

AMLA and the war on terror

The fight against terrorism has become a top priority for many nations. An important part of the anti-terrorism arsenal is the availability and implementation of comprehensive anti-money laundering laws. Thailand, which itself is facing attacks in the South, is keenly aware of the link between terrorism and money laundering.

Not only has the country enacted measures to ensure that it is not used as a conduit to finance national and international terrorist activities, but it also continues to combat terrorism through its continuous review of anti-money laundering legislation. It is expected before the next general election that there will be at least two amendments to the Anti-Money Laundering Act B.E. 2542 (1999) (AMLA).

Money laundering is the "cleaning" of funds yielded from illegal businesses. As it is difficult for criminals to use "dirty money" without being caught, they find ways to launder the money to make it appear legal for use and reinvestment. Common laundering techniques include using the money to buy a car or a piece of jewellery or transferring the money to another person. More complicated means may involve complex commercial transactions to conceal the actual source of the funds or assets.

In Thailand, only certain money laundering activities are subject to prosecution under the AMLA. Unlike the US, where there are about 130 money laundering offences, the current AMLA only stipulates eight offences for which one can be prosecuted for money laundering: narcotics-related charges, sexual offences under the Penal Code and the Prostitution Prevention Act, public fraud offences, fraud and embezzlement within financial institutions, abuse of power in civil or judicial service, extortion or blackmail, customs evasion, and terrorism.

Unquestionably, these eight predicate offences fail to provide the Anti-Money Laundering Office (Amlo) sufficient authority to investigate, enforce regulations, and confiscate proceeds and assets obtained from more complex money laundering methods. This lack

of power, coupled with the rise of terrorism has prompted the government to broaden the scope of the AMLA.

The first expected amendment to the AMLA, currently pending the National Legislative Assembly's approval, would add additional prosecutable offences to the AMLA. Under such an amendment, Amlo would have the authority to prosecute money laundering offences for matters related to the abuse of natural resources, illicit foreign exchange, unlawful stock purchases, illegal gambling, illicit arms trafficking, collusion on bids for state agency projects, labour fraud (human trafficking), and charges relating to excise tax, cigarettes and alcoholic beverages.

It should be noted, however, that notwithstanding the prolific counterfeit product cases, the Council of State said intellectual property infringement should not be considered a predicate offence as it is a compoundable offence between private parties. Whereas the first amendment to the AMLA aims to introduce additional prosecutable offences to the AMLA — the second amendment is expected to focus on money laundering monitoring measures. Currently, the Act simply requires financial institutions to keep customer identification records and to report to the Amlo on transactions which (1) involve more than two million baht in cash, (2) relate to property valued in excess of five million baht, or (3) are otherwise suspicious.

The Act also obligates land offices across the country to file reports to Amlo in relation to transactions meeting the above criteria. In addition, the Act requires consulting businesses or operations related to investment or removal of capital to file a report with Amlo when there is reason to believe that a transaction is suspicious.

It is clear from the above that there is a lack of policies in place relating to customer identification and due diligence — policies that would apply to all financial institutions and businesses in order to detect, deter and prevent money laundering and the financing of terrorism. Hence, the second amendment.

While the second amendment is still in its nascent stages, a policy statement has been issued suggesting that the amendment would bring Thailand more in line with international standards related to anti-money laundering and the countering of the finance of terrorism. The policy statement requests that financial institutions and designated non-financial businesses and professions including jewellery traders and professions related to precious stones and metals, vehicle hire-purchase businesses, certain personal loan businesses under the supervision of the Bank of Thailand, and electronic cash card businesses under the supervision of the Bank of Thailand, comply with "Know Your Customer" and "Customer Due Diligence" (KYC/CDD) policies.

The KYC/CDD policies are not new to financial institutions. The KYC policy relates to the collection of customer identification information in accordance with the customer's risk level, while the CDD policy requires institutions to implement a system to gather enhanced information and verification of the customer's background.

Although implementation of these two policies is essential, it will cost money, take time and entail hard work and additional resources. It also means that education must be provided and awareness must be raised to ensure effective implementation of the KYC/CDD policies. This naturally will affect the designated non-financial businesses more severely than it will the larger financial institutions. But it will ensure the world's safety in the future.

Together with other parts of the world, Thailand is actively engaging in the war against money laundering and terrorism. Successful passage of the two AMLA amendments will bring Thailand a step closer to succeeding in that fight.

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