

CURRENT SITUATION AND COUNTERMEASURES AGAINST MONEY LAUNDERING IN THAILAND

*Pisan Mookjang **

Thailand is a democratic country with a strong economy in Southeast Asia. Like most developing countries, Thailand is mainly concerned with the economic and social development of the country for the well-being of her people. So she must face up to various kinds of problems such as unemployment, poverty, education, traffic, political corruption, the environment and crime, etc.

It is generally accepted that “crime” means an offence for which there is severe punishment by law and such offences are collectively treated as serious law-breaking. Not only “Street Crimes” such as homicide, rape, larceny, extortion, robbery, gang-robbery and drug offences etc. are serious problems to the Thai Government but also “Transnational Crimes” and “Economic Crimes” are the most serious ones in this decade.

I. MAJOR TRANSNATIONAL ORGANIZED CRIMINAL GROUPS AND THEIR ACTIVITIES

A. Drug Trafficking

Drug crime in Thailand starts at the beginning of the cycle in that many types of drugs like heroin, amphetamine, opium, marijuana are produced here in Thailand and immediately transported to “domestic markets” which will be trafficked directly to the “consumers”. This trade is stimulated by the tension people get from the country’s

economic crises and the negative effects emerging from the effort to convert the country’s economic system from agricultural oriented to industrial oriented.

Moreover, the proximity of the golden triangle where the borders of Thailand, Myanma and Laos, meet has allowed drug business to be prosperous, especially opium plantation.

B. Smuggling of Illegal Migrants

Since Thailand’s economic condition is much better than her neighboring countries’ such as Myanmar, Laos, Cambodia and China, there has been an influx of illegal foreign workers through the means of fake passports and visas made by organized smuggling rings. These organized criminal groups not only smuggle illegal workers from neighboring countries into Thailand but are involved in smuggling illegal migrants to other countries by using Thailand as the gateway and a temporary resort. This is also rewarding business for it turns out that this business makes a lot of money especially smuggling illegal migrants to other countries like the USA, the UK, the Netherlands and Japan, and it costs each person about 75,000 baht — 140,000 baht for one illegal trip.

C. Arms Trafficking

Thailand is located among neighboring countries which have problems concerning internal peace and order such as Myanmar, and Cambodia. Consequently, for the past 10 years, there has been an in-flow and out-flow of lethal weapons. Unfortunately, some Thai government officials cooperate with the organized criminal groups secretly

* Superintendent, Economic Crime Prevention and Suppression Police Cadet Academy, Royal Police Headquarter, Thailand

to sell illegal weapons to ethnic or minor groups along the borders of Thailand. These weapons are used to fight against their governments.

D. Trafficking in Women

There are a large number of prostitutes in Thailand partly due to poverty and partly because many women have been misled and forced into it, some of whom have been trafficked to other countries such as Japan and Germany. However, it is widely known that some foreign prostitutes come and do their business in Thailand under the control of transnational organized crime syndicates.

II. PROBLEMS AND OBSTACLES TO SOLVING TRANSNATIONAL ORGANIZED CRIME

- (1) The authority and power of law enforcement officers is limited and this does not allow the officers to act quickly and fast, and to keep up with the development and different forms of crime, for example, wire trapping is still prohibited.
- (2) Most law enforcement officers lack knowledge about transnational organized crime and about the new types of crime such as computer crime.
- (3) The shortage of criminal justice personnel and the limited budget as a result of economic crises of the country.

III. ECONOMIC CRIME IN THAILAND

There are various types of economic crime in Thailand but this paper will focus on the enforcement of two kinds of offence which are increasing on a large scale both domestically and internationally : they are credit card fraud and counterfeiting and the laundering of money by organized crime groups.

A. Credit Card Fraud and Counterfeiting

At present, economic crime, especially credit card fraud and counterfeiting U.S. currency, are mostly committed by well organized crime syndicates, who operate not only within each country but expand to international level, by fleeing between countries believing that they will not be apprehended, with a significant number of trade transactions taken along neighboring countries such as Cambodia, Laos, Malaysia and Myanmar.

The occurrence of both credit card fraud and counterfeiting U.S. currency tend to increase at an alarming rate along with greater complexity in investigations and the inability of law enforcement officials to apprehend the suspects. In addition, the number of credit card holders is increasing because of competition between the credit card companies and more borders have been opened to allow trade with neighboring countries. Because of this, certain problems need to be emphasized.

1. Loop-Holes/Weak Points

Criminals who commit fraud always take advantage of existing loop holes or weakpoints to forge and counterfeit. We should try to minimize every advantage used by the criminals by communicating these loopholes and weakpoints throughout the law enforcement community.

2. *Modus Operandi*

It is the duty of law enforcement officials to know the *modus operandi* of the criminals and every type of *modus operandi* should be informed to all competent law enforcement officers.

3. Information

The criminal uses advanced communications (telephones, especially cellular hand or mobile phone, and faxes) to pass his information and travels to and

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from countries in a matter of hours. Law enforcement officers should, therefore, use these same means with each other to bring the criminals to justice regardless of geographical boundaries by establishing information exchange centers between law enforcement authorities to keep ahead of the criminals.

4. Co-operation

Both counterfeit and credit card fraudsters are organized and often commit their crimes in different countries at the same time. We need to be at least as organized as the criminals and also have the ability to pass information to other countries, for effective co-operation, before they can commit any crime anywhere in the world.

The above-mentioned problems have to be closely considered and administered by all competent law enforcement authorities continually, and effectively. Only then will a law enforcement strategy be developed to benefit the economy and societies of every country.

B. Money Laundering

Historically, "crime" has been considered only in terms of acts of violence, threats of violence and overt thefts. The Thai system of jurisprudence has evolved by defining as illegal, certain activities directed against property and persons, and over a number of years, law enforcement agencies have developed generally accepted methods for investigating these traditional crimes. As firstly mentioned, "economic crime" causes a lot of problems to law enforcement and one of the illegal activities of this type of crime, which becomes an alarming issue nowadays, is money laundering.

Since most money collected by organized crime activities is from illegal sources such as loansharking, prostitution, gambling or narcotics, the individual racketeer is

understandably reluctant to report the income and its source on his tax return. Before spending or using these funds, it is necessary that this money must be given an image of legality so that it can be reported on the tax return without revealing the true nature of its origins. This process of conversion is known as "laundering".

If law enforcement officials are to combat organized crime successfully, they must have an understanding of how money acquired from illicit sources is transformed into respectable funds that can be spent and invested without the fear of prosecution.

The Bank of Thailand has classified money laundering into several characteristics;

1. Carrying cash when traveling abroad

Criminals tend to carry dirty money, especially cash, with them every time they travel abroad to finance themselves abroad because dirty money obtained from drug trafficking or other economic crime activities could be traced by law enforcement officials if the transfer is done through financial institutions.

2. Deposits with domestic financial institutions

The role of the modern banking system has helped criminals to deposit their dirty money in financial institutions. Part of the ordinary business of financial institutions is discretion, which is the bankers duty when serving their clients, and last but not least, his obligation to keep all information secret.

3. International wire transfer

Satellite communication hold the promise of a new era in which people throughout the world while be linked,

including the Thai citizen, by a single telecommunications system. This will provide a great number of avenues to tremendously expand Thailand's telecommunication's capacity and enhance its chances of becoming the region's telecommunication's hub. Whereas electronic records favor law enforcement authorities, modern international banking favors the criminal. It is difficult, sometimes impossible, and often not worth the trouble, to follow the paper trail across international borders. Therefore, money launderers use typical international transfers to hide the true source of the money. With the advent of satellite communication, hi-tech information systems and the introduction of facsimile machines, both economic criminals and drug traffickers have been invited to launder their dirty money during this last decade and it will continue to flourish as we approach the conclusion of this century.

4. Front Companies

Drug traffickers and white-collar criminals certainly conceal their illegal income and the ownership of such illicit money to avoid being detected by law enforcement officials. They establish a "front company" in a free-port state and proceed with lending money or selling high price merchandise to their own companies with high interest rates or high costs with the real intention to launder the dirty money into legal income.

5. Others

While laundering money can be accomplished by a wide variety of legitimate businesses, it should be recognized that certain domestic businesses have characteristics which lend themselves to successful laundering operations. Businesses that normally experience a high rate of spoilage or other loss of goods also have a high potential to launder money. Groceries, hotels,

restaurants, money changers are good examples, since some spoilage of goods is expected during the normal course of business. When such a business is taken over, a large bulk of illicit money is introduced into the business and recorded in the general income accounts of the grocery stores, hotels, restaurants etc. as if this money has been received from customers. Fraudulent invoices, forms of produce or other perishable items are then issued to these business by other mob-owned or mob-controlled companies acting as suppliers.

Domestic laundries : domestic businesses also have characteristics which lend themselves to successful laundering operations. For example, the business selected as a "laundry" must be capable of absorbing a large volume of cash income, since most illicit income is received in the form of cash. The purpose of laundering funds is to co-mingle licit and illicit money so that they cannot be separated, while simultaneously preventing the discovery of the introduction of illegal money into the business. Since almost all checks and credit card receipts are traceable by law enforcement officials, businesses such as restaurants, bars, and massage parlors, which normally take in high proportions of cash, tend to be more desirable as a potential "laundry" than a business normally receiving most of its income in the form of checks or other traceable financial instruments.

The above technique has been used to launder funds successfully for a number of years, and a large number of domestic businesses controlled by organized crime groups are still being used for this function. A few years ago, however, law enforcement officials from the Office of Narcotics Control Board (ONCB) adapted new methods, such as sampling, ratio analysis, and flowcharting to discover laundering

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operations and to successfully prosecute the people involved in the conversion process.

Another method used to uncover domestic laundering operations involves researching the corporate and ownership structures of both the suspected business and all the companies' deals. Since the ultimate success of laundering operations are dependent upon keeping the money "in-house" there will be a commonality among the various businesses. The relationship between the various companies may be illustrated visually by the process of flowcharting, which allows investigators, prosecutors, and judges to grasp more easily the sometimes complex relationships which exist in laundering operations.

Implications for law enforcement : since the laundering of dirty money depends upon keeping the cash flow "in house", it creates such complexity that investigations into the operation appear to be too complicated to undertake. Experience has shown, however, that these laundering operations are not complicated and can be successfully investigated by law enforcement officers willingly to use techniques such as sampling, ratio analysis, and flowcharting, combined with traditional methods of investigation.

The success of organized crime in laundering funds through secret numbered bank accounts and foreign corporations and through securities and financial instruments issued by off-shore banks has, in larger part, been a result of the fact that these "foreign laundries" have traditionally been beyond the jurisdiction and resources of law enforcement agencies operating in the Kingdom of Thailand. While investigating this type of laundering operation remain expensive, difficult, and time consuming, significant steps have

been taken in providing investigators with new jurisdictional tools to combat this problem.

Worldwide rules and different legal cultures : since laundering is typically done by moving money across international borders, it is highly desirable to develop internationally uniform rules on money laundering definitions and forfeiture definitions.

IV. RECENT LEGISLATIVE DEVELOPMENTS

It has been taken for granted that Thailand provides a fertile ground where illegal businesses can operate lucratively much to their advantage. This is possible partly because of its socio-economic conditions and partly because of its geopolitical situation. Against this backdrop, however hard the government and the institutions concerned try to combat organized crimes in general and money laundering in particular, it seems that a total victory over such crimes is still an illusive object, if not a distant dream, if concerted efforts are lacking on both a regional and international scale.

There are a variety of illegal sources that contribute to the flourishing business of money laundering. In order to spotlight the gravity of the situation and its devastating impact on society, Chulalongkorn's Political Economy Center, Faculty of Economics, has undertaken a research into illegal trades in Thailand along the following main categories : (1) drug trafficking (2) trading in contraband arms; (3) diesel oil smuggling; (4) prostitution; (5) human trafficking, and (6) illegal gambling. The study provides estimates of these illegal trades concluding that these six activities generated 289-457 thousand million Baht of value added per annum during the period 1993-1995. The

figure is equivalent to 8-13 percent of GNP. The largest contributor was gambling, followed by prostitution, drug trafficking, diesel oil smuggling, trafficking labour, and trading in contraband arms, as can be seen in the table below:

Estimates of the Size of the Illegal Economy (1993-1995, billion baht per annum)

Category	Value added
1. Drug trafficking	29-33
2. Trading in contraband arms	6-31
3. Diesel oil smuggling	9
4. Prostitution in Thailand	100
5. Human trafficking	5-7
6. Illegal Gambling	140-277
6.1 Underground lottery	(80-98)
6.2 Football gambling	(12-16)
6.3 Casinos	(45-163)
Total	289-457

Remark : Thailand's GDP between 1993-1995 averaged 3.6 billion Baht a year.

The above table testifies to the fact that the average volume of turnover of the illegal economy in Thailand is staggeringly huge and it is enough to stimulate the business of money laundering and other related activities. It can therefore be safely deduced that these illegal business operators and their agents will resort to all available facilities whether they be legal, financial, or banking to launder their illicit proceeds of crime. Their widespread use of money to achieve their ultimate aims of turning illegal proceeds to legal money undoubtedly paves the way for a general degradation of morality, which unfortunately has become a negative social phenomenon tearing apart the fabric of society.

The overall situation being as such, it has become imperative that the

Government and the business community take timely action to guard against the onslaught of organized crime, particularly money laundering. To this end, as we have observed, the State reacted, and will continue to react, with some commendable determination by means of administrative and legislative initiatives.

Legislative & Administrative Initiatives

Beginning in 1991, the government of Thailand had taken the following legislative and administrative measures in pursuance of the 1988 Vienna Convention (The United Nations Convention against Illicit Trafficking in Narcotics Drugs & Psychotropic Substances) :

- a) the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534; (1991)
- b) Ministerial Regulations (to implement the above Act); and
- c) the Money Laundering Control Act, 1999

It may, however, be noted that the legal and administrative instruments shown in (a) and (b) above do not directly deal with money laundering properly; whereas item (c) is the precise answer to the problem of money laundering in Thailand.

**MONEY LAUNDERING CONTROL
ACT OF THAILAND 1999**

**The Money Laundering Control Act
1999 consists of 7 chapters and
66 sections :-**

- Chapter 1 : General Provision
- Chapter 2 : Reporting and Identification
- Chapter 3 : Money Laundering Control Board
- Chapter 4 : Business Transaction Committee
- Chapter 5 : Office of Money Laundering Control
- Chapter 6 : Actions on Properties
- Chapter 7 : Penalties

“Predicate offences” mean

1. Narcotic offences : offenses pertaining to narcotics, under the Narcotics Control Act or the Act on Measures for the Suppression of Offenders in an Offense Relating to Narcotics.
2. Trafficking of children and women : offenses relating to sexuality under the Penal Code, in particular sexual offenses pertaining to procuring, seducing, and taking away, for indecent acts, women and children in order to gratify the sexual desire of another person, sexual offenses against children and minors, offenses under the Measures to Prevent and Suppress Trading of Women and Children Act, offenses under the Prevention and Suppression of Prostitution Act, especially offenses pertaining to procuring, seducing and taking away persons for the purpose of forced prostitution, offenses pertaining to conducting a prostitution businesses as owner, operator, or manager of places of prostitution, or supervising persons who commit prostitution in places of known prostitution.
3. Cheating and fraud of the public : offenses of cheating and fraud of the

public under the Penal Code or offenses pertaining to acquiring loans fraudulently pursuant to the Fraudulent Loans and Swindles Act.

4. Misappropriation or cheating and fraud by financial institutions : offenses of misappropriation and cheating and fraud under the law governing commercial banks, law governing the conduct of business in finance, money market funds, securities and credit fencier, law governing securities and securities market, which are committed by managing directors or any person who is responsible for or has some interests in conducting the affairs of a financial institution.
5. Malfeasance in office or in judicial office : offenses pertaining to malfeasance in office or malfeasance in judicial office under the Penal Code, offenses pertaining to law governing officers of government organizations or sector or offenses pertaining to malfeasance on dishonesty in carrying out official duty under other laws.
6. Extortion or blackmail by financial institutions : offenses of extortion or blackmail which are committed by a member of a secret society or criminal organization, under the Penal Code.
7. Customs evasion : offenses of customs evasion under the Customs Law.

“transaction” means any activity relating to a juristic act, contract, or any operation with other persons dealing with finance, business or involving properties;

“suspicious transaction” means a transaction that is more complicated than the norm by which that transaction is usually conducted, a transaction that lacks economic possibility, a transaction believed to be conducted for the purpose of avoiding the application of this Act or a transaction

related or possibly related to a predicate offense, whether the transaction was conducted once or more than once;

“properties related to an offense” means :

- (1) money or properties derived from a predicate offense, or from supporting or assisting in the commission of a predicate offense;
- (2) money or properties derived from the sale, distribution, or transfer in any manners the money or properties in (1); or
- (3) fruits of the money and properties in (1) and (2)

Notwithstanding how many times the properties in (1), (2), or (3) have been sold, distributed, transferred, or changed from, or have been found in whosever ownership, or have been transferred to whomever, or have been shown registered or recorded under whosever ownership.

“Financial institutions” means :

1. Banks
2. Trust and investment companies, credit and finance companies and securities enterprises
3. Industrial Fund Enterprise of Thailand
4. Saving Cooperative
5. Other institutions as designated in the Ministerial Regulations.

Definition of “money laundering offence” under section 5 of the Money Laundering Control Act 1999

Whoever

- (1) transfers, receives the transfer, or changes the form of properties related to an offense, for the purpose of concealing or covering up the sources of those properties, or for the purpose of assisting other persons before, while, or after the commission of the offense so that the offenders can avoid

the penalty or receive lesser penalty for the predicate offense; or

- (2) takes any actions in order to cover up or disguise the true nature of the manner of obtaining, location, sale, transfer, and rights of ownership, of properties related to an offense

Shall be deemed as having committed the offense of money laundering.

The following persons are required to report without delay to the Anti-Money Laundering Office, all transactions that are unusual, suspicious or in excess of a given amount fixed in the Ministerial Regulations :-

1. Financial Institutions
2. Land registration offices
3. Other persons in exercise of their profession carrying out, supervising or advising on transactions involving movement of capital.

The Money Laundering Control

Board mainly consists of :-

- Prime Minister as Chairman
- Minister of Finance as Vice-Chairman
- Permanent Secretary of Ministry of Justice
- Attorney-General
- Commissioner General of the Royal Thai Police
- Secretary General of Narcotic Control Board
- Governor of the Bank of Thailand
- Other nine members with expertise in economics, monetary matters, finance or law appointed by the cabinet etc.

The Anti-Money Laundering Office is subordinate to the Office of the Prime Minister and has the following powers and duties;

1. To carry out resolutions of the Money Laundering Control Board and Business Transaction Committee
2. To receive, collect and examine information on financial transactions

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3. To share information with the Court and other competent authorities for the purpose of investigating and prosecuting offenders
4. To develop training programs for concerned government and private sectors.

Special methods of investigation

The competent officials may apply to the Civil Court for an order authorizing;

- Placing bank accounts under surveillance
- Tapping telephone lines
- Accessing computer systems.

There shall be a Business Transaction Committee consisting of :-

- Secretary General of the Money Laundering Control Board as Chairman
- Other 4 members appointed by the Money Laundering Control Board.

Action on Properties (section 48-59)

The acknowledgement of the report may accompany an order by the Business Transaction Committee seizing or attaching suspicious properties for a period not exceeding 90 days.

All properties related to predicate offences must be forfeited irrespective of whether there is a convicted person and the properties will devolve to the Kingdom of Thailand.

Penalties (sections 60-66)

Whoever commits a money laundering offence shall be punished with imprisonment of one to ten years and a fine from between twenty thousand Baht to two hundred thousand Baht or both.

If the offender is a juristic person, he shall be punished with a fine from two hundred thousand Baht to a million Baht.