

THAILAND'S ANTI-MONEY LAUNDERING ACT: A RENEWED COMMITMENT TO ENFORCEMENT AND PROPERTY SEIZURE

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Historically, Thailand has had the reputation as being a crossroads of numerous illegal activities and of the laundering of huge sums of tainted money. While it is debatable whether such a reputation is fully deserved, the Thai legislature has acted firmly in combating these activities by implementing a comprehensive anti-money laundering law. The law, known as the Anti-Money Laundering Act (the "Act"), was passed in March of 1999 with the purpose of combating not only the drug trade, but other illicit activities, such as corruption, criminal fraud and prostitution.

Enforcement of the Act was not immediate, however. There were some initial delays in the establishment of an enforcement agency and in passing implementing legislation. Once established, enforcement of the Act commenced in October 2000 and during the first five months alone approximately Baht 150 million in assets were seized. Since that time, hundreds of millions of Baht have been frozen and/or seized under the Act.

On March 2, 2008, recent amendments to the Act became effective, with the intent to broaden the overall scope of targeted offenses, increase the powers to conduct investigation and seizures and to attack the controversial issue of perceived government corruption.

The Anti-Money Laundering Prevention and Suppression Office ("AMLO"), which was established under the Act, has reported that financial institutions have been cooperative in reporting transactions subject to the Act, with AMLO receiving over 10,000 reports a week from commercial banks alone shortly after implementation of the Act. However, AMLO has noticed that the number of transactions subject to mandatory reporting under the Act have decreased sharply through time. This is a clear indication that those suspect transactions that were previously made directly with reputable financial institutions are now being made in smaller, diversified amounts or through other methods entirely. Of the total number of transactions reported to AMLO, only a small portion result in further investigation for violation of the Act.

What Are Targeted Crimes?

Thai law enforcement officials initially proposed the enactment of a money laundering act to target the regular transfer of money and property derived from the rampant trade in illegal narcotics, as well as to comply with requirements for membership under the 1988 Convention against Illegal Traffic in Narcotic Drugs and Psycho-toxic Substances. Additional criminal offenses were added during the legislative process and during the March

2008 amendments, with the Act now covering the transfer or conversion of funds or property obtained from:

- 1) Narcotics trafficking;
- 2) Prostitution and other sexual offenses;
- 3) Fraud against the public;
- 4) Fraud involving financial institutions;
- 5) Abuse of position by a government official;
- 6) Extortion;
- 7) Trade in contraband; and
- 8) Offenses of gambling under gambling law, with particular emphasis on large-scale organization of gambling games.

What Does the Law Prohibit?

Under the Act, it is a crime to transfer, convert or receive the transfer of funds or property arising from the above referenced criminal offenses for the purpose of hiding or concealing the source of the funds. Violators are punishable by imprisonment of up to 10 years plus a fine of up to Baht 200,000. Violators are defined under the Act as persons who commit or attempt to commit a money laundering offense or aid another person in committing a money laundering offense.

It is also important to note that the March 2008 amendments include provisions targeted specifically at government officials, whereby the aforementioned fines are doubled for both the principals and the accomplices if they are government officials, as defined under the Act. This represents a concerted effort to tackle the consistent problem of institutional corruption in Thailand.

Banking transactions are a primary activity subject to scrutiny under the Act, but other financial transactions are also covered. For example, an individual who secretly uses money from a drug sale to purchase shares of publicly traded stocks on the Stock Exchange of Thailand could be prosecuted under the Act. Further, a corrupt government official who uses money obtained from a bribe to then purchase land runs the risk of being exposed, having the land confiscated and being subject to double scale fines. Even property developers, if they knowingly hold or accept monies for concealment that they know are derived from one of the stated criminal offenses, can be subject to enforcement under the Act.

Perhaps the most effective tool in combating crime is the ability of enforcement officials to seize, without a warrant, money or property connected with the commission of one of the enumerated criminal offenses, or a money laundering offense. In such case, the owner of the seized property must convincingly demonstrate that the property is unrelated to the commission of one of the enumerated crimes or a money laundering offense, in order to recover the property.

Reporting Requirements

A key provision of the Act is the requirement that banks and other financial institutions report all cash transactions over 2 million Baht. Property transactions in excess of 5 million must also be reported. Also required for reporting are all suspicious transactions that may be related to one of the enumerated criminal offenses, are more complex than normal, lack

economic plausibility, or appear to have been undertaken to avoid compliance with the anti-money laundering law. For such transactions, the financial institutions must require their customers to provide a detailed record of the transactions. The latter requirement is generally left to the practical discretion of the financial institution which must then choose between customer confidentiality concerns and compliance with the Act.

AMLO has also implemented separate regulations which require all persons entering or leaving Thailand to declare currency in their possession where the amount meets or exceeds certain statutory minimum levels.

Failure to comply with the Act's reporting requirements is punishable by a fine of up to Baht 300,000. Filing a false report is punishable by a fine of up to Baht 500,000 and imprisonment of up to two years.

Thailand has made great progress in its legislative efforts to combat illicit crime and the transfer of funds related to such crimes. While much has been done and the laws are in place, ultimate success depends on the practical enforcement of the law, enforcement that we are hopeful will continue to increase.