, Section 8 or Section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.

Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offense shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she takes no part in the commission of the offense of such juristic person.

Section 61/1 The Prime Minister, a Minister or a person holding political positions who instructs or orders the Transaction Committee, Secretary-General, Deputy

Secretary-General or a competent official to examine transactions or assets or to restrain transactions, seize or restrain or act under this Act without sufficient evidence for the purpose of persecution or cause damage to anyone or for political reason or doing so *mala fide* shall receive three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand Baht or both.

A Transaction Committee member, the Secretary-General, Deputy Secretary-

General or competent official who follows the instruction or the order under paragraph one unlawfully under this Act shall receive three to thirty years imprisonment or a fine from sixty thousand to six hundred thousand Baht or both.

Section 62 Any person who violates or refuses to act under Section 13, Section 14, Section 16, Section 20, Section 20/1, Section 21, Section 22, Section 22/1, Section 35 or Section 36 shall receive a fine not exceeding five hundred thousand Baht and an additional amount not exceeding five thousand Baht for each following day that the violation was not corrected or until the action was carried out correctly.

Section 63 Any person who reports or makes a notification under Section 13, Section 14, Section 16 or Section 21 paragraph two by presenting false statements of fact or concealing the facts required to be revealed to the competent official shall be liable to imprisonment for a term not exceeding two years or to a fine of fifty thousand to five hundred thousand Baht or both.

Section 64 Any person who fails to give statements or to furnish written explanations, accounts, documents or evidence under Section 38 (1) or (2) or causes obstruction or fails to render assistance to the acts under Section 38 (3) shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or both.

Any person who does any act to enable other persons to have knowledge of the information retained under Section 38 paragraph four, except in the case of doing such act in the performance of official duties or in accordance with the law, shall be liable to the penalty specified in paragraph one.

Section 65 Any person who moves, damages, destroys, conceals, takes away, renders lost or useless documents, records, information or asset which is seized or attached by the official or which is known or ought to be known to him as

subsequently being vested in the State under this Act shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred thousand Baht or both.

Section 66 Any person who, know or may know an official secret relating to action taken under this Act, acts in any way which results in another person's knowledge or potential knowledge of the secret, except where he does it in the conduct of his duty or under the law, is liable to an imprisonment of not exceeding five years or to a fine not exceeding one hundred thousand Baht or both.

APPENDIX D
ANTI-TERRORIST FINANCING ACT
B. E. 2556 (2013)

Bhumibol Adulyadej, R.
Given under Our Hand this 1st Day of February, B. E. 2556 (2013)
Being the 68th Year of Our Reign.

Phra Bat Somdet Phra Paraminthra Maha Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is desirable to bring into existence a law against the financing of terrorism;

And whereas it is aware that this Act contains certain provisions giving rise to the restriction of personal rights and freedoms which section 29 incorporating sections 33, 35, 36, 41 and 43 of the Constitution of the Kingdom of Thailand permit to be done by virtue of the legal provisions;

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the National Assembly, as follows:

1

This Act shall be cited as the "Anti-Terrorist Financing Act, BE 2556 (2013)".

2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

3

In this Act:

"Property" means money, thing or incorporeal object which is valuable and capable of being appropriated, and includes the fruits of such money, thing or object, and the legal documents or instruments of whatever kinds, whether embodied in

written form, electronic form or any other media, which bear evidence of ownership, possession, claim or any other benefit concerning the property in question;

"Terrorism" means the acts constituting an offence of terrorism under the Criminal Code or the criminal acts within the scope of a terrorism-related international convention or protocol to which Thailand is a party or which is recognized by Thailand, whether the acts are committed inside or outside the Kingdom;

"Designated person" means a person, group of persons, legal person or organ designated as a terrorist by a United Nations Security Council resolution or announcement, or a person, group of persons, legal person or organ listed as a designate person under this Act upon a judicial examination and adjudication;

"Reporter" means a person required to report the financial transactions pursuant to the law against money laundering;

"Suspend a property-related action" means to prohibit the transfer, sale, removal, disposal, conversion or use of property or the performance of whatever act on property in the manner likely to change its amount, value, quantity, location or nature;

"Commission" means the Anti-Money Laundering Commission under the law against money laundering;

"Transactional Commission" means the Transactional Commission under the law against money laundering;

"Office" means the Anti-Money Laundering Office.

4

Where any person, group of persons, legal person or organ has been listed as a terrorist by a United Nations Security Council resolution or announcement, the Office shall without delay submit the name of such person or organ to the Minister of Justice to further be entered in the list of designate persons, subject to the criteria and procedure set forth in a ministerial regulation.

The removal of an entry in the list of designate persons under paragraph 1 may only be made when there is a United Nations Security Council resolution or announcement leading to such removal.

5

In cases there is a reasonable suspicion according to the circumstances that any person is in connection with terrorism or the financing of terrorism, or that any person acts on behalf of, upon instructions of or under control of such person, the

Office, upon approval of the Transactional Commission, shall submit the name of the person in question to a public prosecutor to further ex parte seek a judicial order adjudging the person as a designate person. The court shall rule in favour of the request when reasonable evidence supports the following believes:

(1) the person being in connection with terrorism or the financing of terrorism;

(2) the person acting on behalf of, upon instructions of or under control of a designate person under (1) or under section 4

The circumstances indicating the connection with terrorism or the financing of terrorism or the acting on behalf of, upon instructions of or under control of another person as described in paragraph 1 must exist on the day the court adjudges the person in question as a designate person.

The Office shall review the list of designate persons under paragraph 1. Should it find that certain circumstances have changed, it shall, upon approval of the Transactional Commission, refer the matter to a public prosecutor to further ex parte seek a judicial order permitting the removal of the names of the relevant persons from the list.

The criteria and procedure for the deliberations of the Office and the Transactional Commission with respect to the matters under paragraphs 1 and 2 shall be set forth in a ministerial regulation. In holding its deliberations under such ministerial regulation, the Office shall set up a panel to examine the names concerned before forwarding them to the Transactional Commission for further approval.

The Office, Transactional Commission, public prosecutors and court shall expeditiously conduct the proceedings under this section

6

The Office shall publish the list of designated persons under sections 4 and 5 and shall require the designated persons and the reporters or the persons possessing property of the designated persons to carry out the following activities without delay:

(1) to suspend the property-related actions of the designate persons or of the persons who act on their behalves, upon their instructions or under their control;

(2) to provide to the Office the information concerning certain property the actions relating to which have been suspended;

(3) to inform the Office of the current or former clients of the designated persons or the persons conducting or having conducted certain transactions with these designated person

The criteria and procedure for the dispatch of the list and requirement to the persons under paragraph 1 and for the activities under (1), (2) and (3) shall be set forth in the rules of the Commission.

The reporters shall determine a risk assessment policy or any guidance with a view to preventing the financing of terrorism. Otherwise, they shall take any other measures as necessary for the implementation of this Act. This shall, however, be subject to the criteria and procedure laid down by the Commission.

7

The safekeeping and administration of property the actions relating to which have been suspended shall be governed by the rules of the Commission.

8

Any person who carries out the activities under section 6 in good faith, even thereby exposing another to injury, shall incur no liability, save where he is proven to have acted by gross negligence.

9

A designate person under section 5 or a person whose property-related action has been suspended pursuant to section 6 as a result of having been adjudged as a designate person according to section 5 may seek judicial permission:

- (1) to remove his name from the list of designate persons;
- (2) to cancel the suspension of the property-related action;
- (3) to perform any act in respect of property the action relating to which has been suspended.

In the event that permission is to be granted for the purpose of (3), the court may also indicate certain conditions as necessary for preventing the use of property in the financing of terrorism. If the facts later indicate that the permission would give rise to the use of property in the financing of terrorism, the court may indicate additional conditions or revoke such permission.

10

Any other person than a designated person under section 4 or 5 may seek judicial permission:

(1) to perform a due obligation in favour of a person whose property-related action has been suspended under section 6; prescribed the contract or dealing has been concluded or formed prior to the suspension;

(2) to make a necessary payment of interest or fruits by transferring a sum to an account of a person whose property-related action has been suspended under section 6;

(3) to demand performance from a person whose property-related action has been suspended by reason of having been adjudged as a designated person under section 5; prescribed that there is a final judgment placing the duty of such performance upon that person;

(4) to carry out any activity concerning property the actions relating to which have been suspended as a result of any person having been adjudged as a designate person under section 5.

When permission is to be granted for the purpose of paragraph 1, if it is necessary to render performance to, demand performance out of, transfer a sum to or withdraw a sum from an account of a person whose property-related action has been suspended under section 6, the court may also indicate certain appropriate conditions for preventing the use of property in the financing of terrorism.

11

The judicial proceedings under sections 5, 9 and 10 shall be instituted before the Civil Court and the Code of Civil Procedure shall apply *mutatis mutandis*.

12

For the purpose of executing this Act, the Commission shall be invested with the authority:

(1) to lay down the criteria, rules and announcements in keeping with this Act;

(2) to determine the guidance for supervision, examination, monitoring and assessment of the execution of this Act;

(3) to determine the necessary guidance for the reporters or any other persons in complying with this Act;

(4) to monitor and assess the execution of this Act.

13

For the purpose of executing this Act, the Office shall be given the authority:

(1) to provide advice or explanations to the persons bearing the duty to execute this Act;

(2) to monitor, assess, examine and supervise the activities under this Act, as well as to prosecute the persons contravening or failing to abide by the provisions of this Act;

(3) to receive or forward reports or information likely to be of use to the execution of this Act or other laws;

(4) to collect information and evidence for the sake of the seizure, attachment or confiscation of property under this Act or other laws.

14

Any person who contravenes or fails to abide by section 6 (1) or (2) shall be liable to imprisonment for not more than three years, or a fine of not exceeding three hundred thousand baht or both.

Any reporter who contravenes or fails to comply with section 6 (1) or (2) shall be liable to a fine of not exceeding one million baht and a daily fine for ten thousand baht throughout the time of contravention or until the section is correctly complied with.

In cases the offence under paragraph 2 is in consequence of an instruction or act of any person, or the failure of any director, manager or person in charge of a relevant legal person to give any instruction or do any act as necessary, such person shall be liable to imprisonment for not more than three years, or a fine of not exceeding three hundred thousand baht or both.

15

Any reporter who contravenes or fails to observe section 6 (3) shall be liable to a fine of not exceeding five hundred thousand baht and a daily fine of five thousand baht throughout the time of contravention or until the section is correctly observed.

Should the offence under paragraph 1 ensue from an instruction or act of any person, or the failure of any director, manager or person in charge of a pertinent

legal person to give any instruction or do any act as necessary, that person shall be liable to imprisonment for not more than one year, or a fine of not exceeding one hundred thousand baht or both.

16

Any person who provides or collects money or property, or conducts a transaction concerning money or property, or carries out whatever action, with the knowledge that the beneficiary is a designate person, or with the intention to allow such money, property or action to be used in support of any activity of a designate person or a terrorist person or organ, is said to commit an offence of financing terrorism and shall be liable to imprisonment from two years to ten years, or a fine from forty thousand baht to two hundred thousand baht or both.

The secondary participant, aider or abettor in the commission of the offence under paragraph 1 shall be dealt with in the same manner as the principal.

The attempt to commit the offence under paragraph 1 shall be sentenced to two thirds of the penalties provided therefor

Any legal person who commits the offence under paragraph 1, 2 or 3 shall incur a fine from five hundred thousand baht to two million baht.

In cases where the criminal act of the legal person under paragraph 4 is the result of an instruction or act of any person, or the failure of any director, manager or person legally in charge of the legal person to give any instruction or do any act as necessary, such person shall undergo imprisonment from two years to ten years, or a fine from forty thousand baht to two hundred thousand baht or both.

The offences under this section shall constitute the predicate offences under the law against money laundering.

17

The Prime Minister shall be in charge of this Act and be empowered to issue ministerial regulations for the execution of this Act.

Those ministerial regulations shall take effect upon their publication in the Government Gazette.

APPENDIX E

PREDICATE OFFENCES IN THAILAND

25 Predicate Offences in Thailand (Identified by the Anti-Money Laundering Office)

1	Drugs and Drug Trafficking
2	Child and Women Trafficking
3	Public Fraud
4	Fraud and Embezzlement (Financial Institution)
5	Corruption
6	Extortion
7	Customs
8	Terrorism
9	Gambling
10	Participation in Criminal Organizations
11	Receiving Stolen Property
12	Counterfeit Money and other commercial medium
13	Counterfeit Intelligent Property
14	Forgery and Electronic Forgery
15	Natural Resources Trafficking
16	Trespass to Person and/or Property
17	False Imprisonment
18	Larceny and Robbery
19	Piracy
20	Unfair Stock Trading
21	Arms Trafficking
22	Election
23	Human Trafficking
24	Terrorism Financing
25	Criminal Organizations

BIOGRAPHY

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