THAI ANTI-MONEY LAUNDERING LAW: MEASURES TO CONTROL INDIRECT FINANCING OF TERRORISM BY BUSINESS ENTITIES

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วัตถุประสงค์ของวิทยานิพนธ์ฉบับนี้ คือ เพื่อศึกษาถึงความสัมพันธ์ระหว่างองค์กรพัฒนาเอกชนที่ไม่แสวงหากำไรกับองค์กรธุรกิจ และ ความเสี่ยงต่อการมีส่วนร่วมในกระบวนการสนับสนุนทางการเงินแก่การก่อการร้ายในประเทศไทย และ เพื่อศึกษาถึงกฎหมายภายในประเทศในปัจจุบัน ซึ่งมีจุดมุ่งหมายในการควบคุมการสนับสนุนทางการเงินแก่การก่อการร้าย นอกจากนี้วิทยานิพนธ์ฉบับนี้ ยังมุ่งที่จะศึกษาถึงมาตรฐานสากลในการป้องกันและปราบปรามการฟอกเงินและ การต่อต้านการสนับสนุนทางการเงินแก่การก่อการร้ายในปัจจุบัน โดยเฉพาะอย่างยิ่ง ข้อเสนอแนะพิเศษข้อที่ 8 ที่เกี่ยวข้องกับองค์กรไม่แสวงหากำไรของคณะทำงานเฉพาะกิจเพื่อดำเนินมาตรการทางการเงิน รวมถึงการอนุวัติมาตรฐานสากลดังกล่าวต่อกฎหมายภายในประเทศเพื่อป้องกันการสนับสนุนทางการเงินแก่การก่อการร้ายทางอ้อมโดยองค์กรธุรกิจผ่านทางองค์กรพัฒนาเอกชนที่ไม่แสวงหากำไร

จากการศึกษาดังกล่าวพบว่า ประเทศไทยประสบความสำเร็จในการอนุวัติมาตรฐานสากลในการป้องกันและปราบปรามการฟอกเงินและการสนับสนุนทางการเงินแก่การก่อการร้ายโดยผ่านทางการแก้ไข พ.ร.บ. ป้องกันปราบปรามการฟอกเงิน พ.ศ. 2542 ฉบับที่ 4 พ.ศ. 2556 และ การออก พ.ร.บ. ป้องกันและปราบปรามการสนับสนุนทางการเงินแก่การก่อการร้าย พ.ศ. 2556 อันนำมาซึ่งมาตรการที่มีประสิทธิภาพในการควบคุมการสนับสนุนทางการเงินแก่การก่อการร้ายทางอ้อมโดยองค์กรธุรกิจผ่านทางองค์กรพัฒนาเอกชนที่ไม่แสวงหากำไร อย่างไรก็ดีประเทศไทยควรที่จะต้องอนุวัติมาตรการอื่นๆ คือ การรู้จักองค์กรพัฒนาเอกชนที่ไม่แสวงหากำไร การรู้จักผู้บริจาค และ การรู้จักผู้รับประโยชน์ ยิ่งไปกว่านั้น ควรจัดตั้งคณะกรรมการองค์กรการกุศลแห่งประเทศไทย โดยบนพื้นฐานโครงการของคณะกรรมการองค์กรการกุศลแห่งอังกฤษและเวลล์ส และ นำเครื่องมือพิจารณาหน่วยงานและกฎระเบียบขององค์กรพัฒนาเอกชนที่ไม่แสวงหากำไรของคณะกรรมการดังกล่าวมาใช้ และ ในการแก้ไขกฎหมายภายในทั้งสองฉบับในวาระถัดไป ควรจัดให้องค์กรพัฒนาเอกชนที่ไม่แสวงหากำไร และองค์กรธุรกิจมีหน้าที่ในการรายงานธุรกรรมทางการเงินต่อสำนักงานป้องกันและปราบปรามการฟอกเงิน และ หน้าที่ในการออกนโยบายประเมินความเสี่ยงเพื่อป้องกันตนเองจากกิจกรรมที่เกี่ยวข้องกับการสนับสนุนทางการเงินแก่การก่อการร้าย ท้ายที่สุด ประเทศไทยควรพิจารณานำมาตรการที่เกี่ยวข้องที่ถูกใช้ในต่างประเทศมาปรับใช้ภายในประเทศ

สาขาวิชา……กฎหมายธุรกิจ……ลายมือชื่อนิสิต ……...

ปีการศึกษา…… 2555……..ลายมือชื่อ อ. ที่ปรึกษา ……

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AKARIT DEEMARK : THAI ANTI-MONEY LAUNDERING LAW: MEASURES TO CONTROL INDIRECT FINANCING OF TERRORISM BY BUSINESS ENTITIES.
ADVISOR : PROFESSOR VIRAPHONG BOONYOBHAS, 150 pp.

The objective of this thesis is to examine the relations between NGOs and business entities and their risks of involving in terrorist financing process in Thailand as well as examine the current domestic laws and regulations which aim to control the financing of terrorism. In addition, it aims to examine the current anti-money laundering and counter-financing of terrorism (AML/CFT) international standards, particularly the FATF Special Recommendation VIII (SR8) on non-profit organization as well as the implementation of those standards on the domestic laws in order to create effective measures to control indirect financing of terrorism by business entities via NGOs.

The result of the thesis has shown that Thailand has successfully implemented AML/CFT international standards through the amendment of Anti-Money Laundering B.E. 2542 (1999) (No.4) B.E. 2556 (2013) and the enactment of Counter-Terrorism Financing Act B.E. 2556 (2013); which provide effective measures to control indirectly financing of terrorism by business entities via NGOs. Nevertheless, it is recommended for Thailand to implement other measures which are Know Your NGOs, Know Your Donor and Know Your Beneficiary (KYD/KYB). Furthermore, it is recommended that Thailand should establish the Charity Commission of Thailand based on the working prototype of the Charity Commission of England and Wales as well as implements its NGO Sector and Regulation Review Tool. It is also recommended that further amendment of the two domestic laws should include duties for the NGOs and business entities to report their transactions to AMLO and create risk-based assessment policies to prevent themselves from terrorist financing activities. Finally, it is recommended that Thailand should consider adopting AML/CFT measures applied in other countries.

Field of Study : …….Business Law ……Student's Signature…….
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Chapter I
Introduction

1.1 Background

After the terrorist attacks in the mainland U.S. on September 11, 2001, the world has begun to realize the growing threat of transnational organized crimes. In particular, money laundering and financing of terrorism have assumed a major role in continued existence of terrorists and their organizations as well as in their operations against targets. Evidently, the connection between terrorism, transnational organized crime, money laundering and terrorist financing are strong.[1]

Non-profit, non-governmental organizations (NGOs) [the organizations which operate independently from the government and their activities include fund raising, charity, human rights, and religious, environmental or social development works[2]] have become more vulnerable to abuse as a vehicle for transnational organized crimes including money laundering and terrorist financing. The fact that they have access to many sources of funds, which are often cash-incentive, and without adequate governmental supervision of the use of such funds, has made them easily exploitable by terrorist groups. Furthermore, some NGOs have a global presence which provides a framework for national and international operations and financial transactions that are most exposed to terrorist activities.[3]

In addition, business entities [which are considered to be the source of funding for the NGOs through their corporate social responsibility (CSR), corporate

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[1] Seehanat Prayoonrat, "The Need and Compliance Issues of Thailand's Regime on Anti-Money Laundering and Combating the Financing of Terrorism", Ph.D. Thesis, Law, Faculty of Law, Chulalongkorn University, 2007.

[2] Peter Willetts, What is a Non-Governmental Organization? [Online], City University, London, United Kingdom. www.gdrc.org/ngo/peter-willets.html (accessed March 23, 2013)

[3] CTN Electronic Journal, Preventing the Abuse of Non-Profit Organization for Terrorist Financing [Online], June, 2011. OSCE. www.osce.org/atu/78912 (accessed July 3,2012)

philanthropy, or tax reduction schemes, i.e., business entities donates money to the charitable NGOs] have faced the risk of indirectly financing of terrorism.[4]

In U.S., investigation and analysis by intelligence and enforcement agencies have clearly revealed that terrorist organizations utilize charities to facilitate funding and to funnel money. Charitable donations to NGOs are commingled and then sometimes diverted or siphoned to groups or organizations that support terrorism. Fundraising may involve community solicitation in the United States, Canada, Europe, and the Middle East or solicitations directly to wealthy donors.[5]

In South-East Asian (SEA), the region is regard as the "Back Office" for Al Qaeda terrorist group because of providing important logistical and financial support to terrorist activities.[6]

In Thailand, there is a high risk that NGOs are being used as a tool to provide financial supports to terrorist activities, especially those in the deep southern provinces. Over the past years, the unrest in deep southern provinces has claimed thousands of lives due to the urge to create an independent Muslim state in these majority Muslim provinces. Currently, according to the information obtained from the Southern Boarder Provinces Police Operation Center*, there are approximately 100 NGOs, whose objectives related with educational, religious, and cultural works that

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[4] Barnett F. Baron, Deterring Donors: Anti-Terrorist Financing Rules and American Philanthropy [Online], February 2004. The International Journal of Not-for-Profit Law (ICNL), Volume 6, Issue 2. www.icnl.org/research/journal/vol6iss2/special_5.htm (accessed December 15, 2012)

[5] David Aufhauser**,** The Threat of Terrorist Financing [Online], June, 2003. Written Testimony Before the Senate Judiciary Committee and Subcommittee on Terrorism, Technology and Homeland Security, Department of the Treasury, U.S. www.au.af.mil/au/awc/awcgate/congress/terrorist_financing.htm (accessed August 22, 2012)

[6] Zachary Abuza, "NBA Analysis – Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiyah", The National Bureau of Asian Research 14, 5 (December 2003): 5.

*Southern Boarder Provinces Police Operation Center or "ศูนย์ปฏิบัติการตำรวจจังหวัดชายแดนภาคใต้ (ศชต.)" in Thai, under the Order No. 590/2547 of the Royal Thai Police Headquarter, was founded on September 10, 2004. It aims to solve and end the terrorist activities in the three deep southern provinces as productively and quickly as possible.

are posing a risk of being used to as conduit for money laundering and the financing of terrorism in the deep southern provinces.

Furthermore, under the research of King Prajadhipok's Institute, it can be seen that the terrorist activities in the deep southern provinces are funded partly through Muslim charitable NGO. The well-known organizations are Islamic International Relief Organization (IIRO), Al Haramain Islamic Foundation, Medical Emergency Relief Charity (MERC), and World Assembly of Muslim youth.[7]

Although the legal and regulatory frameworks exist for the regulation of NGOs in Thailand, they are not designed for directly governing the NGOs, and have not been implemented effectively. In addition, there are many duplications and complications of regulatory activities.

Nevertheless, Thailand has implemented the Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) international standards upon the law related to anti-money laundering which is the Anti-Money Laundering Act B.E. 2542 (. 1999) as amended Until Anti-Money Laundering Act B.E. 2542 (1999) (No.4) B.E. 2556 (2013), and the newly enacted law related to counter-terrorism financing which Counter-Terrorism Financing Act B.E. 2556 (2013).

With this respect, it is necessary to determine whether the implementation of those AML/CFT international standards upon the two domestic laws can lead to an improvement of AML/CFT regime in Thailand, and also create effective measures to control indirect financing of terrorism by business entities via NGOs.

1.2 Thesis Objectives

1. To examine the relations between NGOs and business entities and their risks of involving in money laundering and terrorist financing in Thailand;
2. To examine the current domestic laws and regulations which aim to control money laundering and financing of terrorism;

[7] Varaporn Vichayarat, "Terrorist Activities in Southern Thailand", Political and Administrative, King Prajadhipok's Institute. [In Thai]

3. To examine the current anti-money laundering and counter-financing of terrorism (AML/CFT) international standards which aim to control money laundering and financing of terrorism;
4. To examine the implementation of the AML/CFT international standards upon the domestic laws in order to create effective measures to control indirect financing of terrorism by business entities via NGOs; and
5. To make appropriate recommendations concerning effective measures to control indirect financing of terrorism by business entities via NGOs.

1.3 Thesis Scope

The scope of this thesis will cover the implementation of AML/CFT international standards in Thailand to create effective measures to control the activities in which business entities donate money to or financing NGOs; and the NGOs then finance terrorist activities.

1.4 Thesis Hypothesis

Effective measures to control indirect financing of terrorism by business entities via NGOs can be achieved through the implementation of AML/CFT international standards: the amendment of Anti-Money Laundering Act (AMLA) and the enactment of Counter-Terrorism Financing Act.

1.5 Thesis Procedures

1. To conduct a documentary research on the current domestic laws governing NGOs and business entities in Thailand;
2. To conduct data collections and interviews with experts and/or related officers/agents on the current activities, issues, problems concerning the money laundering and financing of terrorism in Thailand;

3. To conduct a literature review on the current AML/CFT international standards, which aim to control money laundering and financing of terrorism;
4. To conduct an analytical study on the implementation of AML/CFT international standards on the domestic laws, and the adoptions of certain measures to control indirect financing of terrorism by business via NGOs.

1.6 Benefits of the Thesis

1. To recognize the current domestic laws governing NGOs and business entities in Thailand.
2. To recognize the current activities, issues and problems concerning indirect financing of terrorism by business entities via NGOs in Thailand
3. To recognize the current AML/CFT international standards and the benefits from implementing these standards on Thai domestic laws
4. To be able to provide recommendations concerning effective measures to control indirect financing of terrorism by business entities via NGOs

Chapter II
NGOs and Business Entities in Thailand and their Connection With Financing of Terrorism

2.1 NGOs in Thailand

2.1.1 Definitions

Non-profit, non-governmental organizations (NGOs) have become substantially important features to all countries. They play an important role in the world economy and in national economies and social systems of many countries. Their activities include fund raising, charity, human rights, and environmental or social development works which have a great effect on communities. These activities complement the activities of the government sectors in providing services, comfort and hope to people in need.

NGO Global Network has defined NGOs as any non-profit, voluntary citizens' group which is organized on a local, national or international level. Managed by people with a common interest and task-oriented and, NGOs perform a variety of services and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organized around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Their relationship with offices and agencies of the UN system differs depending on their goals, their venue and the mandate of a particular institution.

Nevertheless, the term ‘NGOs’ has not been generally used until the United Nations (UN) was formed in 1945. The term has become popularly used after it was used in Article 71 of the UN Charter. There is no generally accepted definition of an NGO and the term carries various connotations in various circumstances. However, there are some fundamental features. First, NGO must be independent from the direct

control of any government. In addition, the NGO will not be created as a political party or for profit-making purpose, and it will be not be a criminal or violent group. Their activities include fund raising, charity, human rights, and religious, environmental or social development works [1]

Furthermore, under the research by the International Programme of the Charity Commission, the term 'NGOs' is usually referred to non-governmental, non-profit making, public benefit organizations including religious organizations. However, the Financial Action Task Force (FATF) refers to these organizations as 'Non-Profit Organizations' (NPOs) in its Special Recommendation VIII (SR8). Although the term 'Civil Society Organizations' (CSOs) is being increasingly used, it would include trade unions, political parties and other organizations outside of the scope of this thesis. Nonetheless, in Thailand, the term 'NGOs' is commonly used to describe the non-governmental, non-profit making, public benefit organizations.[2]

Therefore, in this thesis the term 'NGOs' is referred to all non-profit, non-governmental, public benefit organizations.

2.1.2 History of Thai NGOs

Traditionally, the NGOs in Thailand were mostly family-based foundations. However, domestic NGOs have become increasingly linked with international NGOs in recent years. Three factors have led to this significant change. Firstly, there has been a major increase in the number and activities of NGOs globally. Secondly, Thailand's NGO sector enjoyed a period of supportive and enabling regulation from the government. Thirdly, Thailand has historically been a regional centre for a number of international NGOs. In addition, this change in the domestic NGO sector has been

[1] Peter Willetts, What is a Non-Governmental Organization? [Online], City University, London, United Kingdom. www.gdrc.org/ngo/peter-willets.html (accessed March 23, 2013)

[2] The Charity Commisssion's International Programme, "Thailand's NGO Regime: Analysis and Recommendations", the Charity Commission for England and Wales, United Kingdom, February, 2007.

closely linked to the Tsunami incident in 2004, which led to a large incoming of funds, particularly from abroad.[3]

2.1.3 The Importance of NGOs for the Economy of Thailand

Although the NGOs have been playing increasingly important roles in Thailand and other countries throughout the world, these organizations have long been invisible on the social and economic landscape of most countries due to a lack of basic data. The only available economic data of NGOs in Thailand can be found through the work of the Office of the National Economic and Social Development Board (NESDB) together with the Johns Hopkins University Center for Civil Society Studies (JHU/CCSS) to create The Non-Profit Institutions Satellite Account of Thailand 2006-2008 Edition (NPIs).[4] The purpose of this NPIs is to study and present the important roles of the NGOs in terms of economic activities beyond their social service delivery which have been continuously contributing to the society. At present, various types of NGOs and Philanthropic Organizations contributed a significant part in supporting the government sector.

Under the NPIs, there were 70,792 NGOs in Thailand which can be classified by the International Standard Industrial Classification (ISIC) into 4 sectors:

1. Education;
2. Human Health Activities;
3. Social Work Activities without Accommodation; and
4. Activities of Membership Organizations.

The Activities of Membership Organizations are considered to be the most important sector with its share of 70.1 percent of total NGOs, including religious organizations or temples. The Social Work sector and Education sector accounted for

[3]NGO Regulation Network, NGO Law and Regulation in Thailand [Online], The International Programme of the Charity Commission. www.ngoregnet.org/country_information_by _region/Asia_and_ Oceania/Thailand.asp (accessed August 8, 2012)

[4] Office of the National Economic and Social Development Board Supported by the Johns Hopkins University, "Non-Profit Institutions Satellite Account of Thailand (NPIs)", 2006-2008 Edition.

28.7 per cent and 1.2 percent respectively, whereas the Human Health sector has the smallest ratio of only 0.03 percent.

The importance of the NGOs in the economic perspective can be determined by the size of the GDP of the NGOs which is equivalent to 0.8 percent of the country's GDP, i.e., was amounted at Thai Baht 61,872 million in 2006, Thai Baht 66,555 million in 2007 and Thai Baht 72,111 million in 2008. The current size of the GDP of the NGOs is not available yet, but can expect to be much increased.

Economically, Social Work activities showed the highest share, contributing 30.6 percent to the NGOs' GDP, followed by the Human Health activities which posted nearly the same rate of 29.1 percent. It should be noticed that the NGOs in the Human Health activities has the smallest number among the total NPIs organizations, however, it generated the second most on the value added or GDP of the NGOs. This result of the Human Health activities is mainly from private hospitals which are considered to be the market NGOs whereas all organizations in Social Work activities are non-market NGOs.

Furthermore, number of organizations in Activities of Membership Organizations sector posted at 70.1 percent, which is the highest structure of total NGOs. However, most of them are non-market NGOs, including religious organizations, therefore the GDP of this sector was only 24 percent of the NGOs' GDP, ranking third after the Social Work activities sector and the Human Health activities sector. The smallest GDP of the NGOs is the Education sector which is valued only at 16.3 percent of the NGOs' GDP. Education sector which consists mostly of religious schools, special schools, and education welfare schools has been classified as non-market NGOs, while some market schools are not-profits except for universities.

In addition, most of the NGOs' sources of revenue are obtained from the government subsidies and private sector transfers. It should be noted that the sources of revenue of the NGOs in Thailand came mostly from private donations with 52.6 percent share of total revenue. Government support accounted for only 7.0 percent of total revenue and the remaining balance came from the sale of goods and services, property income and foreign grants and transfers.

As for the NGOs' expenditures, the majority is operating expenses. A significant part of the expense is on final consumption expenditure which accounted for an average of 38.2 percent to total expense per year. The final consumption expenditure of the NGOs is considered to be the benefit of households through the NGOs' activities in both normal and disaster situations.

2.2 Business Entities and its link to the NGOs

2.2.1 Business Entities

The role of business entities is critical as they provide products or services to customers all around the world. These products or services are provided by entrepreneurs who organize, manage and assume the risk of starting businesses mainly for earning profit. Business entities make the best possible use of scarce resources such as men, machines and materials for the production of goods. Businesses may be operated in various types from individual as the owner or by investing with other individuals as the group. In order to decide to choose any type of businesses, the entrepreneurs must realize various components of business operations such as nature of businesses, capital, business capability, etc, in order for the success of businesses and maximization of profit and benefits.[5]

In general, a business entity is an establishment formed to carry on commercial enterprises.[6] This is an important aspect that the law enables entities to be created for conducting business activities. These entities are separate and distinct from the individual owners of the business. In addition, business entities have many of the

[5] Department of Business Development, Type of Business Organization [Online], Ministry of Commerce. www.dbd.go.th/mainsite/index.php?id=102&L=1 (accessed November 4, 2012)

[6]The Law Dictionary and Black's Law Dictionary, What is Business Entity? [Online] http://thelawdictionary.org/business-entity/ (accessed March 15, 2013)

rights of individuals. They can own property and enter into contracts as well as sue or be sued, and the governments can tax them.[7]

Nevertheless, business entities are defined differently in the legal systems of various countries. These include corporations, cooperatives, partnerships, sole traders, limited liability company, and other specifically labeled types of entities. . However, business entities are defined differently in the legal systems of various countries. These include corporations, cooperatives, partnerships, sole traders, limited liability company, and other specifically labeled types of entities. .

In United Kingdom (UK), business entities are generally in the form of general partnership, limited partnership (LP), limited liability partnership (LLP), limited company (Ltd.) or *Cyfyngedig* (*Cyf*) for Welsh companies, and public limited company (plc.) or *Cwmni Cyfyngedig Cyhoeddus* (*Ccc*) for Welsh companies.[8]

In Germany, there are various forms of business entities. Einzelunternehmen equals to sole proprietorship in US. GmbH (Gesellschaft mit beschränkter Haftung) is similar to limited liability company (LLC) in US. AG (Aktiengesellschaft) equals to public limited company (plc) in UK and corporation in US.[9]

For Spain, S.A. (Sociedad Anónima) is similar to public limited company (plc) in UK and S.L. (Sociedad Limitada) is similar to limited company (Ltd.) in UK.[10]

In Japan, kabushiki-kaisha or kabushiki-gaisha, "KK Company", is the most typical form of business corporation.[11]

2.2.2 Link to NGOs

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[7] Encyclopedia for Everyday Law, Business Law: Corporations [Online], 2003, Delaware Division of Corporations, U.S. www.enotes.com/business-law-reference/corporations (accessed March 15, 2013)

[8] Department for Business Donation and Skills, “A Guide for Legal Forms for Business”, The Government of United Kingdom, U.K., 2011. [pdf.]

[9] Arno Probst, Business Entities [Online], 2005, Fact Sheet, The BDO International network, Lübeck Business Development Corporation, Germany. www.luebeck.org/file/fact_sheet_business_entities_eng.pdf (accessed January 5, 2013)

[10] Legal Information Institute, Business Entities; Definitions [Online], Cornell University Law School, U.S. www.law.cornell.edu/cfr/text/26/301.7701-2 (accessed January 29, 2013).

[11] Baker & McKenzie, Doing Business in Japan [Online], 2005, Cornell University ILR School. http://digitalcommons.ilr.cornell.edu/lawfirms (accessed on January 15, 2013).

The relationship between NGOs and business entities has been formed mostly through charitable donations. The business entities are considered to be the major source of funding for the NGOs. As indicated in the Non-Profit Institutions Satellite Account of Thailand 2006-2008 Edition (NPIs), the sources of revenue of the NGOs in Thailand mostly came from private donations with 52.6 percent share of the total revenue.

2.2.3 Charitable Donations from Business Entities to NGOs

2.2.3.1 Charitable Donations

Charitable donation is something bestowed voluntarily and without compensation. Such donation made by individuals and entities are eligible for a deduction against income tax. Characteristics of a charitable donation include: a clear and unmistakable intention on the part of the donor to absolutely and irrevocably divest himself or herself of title, dominion, and control of the property; the irrevocable transfer of the present legal title and dominion and control of the entire item to the donee so that the donor can exercise no further act of dominion and control over it; a delivery by the donor to the donee of the item or of the most effective means of commanding dominion over it; and the acceptance of the item by the donee.[12]

As the donations are given without return consideration, this lack of return consideration means that, in common law jurisdictions, an agreement to make a donation is an imperfect contract void for want of consideration.[13]

Under the law of U.S., donation is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another

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[12] Charitable Giving Law and Issues, What is a charitable gift? [Online] University of Michigan www.ogc.umich.edu/faq_charitable.html (accessed November 3, 2012)

[13] William Blackstone, "Catholic Encyclopedia: Donation" [Online], Robert Appleton Company, U.S. www.newadvent.org/cathen/05117a.htm. (accessed December 6, 2012).

person, without any consideration; a gift. A donation is never perfected until it is has been accepted, for the acceptance is requisite to make the donation complete. The person making the gift is called the donor and the person receiving the gift is called the donee. If made to a qualified non-profit charitable, religious, educational or public service organization, it may be deductible as a contribution in calculating income tax.[14]

2.2.3.2 Fund Raising Activities

The contact of an NGO with the business entities is often through fund-raising activities. This is because the NGOs need new sources of funding or alternative financial sources, as government assistance is decreased and subject to political considerations beyond the control of individual NGOs. Also, the NGOs see full-scale collaboration with the private sector as the most effective way towards a more sustainable future.[15] The business entities then give charitable donations to the NGOs as part of their Corporate Social Responsibility (CSR) and tax reduction plans.

2.2.3.3 Corporate Social Responsibility (CSR)

The European Commission defines corporate social responsibility (CSR) as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.[16]

World Business Council on Sustainable Development also defines CSR as the commitment of business to contribute to sustainable economic development, working

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[14] http://definitions.uslegal.com/d/donations/ (accessed November 8, 2012)

[15] Simon Heap, "NGOs and The Private Sector: Potential for Partnerships?", Occasional Papers Series 27, International NGO Training and Research Centre (December 1998).

[16] European Commission, Sustainable and responsible business: Corporate Social Responsibility (CSR) [Online] http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm (accessed January 14, 2013)

with employees, their families, the local community and society at large to improve their quality of life.[17]

CSR has been known to reduce operational risks associated with environmental and social issues which contribute to the competitiveness of companies. Also, it can be a driver for product and service innovation that respond to the challenges and opportunities of today's rapidly changing political, economic, social, and environmental spheres. If companies collaboratively work with their stakeholders, economic growth and development can be brought in-line with societal expectations about how to effectively manage resources and develop communities.

In Thailand, corporate commitment to local communities and philanthropy is deeply rooted in Thai culture. It can be seen through the concept of corporate philanthropy whereby companies give money to a non-profit organization and do not receive any benefit from the donation. It is a completely altruistic act which lays the foundation for a potentially strong CSR culture in Thailand.[18] This is due to the fact that many Thai companies see advantages in engaging in CSR activities because they foster trust and nurture goodwill which will positively influence their reputations. In addition, as the social and religious context in Thailand is the basis for performing good deeds based on of the Buddhist merit-making culture, a lot of Thai companies are involved in philanthropic actions and employee volunteering.[19] This is the reason that Thai companies placed an increased emphasis on community giving as such donations to charities.

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[17]World Business Council for Sustainable Development, Corporate Social Responsibility (CSR) [Online]. www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx (accessed December 20, 2012)

[18] Leena Wokeck, Corporate Social Responsibility in Thailand [Online], The CSR Asia Center at AIT. www.csrcenter@ait.asia/ (accessed December 6, 2012)

[19]Pareena Prayukvong and Matt Olsen, "Research Paper on Promoting Corporate Social Responsibility in Thailand and the Role of Volunteerism", The Network of NGO and Business Partnerships for Sustainable Development, UNDP, (January 2009).

2.2.3.4 Tax Deduction on Corporate Income Tax

Making donations to charity can not only earn spiritual merit, but can put companies in a better position for taxation. According to the Corporate Income Tax Law, charitable donations made by companies are tax-deductible, but to a limited amount relative to many other countries.

The deductible amount equals to the cost of the donated items, provided that such amount together with the sum donated for public charity or public benefit pursuant to Section 65 ter (3) of the Revenue Code shall not exceed two percent of the net taxable profits.

Nevertheless, the maximum allowances for charitable donations are considered too small to encourage companies to give for the benefit of tax reduction.[20]

2.3 NGOs and Business Entities and their Connection with Financing of Terrorism

2.3.1 Financing of Terrorism

Financing of terrorism has many definitions. First, financing of terrorism means the act of providing the funds or something of value to individual terrorist or terrorist groups or persons and groups engaged in terrorist activities or engaging in financial transactions with terrorist groups knowingly and unlawfully.[21]

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[20] Sriwipa Siripunyawit, Deductions for charitable donations are modest and recipients have to be approved by the state [Online], 2001, Bangkok Post. www.thailand-accounting.com/newscharity.html (accessed December 15, 2012)

[21] The Law Society, Anti-Money Laundering Practice Note [Online], 2008. www.lawsociety.org.uk/productsandservices/practicenotes/aml/452.article#h1amldef (accessed August 20, 2012)

Second, terrorist financing refers any conduct by any person that directly or indirectly, whether lawfully or unlawfully and willfully provide or collect funds with the intention that they should be used, or in the knowledge that they should be used, to carry out an act that constitutes an offence under any one of the thirteen United Nations Conventions.[22]

Third, terrorist financing is the financial support, in any form, of terrorism or of those who encourage, plan, or engage in it.[23]

Therefore, the act of financing of terrorism can be defined as the process of directly or indirectly, whether lawfully or unlawfully and willfully providing funds or something of value to individual terrorist or terrorist groups or persons and groups engaged in terrorist activities or engaging in financial transactions with terrorist groups knowingly and unlawfully.

2.3.2 Financing of Terrorism by Business Entities via NGOs

There are vulnerabilities in the NGO sector which leads to the organizations being used as conduit for trans-national crimes including money laundering and terrorist financing. This is because the NGOs feature a number of characteristics:

- the NGOs enjoy public trust; have access to considerable sources of funds; and are often cash–intensive;
- Some of the NGOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near areas that are most exposed to terrorist activity;
- the NGOs may often be subject to little or no governmental oversight (registration, record keeping, reporting and monitoring, check of background of beneficial owners, employees, management);

[22] The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders. [Online] www.unafei.or.jp/english/pdf/RS_No71/No71_16RS_Group2.pdf (accessed August 20, 2012)

[23] The World Bank Group, Money Laundering and Terrorist Financing: Definitions and Explanations [Online] www1.worldbank.org/finance/assets/images/01-chap01-f.qxd.pdf (accessed August 20, 2012)

- Governmental bodies may have insufficient resources to effectively oversee the sector; and the NGOs may have limited resources or capacity to withstand demanding regulatory requirements.[24]

With respect to the above, terrorist organizations have taken advantage of these characteristics of the NGOs to infiltrate the sector and misuse their funds and operations to cover for or support terrorist activity. Thus, the business entities which give donations to the NGOs without knowing that such NGOs are connected to terrorist activities have faced the risks of indirectly financing the terrorist activities.

Effective regulations can play an important role in minimizing those vulnerabilities of the NGOs. They allow both the government and the public to identify what NGOs exist, what their purposes are, who is responsible for the activities of the organization, and what that organization is pursuing. It also provides means to identify abuse, and sufficient powers to deal with those abuses that occur. Failure to conduct the effective regulations can cause the following negative effects.

2.3.2.1 Effect on Community

NGOs help in providing services to the community such as charitable or voluntary works in undeveloped areas and technical or professional assistance. The fact that they have access to many sources of funds through fund raising activities, which are often cash-incentive, and without adequate governmental supervision of the use of such funds will a great deal of suffering in the community. This is because those terrorist groups can use such funds to finance their terrorist acts which will harm the community in the end.

2.3.2.2 Effect on Economy

Some foundations registered with the Ministry of Interior which meet certain criteria can also register with the Ministry of Finance as a Public Charitable

[24] CTN Electronic Journal, Preventing the Abuse of Non-Profit Organization for Terrorist Financing [Online], June, 2011. OSCE. www.osce.org/atu/78912 (accessed July 3,2012)

Institution to benefit from complete exemption from income tax. This has created a room for tax evasion schemes by some organizations pretending to operate as foundations or associations in which the authority cannot tax the income of such organizations. If there is no effective regulation for the NGOs, other countries will lose confidence in the integrity of Thai NGOs and refuse to support the funds necessarily to operate such NGOs. As a result, it will reduce the domestic cash flow which causes a negative effect to Thailand's economy.

2.3.2.3 Effect on Politic and Administration

NGOs make significant contributions to political life and to political change in developing countries. Some powerful NGOs have major influence on domestic and international media with agendas that might not benefit the community and society. The political turmoil in Bangkok during the year 2010 has proven that NGOs played an important role in leading the demonstrations. Thus, NGOs can be used as tools for achieving political agendas which may consequently harm the Thai people.

2.4 Problems within Thailand

After the incident of terrorist attack in U.S. on September 11, 2001, questions were raised on how resources could have been allocated to support such terrorist activity. There has become uncertain whether it is safe for business entities to give charitable donations. The philanthropy revenues derived from the private sector giving between 1995 and 2006 had increased from US$6 million to US$141 million, thus, become an important source of revenue for charities.[25] As terrorist organizations may raise funds through a legitimate source, e.g., legitimate businesses, the proceeds of legitimate businesses which are donated to the charitable NGOs linked with

[25] Margaret Hanson et al., "Global Impact: Managing Corporate Giving", Social Innovation Centre, INSEAD, 2008.

terrorist groups can be used as a source of funds to support terrorist activities. It is quite critical if this major fund is used for terrorist financing.[26]

In Thailand, recent national and international trends towards CSR have increased awareness and practices in Thai firms. In addition, many of the American Chamber of Commerce (AMCHAM) firms have grant review committees, a community relations manager, plans for giving, NGO partners, and dedicated funds for disaster recovery philanthropy. Consequently, some firms were in a better position to assist when the disaster hit.

or example, AIA, Chevron (formerly Unocal), Dow Chemical and American Express worked with Kenan Institute Asia (KIAsia) to redirect existing funding available under the American Corporations for Thailand (ACT) program to provide scholarships to 400 students impacted by the tsunami. The firms and KIAsia were able to act quickly because of their standing relationship with the Ministry of Education and the existence of mechanisms to quickly identify needs and allocate funding. On the other hand, firms began to build new relationships with local NGOs. The NGOs are often better positioned to identify and deliver the needed assistance to the communities than the government agencies or foreign organizations. By partnering with local NGOs, the firms can track exactly how the funds are used and who the end recipients are. This is often not the case when donating to large organizations such as the Red Cross or World Vision that pool their resources.[27]

2.4.1 Terrorist Financing in Thailand and South-East Asia

Thailand is one of the countries in South-East Asian (SEA) region, which are regard as the "Back Office" for Al Qaeda terrorist group because of providing important logistical and financial support to terrorist activities.[28] Some of the financial supports came from the charitable NGOs, for examples:

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[26] FATF Terrorist Financing Typologies Report, February 2008. (pdf.)

[27] Richard Bernhard et al., "AMCHAM Members Lead the Way in Corporate Philanthropy after the Tsunami", Strategic Corporate Citizenship (SCC) News Letter, Kenan Institute Asia (2006).

[28] Zachary Abuza, "NBA Analysis – Funding Terrorism in Southeast Asia:

- Much of Jemaah Islamiyah [Al Qaeda's regional affiliate in SEA]'s funding come from charities. This is because Jemaah Islamiyah and Al Qaeda inserted top operatives into leadership positions in several Islamic charities in Southeast Asia in the late 1990s.[29]
- The International Islamic Relief Organization (IIRO) [a charitable NGO] is one of the most important Saudi charities operating in Southeast Asia. Although most of the donations to IIRO go to legitimate social work, a significant amount is diverted to terrorist and paramilitary activities.[30] The U.S. Treasury Department designated the IIRO offices in the Philippines and Indonesia under Executive Order 13224 for terrorist financing[31], and they were later placed on the United Nations Security Council Resolution (UNSCR) 1267 Committee's list of designated terrorist.[32] IIRO has also operated in Thailand since 1998 and provided helps during the Tsunami Disaster in 2004, but it yet has no branch in Thailand.[33] Nonetheless, the IIRO's operations in Thailand have come under scrutiny for their part in supporting the ongoing insurgency;
- Islam Burapha religious school in Deep-Southern Provinces of Thailand which is owned by an NGO has been used as a center to support terrorist activities in the area.[34] The Anti-Money Laundering Office announced in 2012 that the

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The Financial Network of Al Qaeda and Jemaah Islamiyah", The National Bureau of Asian Research 14, 5 (December 2003): 5.

[29] Ibid., p. 22.

[30] Ibid., p. 24.

[31] Individuals and Entities Designated by the State Department Under E.O. 13224, U.S. Department of State. [Online] www.state.gov/j/ct/rls/other/des/143210.htm (accessed March 26, 2013)

[32] Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities. [Online] www.un.org/sc/committees/1267/aq_sanctions_list.shtml (accessed March 20, 2013)

[33] Muslim World League –MWL, Department of South Asian, Middle East, and African Affairs, Ministry of Foreign Affair, Thaiand. [Online] http://sameaf.mfa.go.th/en/organization/detail.php?ID=204 (accessed March 29, 2013)

[34] Deep South Watch Network. [Online] www.deepsouthwatch.org/ (accessed March 29, 2013)

school was financed by foreign organization and connected to the Taliban terrorist group in the Middle East.[35]

- According to the information obtained from the Southern Boarder Provinces Police Operation Center*, there are approximately 100 NGOs [whose objectives related with educational, religious, and cultural works] that are posing a risk of being used to as conduit for money laundering and the financing of terrorism in the deep southern provinces.; and
- Under the research of King Prajadhipok's Institute, it can be seen that the terrorist activities in the deep southern provinces are funded by Muslim charitable NGOs. The well-known organizations are Islamic International Relief Organization (IIRO), Al Haramain Islamic Foundation, Medical Emergency Relief Charity (MERC), and World Assembly of Muslim youth.[36]

2.4.2 Ineffective NGO Regulations in Thailand

Although the legal and regulatory frameworks exist for the regulation of NGOs in Thailand, they are not designed for directly governing the NGOs, and have not been implemented effectively. Also, there are many duplications and complications of regulatory activities as indicated below:

- Only NGOs that wish to become associations and foundations must be registered.** There is unknown number of informal organizations who choose to be clubs or groups which have no legal personality and cannot

[35] MCOT, AMLO Froze Asset of Islamic School connected to insurgency in Deep-South of Thailand and financed from Abroad [Online], September 4, 2012. www.mcot.net/site/content?id=504600080b01da921300003b (accessed on March 24, 2013) [in Thai]

*Southern Boarder Provinces Police Operation Center or "ศูนย์ปฏิบัติการตำรวจจังหวัดชายแดนภาคใต้ (ศชต.)" in Thai, under the Order No. 590/2547 of the Royal Thai Police Headquarter, was founded on September 10, 2004. It aims to solve and end the terrorist activities in the three deep southern provinces as productively and quickly as possible.

[36] Varaporn Vichayarat, "Terrorist Activities in Southern Thailand", Political and Administrative, King Prajadhipok's Institute. [In Thai]

** Sections 78 and 110 of the Civil and Commercial Code

be supervised by the authorities, i.e., the police and Anti-Money Laundering Office (AMLO);

- There is no unique process of registration for NGOs; associations and foundations must go through a normal registration process with the Registrar under control of Ministry of Interior*; NGOs from particular sectors, such as, culture, religion and social welfare sectors must additionally get the approval of the relevant Ministry before they can proceed with such normal registration.[37];
- Only foundations have duty to submit their annual reports containing the summary of their works and financial balance information as well as other changes in the organizations during the year to Ministry of Interior; Association has no obligation to summarize their annual activities and submit annual report as well as financial balance information to the authority.[38] Thus, it is difficult to check on the activities of the associations whether they are lawful or not.
- Associations and foundations are subject to little scrutiny by the regulators; those that are identified as failing to meet any of the legal or regulatory requirements are subject to only dissolution.**
- The regulators have no power for the prosecution of criminal offenses of the NGOs.[39]

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*The Act of National Culture B.E. 2485 (A.D.1942) and Sections 109 and 136 of the Civil and Commercial Code

[38]The Charity Commisssion's International Programme, "Thailand's NGO Regime: Analysis and Recommendations", the Charity Commission for England and Wales, United Kingdom, February, 2007.

[38] Ibid.

**Sections 101 and 130 of the Civil and Commercial Code

[39] The Charity Commisssion's International Programme, "Thailand's NGO Regime: Analysis and Recommendations", the Charity Commission for England and Wales, United Kingdom, February, 2007.

Thus, those companies which engaged in corporate philanthropy may face the risk of involving in terrorist financing crime if they give donations to the NGOs that are connected with terrorist groups or finance terrorist activities.

Furthermore, at present there is no specific regulation for the NGOs in term of Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT). The only domestic laws related to AML/CFT are the Anti-Money Laundering Act (AMLA) B.E. 2542 (1999) as amended until Anti-Money Laundering Act B.E. 2542 (1999) No. 4) B.E. 2556 (A.D. 2013) and the newly enacted Counter-Terrorism Financing Act (CTFA) B.E. 2556 (2013).

Previously, the Legal Department of the International Monetary Fund (IMF) in cooperationed with FATF has entered into a strategic partnership with Thailand to improve the AML/CFT Regime. The National Risk Assessment (NRA) Project was introduced between 2011 and 2012 with its objective to improve Thailand's AML/CFT regime by assessing the Money Laundering/Financing of Terrorism (ML/FT) risk within the country. The NRA concluded that Thailand's ML/FT risk was high. As for FT risk, the NGO sector is among the sectors which have the highest level of FT risk.[40]

In addition, in February 2012, Thailand was named a "high risk" jurisdiction by the Financial Action Task Force (FATF) for its failure to take sufficient steps to guard against money laundering and the financing of terrorism, i.e., failure to improve its strategic AML/CFT deficiency. According to FATF, implementation of AML/CFT international standards in the domestic laws is necessary for Thailand to solve the strategic deficiency problems.

With this respect, it is necessary to determine whether those implementations can provide effective measures to control indirect financing of terrorism by business entities via NGOs. The next chapter will discuss about this matter in details.

[40] Stephen Dawe et al., "Kingdom of Thailand: National Money Laundering and Financing of Terrorism Risk Assessment", International Monetary Fund (IMF), January 19, 2012. [Unpublished Manuscript]

Chapter III

Literature Review on Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) International Standards

Thailand is one of the founding members of the Asia/Pacific Group on Money Laundering (APG) which is the FATF regional body for the Asia/Pacific region. It is an autonomous international organization founded in Bangkok, Thailand in 1997.

The roles of the APG as stated in its strategic plan including:

- Assessing APG members' compliance with the AML/CFT international standards through a programme of mutual evaluations;
- Supporting implementation of the AML/CFT international standards, including coordinating multi-lateral and bi-lateral technical assistance and training with donor countries and agencies;
- Conducting research and analysis into money laundering and terrorist financing trends and methods; and
- Participating in, and co-operating with, the international AML/CFT network and contributing to global policy development of the standards through associate membership in the FATF.

In addition, according to the FATF, the purpose of the APG is to ensure the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF 40+9 Recommendations. The effort includes assisting countries and territories of the region in enacting laws to deal with the proceeds of crime, mutual legal assistance, confiscation, forfeiture and extradition; providing guidance in setting up systems for

reporting and investigating suspicious transactions and helping in the establishment of financial intelligence units (FIU). The APG also enables regional factors to be taken into account in the implementation of anti-money laundering (AML) measures. Following the terrorist events of 11 September 2001 in U.S., the APG has expanded its scope to include the countering of terrorist financing (CFT). Furthermore, the APG conducts mutual evaluations of its members and holds a periodic workshop on money laundering methods and trends.

The mutual evaluations of APG's members are to determine whether they comply, or to what extent they comply, with their obligations to implement the global anti-money laundering and anti-terrorist financing standards. The evaluations are conducted jointly with other AML/CFT bodies such as the FATF, the International Monetary Fund, the World Bank and the Offshore Group of Banking Supervisors.

In Thailand, the evaluation was in the form of National Risk Assessment (NRA) Project conducted by the IMF.[1] This project's main objectives are to improve Thailand's AML/CFT regime by assessing the ML/FT risk it has faced. Understanding the ML/FT risks is an essential part of developing and implementing a national AML/CFT regime.

A risk assessment allows countries to identify, assess and understand its ML/FT risks. Once these risks are properly understood, countries can apply AML/CFT measures that correspond to the level of risk, i.e., the risk-based approach (RBA). This risk-based approach, which is central to the FATF Recommendations, enables countries to prioritize their resources and allocate them efficiently.

The NRA in 2007 reviewed that Thailand has major AML/CFT deficiencies against the FATF 40+9 Recommendations. In February 2010, the country was listed by FATF as a country with strategic AML/CFT deficiencies. The FATF then requested its members and other jurisdictions to apply enhanced scrutiny of

[1] Stephen Dawe et al., "Kingdom of Thailand: National Money Laundering and Financing of Terrorism Risk Assessment", International Monetary Fund (IMF), January 19, 2012. [Unpublished Manuscript]

transactions involving the listed countries, including Thailand. Nevertheless, in February 2012, the FATF evaluated Thailand as one of the jurisdictions that have not made sufficient progress in addressing strategic AML/CFT deficiencies.[2]

However, due to Thailand's progress in largely addressing its action plan agreed upon with the FATF, Thailand has been removed from the list of "high risk" countries. This is because Thailand has made significant progress to improve its AML/CFT regime, including by enacting legislation to adequately criminalize terrorist financing [CTFA], establishing and implementing adequate procedures to identify and freeze terrorist assets, and further strengthening AML/CFT supervision based on AML/CFT International Standards.[3] The remaining parts of this chapter will discuss about the AML/CFT international standards in which Thailand has adopted with aims to improve its domestic legislations. The AML/CFT International Standards are those instruments which aim to control and suppress the extent of money laundering and financing of terrorism internationally. The related international standards are shown below.

3.1 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – The Vienna Convention (1988)

This Convention is regarded as the first international instrument for suppression of money laundering, and was adopted on December 19, 1988 and came into force on November 11, 1990. Although the Convention is restricted to drug trafficking and does not use the term money laundering, it includes provisions which imply **the concept against money laundering** in Articles 3 and 5.[4] Thailand ratified the Convention on May 3, 2002.

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[2] www.fatf-gafi.org/countries/s-t/thailand/documents/fatfpublicstatement-16february2012.html#thailand (accessed March 24, 2013)

[3] www.fatf-gafi.org/countries/s-t/thailand/documents/improving globalamlcftcomplianceon-goingprocess-22february2013.html#thailand (access March 24, 2013)

[4] Seehanat Prayoonrat, "The Need and Compliance Issues of Thailand's Regime on Anti-Money Laundering and Combating the Financing of Terrorism", Ph.D. Thesis, Law, Faculty of Law, Chulalongkorn University, 2007, P. 21.

Under Article 3, Offences and Sanctions, paragraphs 1-b (i), (ii), 1-c (i), (ii), each party to the Convention shall adopt such measures as may be necessary to establish as criminal offences [money laundering] under its domestic law, when committed intentionally to following acts:

1. The conversion or transfer of property, knowing that such property is derived from any predicate offence or offences as established in this Convention, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

2. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from any predicate offence or offences as established in this Convention or from an act of participation in such an offence or offences;

3. Subject to its constitutional principles and the basic concepts of its legal system, the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from any predicate offence or offences established in this Convention or from an act of participation in such offence or offences; and

4. Subject to its constitutional principles and the basic concepts of its legal system, the possession of equipment or materials or substances listed in Table I and Table II of this Convention, knowing that they are being or are to be used in or for the illicit cultivation, production.

Under Article 5, paragraphs 1-a and 2, each party to the Convention shall adopt such measures as may be necessary to enable confiscation of proceeds derived

from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds; and adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things related to such proceeds, for the purpose of eventual confiscation.

3.2 International Convention for the Suppression of the Financing of Terrorism – The Convention against Financing of Terrorism (1999)

After the Vienna Convention came into force, it marked the first step toward developments of measures to address the problems of proceeds of serious crimes and money laundering. United Nations, having realized the connection between money laundering and financing of terrorism, decided to adopt the International Convention for the Suppression of the Financing of Terrorism on December 9, 1999. The Convention came into force on April 10, 2002. Thailand signed the Convention on December 18, 2001 and ratified it on September 29, 2004.[5]

Article 2 (1) of the Convention defines the act of **financing of terrorist** as follows:

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a

[5] Ibid., P. 23.

population, or to compel a government or an international organization to do or to abstain from doing any act.

3.3 United Nations Convention against Transnational Organized Crime – The Palermo Convention (2000)

The Palermo Convention was adopted on November 15, 2000 and came into force on September 29, 2003. The purpose of this Convention is to promote international coordination to prevent and combat transnational organized crimes more effectively. It mentions for the first time the term "**laundering of proceeds of crime**" which is money laundering and recommends all the countries to criminalize money laundering as predicate offense.[6] Thailand signed the Convention on December 13, 2000. Article 6 contains the definitions of the predicate offences including money laundering as following:

Article 6 - Criminalization of the laundering of proceeds of crime:

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.

3.4 United Nations Convention against Corruption (2003)

It can be seen that the connections between corruption and different types of crime, such as, terrorism, human rights abuse and economic crime including money laundering, is clear and recognized around the world. This is not only a local matter, but also a transnational matter that affects the political stability, the stability and

[6] Ibid., P. 24.

security of societies, as well as national economics. Measures for preventing and combating corruption must therefore be taken. Thus, the Convention against Corruption was adopted by the United Nations on October 31, 2003, and came into force on December 14, 2005.[7] Thailand signed the Convention on December 9, 2003 and ratified it on March 1, 2011. Its focus is on preventing of corruption and the purposes of the Convention are:

1. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
2. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
3. To promote integrity, accountability and proper management of public affairs and public property.

It contains preventive measure for private sector and civil society, i.e., accounting standards, **combating money laundering**, society participation.

Article14 - '**Measures to prevent money-laundering**' reads:

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect **all forms of money-laundering**, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of **suspicious transactions**;

[7] Ibid., P. 25.

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the **establishment of a financial intelligence unit** to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavor to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

3.5 United Nations Security Council Resolutions

As a member state, Thailand is obliged to act in accordance to the terms in all of the Resolutions of the United Nations Security Council.

3.5.1 United Nations Security Council Resolution (UNSCR) 1267

It was adopted by the Security Council on October 15, 1999 and provides a sanctions regime to cover individuals and entities associated with Al-Qaida, Usama bin Laden (deceased) and/or the Taliban wherever located. In this Resolution, the Security Council concerns over the continuing violations of international humanitarian law and of human rights; and condemns the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts.

Furthermore, it recalls the relevant international counter-terrorism conventions and the obligations of parties to those conventions [to create domestic laws] to extradite or prosecute terrorists; and reaffirms its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security.

In addition, it decides to establish a Committee of the Security Council consisting of all the members of the council to seek further information from member states regarding the implementation of measures to deny permission for takeoff or landing of any terrorist-related aircrafts as designated by the Committee and to freeze funds and other financial resources including funds derived or generated from property owned or controlled directly or indirectly, or by any undertaking owned or controlled by the terrorist groups as designated by the Committee; as well as to report on its work to the Council with its observations and recommendations:

3.5.2 United Nations Security Council Resolution (UNSCR) 1373

Following the terrorist attacks event of September 11, 2001 in U.S., the Security Council passed UNSC Resolution No. 1373 dated September 28, 2001, which aims to tackle the issues of terrorist financing.

In this Resolution, the Security Council condemns these terrorist attacks and calls on member states to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism. It also recognizes the need for the member states to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means**, the financing and preparation of any acts of terrorism**.

In addition, it decides that all member states should:

- Prevent and suppress the financing of terrorist activities;
- criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- freeze without delay funds and other financial assets or economic resources of **persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts**; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who **commit or attempt to commit or facilitate or participate in the commission of terrorist acts**, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

Furthermore, it decides that all member states should ensures that any person who participates in t**he financing**, planning, preparation or perpetration **of terrorist acts** or in supporting terrorist acts is brought to justice and ensure that, in addition to

any other measures against them, **such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts**.

Also, all member states should become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism (1999).

3.5.3 United Nations Security Council Resolution (UNSCR) 1617

Due to the ongoing and multiple criminal activities caused by AL-Qaida, Usama Bin Laden (deceased), the Taliban as well as their associates have been the cause of a large number of deaths of innocent people and destruction of properties, under the UNSCR 1617 which was adopted on July 29, 2005, the Security Council emphasizes that the act of such terrorist groups should be condemned, and terrorism, in any forms, is seen as a threat to peace and security. In addition, any acts of terrorism, regardless of their motivations, whenever and by whosoever committed, are criminal and unjustifiable.

In addition, the UNSCR 1617 also express its concern over the use of various media including internet by such terrorist groups for terrorist propaganda and inciting terrorist violence. Therefore, the Security Council urged all member states to implement Resolution UNSCR 1373 in full and reaffirmed the need to combat terrorism. Furthermore, it decides that all states shall take measures as previously imposed by UNSCR 1267.

Also, it strongly urges all member states to implement the comprehensive, **international standards embodied in the Financial Action Task Force's (FATF) Forty (40) Recommendations on Money Laundering and the FATF Nine (9) Special Recommendations on Terrorist Financing**;

3.6 The FATF 40 + 9 Recommendations[8]

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 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 national legislative generate the necessary political will to bring about and regulatory reforms in these areas.

In addition, the FATF has developed a series of Recommendations that are recognized as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a coordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.

Moreover, the FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. The FATF's decision making body, so called the FATF Plenary, meets three times per year.

Thailand needs to abide by the FATF 40+9 Recommendations because it is one of the founding members of the Asia/Pacific Group on Money Laundering (APG) which is the FATF regional body for the Asia/Pacific region.

[8] www.fatf-gafi.org/ (accessed March 15, 2013)

3.6.1 The FATF 40 Recommendations[9]

The purpose of the 40 Recommendations is to develop and promote policies, at national and international levels, to combat money laundering based on those international standards described earlier in this chapter.

In 2012, due to money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction are serious threats to security and the integrity of the financial system, the FATF Standards have been revised to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime. At the same time, these new standards will address new priority areas such as corruption and tax crimes.

The revision of the Recommendations aims at achieving a balance:

On the one hand, the requirements have been specifically strengthened in areas which are higher risk or where implementation could be enhanced. They have been expanded to deal with new threats such as the financing of proliferation of weapons of mass destruction, and to be clearer on transparency and tougher on corruption.

On the other hand, they are also better targeted – there is more flexibility for simplified measures to be applied in low risk areas. This risk-based approach will allow financial institutions and other designated sectors to apply their resources to higher risk areas.

In addition, the FATF Recommendations are the basis on which all countries should meet the shared objective of tackling money laundering, terrorist financing and the financing of proliferation. Thus, the FATF calls upon all countries to effectively implement these measures in their national systems. The major recommendations are as follows.

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[9] FATF, FATF 40 Recommendations [Online] www.fatf-gafi.org/topics/fatfrecommendations/ (accessed July 25, 2012).

Assessing risks & applying a risk-based approach (Recommendation 1)

It recommends that countries should identify, assess, and understand ML/FT risks and apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. Also, countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their ML/FT risks.

National cooperation and coordination (Recommendation 2)

It recommends that countries should have national AML/CFT policies, and ensures that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities have effective mechanisms for cooperate with each other concerning implementation of such policies.

Money laundering offence (Recommendation 3)

It recommends that countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention, and should apply the crime of money laundering to all serious, and the widest range of, predicate offences.

Confiscation and provisional measures (Recommendation 4)

It recommends that countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize, confiscate, identify, trace, and evaluate properties or proceeds of crime related to ML/FT.

Terrorist financing offence (Recommendation 5)

It recommends that countries should criminalize terrorist financing on the basis of the Terrorist Financing Convention, and should criminalize not only the financing of terrorist acts but also the financing of terrorist organizations and individual terrorists, ensures and such offences are designated as money laundering predicate offences.

Targeted financial sanctions related to terrorism & terrorist financing (Recommendation 6)

It recommends that countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions (UNSCR) relating to the prevention and suppression of terrorism and terrorist financing, which require them to freeze without delay the funds or other assets of terrorists or terrorist groups either designated by United Nations Security Council under UNSCR 1267 or any country under UNSCR 1373.

Non-profit organizations (Recommendation 8)

It recommends that countries should review the adequacy of laws and regulations that relate to entities, particularly, non-profit organizations that can be abused for the financing of terrorism, and should ensure that they cannot be misused:
(a) by terrorist organizations posing as legitimate entities;
(b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

Customer due diligence (Recommendation 10)

It recommends that financial institutions should be required to undertake customer due diligence (CDD) measures [identifying the customer and verifying that customer's identity, identifying the beneficial owner; obtaining information on the purpose and intended nature of the business relationship, and conducting ongoing due diligence on the business relationship] when there is a suspicion of money laundering or terrorist financing, and the principle that financial institutions should conduct CDD should be set out in domestic law of each country.

Record keeping (Recommendation 11)

It recommends that financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, obtained through CDD measures.

Reporting of suspicious transactions (Recommendation 20)

It recommends that if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing; it should be required, by domestic law, to report promptly its suspicions to the financial intelligence unit (FIU).

Financial intelligence units (FIU) (Recommendation 29)

It recommends that countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

Responsibilities of law enforcement and investigative authorities (Recommendation 30)

It recommends that countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies.

Powers of law enforcement and investigative authorities

(Recommendation 31)

It recommends that competent authorities should be able to obtain access to all necessary documents and information, and use a wide range of investigative techniques suitable, for the investigations of money laundering, associated predicate offences and terrorist financing, and in prosecutions and related actions.

Sanctions (Recommendation 35)

It recommends that there should be a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered that fail to comply with AML/CFT requirements. Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

International instruments (Recommendation 36)

It recommends that countries should take immediate steps to become party to and implement fully the Vienna Convention, 1988; the Palermo Convention, 2000; the United Nations Convention against Corruption, 2003; and the Terrorist Financing Convention, 1999.

Mutual legal assistance (Recommendations 37 and 38)

It recommends that countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings; and ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; and proceeds from money laundering, predicate offences and terrorist financing

3.6.2 The FATF IX (9) Special Recommendations[10]

The FATF has recognized the vital importance of taking action to combat the financing of terrorism, and agreed that these nine recommendations, when combined with the FATF 40 recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

The major recommendations under 2012 version of IX Special recommendations (SR) include:

Ratification and implementation of UN instruments (SR1)

It recommends that each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; and should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

[10] FATF, FATF IX Special Recommendations [Online] www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html (accessed July 25, 2012).

Criminalizing the financing of terrorism and associated money laundering (SR2)

It recommends that each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations; and should ensure that such offences are designated as money laundering predicate offences.

Freezing and confiscating terrorist assets (SR3)

It recommends that each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts; and should implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

Reporting suspicious transactions related to terrorism (SR4)

It recommends that the financial institutions, or other businesses or entities subject to anti-money laundering reporting duty, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

International Co-operation (SR5)

It recommends that each country should provide to another country mutual legal assistance or information exchange in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to

the financing of terrorism, terrorist acts and terrorist organizations; and should ensure that they do not provide safe havens for individual terrorists.

Non-Profit Organizations (SR8)

It recommends similarly to the Recommendation 8 that countries should review the adequacy of laws and regulations that relate to entities, particularly, non-profit organizations that can be abused for the financing of terrorism, and should ensure that they cannot be misused:
(a) by terrorist organizations posing as legitimate entities;
(b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

3.7 Special Recommendation VIII (SR8) for Non-Profit Organizations (NPO) which applies to the NGOs in Thailand

Under FATF interpretation note for SR8, the objective of SR8 is to ensure that the NGOs are not misused by terrorist organizations:

(i) to pose as legitimate entities;

(ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or

(iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes but diverted for terrorist purposes.

Thus, the approach taken to achieve this objective is based on the following general principles:

1) The ongoing abuse of the NGO sector by terrorists and terrorist organizations requires countries to adopt measures both:
   (i) to protect the sector against such abuse, and

(ii) to identify and take effective action against those NGOs that either are exploited by or actively support terrorists or terrorist organizations;

2) Measures adopted by countries to protect the NGO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Such measures should promote transparency and greater confidence in the sector. This is because a high degree of transparency, integrity and public confidence in the management and functioning of all NGOs will ensure that the sector cannot be misused for terrorist financing;
3) Measures adopted by countries to identify and take effective action against the NGOs that either are exploited by or actively support terrorists or terrorist organizations should aim to prevent and prosecute as appropriate terrorist financing and other forms of terrorist support. When NGOs are suspected of involving in terrorist financing or other forms of terrorist support, the first priority that countries must do is to investigate and halt such terrorist financing or support. Such actions should avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. Nevertheless, the immediate interest of halting terrorist financing or other forms of terrorist support provided by NGOs should come first;
4) It is critical to develop co-operative relationships among the public, private and NGO sector for raising awareness and fostering capabilities to combat terrorist abuse within the sector. Also, countries should encourage the development of academic research on and information sharing in the NGO sector to address terrorist financing related issues.;
5) A targeted approach in dealing with the terrorist threat to the NGO sector is essential and should take into account the diversity within individual national sectors; the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists; the need to ensure that legitimate charitable activity continues to flourish; and the limited resources and authorities available to combat terrorist financing in each jurisdiction.

6) Flexibility in developing a national response to terrorist financing in the NGO sector is also crucial in order to allow it to develop over time as it faces the changing characteristics of the terrorist financing threat.

In addition, countries should undertake domestic reviews of their NGO sector or have the capacity to obtain timely information on its activities, size and other relevant features. In undertaking these assessments, countries should use all available sources of information in order to identify features and types of NGOs, which are at risk of being misused for terrorist financing. Also, countries should periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

There is a diverse range of approaches in identifying, preventing and combating terrorist misuse of NGOs. An effective approach involves the following four elements:

a) **Outreach to the NGO sector**

(i) Clear policies to promote transparency, integrity and public confidence in the administration and management of all NGOs;

(ii) Outreach programs to raise awareness in the NGO sector about the vulnerabilities of NGOs to terrorist abuse and terrorist financing risks, and the measures for NGOs to protect themselves against such abuse;

(iii) Cooperative work with the NGO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse;

(iv) Encourage NGOs to conduct transactions via regulated financial channels, wherever feasible, taking into account the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns;

b) **Supervision or monitoring of the NPO sector**

Countries should take steps to promote effective supervision or monitoring of their NGO sector. In practice, countries should be able to demonstrate that the

following standards apply to NGOs which account for a significant portion of the financial resources under control of the sector; and a substantial share of the sector's international activities.

(i) NGOs should maintain information on:

(1) the purpose and objectives of their stated activities; and

(2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NGO or through appropriate authorities;

(ii) NGOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures;

(iii) NGOs should be licensed or registered. This information should be available to competent authorities;

(iv) NGOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NGO's stated activities;

(v) NGOs should follow a "**know your beneficiaries and associate NGOs**" rule, which means that the NGO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NGOs. NGOs should also undertake best efforts to **document the identity of their significant donors** and to respect donor confidentiality; and

(vi) NGOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. This also applies to information mentioned in paragraphs (i) and (ii) above;

(vii) Appropriate authorities should monitor the compliance of NGOs with applicable rules and regulations. Appropriate authorities should be able to properly sanction relevant violations by NGOs or persons acting on behalf of these NGOs.

c) **Effective information gathering and investigation**

(i) Ensure effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organizations that hold relevant information on NGOs;

(ii) Ensure investigative expertise and capability to examine those NGOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations;

(iii) Ensure that full access to information on the administration and management of a particular NGO (including financial and programmatic information) may be obtained during the course of an investigation;

(iv) Establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NGO:

(1) is a front for fundraising by a terrorist organization;

(2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or

(3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organizations,

this information is promptly shared with all relevant competent authorities in order to take preventative or investigative action.

d) **Effective capacity to respond to international requests for information about an NPO of concern**

Consistent with Special Recommendation V (SR5) regarding mutual legal assistance or information exchange, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NGOs suspected of terrorist financing or other forms of terrorist support.

In summary, this chapter has shown the on-going development of AML/CFT international standards which have aimed to control and minimize the act of money laundering and terrorist financing internationally. The next chapter will discuss about

how Thailand has implemented these AML/CFT international standards upon its two domestic laws, namely, Anti-Money Laundering Act B.E. 2542 (1999) and Counter-Terrorism Financing Act B.E. 2556 (2013) and how such implementation can improve the AML/CFT in Thailand and create effective measures to control indirect financing of terrorist by business entities via NGOs.

Chapter IV

Implementation of AML/CFT International Standards in Thailand

Due to the fact that Thailand is known for its varied organized crimes, such as, credit card fraud, drug trafficking, prostitution, money laundering and terrorist financing, it cannot remain passive under the international pressure to suppress all these crimes. Money laundering and terrorist financing are selected to serve as the subjects of scrutiny for the purpose of analyzing the combat mechanism, so-called "Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Regime." This is because previous money laundering could enable the criminals to use the laundered money or assets to finance their further criminal activities or commit their other offences. These illegal activities will continue if the existing laws are not sufficient to suppress either money laundering or terrorist financing.

As a member of the United Nations and Asia/Pacific Group on Money Laundering, Thailand needs to observe and must implement all international standards that are required to create a peaceful atmosphere in the society. In order to improve AML/CFT regime, Thailand must create domestic laws which adopt the guidelines governing money laundering and financing of terrorism issues that can be found in the following core AML/CFT international standards:

1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances - The 1988 Vienna Convention
2. International Convention for the Suppression of the Financing of Terrorism - The 1999 Convention against Financing of Terrorism

3. United Nations Convention against Transnational Organized Crime - The 2000 Palermo Convention
4. United Nations Security Council (UNSC) Resolutions
5. FATF 40+9 Recommendations

The Office of Narcotics Control Board (ONCB), an agency under the Ministry of Interior that is responsible for narcotic drugs and drug related crimes, issued an Order No. 3/2537 dated May 25, 1993 to form an agency level drafting committee. The committee drafted a Bill on anti-money laundering based on the UN Conventions, especially the Vienna Convention and Palermo Convention, and the FATF 40 Recommendations. The committee not only used the international standards for combating money laundering provided by the UN Conventions, but also collected certain anti-money laundering Acts of other countries to obtain some ideas for adjusting the standards to the circumstance of Thailand.

After a number of modifications, the Bill was signed by His Majesty the King on April 10, 1999, and the "Anti-Money Laundering Act (AMLA), B.E. 2542" was published in the Royal Gazette on April 21, 1999 and came into force on August 19, 1999.

Strategic AML/CFT Deficiencies Issues

Although Thailand had adopted the AML/CFT International Standards into its domestic law, i.e., the enactment of AMLA B.E. 2542 (A.D. 1999), it is still insufficient, and, the Act was amended several times.

On October 19, 2012, FATF indicated Thailand in its public statement that Thailand has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies exist. Therefore, Thailand should continue to work on implementing its action plan to address the deficiencies, including by: (1) adequately criminalizing terrorist financing; (2) establishing and implementing adequate procedures to identify and freeze terrorist assets; and (3) further

strengthening AML/CFT supervision. The FATF also encouraged Thailand to address its remaining deficiencies and continue the process of implementing its action plan, specifically enacting its draft on counter-terrorism financing legislation.

Negative effects[1] on failure to comply with the FATF 40+9 Recommendations are:

1. Increase of time and cost used to supervise the business transactions, both domestic and international.
2. Decrease of Thailand's economic competitiveness and foreign direct investments as foreign companies are concerned about the ML/FT issues
3. Increase of difficulty for Thai individuals to do business transactions with foreign companies.
4. The massive impact on Thai economy as 70% of the economy depends on export.
5. Tourism industry may be affected because the tourists are concerned about their safety when traveling to Thailand.
6. Negative effect in stock market because the investors are concerned about ML/FT issues.

To improve its AML/CFT regime, Thailand has gone through a process of amending the AMLA which completed in early 2013.This 2013 version of AMLA is Anti-Money Laundering Act B.E. 2542 (A.D. 1999) as amended until Anti-Money Laundering Act B.E. 2542 (No.4), B.E. 2556 (2013). In addition, Thailand has also successfully passed a new counter-terrorism financing law in early 2013; i.e., Counter-Terrorism Financing Act (CTFA) B.E. 2556 (2013). Thus, Thailand has fulfilled the requirements under FATF Recommendation 2 that countries should have national AML/CFT policies. The full text of these two Acts can be found in the Appendix.

[1] The Secretariat of The House of Representatives, "Bill on Amendment of AMLA", Supporting Document for the Consideration of House of Representatives, June, 2012.

4.1 Anti-Money Laundering Act B.E. 2542 (A.D. 1999) as amended until Anti-Money Laundering Act B.E. 2542 (No.4), B.E. 2556 (2013)

4.1.1 Predicate Offences

Predicate offence is the underlying crime that generates the money to be laundered. It is one of the material elements of money laundering offence[2]. For example, authorities cannot punish an individual for laundering the proceeds of arms smuggling if arm smuggling is not defined as a predicate offence.[3]

In principle, the predicate offence should have the following characteristics:

(1) Offence committed by criminal organization;
(2) Offence which derives high proceed of crime;
(3) Offence of complicate procedures which is difficult to suppress;
(4) Offence against national security.[4]

Under Section 3 of AMLA before the amendment (No. 4): "predicate offence" means any offence of the following 9 offences:

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

[2] Viraphong Boonyobhas, The Justice Process and the Anti-Money Laundering Law, 1 (Bangkok: Nittitham Publishing House, 2004), Page 42. [in Thai]

[3] Nattawat Baibua, "The Predicate Offences of Money Laundering: A Study of the Definition of "Predicate Offences" under Thai Anti-Money Laundering Act and the United Nations Convention Against Transnational Organized Crime", Thailand Law Journal 2, 14 (2011).

[4] Seehanart Prayoonrat, Interpretation of Anti-Money Laundering Act B.E. 2542, 1 (Sor Asia Place Publishing House, 1999) Page 72.

gratification of others, offence of taking away a child and a minor, offence under the law on measures for the prevention and suppression of women and children trading or offence under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offence relating to being an owner, supervisor or manager of a prostitution business or4 establishment or being a controller of prostitutes in a prostitution establishment;
(3) relating to public fraud under the Penal Code or offence under the law on loans of a public fraud nature;

(4) relating to misappropriation or fraud or exertion of an act of violence against property 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) of malfeasance in office or malfeasance in judicial office under the Penal Code, offence under the law on offences of officials in State organisations or agencies or offence of malfeasance in office or dishonesty in office 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 only in respect of offences relating to being an organizer of gambling activities 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.

Thus, laundering the proceeds of those offences under “Predicate Offence” of Section 3 constitutes the distinct offence of money laundering.

In addition, AMLA defines the term ‘Money Laundering’ in Section 5 as following:

“Any person who:

(1) transfers, accepts a transfer of or converts the property connected with the commission of an offence for the purpose of covering or concealing the origin of that property 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 offence; 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 property connected with the commission of an offence or the acquisition of rights therein,

shall be said to commit an offence of money laundering.”

Analysis: The 8th Predicate Offence (relating to terrorism under Penal Code) was added by section 3 of the Royal Decree on Amendment to the Anti-Money Laundering Act of B.E. 2542 (1999) B.E. 2546 (2003). It was added after the terrorist activities in U.S. on September 9, 2011, as part of the compliance with UNSCR 1373 which aims to tackle the issues of terrorism.

The amendment of AMLA (No. 4) includes eleven additional predicate offenses in its Section 3:

The following shall be added as (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) and (21) of the definition of “predicate offense” in Section 3 of the Anti-

Money Laundering Act, B.E. 2542 (A.D. 1999) amended by the Anti-Money Laundering Act (No. 2) B.E. 2551 (A.D. 2008).

"(10) offense relating to being a member of a racketeering group under the Penal Code or participating in an organized criminal group which constitutes an offense under relevant laws;

(11) offense relating to receiving stolen property under the Penal Code only as it constitutes assisting in selling, buying, pawning or receiving in any way property obtained from the commission of an offense with a nature of business conduct;

(12) offense relating to counterfeiting or alteration of currencies, seal, stamp and ticket under the Penal Code with a nature of business conduct;

(13) offence relating to trading under the Penal Code only where it is associated with the counterfeiting or violating the intellectual property rights to goods or the commission of an offense under the laws on the protection of intellectual property rights with a nature of business conduct;

(14) offense relating to forging a document of right, electronic cards or passports under the Penal Code with a nature of regular or business conduct;

(15) offence relating to the unlawful use, holding, or possessing of natural resources or a process for illegal exploitation of natural resources with a nature of business conduct;

(16) offence relating to murder or grievous bodily injury under the Penal Code for the acquisition of assets;

(17) offence relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits;

(18) offence relating to theft, extortion, blackmailing, robbery, gang-robbery, fraud or misappropriation under the Penal Code with a nature of regular conduct;

(19) offence relating to piracy under the anti-piracy law;

(20) offence relating to unfair securities trading practice under the law on securities and stock exchange;

(21) offence relating to arms or arms equipment which is or may be used in the combat or war under the law on arms control."

Also, under the amended AMLA (No.4), the predicate offence under Section 3 of AMLA will include a penal offence committed outside Thailand if it is considered as a predicate offence if committed in Thailand.

Furthermore, the amended AMLA (No. 4) also include the addition of paragraph two of the definition of "predicate offence" in Section 3 of the Anti-Money Laundering Act, B.E. 2542 (A.D. 1999), amended by the Anti-Money Laundering Act (No. 2) B.E. 2551 (A.D. 2008). The paragraph reads:

> "predicate offence under paragraph one shall include a penal offence committed outside the Kingdom which would have constituted a predicate offence had it been committed in the Kingdom."

Analysis: Before the amendment of AMLA (Act No. 4), some serious offences as stated above were not stipulated as predicate offences. The offenders can launder the proceeds of such offences for funding new crimes without any punishment. Presently, these additional predicate offenses have formed a sufficient coverage of the offenses which can initiate an offense of money laundering under Section 5 of AMLA. This is also made in line with FATF Recommendation 3 in that countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention, and that it should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.

In addition, the AMLO will obtain benefit on supervising of the NGOs and business entities due to the fact that the chance of the NGOs being used in the process

of money laundering and financing of terrorism is lower as most of the serious offences are stipulated as predicate offences.

In addition, under Section 3 of the amended AMLA (No.4), a penal offence committed outside Thailand, of which its proceeds have been transferred to Thailand, will be considered as a predicate offence in Thailand had it been committed in the country. This is proven that AMLA has cooperated with other countries to control and suppress money laundering activities.

4.1.2 Suspicious Transaction Reporting

Under the amended AMLA (No.4), the definition of “suspicious transaction” in Section 3 shall be replaced by the following.

> “suspicious transaction” means a transaction with reasonable grounds to believe that it is conducted to avoid the application of this Act, or transaction connected or possibly connected with the commission of a predicate offense or terrorist activity financing offense, notwithstanding the transaction being single or multiple, and shall include an attempt to conduct such a transaction.”

Under Section 13 of AMLA, when a transaction is made with a financial institution, the financial institution shall have the duty to report that transaction to the Anti-Money Laundering Office when it appears that such transaction is:

(1) a transaction funded by a larger amount of cash than that prescribed in the Ministerial Regulation;

(2) a transaction connected with the property worth more than that 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.

Under Section 14 of AMLA, 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 Anti-Money Laundering Office without delay.

Suspicious transaction reporting is also applied to the traders with duty to report their transactions under Section 16 of AMLA.

Analysis: this new definition of suspicious transaction in Section 3 of the amended AMLA (No.4) uses the phrase “reasonable grounds” which provides a simpler scope in term of identifying a transaction in connection with the predicate offenses and terrorist financing offense. It also helps in simplifying the discretion process the financial institutions and traders use in determining a suspicious transaction which results in reducing the number of suspicious transaction cases to be reported to the Anti-Money Laundering Office (AMLO). Thus, this has created a transition from a quantitative reporting approach into a qualitative reporting approach.

In addition, it can be seen that the duty to report a suspicious transaction under Section 13 of AMLA is made in line with FATF Recommendation 20 which indicates that if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU), in the case of Thailand, the AMLO.

Nevertheless, it appears that the duty to report a suspicious transaction is limited to only the financial transactions and traders.

4.1.3 Know Your Customer (KYC)

Section 20 of AMLA focuses on Know Your Customer (KYC). KYC is the activities of Customer Due Diligence (CDD), as recommended in FATF Recommendation 10, that financial institutions and other regulated companies, as well as some professions must perform to identify their clients and ascertain relevant information before doing financial business with them.

Under Section 3 of the AMLA, “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 bank 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) a cooperatives under the law on a cooperative only in respect of a cooperative with operating capital exceeding two million Baht of total share value or

more, and having objectives of its operation relating to acceptance of deposits, lending
of loans, mortgage, pawning or acquiring of money or property by any means; and

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

Under Section 20, financial institutions and traders with duty to report their transactions under section 16 shall require all customers to identify themselves prior to making a transaction as prescribed in the Ministerial Regulation, unless such customers have previously made such identification. There shall also be a measure to eliminate obstacles in identification of the disabled or incapacitated. The identification shall be in accordance with the procedure prescribed by the Minister.

As amended by section 3 of the Anti-Money Laundering Act (No. 3) B.E. 2552 (2009),

Under Section 16, the traders as prescribed below shall have the duty to report to the Office in the case where there is a transaction funded by a larger amount of cash than that prescribed in the Ministerial Regulation or a suspicious transaction. Provided that trader under (2), (3), (4) and (5) must be a juristic person, unless there is a reasonable ground with appropriate evidence to suspect that a transaction is made relating or possibly relating to the commission of a predicate offence or offence of money laundering with trader 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 trader to report the transaction to the Office:

(1) trader that is not a financial institution under section 13, engaging
in the business involving the operation of or the consultancy or the provision of advisory service in a transaction relating to the investment or mobilisation of capital under the law on securities and stock exchange;

(2) trader dealing in the business of gems, diamonds, colored stones,
gold, or ornaments decorated with gems, diamonds, colored stones, gold;

(3) trader dealing in the business of selling or leasing of cars;
(4) trader dealing in the business of immovable property broker or agent;
(5) trader dealing in the business of antiques trade under the law on Control of Sale by Auction and Antique Trade;
(6) trader dealing in the business of personal loan under supervision for businesses that is not a financial institution under the Notification of the Ministry of Finance determining on Personal Loan Businesses under Supervision or under the law on financial institution business;
(7) trader dealing in the business of electronic money card that is not a financial institution under the Notification of the Ministry of Finance determining on electronic money card or the law on financial institution business;
(8) trader dealing in the business of credit card that is not a financial institution under the Notification of the Ministry of Finance determining on credit card
or the law on financial institution business;
(9) trader dealing in the business of electronic payment service under the law on 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 which had reported under paragraph one, that person shall report such fact to the Office without delay.

Furthermore, under Section 22 on AMLA, a financial institution and traders with duty to report their transactions under Section 16 shall retain information as follows:

(1) relating to customer identification under section 20 for the period of five years as from the date the customer account is closed or the relationship with its customer terminates; and

(2) relating to the making of transaction or a record of statements of fact under section 21 for the period of five years as from the date such transaction or record is made.

Analysis: It could be observed that KYC measure under Section 20 of AMLA is related to only financial institutions and traders. According to FATF Special Recommendation VIII, it is necessary that countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Thus, in order to prevent the NGOs and business entities from abuse as conduit for terrorist financing, it is advisable to further amend AMLA to impose upon them the KYC measure to identify their transaction partners prior to making any transaction.

4.1.4 Risk Assessment by Anti-Money Laundering Board (AMLB)

The Anti-Money Laundering Board (AMLB) consisting of 25 members was established under Section 24 of the AMLA. The 25 members are:

the Prime Minister as Chairperson, Minister of Justice and Minister of Finance as Vice Chairpersons, 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 persons appointed by the Council of Ministers, with the approval of the House of Representatives and the Senate respectively, from those who possess

knowledge and experience in economics, monetary, public finance, law or other related fields beneficial for the execution of this Act, as members, and the Secretary-General of Anti-Money Laundering Office (AMLO) as a member and the secretary.

The Powers and duties of the Board are indicated in Section 25 of the AMLA:

(1) to propose measures for anti-money laundering;

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

(3) to lay down rules in connection with the returning of the properties , the retention, the sale by auction, the utilization of the property, the evaluation of compensation and depreciation, and rules in accordance with the Anti-Money Launder Fund;

(4) to promote public co-operation in connection with the giving of information for the purpose of anti-money laundering and lay down rules pertaining to information or documents management for the purpose of being used as evidence for the execution of this Act;

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

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

The AMLO is directly overseen by the AMLB and operations of the AMLO that handling the seizing of assets are overseen by the Transaction Committee (TC).

Under the amended AMLA (No.4), the following is added as (1/1) of Section 25 regarding the powers and duties of the Anti-Money Laundering Board (AMLB) under the Anti-Money Laundering Act, B.E. 2542 (A.D. 1999) amended by the Anti-Money Laundering Act (No. 2) B.E. 2551 (A.D. 2008).

> “(1/1) establish rules and procedures for assessing risks relating to money laundering which may arise from transaction conducted by government

agencies or certain entities not subject to reporting obligation under this Act; and recommend guidelines to prevent such risks."

Analysis: This is a new power under Section 25(1/1) of the amended AMLA (No.4) given to AMLB for assessing risks relating to money laundering; and recommend guidelines to prevent such risks, of the entities not subject to reporting obligation, e.g., business entities and the NGOs. It is made in line with FATF Recommendation 1 in that the authority (AMLB) should have power to assess money laundering and terrorist financing risks, and apply resources, aimed at ensuring the risks are mitigated effectively.

Based on that assessment, it is necessary to apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing incidents are commensurate with the risks identified.

In particular, under the Recommendation 1, it is required that the financial institutions and designated non-financial businesses and professions (DNFBPs) should identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

Thus, AMLB can use this new power to assess money laundering and terrorist financing risks related to the transaction of the NGOs and business entities. If the risks are prominent, the AMLB can consider further amending the AMLA to impose the duty to report transaction upon the NGOs and business entities which can minimize their risks of being use as a conduit for money laundering and terrorist financing.

4.1.5 Risk Assessment by Anti-Money Laundering Office (AMLO)

The AMLO was established under Section 40 of the AMLA, and is headed by the Secretary-General, and assisted by two Deputy Secretaries-General, one in charge of matters relating to administration and the other in charge of matters relating to compliance. The duties and responsibilities of the AMLO are also indicated in the Section 40.

Section 40 reads: “There shall establish the Anti-Money Laundering Office, called as “AMLO” in brief, to be a Government agency which is not under the Prime Minister Office, Ministry, or Sub-Ministry, to perform the duties independently and impartially, 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 secretariat work;

(2) to receive transaction reports 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 gather, compile, monitor, 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 any fields in accordance with 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 other laws.

Under the amended AMLA (No.4), the provisions contained in (3) and (4) of Section 40 of the Anti-Money Laundering Act, B.E. 2542 amended by the Anti-Money Laundering Act (No. 2) B.E. 2551 shall be repealed and replaced by the following.

“(3) to receive or disseminate reports or information for the execution of this Act or other laws or under an agreement made between domestic or foreign agencies.

(4) to gather, collect data, statistics, examine, monitor and evaluate the implementation of this Act and analyze reports or data related to transactions, and assess risk relating to money laundering and terrorist financing.”

In addition, under the amended AMLA (No.4), the following shall be added as (3/1) of Section 40 of the Anti-Money Laundering Act, B.E. 2542 amended by the Anti-Money Laundering Act (No. 2) B.E. 2551.

"(3/1) establish guidance for observance, supervise, examine and evaluate persons under an obligation to report transactions to the Office on implementation of this Act in accordance with rules, procedures and guidance established by ordinance of the Board."

Analysis: It can be seen that AMLO is considered to be a Financial Intelligence Unit (FIU) under FATF Recommendation 29 which serves as a national centre for the receiving and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. AMLO is now able to obtain additional information from the reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

In addition, according to Section 40 (3), (3/1) and (4) of the amended AMLA (No.4), the new power given to AMLO for conducting a risk-based assessment is made in line with FATF Recommendations 1 in that AMLO should have power to identify, assess, and understand the money laundering and terrorist financing risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, AMLO should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

4.1.6 AMLA: Effective Measures to Control Indirect Financing of Terrorism by Business Entities via NGOs in Thailand

It could be observed that under Section 13 of AMLA the duty to report a suspicious transaction is exclusive to only financial institutions and traders. This is made in line with FATF Recommendation 20 which indicates that if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU), in the case of Thailand, AMLO.

However, according to FATF Special Recommendation VIII (SR8), it is necessary that countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Thus, in order to prevent the non-profit NGOs and business entities from abuse as conduit for terrorist financing, it is necessary to impose upon them the duty to report suspicious transaction.

Under the amended AMLA Section 25 (1/1) and Section 40 (3), (3/1), (4), they give the power to Anti-Money Laundering Board (AMLB) and Anti-Money Laundering Office (AMLO) for assessing money laundering and terrorist financing risks. Thus, AMLO can conduct a risk-based assessment on the NGOs which have no duty to report transactions. If the AMLO found any suspicious transactions under such NGOs, it can consider further amending of the AMLA to impose the duty to report transaction upon them. Thus, it could subsequently prevent the NGOs from transferring funds to the terrorist groups.

Furthermore, it is also necessary to adopt FATF Special Recommendation IV (SR4) and amend the AMLA to impose duty to report transaction upon the business entities. SR4 recommends that if businesses or entities other than financial institutions subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities, i.e., AMLO.

4.2 Counter-Terrorism Financing Act (CTFA) B.E. 2556 (A.D. 2013)

It can be seen that terrorism has caused negative effects to the society and is a major problem to national security. Even though Thailand has added the offence related to terrorism as a predicate offence (8) in AMLA, it is necessary to create counter measures against terrorist financing through the enactment of Counter-Terrorism Financing Act (CTFA) B.E. 2556 (A.D. 2013).

4.2.1 Designated List of Terrorists

Under Section 4 of CTFA,

> upon the issuance of a resolution or notification under the United Nations Security Council designating persons, group of persons, legal persons or entities, at the advice of the AMLO, Minister of Justice shall make notification of the designated persons without delay. Rules and procedures shall be prescribed by the Ministerial Regulation.
>
> Delisting of persons designated under paragraph one shall be made upon the issuance of Resolution or Notification of the United Nations Security Council resulting in the delisting of such persons from the designated list.

Analysis: According to Section 4 of CTFA, the concept of designating person is identified in Section 3 of CTFA which indicates that a designated person means a person, group of persons, legal persons or entities, listed as designated persons pursuant to a resolution of, or notification issued under the United Nations Security Council or a person, group of persons, legal persons or entities who were designated by Court order under this Act.

This concept has been made in line with FATF Special Recommendation III (SR3) for the benefit of freezing asset of terrorist, and has adopted the principle of the United Nations Security Council Resolution (UNSCR) 1267 which is the AML/CFT

international standards that the Security Council imposes upon all member states in that the member states must create domestic laws which have provisions to freeze funds and other financial resources including funds derived or generated from property owned or controlled directly or indirectly, or by any undertaking owned or controlled by the terrorist groups (AL-Qaeda and Taliban) as designated by the Committee of Security Council.

This Section of CTFA is also made in line with FATF Special Recommendation I (SR1) in that each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; and should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Thailand received a list of 291 international designated persons (terrorists) consisting of 227 individual terrorists and 64 terrorist organizations issued under UNSCR 1267 from the UN and proceed in accordance with Section 4 of CTFA, i.e., the AMLO sent the list to the Ministry of Justice and after that the Minister of Justice made notification of the designated persons without delay on April 23, 2013.[5]

Under Section 5 of CTFA,

> in the case where there is probable cause to suspect that any person is connected with the commission of terrorist act or terrorist financing or acts for or on the orders of or under the control of such a person, the AMLO, with the consent of the Transaction Committee shall consider referring the names of such person to the public prosecutor for consideration of filing an ex parte petition to the Court for an order to designate such person. Where there is a probable evidence to believe as follows, the Court shall order the designation;

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[5] Terror Groups Hit with Thai Finance Ban: AMLO Aims to Include South Insurgents on List. Bangkok Post [Online], April 23, 2013. www.bangkokpost.com/news/local/346510/291-terrorists-on-finance-blacklist (accessed April 24, 2013)

(1) Such person may be involved in terrorist act or terrorist financing or;
(2) Such person acts for or on the orders of or under the control of the person designated under (1) or under Section 4.

Such connection with the commission of terrorist act or terrorist financing or action for or on the orders of or under the control of such a person under paragraph one has to exist on the day the court orders the designation.

The AMLO shall regularly review the designated list under paragraph one. Where there is circumstantial change, the AMLO, with the consent of the Transaction Committee, shall consider referring the matter to the public prosecutor to consider filing an ex parte petition with the Court for an order to delist such person from the designated list.

Rules and procedures followed by the AMLO and the Transaction Committee under paragraph one and three, shall be in accordance with the Ministerial Regulation, by which the Office shall appoint a committee for considering the name to be delisted before submission to the Transaction Committee for approval.

The AMLO, the Transaction Committee, the public prosecutor and the Court shall implement this Section without delay.

Analysis: According to Section 5 of CTFA, the concept of designating person has been made in line with FATF Special Recommendation III (SR3) for the benefit of freezing asset of terrorist and has adopted from the United Nations Security Council Resolution (UNSCR) 1267 and UNSCR 1373 which is the AML/CFT international standards that the Security Council imposes upon all member states to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. It imposes the duty to AMLO to refer the names of terrorists to the court for an order to designate such

terrorists. If circumstance has changed, the AMLO also has duty to inform this change to the court for an order of delisting of the designated names.

This Section of CTFA is also made in line with FATF Special Recommendation I (SR1) in that each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; and should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

4.2.2 Freezing of Asset of Designated Terrorists

Under Section 6 of CTFA,

The AMLO shall make notification of the list of designated persons under Sections 4 and 5 and shall instruct the designated persons and persons under an obligation to report transactions or persons holding the assets of the designated persons to take the following actions without delay;

(1) Freeze the assets of the designated persons or a person acting on behalf of, or at the direction of, or an undertaking controlled by such persons;
(2) Inform the AMLO of the frozen assets;
(3) Inform the AMLO of a customer or former customer who is listed as a designated person or who has or had conducted transactions with such a person.

Rules and procedures for making notification and giving notice to the persons under paragraph one, including actions to be taken under (1) (2) and (3) shall be prescribed by an ordinance issued by the AMLB.
A person under an obligation to report transactions shall set out a risk assessment policy or any guidance for the prevention of the financing of

terrorism or other measures necessary for the implementation in accordance with this Act. Rules and procedures shall be prescribed by an ordinance issued by the AMLB.

Under Section 14 of CTFA,

any person who violates or fails to comply with Section 6 (1) or (2) shall be liable to an imprisonment not exceeding three years or a fine not exceeding three hundred thousand baht or both.

Any person under an obligation to report transactions who violates or fails to comply with Section 6 (1) or (2) shall be liable to a fine not exceeding one million baht, as well as a daily fine of ten thousand baht until rectification is made.

Where violation under paragraph two has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person responsible for the operations of the juristic person, such person shall be liable to a term of imprisonment not exceeding three years or a fine not exceeding three hundred thousand baht or both.

Analysis: According to Section 6 of CTFA, the concept of freezing the asset of designated person and inform the AMLO of such frozen asset without delay has been adopted from FATF Recommendation 4 and FATF Special Recommendation III (SR3) in that each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts; and should also adopt and implement measures, including legislative ones, which would enable the competent authorities (in this case the AMLO) to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations. Those who violate or fail to comply with Section 6 will be punished under Section 14 of CTFA which adopted the principle of FATF Recommendation 35 regarding Sanctions (Recommendation 35) in that there should

be a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered that fail to comply with AML/CFT requirements; and should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

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4.2.3 Power of the Anti-Money Laundering Board (AMLB)

Under Section 12 of CTFA, for the benefit of implementing this Act, the AMLB shall have the following powers and duties:

(1) to set out the rules, regulations and notification under this Act;

(2) to set out the guideline for supervision, examining, monitoring and assessment in accordance with this Act;

(3) to set out guidelines and procedures necessary for the person under an obligation to report transactions or any other person for the performing of its duties in accordance with this Act;

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

Analysis: According to Section 12 of CTFA, the power of AMLB is made in line with FATF Special Recommendation III (SR3) in that each country should adopt and implement measures, including legislative ones, which would enable the competent authorities (in this case the AMLB) to perform their duties, e.g., to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

4.2.4 Power of the Anti-Money Laundering Office (AMLO)

Under Section 13 of the CTFA, for the benefit of implementing this Act, the AMLO shall have the following powers and duties;

(1) to provide clear guidance for persons on obligations in taking action under this Act;

(2) to monitor, evaluate, examine, and supervise proper compliance with this Act as well as taking legal action with those who violated or failed to observe the provision of this Act;

(3) to receive or disseminate report or information useful to implementation of this Act or other laws;

(4) to gather information and evidence for the assets freezing, seizure or confiscation under this Act or other laws;

Analysis: According to Section 13 of CTFA, the power of AMLO is made in line with FATF Special Recommendation III (SR3) in that each country should adopt and implement measures, including legislative ones, which would enable the competent authorities (in this case the AMLO) to perform their duties, e.g., to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

4.2.5 Financing of Terrorism Offence

Under Section 16 of CTFA,

any person who provides, collects or conducts financial or asset transactions or undertaking in any way, directly or indirectly, with the knowledge that the beneficial person of the financial benefit or assets or from such undertaking is the designated person, or with the intention that the financial benefit or assets or such undertaking are to be used for the benefits whatsoever of the designated person or of a person or organization involved in a terrorist act(s) shall be deemed to have committed a financing of terrorism offense and shall be liable to a term of imprisonment from two to ten years and a fine from forty thousand to two hundred thousand baht or both.

Any person who directs, or aids or abets, or conspires in the commission of an offense under paragraph one shall be liable to the same penalty as the principal of the offense.

Any person who attempts to commit an offense under paragraph one shall be liable to two-thirds of the penalty specified for such offense.

Any legal person who commits an offense under paragraph one, two or three shall be liable to a fine from five hundred thousand baht to two million baht.

Where violation of a legal person under paragraph four has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person in authority in the operation of the juristic person, such person shall be liable to a term of imprisonment from two to ten years or a fine from forty thousand to two hundred thousand baht or both.

The offense under this Section shall be a predicate offense under the law on anti-money laundering.

Analysis: According to Section 16 of CTFA, any person who provides financing benefit or asset to designated persons or persons involved in a terrorist activity will be deemed to commit a financing of terrorism offence. This is made in line with FATF Recommendation 5 and FATF Special Recommendation II (SR2) in that each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations; and should ensure that such offences are designated as money laundering predicate offences.

Note: Provisions in Section 16 are based on principles in line with international standards. They explicitly indicate that a terrorist financing offence and a terrorist act are two distinct concepts, with the former being an offence in itself without any linkage to a specific terrorist offence(s). Therefore, provision, collection of funds or assets or any undertaking for the benefits whatsoever of a designated person or a person or entity linked to terrorism is an offence under this section whether or not the offender does the act directly or indirectly and whether or not the funds or assets or

undertaking were used or intended to be used in or linked to the commission or attempted commission of a terrorist act.

4.2.6 CTFA: Effective Measures to Control Indirect Financing of Terrorism by Business Entities via NGOs in Thailand

Section 6 of CTFA indicates that AMLO will make notification of the list of designated persons under Sections 4 or 5 of CTFA and will order the designated persons, persons under an obligation to report transactions or persons holding the assets of the designated persons to freeze of the assets of such designated person; and inform AMLO of the frozen assets without delay.

In this respect, the freeze of such assets will prevent the terrorists from using these assets to finance terrorist activities, i.e., counter-terrorist financing is succeed. Thus, if any of the NGOs are involved with designated terrorists under Section 4 of CTFA (Al Qaeda or Taliban); or are designated under Section 5 of CTFA, their assets will be frozen and cannot be used to finance terrorist activities. Also, the names of the NGOs will be notified to the public in which could prevent any business entities from giving charitable donations to such NGOs, i.e., prevent the indirect financing of terrorism by the business entities.

This is because Section 16 of CTFA indicates that any person who provide funds, either directly or indirectly, with the knowledge that the beneficial person of the funds are designated person or of a person or organization involved in a terrorist act, will be deemed to have committed a financing of terrorism offense and will be liable to a term of imprisonment from two to ten years and a fine from forty thousand to two hundred thousand baht or both.

In addition, if the NGOs and business are imposed with an obligation to report transactions under AMLA, they have to perform their duties in accordance with Section 6 of CTFA, i.e., the persons under an obligation to report transactions must freeze the assets of the designated persons or a person acting on behalf of, or at the direction of, or an undertaking controlled by such persons; and inform AMLO of the frozen assets without delay. Failure to do so will receive penalty under Section 14 of

CTFA in that any person under an obligation to report transactions who violates or fails to freeze the assets and inform AMLO of such frozen assets will be liable to a fine not exceeding one million baht, as well as a daily fine of ten thousand baht until rectification is made.

Chapter V
Overview of Foreign Cases Relating to Implementation of AML/CFT International Standards

It can be seen in Chapter IV that the implementation of AML/CFT international standards in Thailand through the amendment of Anti-Money Laundering Act B.E. 2542 (1999) (No.4) B.E. 2556 (2013) and the enactment of Counter-Terrorism Financing Act B.E. 2556 (2013) has created effective measures to control indirect financing of terrorism by business entities via NGOs. Nevertheless, it is recommended that Thailand should observe the implementation of AML/CFT international standards in the following countries and consider adopting any effective measures they have taken to ensure that the NGOs and business entities will not be used as conduit for money laundering and terrorist financing.

5.1 The Philippines Case

Under the law of the Philippines, legal persons are governed by the provisions of the Corporation Code of the Philippines, namely, the Corporation Code (1980). It provides for two types of corporations, stock and non-stock corporations. Non-stock companies include NGOs. Other than cooperatives and other NGOs

and partnerships no other legal persons can be formed under Philippine lawThe Philippines has a large and diverse NGO sector. Many NGOs are not registered because they are not required to do so by the law, and the constitutional right to free association prevents any legislation being enacted that would make NGO registration mandatory. Nevertheless, NGOs do need to obtain legal personality to be able to open bank accounts, to enter into contracts, and to raise public funds. There has been one terrorist related case involving an NGO namely the International Islamic Relief Organization (IIRO), Philippine Branch, whose funds were confiscated. Local law enforcement agencies indicated that there is a real risk of misuse of NGO funds

for terrorist financing purposes in those areas of the country that have suffered from terrorist activity.[1]

The Enactment of Counter-Terrorism Financing Law in the Philippines[2]

In September to October 2008, the Philippine's Anti-Money Laundering & Combating Financing of Terrorism (AML/CFT) Regime underwent a Mutual Evaluation process jointly conducted by the assessment teams of the World Bank and the Asia/Pacific Group on Money Laundering (APG). On July 8, 2009, the Mutual Evaluation Report on the Philippines prepared by the Assessment Team was adopted by the APG during its Plenary Meeting in Brisbane, Australia. The report contains the rating that the Philippines got as against the sixteen FATF Key and Core Recommendations. Out of 16, the Philippines got 13 Partially Compliant (PC) and/or Non-Compliant (NC) rating. A country with more than 10 out of 16 PC/NC ratings is considered to have major strategic deficiencies in its AML/CFT Regime.

As a result of such evaluation ratings, the FATF placed the Philippines into the group of countries which have AML/CFT strategic deficiency. One of the action plans for the Philippines is to enact, on or before December 31, 2011, of a law further amending the Anti-Money Laundering Act (AMLA) and another law which criminalizing terrorist financing as a stand-alone offence.

In October 2010, the Philippines made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies. Nevertheless, the FATF has determined that certain deficiencies remain and declared that the Philippines needed to work on its action plan by, among others: (1) adequately criminalizing money laundering and terrorist financing (FATF Recommendation 1 and Special Recommendation II), and (2) implementing adequate

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[1]Asia/Pacific Group on Money Laundering, "Anti-Money Laundering and Combating the Financing of Terrorism: Republic of the Philippines", Mutual Evaluation Report (8 July 2009): 14.

[2]Julia C. Bacay-Abad, "Combating the Financing of Terrorism: The Philippines Experience and Perspectives" Seminar on the Anti-Financing of Terrorism Act: International and Thailand Legal Perspectives, at Vayubhak 6 Hall, Centra Convention Center, Bangkok, Thailand (27 July 2012).

procedures to identify and freeze terrorist assets and confiscate funds related to money laundering (Special Recommendation III and Recommendation 3). Effectively, the Philippines was placed in the FATF's "Grey List".

While the Philippines was working on the enactment of the Bills amending the AMLA and criminalizing terrorist financing, in February 2012, the FATF downgraded the Philippines from "Grey List" to "Dark Grey List" due to its failure to enact the AMLA Amendment and the Terrorist Financing Suppression Law on the prescribed deadline of December 31, 2011. Thereby, the Philippines was placed at the same situation as currently happening in Thailand; at the risk of being blacklisted should failure persists until June 2012.

The procedures were taken to expedite the enactment of the two Bills. Subsequently, the Senate approved the Bill on June 6, 2012, and on June 18, 2012, the President of the Philippines signed into law the two bills, just hours before the FATF held it's Plenary Meeting on the same day in Rome, Italy. As a result of this, the Philippines was averted being blacklisted.

On July 6, 2012, the Terrorism Financing Prevention and Suppression Law (the Republic Act No. 10168) came into force on July 6, 2012.

The Anti-Money Laundering Act of 2001 (AMLA)[3]

The law came into force on 17 October 2001 and was amended on 23 March 2003 and further amended on 6 July 2012. The main features are criminalizing money laundering and related offenses, i.e. failure to report suspicious transactions, breach of confidentiality, etc.; identification of the predicate crimes including acts of terrorism; creation of the Anti-Money Laundering Council (AMLC), the government's financial intelligence unit (FIU), and lead agency in implementing the AMLA.

In addition, the law also empowers the AMLC to: inquire ex parte into bank deposits and investments, including related accounts, linked to money laundering or

[3] Vicente S. Aquino, "Combating Terrorism Financing – The Philippines Experience", Special Meeting of the UN Counter-Terrorism Committee with Member States and relevant International and Regional Organizations (20 November2012).

its predicate crimes, including terrorism and terrorism financing; initiate freeze ex parte of property or funds related to predicate crimes, including acts of terrorism; initiate civil (non-criminal conviction-based) forfeiture of property or funds related to money laundering and its predicate crimes, including acts of terrorism; take action on requests of foreign States for assistance in tracking down, freezing, restraining and seizing assets alleged to be proceeds of a predicate crime, including acts of terrorism; cooperate with the National Government and/or take appropriate action in respect of conventions, resolutions and other directives of the UN, the UNSC and other international organizations, of which the Philippines is a member; and enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the Philippine government, including government-owned and -controlled corporations in the implementation of the AMLA, which may include the use of its personnel, facilities and resources.

Terrorism Financing Prevention and Suppression Act of 2012[4]

The law came into force on 6 July 2012. Its main features are: to adopt as a State policy to (i) make terrorism financing a crime against the Filipino people, humanity, and the law of nations; (ii) recognize and adhere to international commitments to combat terrorism financing, specifically the Terrorist Financing (TF) convention and terrorism-related UNSCRs; and (iii) reinforce the fight against terrorism by criminalizing its financing and related offenses and by preventing and suppressing said offenses thru freezing and forfeiture of properties or funds while respecting human rights.

In addition, the law includes: criminalizing and defining terrorism financing (TF), as a stand-alone offense (penalizing TF even if the property or funds intended to finance acts of terrorism are not actually used or no crime of terrorism is actually committed) based on the TF Convention's Article 2, No. 1 (a) and (b) and UNSC Resolution No. 1373's No. 1 (a) and (b); criminalizing related offenses, i.e., conspiracy to commit terrorist financing; dealing with property or funds related to TF

[4]Ibid.

or acts of terrorism or belonging to designated terrorist individuals, organizations, associations or groups of persons; failure to comply with AMLC's freeze order; penalizes a juridical person/corporate body (including its responsible officers) or alien; defining "property or funds" in the same manner as "funds" defined under the TF Convention; defining designated persons as any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable UNSC Resolution; and making terrorist financing and related offenses predicate crime to money laundering.

Furthermore, the law also empowers the AMLC to: investigate terrorist financing and related offenses; inquire ex parte into deposits and investments with any bank or non-bank financial institution and their subsidiaries and affiliates without a court order; and freeze ex parte without delay and without a court order property or funds; that are in any way related to terrorist financing or acts of terrorism; or of any person, terrorist organization, association or group who is committing, attempting, or conspiring to commit, or participating in or facilitating terrorist financing or acts of terrorism; or of a designated person, organization, association or group of persons based on binding terrorism related UNSCRs, including UNSCR 1373.

Benefit for NGOs in the Philippines

Under FATF Recommendation VIII (SR8), the Philippines could benefits from the above two Acts in that it should be able to develop measures to prevent the use of NGOs as conduit for terrorist financing due to the fact that terrorist financing is now criminalized in the Philippines and the AMLC now has power regarding designating terrorists and freezing of asset of such terrorists. Thus, NGOs found involved in terrorist activities can be designated and their assets will be frozen, and thus, cannot be used to support terrorist activities.

5.2 Belgium Case[5]

Since the terrorist attacks of 11 September 2001 in U.S., the detection of terrorist financing led the FATF to set up recommendations in this regard. The Belgian Law of 12 January 2004 amended the Belgian AML system established by the Law of 11 January 1993 in order to extend it to terrorist financing. Preventive detection of the terrorist financing has been a new priority ever since.

Because of this change, the Belgium's Financial Intelligence Unit (FIU), so-called CTIF-CFI set up partnerships with other competent authorities such as the office of the Federal Public Prosecutor, the financial department of the offices of the Public Prosecutor, the federal judicial police and the State Security Department. The aim of the partnership is to create synergy and to optimize the cooperation and possibilities for CTIF-CFI to obtain necessary and relevant information from each department in this regard.

In addition, CTIF-CFI regularly analyses the files reported for terrorist financing in order to identify typologies and indicators. This information is forwarded to the disclosing entities to help them identify suspicious transactions that could be related to terrorist financing.

A study conducted by CTIF–CFI demonstrated that NGOs are used for terrorist financing purposes in various ways as shown below.

Collected Amounts:

NGOs are used to collect funds from donations. The amounts collected are generally small, e.g., between 25 and 250 EUR per transaction. However, with multiple transactions, the total amount of the funds collected from donations, is significant. These transactions are then followed by cash withdrawals or fund

[5] CTN Electronic Journal, Preventing the Abuse of Non-Profit Organization for Terrorist Financing [Online], June, 2011. OSCE. www.osce.org/atu/78912 (accessed July 3,2012)

transfers abroad. Therefore, they are noticeably higher than those that come from individual donations, amounting to as much as several hundred thousand EUR.

Real Estate Investments:

NGOs are used to purchase property with the aim of providing logistical support to terrorist organizations. One case disclosed by CTIF–CFI involved an NGO holding a bank account on which several large amounts of cash had been deposited, presumably from donations. The money was used to issue cheques to purchase property.

NGO as a Cover:

NGOs serve as a cover for other NGOs with terrorist financing activities. One case reported by CTIF–CFI involved many small transfers and cash deposits from donations made on the bank account of charitable organization A. Substantial transfers were subsequently made in favor of charitable organization B. Charitable organization B was the parent company of charitable organization A and was suspected of having links with a terrorist network. Thus, these humanitarian activities were used as a cover for financial transactions linked to terrorist activities.

Infiltration:

Persons involved with terrorist activities may infiltrate NGOs and use these organizations to collect funds, part of which will not be used for charitable purposes but will be used to finance terrorist activities. One case reported by CTIF–CFI involved a group of charitable organizations with humanitarian purposes. A bank disclosed suspicious financial transactions, i.e., numerous small transfers and deposits that could originate from donations on the bank accounts of these organizations. The

funds were then sent to the personal bank account of one of the NGO's managers and withdrawn in cash. One of the NGOs was known to be linked to a terrorist group.

Use of Third Parties or Front Companies:

NGOs use bank accounts of third parties or front companies to collect donations and finance terrorist activities. One reported case regarded suspicious transfers and deposits on the bank account in Belgium of an individual receiving only a small income through social benefits. One of the transfers had been made by the founder of an NGO established in Belgium. This person had links with a terrorist group. Another disclosed case concerned suspicious transactions, i.e., many cash deposits on the bank account of company X, which was not an NGO. According to the balance sheet the company had no activity at all. Individual A, who had power of attorney on company X's bank account was the manager of an NGO known to be linked to a terrorist group.

Implementation of FATF Special Recommendation VIII (SR8)

Belgium has developed effective measures to control and minimize the money laundering and financing of terrorism risks of NGOs based on FATF Special Recommendation VIII (SR8) as indicated below.

1. **Awareness about the vulnerabilities of NGOs to terrorist abuse and terrorist financing risks in the NGO sector; Measures for NGOs to protect themselves against such abuse; and NGOs' best practices to address terrorist financing risks and vulnerabilities**

The Belgium FIU's website contains various examples of misuse of NGOs for terrorist financing purposes. The website also includes different FATF reports on the risks and vulnerabilities of terrorist financing that the NGO sector could be confronted

with. In addition, its published annual report is also a useful tool for raising the sector's awareness. This information allows NGOs to become more aware of the risks of misuse they face. In addition, this awareness raising has leaded the financial sector in a better position to detect transactions by NGOs that may be linked to terrorism or terrorist financing.

2. Promotion of transparency, confidence in the administration and management of all NGOs.

NGOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NGO or through appropriate authorities.

Belgian law indicates that NGOs and foundations must have very detailed articles of association, including the full names, address, date and place of birth of each founder or, in case of a juristic person, the registered name, legal form and address of the registered office, the precise description of the aim(s) for establishing the association, the rules governing the appointment, termination of duties and removal from office of directors.

These documents and information must be deposited at the Commercial Court registry in the court district where the NGO has its registered office. Any person may inspect these documents and information without any charge at the Commercial Court registry. In addition, NGOs that want to benefit from the tax exemption scheme must register with the Ministry of Finance.

3. NGOs should issue annual financial statements with a detailed breakdown of income and expenditures.

In Belgium, all NGOs must keep their accounts. Large NGOs as well as foundations are subject to the same accounting rules as commercial companies. They

must deposit their annual financial statements with the Belgian National Bank in the same way that commercial companies do. On the other hand, small NGOs only have to submit simplified accounting; and establish their annual financial statements according to a simplified procedure and deposit them with the Commercial Court registry.

4. **Effective supervision or monitoring of NGOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities.**

NGOs should be licensed or registered and such information must be available to the competent authorities. NGOs should have appropriate controls to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NGO's stipulated activities. In addition, NGOs should maintain, for a period of at least five years, and make available to appropriate authorities, the records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organizations.

NGOs domiciled in Belgium are subject to tax on legal persons. Therefore, even if their do not engage in profit–making activities, they must make an annual tax return with an overview of their income and expenditure and are subject to an in–depth audit at least once every six years. The tax authorities are very concerned with false NGOs, i.e., those that carry out profitable activities under the cover of an NGO.

As part of the detecting false NGOs, the articles of association, the activities actually carried out and the accounting records held by the NGOs are closely examined. An audit is made of the transactions carried out by an NGO, its income, the nature of its customers, its personnel and its assets used. Consequently, the tax audits carried out on NGOs are likely to lead to the detection of money laundering and/or terrorist financing mainly through revealing the real business of the NGO and by tracing its commercial and financial accounts. When evidence of money laundering

and/or terrorist financing is discovered during the audits and checks carried out by the tax authorities, it may report the facts to the Public Prosecutor's Office.

5. **Competent authorities, e.g., law enforcement, Financial Intelligence Units (FIUs), and tax authorities must be able to gather information on NGOs of concerns and investigate activities of NGOs suspected of involvement with terrorist organizations.**

Countries should ensure that a full access to information on the administration and management of a particular NGO, which include financial and operation information, may be obtained during the course of an investigation.

In Belgium, NGOs must deposit their articles of association, the instruments relating to the appointment or resignation of directors, persons entrusted with the daily management, persons authorized to represent the association at the Commercial Court registry in the court district where the NGO has its registered office. This file also contains a copy of the annual financial statements of the NGO. Any person may inspect the documents that any NGO has filed free of charge. The competent authorities including the FIU can also obtain a copy of the documents in the file of an NGO free of charge.

6. **Investigative expertise and capability to examine those NGOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations; and Effective cooperation, coordination and information sharing possible among all levels of appropriate authorities or organizations that hold relevant information on NGOs.**

In Belgium the judicial authorities, mainly the Federal Public Prosecutor’s Office with respect to terrorism and terrorist financing, the police services, the intelligence and security services and the FIU have investigative powers and sufficient

material and human resources to examine and conduct the necessary investigations into NGOs that could be exploited or support terrorist activities.

For example, they have access to the information on a particular NGO at the Commercial Court registry, to the financial information through court orders from banks or through FIU cooperation. The Belgian anti–money laundering law allows cooperation between the police/judicial authorities and the FIU for investigations, especially in case of suspicions of terrorism with regard to an NGO.

7. **Establishment of appropriate mechanisms to ensure that when there are suspicions or reasonable grounds to suspect that a particular NGO is involved in terrorist activities, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative action.**

In Belgium an association may be declared unlawful if the articles of association do not contain the information referred to above or if one of the aims for establishing an NGO breaches the law or public order. At the request of a member, any interested third party or the Public Prosecutor's Office, the court may order the dissolution of the NGO that does not fulfill its obligations, uses its assets or revenue for aims other than those of its establishment or seriously infringes the articles of the association or breaches the law or public order.

Transparency measures have also been introduced for NGOs established under foreign law wishing to open a center of operations in Belgium. At the request of the Public Prosecutor's Office or any interested party, the court may order the closure of any center of business seriously infringing the articles of the association in question or breaching the law or public order.

8. **Countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NGOs suspected of terrorist financing or other forms of terrorist support.**

For international cooperation, the judicial authorities as well as the FIU in Belgium have appropriate channels for exchanging information on NGOs suspected of being linked to terrorist organizations.

5.3 United Kingdom Case[6]

In England and Wales, there are over 180,000 registered charities (NGOs). The number of incidents and allegations about charities' involvement or connection with terrorism, directly or indirectly, is small in number compared to the size of the sector. Nevertheless, terrorist abuse is not acceptable, in the same way that fraud, corruption or the theft of charitable funds is not acceptable. A single event or allegation has the potential to do serious damage to both that charity and levels of public trust and confidence in the wider charitable sector. The fact that they enjoy high levels of public trust, can reach to access vulnerable communities, and have complex and frequent nature of their financial transactions; can provide an opening for terrorists and cover for illegal activity.

Types of Abuse found in U.K.

Charity Funding:

Funds may be raised by a charity for charitable purposes, which are then used by the fundraisers for supporting terrorist purposes, with or without the knowledge of the charity. They could be diverted before reaching their intended recipients while being moved from one place to another. This risk is increased if the charity's financial controls are weak.

[6] Ibid.

Use of Charity Assets:

Charity assets may be used to support terrorist activities. For instance, charity vehicles might be used to transport people, cash, weapons or terrorist propaganda, and charity premises used to store them or arrange distribution. Individuals supporting terrorist activity may claim to work for a charity and trade on its good will and legitimacy in order to gain access to a region or community.

Use of a Charity's Name and Status:

Terrorist activities may be take place under legitimate, charitable activities. A charity may give financial or other support to an organization or partner that provides legitimate aid and relief. However, that organization or partner may also support or carry out terrorist activities.

Abuse within a Charity:

Those who work within a charity may abuse their position to divert funds and use the name of charity itself for illegal purposes.

Sham Charities:

Terrorists may set up an organization as a sham which is promoted as charitable organization, but actually raises funds or use its facilities or name to promote or coordinate inappropriate and unlawful activities.

Due to the vulnerability of the UK charity sector to terrorist abuse, the Charity Commission of England and Wales[7] has been established to solve the problem of such abuse. This Commission is the registrar and regulator of charities in England and Wales. Its core role is to protect the public's interest in the integrity of charity. In

[7] www.charity-commission.gov.uk/ (accessed March 23, 2013)

addition, the Commission is a non-Ministerial Government Department and part of the Civil Service. The Commission is, by law, independent from Ministerial influence or control over its day-to-day operations and decision-making.

Furthermore, the Commission is a body corporate, with a non-executive Board consisting of a Chair and up to eight Members of the Commission (Board members) which is responsible for its governance and strategy. Day-to-day management and operation of the Commission is delegated to the Chief Executive. Board members are office holders rather than employees; i.e., staffs including the Chief Executive are all civil servants.

In addition, the Commission has developed and published its own Counter-Terrorism Strategy[8] which set the regulator's approach for tackling the threat of terrorist abuse to the charitable (NGO) sector with four aims:

Awareness: raising awareness in the sector to build on charities' existing safeguards;

Oversight: proactive monitoring of the sector, analyzing trends and profiling risks and vulnerabilities;

Co-operation: strengthening partnerships with government regulators and enforcement agencies; and

Intervention: dealing effectively and robustly when abuse, or the risk of abuse, is apparent.

This strategy was developed in line with the FATF Special Recommendation VIII (SR8) to ensure that these NGOs cannot be misused by:

- Terrorist organizations posing as legitimate entities;
- Exploitation of legitimate entities as channels for terrorist financing; and
- Diversion of funds intended for legitimate purposes to terrorist organizations.

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[8] CTN Electronic Journal, Preventing the Abuse of Non-Profit Organization for Terrorist Financing [Online], June, 2011. OSCE. www.osce.org/atu/78912 (accessed July 3,2012)

Registration of Charities

Charitable organizations based in England and Wales have to register with the Commission if their income is over £5,000 a year. If an organization wants to become a charity, it is necessary to provide certain information about the way in which it operates and how it uses resources.[9]

Regulations of Charities

The Commission uses a risk-based and proportionate approach[10] based on FATF Recommendation 1 to regulate charities. It has developed a risk and proportionality framework for its compliance work in a targeted way that represents a proportionate response to the seriousness of the issue. Because of the enormous diversity of the NGO sector, the risks will be different from charity to charity. Thus, what an individual charity needs to do to protect itself from harm will therefore vary. Some charities may experience much higher risks, whether working solely in the UK or operating internationally. Therefore, a risk-based, proportionate and targeted approach is very important.

The Role of Charities to Prevent Themselves from Abuse

Based on the Commission's experience, the NGOs that are transparent about what they do and who with, and which have strong governance and financial management arrangements in place will be better protected against all abuse, not just from terrorists and their supporters. This includes implementing good general risk management policies and procedures and having meaningful and effective oversight of their activities. The Commission has clearly stated that is not the regulator's work to safeguard all 180,000 charities from abuse, but it is responsibility of those charities to take appropriate steps to prevent themselves from abuse.

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[9] www.charity-commission.gov.uk/ (accessed March 23, 2013)

[10] Ibid.

The NGO Sector and Regulation Review Tool

Because of a focus on the NGO sector as a potential flaw in global anti-money laundering and counter-terrorist financing efforts, as illustrated by Special Recommendation VIII (SR8) of the FATF; it puts pressure on both governments and the NGOs to identify the risks to the NGO sector. The NGO Sector and Regulation Review Tool has been designed by the International Programme of the Charity Commission for England and Wales[11] to help identify the risks that affect the NGO sector in a particular country and assess how effective the regulatory framework is in mitigating that risk. This Tool deals with many of the recommendations and requirements of FATF SR8 and takes a systematic approach that comprises four parts.

Part One - Sector Survey: profiling the sector and the risks that affect it. It provides a framework for identifying and recording the key information on the NGO sector. It also identifies areas where no information is available and further work may be needed. The information gathered helps inform the subsequent assessment and review process.

Part Two - Assessment of the Regulatory Framework: assessing the effectiveness of the current regulatory framework. It breaks down regulation into eighteen areas. Indicators are given for each objective to help identify them. The objectives are then tested against seven key standards of effective regulation.

Part Three - Analysis and Recommendations: promptly considering the broad strategic issues which may be impacting upon the effectiveness of the sector and the regulatory framework. It then asks the Local Assessment Team (LAT) to make recommendations for improvements.

[11] CTN Electronic Journal. "Preventing the Abuse of Non-Profit Organization for Terrorist Financing." OSCE, June, 2011, Page 3. http://www.osce.org/atu/78912 (accessed July 3,2012)

Part Four -Final Report: completing the assessment by reporting key information, including summaries of the survey and assessment, recommendations for the future and an executive summary.

In addition, the Tool is to be implemented by a Local Assessment Team (LAT). This team will have responsibility to ensure that the Tool is effectively implemented and that, as far as possible, the recommendations which arise from its findings are brought to the attention of national level policy and law makers. The LAT is made up of equal numbers of government and NGO representatives. Government representatives should represent the key agencies responsible for NGO regulation. In addition, NGO representatives should represent the main different types of NGO within that country's sector. The constitution of the LAT is the single most important factor in the successful implementation of the Tool.

Furthermore, the Tool was implemented in the Philippines in 2007. The government of the Philippines agreed to pilot the use of the tool and this process was completed in 2008. The Charity Commission International Programme team revealed that the government of the Philippines effectively adopted and ran with the tool, and concluded that it had been thoroughly used and that the final report was clear and delivered the expected benefits in terms of an assessment of the scope and nature of the NGO sector and the effectiveness or otherwise of the current systems of NGO regulation.

5.4 United States Case[12]

Charitable giving and voluntarism have a long history in the United States. In recent years, the American people have donated more than $300 billion annually to charitable causes around the world, for instance, those affected by the 2004 tsunami in Indonesia and Southeast Asia, the 2010 earthquake in Haiti, and the 2011 tsunami in

[12]CTN Electronic Journal. "Preventing the Abuse of Non-Profit Organization for Terrorist Financing." OSCE, June, 2011, Page 3. http://www.osce.org/atu/78912 (accessed July 3,2012)

Japan. Currently, there are over 1.8 million charities operating in the U.S. The U.S. Government values and encourages charitable giving, both at home and abroad.

Nevertheless, there has been an awareness in the U.S. that terrorist organizations, such as, Al Qaida, the Taliban, Hamas, and Hizballah, divert charitable and developmental funds; use charitable organizations to cultivate support for their organizations; and shield their activities from official and public scrutiny. Frequently, donors to these charitable organizations are unaware that their funds are being used for illegal purposes.

In this respect, the U.S. Government's strategy to protect the charitable sector from terrorist abuse closely follows the framework provided by the Financial Action Task Force (FATF) Special Recommendation VIII (SR8). This approach to countering the specific terrorist threat to the charitable sector includes the need for: (i) oversight; (ii) investigations and enforcement actions; (iii) outreach and guidance; and (iv) international cooperation.

U.S. Strategy to Counter Terrorist Abuse of Non-Profit Organizations (NPOs)

In order to fulfil its international obligations, the comprehensive U.S. strategy to counter terrorism in the NGO sector consists of the following objectives:

1. **Enhancing the transparency of the charitable sector through coordinated oversight**

This objective aims to strengthen the transparency of the charitable sector in countering terrorist abuse by allowing charitable organizations, donors, and government authorities to better understand, oversee and detect such activity. In the U.S., the charitable sector is subject to three levels of oversight: (i) the federal government; (ii) state authorities; and (iii) the private sector.

At the federal level, the primary unit for oversight of charities is the federal tax system, administered by the Internal Revenue Service through the provision of tax-exempt status for NGOs. In addition, most U.S. states have agencies with responsibilities to oversight over charities raising money in that state, no matter where

the charities are domiciled. Lastly, a key element of the U.S. system is the self-regulation performed by private sector bodies.

2. **Protecting the integrity of the charitable sector through investigations, designations, and targeted enforcement actions against specific terrorist financing threats within the NGO sector**

It is vital to understand that regulation or oversight is not sufficient to protect the sector. All of the terrorist threats in the U.S. charitable sector have been identified and addressed using investigations and sanctions or enforcement actions, which are critical elements of charitable sector protection.

Many of the U.S. government agencies are involved in protecting the integrity of the charitable sector. The U.S. Departments of the Treasury and State work with the Federal Bureau of Investigation, the Department of Justice and other agencies to investigate and combat cases of terrorist financing in the charitable sector through targeted regulatory and law enforcement investigations, information sharing, terrorist financing sanctions designations, and criminal prosecutions.

For instance, sanctions designations are one of the primary actions used by the U.S. Government to protect the integrity of the charitable sector. A sanctions designation deprives the subject of involving the funds required to pay for infrastructure, travel and other logistics, supplies and weaponry, as well as the daily sustenance of terrorist groups. Designations are designed to be preventive, i.e., to freeze assets when there is a reasonable ground to believe that the entity or individual is engaged in terrorist activity or supporting a designated terrorist or terrorist group. In addition, a key benefit of a designation is the notice it provides to the charitable sector, the donor community and the general public.

3. **Raising awareness of the risk of terrorist abuse of the NGO sector and engaging in direct and sustained outreach to the sector to provide guidance on how to mitigate this risk**

U.S. Government outreach efforts focus on fostering greater understanding of the terrorist threats and the actions to combat these threats. Another important part of the outreach message is that the public and private sectors should work together to promote safe charitable activity and to protect the sector from terrorist exploitation. Such collaboration is needed not only to develop effective and practical safeguards, but also to identify and develop ways in which charities can safely assist populations in high risk areas regions.

To reinforce the outreach efforts, the Department of the Treasury has developed and issued extensive guidance to charities seeking to protect themselves from terrorist abuse, including Treasury's Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (Guidelines). The Guidelines do not create any new legal requirements, but are intended to provide guidance on fundamental principles of good charitable practice; governance, accountability and transparency; financial accountability and transparency; programmatic verification; and anti-terrorist financing best practices.

In addition, the Guidelines are using risk-based approach due to the diversity of the charitable sector. The Guidelines also acknowledge that certain circumstances (such as catastrophic disasters) may make application of best practices difficult. Moreover, the Guidelines are not an exhaustive or exclusive set of best practices, and Treasury recognizes that many charities, through their extensive experience and expertise in delivering international aid, have already developed effective internal controls and practices that lessen the risk of terrorist financing or abuse.

4. **Pursuing multilateral efforts by engaging foreign partners in protecting the charitable sector from terrorist abuse.**

The threat of terrorist abuse of charities is clearly a global challenge which requires the understanding, cooperation and collaboration among many partners. The U.S. Government has made substantial progress in forging and strengthening partnerships among various agencies, governments and communities.

The Government has worked with key stakeholders in the charitable sector and with Arab and Muslim communities in particular to explore how best to achieve their common aims. They have focused on the development of alternative relief mechanisms which intended to provide safe and effective ways for individuals to contribute assistance in the critical regions where aid is desperately needed, but where terrorist organizations largely control relief and distribution networks. The concept of alternative relief mechanisms is effective, but also extremely difficult to put into practice and will require a strong partnership among elements of the national security, development, and charitable communities.

In addition, many countries are increasingly using financial, economic, and law enforcement powers to identify, investigate, designate, and prosecute charities and charity officials engaged in supporting terrorist groups. They are also working with their development agencies and the broader charitable community to protect social and charitable services, especially in regions at high risk of terrorist abuse.

Chapter VI
Conclusion and Recommendations

6.1 Conclusion

It can be seen that the relationship between non-profit NGOs and business entities in Thailand exists through the incidence that companies, the NGOs' major donors according to the NPIs in Chapter II, give cash-intensive donation to such NGOs as part of their corporate social responsibility (CSR) plans and/or tax deduction schemes. The NGOs then use the funds to create activities which complement the activities of the government sectors in providing services, comfort and hope to people in community.

However, evidences have shown that terrorists and terrorist organizations have exploited the NGOs to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organizations and operations, for instance; the cases of the International Islamic Relief Organization (IIRO) and Islam Burapha in the southern part of Thailand.

This is due to the fact that the NGOs feature a number of vulnerabilities that terrorist organizations can use:

- The NGOs enjoy public trust; have access to considerable sources of funds; and are often cash–intensive;
- Some of the NGOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near areas that are most exposed to terrorist activity;
- The NGOs may often be subject to little or no governmental oversight (registration, record keeping, reporting and monitoring, check of background of beneficial owners, employees, management);

- Governmental bodies may have insufficient resources to effectively oversee the sector; and
- the NGOs may have limited resources or capacity to withstand demanding regulatory requirements.

With respect to the above, terrorist organizations have taken advantage of these characteristics of the NGOs to infiltrate the sector and misuse their funds and operations to cover for or support terrorist activity. Therefore, the business entities which give donations to the NGOs without knowing that such NGOs are connected to terrorist activities have faced the risks of indirectly financing the terrorist activities.

Under FATF Special Recommendation VIII (SR8), Thailand must review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. In particular, NGOs which are particularly vulnerable must be ensured that they cannot be misused:

(a) by terrorist organisations posing as legitimate entities;

(b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and

(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

In this respect, the Anti-Money Laundering Act (AMLA) B.E. 2542 (1999) as amended until Anti-Money Laundering Act B.E. 2542 (1999) (No.4) B.E. 2556 (2013) and Counter-Terrorism Financing Act (CTFA) B.E. 2556 (A.D. 2013) have adopted certain AML/CFT international standards which not only are sufficient to control money-laundering and terrorist financing incidents and solve the strategic AML/CFT deficiencies in Thailand; but also can be used as effective measures for controlling of the activities of the NGOs and business entities, i.e., they can provide effective measures to control indirect financing of terrorism by the business entities and the NGOs.

Those effective measures are the powers given to Anti-Money Laundering Board (AMLB) and Anti-Money Laundering Office (AMLO) for issuing policies for

assessing money laundering (ML) risks of certain entities not subject to reporting obligation, i.e., the NGOs and business entities, and collecting data on suspicious transaction related to such NGOs and business entities as well as recommend guidelines to prevent such ML risks under AMLA Section 25 (1/1) and Section 40 (3), (3/1), (4) which adopted the principles regarding the risk assessment and risk-based approach under FATF Recommendation 1 and the requirements of competent authorities under FATF Recommendations 29, 30, 31 and 35.

Also, AMLB and AMLO have powers to process and make notification of a list of designated terrorists and order such designated terrorists, persons under an obligation to report transactions or persons holding the assets of such designated persons to freeze the asset of such terrorists and report the frozen asset to without delay under CTFA Sections 4, 5, and 6 which adopted the principles under United Nations Security Council Regulations 1267 and 1373 as well as FATF Special Recommendations I and III (SR1 and SR3).

This will create a counter-terrorist financing process for control the indirect financing of terrorism by the NGOs and business entities. Any NGOs and business entities involved with the financing of the designated terrorists will be regarded as non-compliance of CTFA of which will lead to an offence of terrorist financing and subject to a serious punishment under Section 16 of CTFA. The section has adopted the principle under FATF Recommendation 5 and FATF Special Recommendation II (SR2) that countries should criminalize terrorist financing. This will help the public to be aware of the persons or organizations that are financing terrorist activities and will not easily become the victim of indirect financing of terrorism.

Nevertheless, it could be observed that KYC measure under Section 20 of AMLA is related to only financial institutions and traders. According to the interpretative note of FATF Special Recommendation VIII, to ensure that the NGOs cannot be misused for terrorist financing, the NGOs should follow a Know Your Beneficiaries and Associate NGOs Rule, which means that the NGO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NGOs. Also, The NGOs should undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.

Furthermore, it can be seen the issue related to NGO regulation frameworks other than AML/CFT is still problematic. This is because they have not been designed for directly governing the NGOs. Also, there is much duplication of regulatory activity. For most of the NGOs there is little scrutiny, which leaves them free to operate and may possibly be victims of unnoticed abuse.

The following recommendations can help minimizing the flaws in NGO regulation frameworks and enforcing the effective measures to control indirect financing of terrorism by business entities via NGOs.

6.2 Recommendations

The following measures are recommended to be implemented along with the provisions of AMLA and the CTFA.

6.2.1 Know your NGOs

It is necessary for the business entities to check the details or identifications of the NGOs before they give donations to such organizations. As discussed in this thesis, some NGOs may have connections with terrorist organizations. For instance, companies may contact AMLO regarding the designated list of terrorists to check if the charitable organizations they are interested in giving donations are subject to terrorist financing activities.

6.2.2 Know Your Donor/ Know Your Beneficiary (KYD/KYB)

Based on the Interpretative Note of FATF Special Recommendation VIII (SR8), Know Your Donor (KYD) / Know Your Beneficiary (KYB) measures may be created for using with non-profit NGOs. The KYD/KYB measures include duty for non-profit NGOs, such as Association and Foundation to check the details or identifications of their donors of funds and the beneficiaries of funds that they give to,

and report the names of such donors/beneficiaries that considered suspicious to AMLO.

Furthermore, based on Compliance Toolkit of The Charity Commission for England and Wales[1], most charities should know, at least in broad terms, where the money they are being given comes from, e.g., grants, cash donations etc. Trustees, unpaid volunteer who undertakes fiduciary responsibilities on behalf of the charity, should also be able to identify and be assured of substantial donations. A good, open and transparent relationship between a charity and its donors is essential for building trust and confidence. It will help to ensure that expectations and commitments are clear, and may encourage longer term funding.

In broad term, Trustees should take reasonable and appropriate steps to know who the charity's donors are, particularly where significant sums are being donated or the circumstances of the donation give rise to notable risk. Good due diligence will help to:

- assess any risks to the charity that may arise from accepting a donation or certain types of donations
- ensure that it is appropriate for the charity to accept money from the particular donor, whether that is an individual or organization
- give trustees reasonable assurance that the donation is not from any illegal or inappropriate source
- ensure that any conditions that may be attached are appropriate and can be accepted.

In addition, the identification and selection of beneficiaries are important decisions for charities. Sometimes this is specified in the charity's governing

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[1] The Charity Commission for England and Wales, Compliance Tool Kit Chapter 2 - Due Diligence, Monitoring and Verification of End Use of Charitable Funds [Online], United Kingdom. www.charitycommission.gov.uk/Our_regulatory_activity/Counter_terrorism_work/compliance_toolkit_2.aspx#f (accessed August 23, 2012)

document and this will make it a legal requirement. Other trustees will have more discretion about selection criteria. They may have decided on a policy to guide their decision making.

Ensuring trustees make decisions which are legally valid and exercise their discretion properly, taking account of any due diligence, are an important part of good trustee decision making and help ensure they discharge their duty of care.

6.2.3 Establishing Charity Commission of Thailand

Thailand should establish the Charity Commission of Thailand with powers to regulating Thai Charitable NGOs by adopting the working prototype of the Charity Commission for England and Wales as indicated in 5.3 of Chapter V. It will be a sole unit governing the NGOs in Thailand. Once the Charity Commission of Thailand has been established, it should also implement the NGO Sector and Regulation Review Tool which has been designed by the International Programme of the Charity Commission for England and Wales.[2] The Tool can help to identify the risks that affect the NGO sector in Thailand and assess how effective the regulatory framework is in mitigating those risks.

6.2.4 Further Amendment of AMLA and CTFA to Include Duties of NGOs and Business Entities

It is recommended that AMLA should be amended to include the NGOs and business entities as reporting entities which have duty to report their transactions to AMLO based on FATF Recommendation 20. In addition, these organizations should be designated with duty to create their own risk-based assessment policies based on FATF Recommendation 1 in that countries should require financial institutions and

[2] CTN Electronic Journal, Preventing the Abuse of Non-Profit Organization for Terrorist Financing [Online], June, 2011. OSCE. www.osce.org/atu/78912 (accessed July 3,2012)

designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

For instance, the business entities should create a policy for assessing charitable NGOs; collecting all information related to the operation of such NGO to ensure that its objective is truly humanitarian. Also, the NGO should create a policy to assess its charitable activities and donors and beneficiaries and ensure that these activities, donors, and beneficiaries will not be involved with terrorism.

6.2.5 Adoption of AML/CFT Measures Applied in Other Countries

Thailand should consider adopting the AML/CFT measures applied in other countries which could supplement to the effectiveness of measures to control indirect financing of terrorism by NGOs and business entities in Thailand as derived from the AMLA and CTFA.

For example, based on the Belgium case in 5.2 of Chapter V, the Anti-Money Laundering Office (AMLO)'s website should contain various examples of misuse of NGOs for terrorist financing purposes. Also, the website should also include different FATF reports on the risks and vulnerabilities of terrorist financing that the NGO sector could be confronted with for raising the sector's awareness.

Another example is that based on the U.S. case in 5.4 of Chapter V, the AMLO should create an outreach effort on fostering greater understanding of the terrorist threats and the actions to combat these threats in the NGO sector. In addition, the AMLO and private sector should work together to promote safe charitable activity and to protect the sector from terrorist exploitation, e.g., developing and issuing extensive guidance to charitable NGOs seeking to protect themselves from terrorist abuse.

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Appendix

(Translation)

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

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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[1] 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 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,

[1] Published in the Government Gazette, Vol. 116, Part 29a, page 45, dated 21st April 1999.

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)[2] relating to terrorism under the Penal Code;

(9)[3] 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.

(10) offense relating to being a member of a racketeering group under the Penal Code or participating in an organized criminal group which constitutes an offense under relevant laws;

(11) offense relating to receiving stolen property under the Penal Code only as it constitutes assisting in selling, buying, pawning or receiving in any way property obtained from the commission of an offense with a nature of business conduct;

(12) offense relating to counterfeiting or alteration of currencies, seal, stamp and ticket under the Penal Code with a nature of business conduct;

(13) offence relating to trading under the Penal Code only where it is associated with the counterfeiting or violating the intellectual property rights to goods or the commission of an offense under the laws on the protection of intellectual property rights with a nature of business conduct;

(14) offense relating to forging a document of right, electronic cards or passports under the Penal Code with a nature of regular or business conduct;

(15) offence relating to the unlawful use, holding, or possessing of natural resources or a process for illegal exploitation of natural resources with a nature of business conduct;

(16) offence relating to murder or grievous bodily injury under the Penal Code for the acquisition of assets;

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[2] Section 3 definition of "predicate offense" (8) added in accordance with the provision of the Royal Decree on Amendment to the Anti-Money Laundering Act of B.E. 2542 (1999) B.E. 2546 (2003)

[3] Section 3 definition of "predicate offense" (9) added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(17) offence relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits;

(18) offence relating to theft, extortion, blackmailing, robbery, gang-robbery, fraud or misappropriation under the Penal Code with a nature of regular conduct;

(19) offence relating to piracy under the anti-piracy law;

(20) offence relating to unfair securities trading practice under the law on securities and stock exchange;

(21) offence relating to arms or arms equipment which is or may be used in the combat or war under the law on arms control.

predicate offence under paragraph one shall include a penal offence committed outside the Kingdom which would have constituted a predicate offence had it been committed in the Kingdom.

"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 with reasonable grounds to believe that it is conducted to avoid the application of this Act, or transaction connected or possibly connected with the commission of a predicate offense or terrorist activity financing offense, notwithstanding the transaction being single or multiple, and shall include an attempt to conduct such a transaction.

"Asset connected with the commission of an offense" means:

(1)[4] money or asset obtained from the commission of 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 or abetting the commission of a predicate offense under (8) of the definition of "predicate offense" or the offence of the financing of terrorism under the suppression of the financing of terrorism law;

(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:

[4] Section 3 definition of "asset connected with the commission of an offense" (1) amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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)[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"[6] 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.

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[5] Section 3 definition of "financial institution" (5) amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

[6] Section 3 definition of "fund" added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[7] 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.

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[7] Section 10 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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.[8]

Section 12 In the execution of this Act, a member, member of a sub-committee, 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

[8] Section 11 paragraph two amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[9] 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.

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[9] Section 16 paragraph one amended in accordance with the Anti-Money Laundering Act (No. 3) B.E. 2552 (2009)

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 therefor.

Section 20[10] 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[11] 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[12] Unless otherwise notified in writing by the competent official, a financial institution shall retain information as follows:

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[10] Section 20 paragraph one amended in accordance with the Anti-Money Laundering Act (No.3) B.E. 2552 (2009)
[11] Section 20/1 added in accordance with the Anti-Money Laundering Act (No.3) B.E. 2552 (2009)
[12] Section 22 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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.[13]

Section 22/1[14] 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[15] 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.

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[13] Section 22 paragraph two added in accordance with the Anti-Money Laundering Act (No.3) B.E. 2552 (2009)
[14] Section 22/1 added in accordance with the Anti-Money Laundering Act (No. 3) B.E. 2552 (2009)
[15] Section 24 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[16] The Board shall have the powers and duties as follows:

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

(1/1) to establish rules and procedures for assessing risks relating to money laundering which may arise from transaction conducted by government agencies or certain entities not subject to reporting obligation under this Act; and recommend guidelines to prevent such risks;

(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;

(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.

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[16] Section 25 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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 49 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[17] 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

[17] Section 32 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[18] 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;

[18] Section 34 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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[19] 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[20] 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[21] 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[22] 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 37/1 In the case where the Transaction Committee deems it appropriate to provide protection measures for a testifying person or informant of clue or any information beneficial for implementation of this Act, the Transaction Committee shall notify the relevant agency to provide protection for such person. Such person shall be regarded as a witness entitled to receive protection under the law on witness protection in criminal cases. The Transaction Committee shall submit an opinion on whether a general measure or special measure under such law should be applied to such person.

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[19] Section 35 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[20] Section 36 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[21] Section 36/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[22] Section 37 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

In the case of a loss of life, body, health, reputation, property or any right of a person under paragraph one, or the husband, wife, ascendant, descendant or other person closely related to such person, as a result of a willful commission of a criminal offence due to the action or testimony or giving of a clue or information to a competent official, such person shall have the right to submit a claim to the responsible agency for the necessary and appropriate compensation under the law on witness protection in criminal cases.

The Office may provide compensation or other benefits to a person under paragraph one, in accordance with ordinances prescribed by the Board.

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 a 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[23] Under the Criminal Procedure Code, in the execution of this Act, the Secretary-General, Deputy Secretary-General, and competent officials

[23] Section 38/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[24] 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[25] 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[26] There shall be an Anti-Money Laundering Office, called in short "AMLO", as an office not under the Prime Minister Office, Ministry, or Sub-

[24] Section 39/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[25] Section 39/2 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[26] Section 40 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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 disseminate reports or information for the execution of this Act or other laws or under an agreement made between domestic or foreign agencies;

(3/1) establish guidance for observance, supervise, examine and evaluate the financial institutions and professions under Section 16 on implementation of this Act in accordance with rules, procedures and guidance established by ordinance of the Board;

(4) to gather, collect data, statistics, examine, monitor and evaluate the implementation of this Act and analyze reports or data related to transactions, and assess risk relating to money laundering and terrorist financing;

(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[27] 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;

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[27] Section 41 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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[28] 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.

Official of the Office appointed as competent officers shall be positions with special reasons under the law on civil servant and in determining the additional stipend for such position, consideration has to be given to their work load, work quality and integrity, and comparison shall be made with the additional stipend for functionary of other jobs within the justice process. This shall be in accordance with the ordinance issued by the Board, with the consent of the Ministry of Finance.

Section 45[29] 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[30] 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.

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[28] Section 44 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[29] Section 45 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[30] Section 45/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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

Section 46[31] 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 46/1 In the case where it is necessary for the benefit of evidence gathering under this Act, when the Office requests the Department of Special Investigation to exercise its powers to investigate, inquire and gather evidence under the law on special case investigation for the prosecution of offenders under this Act or to take proceedings on assets connected with the commission of offenses, the Department of Special Investigation shall have the powers to act within its authority in support of the Office.

For the purposes of taking action under paragraph one, the Director-General of the Department of Special Investigation on the recommendation of the Secretary-General may appoint an official of the Office as special case inquiry officer to perform the duties in investigation, inquiry and evidence gathering under the law on special case investigation relating to the performing of duties under this Act.

The operation under paragraphs one and two shall be in accordance with ordinances set out by the Director-General of the Department of Special Investigation and the Secretary-General.

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;

[31] Section 46 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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.[32]

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.

[32] Section 49 paragraph four amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[33] 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[34] 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

[33] Section 51 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[34] Section 51/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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[35] 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

[35] Section 57 paragraph one amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

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*.

For this purpose, the public prosecutor shall be exempted from all fees.

CHAPTER VI/I
Anti-Money Laundering Fund[36]

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;

[36] Chapter VI/I Anti-Money Laundering Fund, Section 59/1 – 59/7 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)

(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[37] 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[38] 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 64/1 As for offenses under Section 62, Section 63 and Section 64, a settling committee appointed by the Board shall have the power to settle fines.

The settling committee shall consist of five members; the Secretary-General as chairman, two representatives from government agencies concerned, one enquiry officer under the Criminal Procedural Code, and official of the Office assigned by the Secretary-General as a committee member and secretary.

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[37] Section 61/1 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008)
[38] Section 62 amended in accordance with the Anti-Money Laundering Act (No.3) B.E. 2552 (2009)

The Secretary-General shall appoint no more than two other officials as assistant secretaries.

When the settling committee settled the fine and the accused paid the fine in full and within the period of time by the committee, the case shall be deemed settled under the Criminal Procedural Code.

Section 64/2 For offenses for which fines could be settled under Section 62, if no charges are brought to the court or no fine settled under Section 64/1 within two years of the date on which the competent officer found the commission of the offense and reported the matter to the Secretary–General or within five years of the date of the commission of the offense, the term of prescription shall expire.

Section 65 Any person who moves, damages, destroys, conceals, takes away, causes loss of or renders uselessness of any document, record, 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, having or possibly having knowledge of an official secret in connection with the execution of this Act, acts in any manner that enables other persons to have knowledge or probable knowledge of such secret shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand Baht or to both, except in the case of doing such act in the performance of official duties or in accordance with the law.

Countersigned by:
Chuan Leekpai
Prime Minister

Remarks: At present, criminals who committed offenses under certain laws have been dealing with the money and the assets in many ways – which is money laundering, to use money or assets for other crimes and which is difficult to fight using those laws. The existing law could not sufficiently suppress money laundering or deal with such money or assets. To break the criminal cycle, there shall be measures to sufficiently suppress money laundering. Hence this law must be issued.

The Emergency Decree on amendment of the Anti-Money Laundering Act B.E. 2542 (1999) B.E. 2546 (2003)[39]

Remarks: There is an amendment of the Penal Code prescribing offenses relating to terrorism. Financing of terrorism is a factor aiding the more violent terrorism, which affects national security and which the United Nations Security Council urges every country and jurisdiction to cooperate with each other in the fight against terrorist acts, as well as against provision of financial support or other means that are intended for use in the terrorist act, so as to end the terrorist problem. Terrorism shall be prescribed as a predicate offense under the Anti-Money Laundering Act B.E. 2542 (1999) so that these two laws can be coordinated in action which will enable greater effectiveness in the execution of this provision in the Penal Code. Overriding need and emergency for safeguarding the security of the Kingdom and the people makes it inevitable to take an urgent measure. Hence this Emergency Decree must be issued.

The Anti-Money Laundering Act (No.2) B.E. 2551 (2008)[40]

Section 28 The Secretary-General under the Anti-Money Laundering Act B.E. 2542 (1999), who has been in the position before this Act came into force, shall become the Secretary-General under this Act and perform the duties until the new Secretary-General is appointed.

Remarks: Some of the provisions of the Anti-Money Laundering Act B.E. 2542 (1999) (AMLA) are not efficiently and appropriately enforced for eliminating or reducing the cycle of crimes and as the law targets crimes listed in the eight predicate offenses under the Act, the law's intention of reducing or eliminating of crimes cannot be achieved. This is because criminals committing other criminal offenses are still able to use the money or assets derived from such crimes to facilitate the commission of these eight predicate offenses. Furthermore, some of the procedures in enforcing the AMLA are not used at the desired speed. In order to break the criminal cycle effectively as the law's objectives, while the procedure in enforcement of the Anti-

[39] The Government Gazette, Vol. 120, Part 76a, page 4, dated 11th August 2003.
[40] The Government Gazette, Vol. 125, Part 40a, page 14, dated 1st March 2008.

Money Laundering Act is relatively swift, efficient and effective, it is still necessary to prescribe other criminal offenses that obstruct peace and morals of society, security and economic stability of the State as predicate offenses. Hence this law must be issued.

Duangjai/amended
8 November 44 (01)
A+B (C)
Patchara Suksumek
Orada Chaowarodom
Hataichanok Supyai
27/05/46(01)

Pongpilai/Yongyuth
6 October 2003
Orada/examined
3 March 2004
Pathomporn/Watinee/amended
16 August 2006

Note on translation

* *The name of the agency—National Counter Corruption Commission (NCCC)—has been changed to National Anti-Corruption Commission (NACC) by its resolution 40/2551 of 15 July 2008.*

* *Revised Amended AMLA, 3rd August 2009*

(Translation)
Counter-Terrorism Financing Act
B.E. 2556 (2013)

Whereas it is expedient to have a law on suppression of the financing of terrorism;

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 33, section 35, section 36, section 41 and section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Section 1 This Act shall be called the "Counter Terrorism Financing Act B.E. 2556 (2013)".

Section 2 This Act shall come into force on the day following the date of its publication in the Government Gazette.

Section 3 In this Act:

"assets" means funds, property or intangible object, susceptible of having a value and of being appropriated, including the fruit thereof, and shall include legal documents or instruments in any form, whether in paper or any other material or in electronic form, evidencing title to, possession, right to claim, or any other interest in, such funds or property;

"terrorist act" means any act which constitutes an offense related to terrorism under the Penal Code, or any act which constitutes an offense within the scope of international conventions and treaties related to terrorism, to which Thailand is a party or acceded, whether such act is committed inside or outside the Kingdom;

"designated person" means a person, group of persons, legal persons or entities, listed as designated persons pursuant to a resolution of, or notification issued under the United Nations Security Council or a person, group of persons, legal persons or entities who were designated by Court order under this Act;

"reporting entity" means reporting entities under the law on anti-money laundering;

"assets freezing" means prohibition of making transfer, selling, moving or disposition or conversion, utilization of, or dealing in any way with such assets which

would result in changing in amount, value, quantity, location, or character of the assets;

"Board" means the Anti-Money Laundering Board under the law on anti-money laundering;

"Transaction Committee" means the Transaction Committee under the law on anti-money laundering;

"Office" means the Anti-Money Laundering Office.

Section 4 Upon the issuance of a resolution or declaration under the United Nations Security Council designating persons, groups of persons, legal persons or entities, at the advice of the Office, Minister of Justice shall make notification of the designated persons without delay. Rules and procedures shall be prescribed by the Ministerial Regulation.

Delisting of persons designated under paragraph one shall be made upon the issuance of Resolution or Declaration of the United Nations Security Council resulting in the delisting of such persons from the designation list.

Section 5 In the case where there are reasonable grounds to suspect that any person is connected with the commission of terrorist act or terrorist financing or acts on behalf of or at the direction of or under the control of such a person, the Office, with the consent of the Transaction Committee shall consider referring the names of such person to the public prosecutor for consideration of filing an ex parte petition to the Court for an order to designate such person. Where there is a probable evidence to believe as follows, the Court shall order the designation;

(1) Such person may be involved in terrorist act or terrorist financing or;

(2) Such person acts on behalf of or at the direction of or under the control of the person designated under (1) or under Section 4

Such connection with the commission of terrorist act or terrorist financing or

action on behalf of or at the direction of or under the control of such a person under paragraph one has to exist on the day the court orders the designation.

The Office shall regularly review the designation list under paragraph one. Where there is circumstantial change, the Office, with the consent of the Transaction Committee, shall consider referring the matter to the public prosecutor to consider filing an ex parte petition with the Court for an order to delist such person from the designation list.

Rules and procedures followed by the Office and the Transaction Committee under paragraph one and three, shall be in accordance with the Ministerial

Regulation, by which the Office shall appoint a committee for considering the name to be delisted before submission to the Transaction Committee for approval.[1]

The Office, the Transaction Committee, the public prosecutor and the Court shall implement this Section without delay.

Section 6 The Office shall make notification of the list of designated persons under Section 4 and 5 and shall instruct the designated persons and reporting entities or persons holding the assets of the designated persons to take the following actions without delay;

(1) Freeze the assets of the designated persons or a person acting on behalf of, or at the direction of, or an undertaking controlled by such persons;

(2) Inform the Office of the frozen assets;

(3) Inform the Office of a customer or former customer who is listed as a designated person or who has or had conducted transactions with such a person.

Rules and procedures for making notification and giving notice to the persons under paragraph one, including actions to be taken under (1) (2) and (3) shall be prescribed by an ordinance issued by the Board.

A reporting entity shall set out a risk assessment policy or any guidance for the prevention of the financing of terrorism or other measures necessary for the implementation in accordance with this Act. Rules and procedures shall be prescribed by an ordinance issued by the Board.

Section 7 The maintenance and management of the frozen assets shall be in accordance with rules prescribed by the Board.

Section 8 Any person shall be excluded from liability for a loss or claim resulting from the performing of an act under Section 6 where such act is carried out in good faith, unless gross negligence is proven.

Section 9 Persons designated under Section 5 or whose assets were frozen under Section 6 due to being a designated person under Section 5 may file a written petition with the Court for consideration on the following matters:

(1) To order the delisting of such persons from the designation list;

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[1] The Anti-Laundering Office and the Transaction Committee can rely on section 38 and section 40 of the Anti-Money Laundering Act, B.E. 2542 in gathering witnesses and evidence for use in consideration of submitting names to the Public Prosecutor for his consideration of filing a petition to the court for its designation of the person(s). As it is related to terrorism or terrorist financing, which is a predicate offence under the said Act, it is not necessary to have provisions for the mutatis mutandis application of section 38 and section 40 under this Act.

(2) To lift the freezing of assets;

(3) To seek permission to take any action with the frozen assets.

Where there is a permission granted according to (3), the Court may stipulate any necessary conditions to prevent the assets from being used to finance terrorism and where there appears to be facts that such permission may provide opportunity for such assets to be used for financing of terrorism, the Court may set any further conditions or may revoke the permission.

Section 10 A person other than persons designated under Section 4 or Section 5 may file a written petition with the Court to order the followings;

(1) payment for debt due to the person whose assets were frozen under Section 6 under contracts or obligations which were concluded on or before the date the account became subject to freezing;

(2) payment of interest or other benefits due on the account in favor of the person whose assets were frozen under Section 6;

(3) payment for debt, according to the Court's final decision, of the person whose assets were frozen due to being a designated person under Section 5;

(4) for undertaking in any way with the frozen assets of the person whose assets were frozen due to being a designated person under Section 5;

In case of permission granted under paragraph one, if debt is to be paid or money to be transferred into or out of the account of a person whose assets were frozen under Section 6, the Court may prescribe conditions as it deems appropriate for the prevention of use of the assets for financing terrorism.

Section 11 Judicial procedures under Section 5, Section 9 and Section 10 shall be brought to the Civil Court and Civil Procedural Code shall apply mutatis mutandis.

Section 12 For the benefit of implementing this Act, the Board shall have the following powers and duties:

(1) to set out the rules, regulations and notification under this Act;

(2) to set out the guideline for supervision, examining, monitoring and assessment in accordance with this Act;

(3) to set out guidelines and procedures necessary for the reporting entity or any other person for the performing of its duties in accordance with this Act;

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

Section 13 For the benefit of implementing this Act, the Office shall have the following powers and duties;

(1) to provide guidance for persons on obligations in taking action under this Act;

(2) to monitor, evaluate, examine, and supervise proper compliance with this Act as well as taking legal action with those who violated or failed to observe the provision of this Act;

(3) to receive or disseminate report or information useful to implementation of this Act or other laws;

(4) to gather, collect information and evidence for the assets freezing, seizure or confiscation under this Act or other laws;

Section 14 Any person who violates or fails to comply with Section 6 (1) or (2) shall be liable to an imprisonment not exceeding three years or a fine not exceeding three hundred thousand baht or both.

Any reporting entity who violates or fails to comply with Section 6 (1) or (2) shall be liable to a fine not exceeding one million baht, as well as a daily fine of ten thousand baht until rectification is made.

Where violation under paragraph two has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person responsible for the operations of the legal person, such person shall be liable to a term of imprisonment not exceeding three years or a fine not exceeding three hundred thousand baht or both.

Section 15 Any reporting entity who violates or fails to comply with Section 6 (3) shall be liable to a fine not exceeding five hundred thousand baht and a daily fine of five thousand baht until rectification is made.

Where violation under paragraph one has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person responsible for the operations of the legal person, such person shall be liable to a term of imprisonment not exceeding one year or a fine not exceeding one hundred thousand baht or both.

Section 16[2] Any person who provides, collects or conducts financial or asset transactions or undertaking in any way, directly or indirectly, with the knowledge that the beneficial person of the financial benefit or assets or from such undertaking is the designated person, or with the intention that the financial benefit or

[2] Provisions of section 16 are based on principles in line with international standards. They explicitly indicate that a terrorist financing offence and a terrorist act are two distinct concepts, with the former being an offence in itself without any linkage to a specific terrorist offence(s). Therefore, provision, collection of funds or assets or any undertaking for the benefits whatsoever of a designated person or a person or entity linked to terrorism is an offence under this section whether or not the offender does the act directly or indirectly and whether or not the funds or assets or undertaking were used or intended to be used in or linked to the commission or attempted commission of a terrorist act.

assets or such undertaking are to be used for the benefits whatsoever of the designated person or of a person or organization involved in a terrorist act(s) shall be deemed to have committed a financing of terrorism offense and shall be liable to a term of imprisonment from two to ten years or a fine from forty thousand to two hundred thousand baht or both.

Any person who directs, or aids or abets, or conspires in the commission of an offense under paragraph one shall be liable to the same penalty as the principal of the offense.

Any person who attempts to commit an offense under paragraph one shall be liable to two-thirds of the penalty specified for such offense.

Any legal person who commits an offense under paragraph one, two or three shall be liable to a fine from five hundred thousand baht to two million baht.

Where violation of a legal person under paragraph four has resulted from the orders or action of a person or failure to give instructions or to perform the duty of a director, manager, or a person in authority in the operation of the legal person, such person shall be liable to a term of imprisonment from two to ten years or a fine from forty thousand to two hundred thousand baht or both.

The offense under this Section shall be a predicate offense under the law on anti-money laundering.

Section 17 Prime Minister shall have charge and control of the execution of this Act and shall have the power to issue a Ministerial Regulation to implement this Act.

The Ministerial Regulation shall take effect upon its publication in the Government Gazette**.**

Countersigned by:

…….
Prime Minister

Biography

Name:	Mr. Akarit Deemark
Date of Birth:	16 May 2522 (1979)
Education:	Bachelor of Science in Food Technology from Chulalongkorn University: Academic Year 2542 (1999)
	Master of Management in General Management from University of Technology, Sydney: Academic Year 2546 (2003)
	Bachelor of Laws (Second Class Honors) from Chulalongkorn University: Academic Year 2551 (2008)
Work:	Consultant and Patent Agent, Patent Group, Intellectual Property Department, Tilleke & Gibbins International Ltd. from 2547 – 2553 (2004 – 2010)