

LEGAL APPROACH TO COMBATING ILLICIT DRUG TRAFFICKING AND MONEY LAUNDERING IN THAILAND

*Krirkkiat Budhasathit **

I. THE CURRENT SITUATION OF DRUG PROBLEMS

A. Drug Related Crime

During the last decade (1992-2002), a dramatic number of drug problems have been found in Thailand. Although the Thai Government has applied extreme measures to suppress drug trafficking, the number of drug cases and offenders throughout the country are still high. The drug problem of Thailand nowadays is that the country is frequently used as a transit place to the international market while the epidemic within the country is also radical. The number of domestically produced drugs like opium, marijuana and methamphetamine are far less than those smuggled from neighbouring countries. The drugs that are found in most tourist cities around the country are marijuana, heroin, ecstasy, ketamine, cocaine and methamphetamine. Traditional drugs like opium, marijuana, and kratom plants are prevalent in many areas of the country while volatile substances are epidemic in slums and dense communities.

Number of Drug Cases and Offenders in Thailand during 1998-2003

Year	Number of Cases	Number of Offenders
1998	193,502	212,519
1999	206,170	223,294
2000	222,498	238,153
2001	205,426	218,218
2002	179,866	189,998
2003 (Jan-Mar)	18,119	19,252

Methamphetamine is the most serious drug problem in Thailand and its become an epidemic in every region. The supply of methamphetamine, which comes from both inside and outside Thailand, has expanded intensively. Big syndicates mostly control the drug producers and traffickers because only the large and reliable wholesale traffickers can make direct contact with the manufacturers. These syndicated groups deliver methamphetamine and other drugs to medium and small-scale traffickers before distributing to retailers or users. In 2002, 95.9 million methamphetamine tablets were seized, which is the highest figure ever recorded.

The methamphetamine is mainly produced around the Golden Triangle area and smuggled through the Thai northern border as the main route. Instead of carrying the drugs through the border channels, the drug traffickers use various methods to transport the drugs i.e. drug caravans escorted by armed forces, sneak into the jungles nearby the northern border and store the drugs at villages along the Thai border as a hub before distributing it to other areas. Moreover, there is evidence that during the last two years a huge amount of drug smuggling is taking place using sea routes. The drugs originate from the producing area in the north and are transported to a bay in the central part of Myanmar before being carried in fishing

* Secretary of the Criminal Court, The Criminal Court, Thailand.

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boats to the southern part of Thailand. Another main route is along the Mekong River, which is near to the producing area, to the north and north-eastern part of Thailand. For smuggling inside the country, the land route is popularly used to smuggle methamphetamine tablets from one place to another. The producers and smugglers are mostly hill tribes including Chinese haw and Thais and some of them are found to have a connection with overseas foreigners.

Marijuana growing is found throughout the country but its concentration is mostly in the north-eastern region. Local production may be enough for domestic demand but the total production is not sufficient to supply international markets. Meanwhile, smuggled marijuana from neighbouring countries to Thailand is not only delivered to international markets but distributed in the country as well. The eastern seashore is used as a main route to transport marijuana via Thailand to other countries. Large quantities of marijuana products are gathered in the sea-connected provinces before being loaded into fishing trawlers, to be carried through the Thai gulf and reloaded onto cargo ships waiting in the open sea. For marijuana abuse, the situation during this period is stable since this drug is quite cheap and available in all regions. In addition, it is not a hard-core drug like heroin or methamphetamine.

The volatile substances epidemic tended to be less radical last year. Glue, thinner, and lacquer are still the three kinds of abused volatile substances in Thailand. People who abused these substances were the same groups; i.e., out of school youths, street kids, and some adults living in slums throughout the country. However, due to the heavy measures being taken against hard-core drugs, there is a possibility that the situation of volatile substance abuse will become more severe.

The epidemic situation of club drugs like ecstasy, ketamine, and cocaine during this period seems to be more severe than the previous period. One reason is the price of these worldwide popular drugs tends to decrease each year. For example, the retail price of ecstasy in the early period ranged between 800-1500 Baht per tablet but it recently costs between 350-600 Baht. The Thai authorities seized eight kilograms of cocaine in 2001, which was two times higher than in 2000. Ecstasy and cocaine are mainly smuggled by foreign drug traffickers from Europe and Latin America before distributing them to their drug networks in Thailand and neighbouring countries. Meanwhile, ketamine is imported from countries in South Asia and Eastern Europe. However, most ecstasy traffickers and dealers in Thailand have been recently known to distribute ketamine and cocaine at the same time. Ecstasy and ketamine are usually used together by drug abusers in entertainment places since both drugs have similar effects. Ecstasy is usually imported into the country from two sources: from overseas countries via international airports or seaports and from a neighbouring country in the south of Thailand. As ecstasy is increasingly spreading in Thailand and has a high price, some drug traffickers have tried to make ecstasy tablets in Thailand. For example, the police arrested a Canadian and his Thai wife in November 2001. They were charged with using his kitchen as a drug lab and they had a simple stamping machine to produce small quantities of ecstasy tablets. The raw materials, MDMA and precursors chemicals were smuggled from a European country. The police found 3,300 ecstasy tablets and 20 bottles of ketamine in their house during the raid. Major abusers of these club drugs were found to be youths, students, and wealthy people in big or tourist cities i.e. Bangkok, Phuket and Pattaya.

Smuggling of precursors, chemicals and equipment used in drug manufacturing has become more serious along the Thai-Myanmar border. The manufacturers are provided chemicals and equipment from Thai conspirators. The crucial exit is at a permanent checkpoint in Mae Sai and Tachileik District, Chiang Rai Province. The Thai government set up the Precursor Chemical Control Committee in 1993 to formulate a national strategy on precursors control, to supervise the precursor control and implementation and to develop cohesive efforts among concerned chemical control agencies i.e. the Food and Drug Administration, Industrial Works Department, Customs Department, Department of Internal Trade, Police Narcotics Suppression Bureau, Office of Permanent Secretary of Ministry of Interior, Foreign Trade Department, Pharmaceutical Organization and the Office of Narcotics Control Board (ONCB). Twenty-three chemicals are controlled in accordance with the 1988 UN Convention and more than seven precursors and chemicals, which are not listed in the 1988 UN Convention are also put under control.

Currently, caffeine has become one of the crucial substances because it is a major ingredient of methamphetamine tablets. Each tablet is generally composed of 60 mgs. of caffeine and 23 mgs. of methamphetamine and 7 mgs. of other binding substances. As a result, the government has enforced the Commodities Control Act 1952 to control the possession, transformation and transportation of caffeine throughout the countries as well as the Import and Export Act 1979 to control the import in and export of caffeine out of the country. Thai border authorities now severely control the smuggling of chemicals and equipment from Thailand to the producing sites along the border. According to the Commodities Control Act 1952, the possession, transformation and transportation of caffeine without permission is subject to imprisonment for 10 years.

Drug Seizure throughout the Country During 1998-2003

Weight: Kilograms

Year	Heroin	Meth-Amphetamine	Ecstasy	Opium	Dried Marijuana	Volatile Substances
1998	577	3,012 (33.5 Million tablets)	1 (5,920 tablets)	1,772	2,890	599
1999	404	4,518 (50.2 Million tablets)	5 (21,794 tablets)	2,046	14,684	4,141
2000	384	7,549 (83.9 Million tablets)	18 (72,182 tablets)	1,595	10,323	455
2001	474	8,459 (94.0 Million tablets)	17 (67,539 tablets)	2,289	10,921	360
2002	634	8,635 (95.9 Million tablets)	37 (149,587 tablets)	4,034	12,122	453
2003 (Jan-Mar)	138	1,942 (21.6 Million tablets)	14 (57,083 tablets)	9,721	1,111	52

Seized opium includes raw and cooked opium and opium poppy plants

B. Money Laundering Situation

After the Anti-Money Laundering Act became effective, there were evidently changes in domestic money laundering. Over-the-counter banking transactions are carried out in amounts just under the amount set forth in the law (2 Million Baht) in order to avoid the transaction being reported. Many offenders opt to carry cash from one place to another or keep it at home. They also convert the money to gold, jewellery, real estate, shares, vehicles or other property instead of depositing it in financial institutions. Some offenders set up high risk businesses such as jewellery shops, oil trading companies, tour companies, foreign exchange, real estate companies and entertainment places to launder their money.

There are many money laundering transactions along the Thai-Myanmar border in the northern region. Most of the cases are drug payments. The most popular method is cash carried across the border; nevertheless, some traffickers open a bank account in their nominees' names to receive money transmissions. In the southern region, cash is also frequently used for the payment of drugs and evaded custom products. Meanwhile, gambling is the main cause of money transactions along the Thai-Cambodia border.

In brief, offenders generally avoid the anti-money laundering law by transferring money via the

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following channels:

1. Banking transmissions using a false I.D. or fraudulent papers to pay the import price or repay a loan higher than the real value.
2. Underground transmission via foreign exchange, travel businesses or gold and jewellery shops.
3. Hire a person to carry cash and deposit it in foreign bank accounts. There is a loophole in the regulations that does not require cash-carry reports. The most common destination countries are Hong Kong, Singapore and Australia.

Case Example

The police stopped and searched a pick-up truck driven by Mrs. A. They found three Million Baht cash hidden in the trunk's side compartment. Mrs. A admitted that Mr. B hired her to deliver the money in Chiang Mai province in the northern region.

The money and vehicle were seized, the police went to search Mrs. A's house and found a small amount of methamphetamine. Mrs. A was indicted for possession of drugs. She was bailed on 200,000 Baht cash, but finally she pleaded guilty. The Criminal Court rendered judgment and sentenced her to six months imprisonment and a fine of 5,000 Baht; nevertheless, the sentence was suspended for two years. The police reported the matter to the AMLO.

The AMLO officials made a preliminary examination. They found that Mrs. A had committed a drug offence (drug possession) and were convinced it related to the drug dealing. The matter fell under the predicate offences under the AML Act. The officials, therefore, reported it to the Secretary General for review and then forwarded it to the Transaction Committee.

The Committee considered that there was convincing evidence and then ordered a 90 days temporary seizure of the 3 Million Baht police-seized cash, 200,000 Baht bail money and the truck which Mrs. A drove. The AMLO took further steps by submitting the documents to the Prosecutor for filing the petition. The Prosecutor; nevertheless, required additional statements to support the evidence. After the AMLO officials finished the additional statement, the Prosecutor then filed a petition to the Civil Court for forfeiture of Mrs. A's property. The Prosecutor also filed a petition for the provisional seizure of all three properties prior to the Civil Court issuing a forfeiture order. The Civil Court granted the provisional seizure order and the property was retained by the Secretary General of the AMLO. The Civil Court set a date for a hearing and ordered a notice to be posted at the Court and have the matter published for two consecutive days in a local well known newspaper. Copies of the notice were passed to the AMLO for posting at the AMLO and the police station where the properties were seized. A copy of the notice was also mailed to Mr. C, the truck's owner according to the registration plate.

The Civil Court then commenced the hearing. Mr. C appointed a lawyer to file a petition to claim his true ownership. He claimed that the truck was hire-purchased from him and not related to the drug offence. After the hearing, the Civil Court ordered the forfeiture of two amounts of cash totalling 3.2 million Baht and returned the truck to Mr. C.

II. SPECIAL MEASURES AGAINST DRUG TRAFFICKING

A. Controlled Delivery

The Narcotics Act B.E. 2522 (1979) as amended in 2002 provides legal power to use controlled delivery channels by competent officials. Section 15 in Para I and II provide that: "No person shall produce, import, export, dispose of or possess narcotics of category I, unless the Minister permits as necessity for the use in government service. The application for the permission shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulations."

Since this Section was just amended at the end of 2002, there are no Ministerial Regulations issued yet. As a result, controlled delivery in Thailand is pending.

B. Communication Interception

Access to communication interception may be granted under the Narcotics Control Act B.E.2519 (1976) and the Anti-Money Laundering Act. This measure is a new part of the Narcotics Control Act 1976 as amended by the fourth revision in 2002. Section 14 four allows competent officials to intercept the communication of a suspect by the permission of the Chief Judge of the Criminal Court. The procedure begins when there is a reasonable ground that any information communicated via post, telegraph, phone, facsimile, computer, other communication instruments and electronic or other information technology communication is used or may be used for the purpose of the commission of a narcotics offence. The officials then request the approval of the Secretary-General of the ONCB and then submit a request to the Chief Judge for communication interception. The Chief Judge will consider the affect of individual rights and if he believes that there is reasonable ground that a narcotics offence has been or will be committed and the information may be received by granting the access and there is no other method more suitable and effective, the permission will be granted. The Chief Judge may permit the interception for a period not over 90 days each time and he may change the permission depending on the circumstances. The information obtained must be kept and used only for the investigation and as evidence in the prosecution case.

Since this Section has just been added to the Narcotics Control Act and the ONCB is in the process of coordinating with competent officials to comply with the regulations to utilize this method, there are few requests submitted to the Chief Judge of the Criminal Court.

The Anti-Money Laundering Act also provides the communication interception power. When there is a reasonable ground that an account at a financial institution; equipment or communication device; or any computer has been used or may be used for the commission of a money laundering offence, the competent official designated by the Secretary-General of the AMLO shall submit a petition to the Civil Court to grant access to the information of such sources. The Civil Court may grant access not longer than 90 days each time.

The provisions under the Narcotics Control Act and the AML Act are quite similar; however, there are some differences. The power to grant access under the Narcotics Control Act vests solely with the Chief Judge of the Criminal Court, while all judges of the Civil Court may use such power under the AML Act. In addition, the Narcotics Control Act clearly mentions that information obtained by the access may be used in the investigation and as evidence in the trial of narcotic cases. The AML Act does not have the same provisions.

Communication Interception under the Narcotics Control Act

Year	Amount	Method
2003*	9	Wire-tapped

Source: the Criminal Court *counted at the end of July

Communication Interception under the Anti-Money Laundering Act

Year	Amount	Method
2001	1	Wire-tapped
2002	7	Wire-tapped
2003*	5	Wire-tapped

Source: the Civil Court *counted at the end of July

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C. Utilization of Informants

To suppress illicit drug trafficking effectively, information is very important. The ONCB and the AMLO generally accepts the utilization of informants. The ONCB provides rewards to informants who give information relating to narcotics according to the Prime Ministerial Office Regulation Re: Rewards in Narcotics Case B.E. 2537 (1994). The Regulation rules that the reward may be paid to an informant who informs the competent official and it leads to the arrest and seizure of the narcotics. The reward is calculated according to the weight or number of tablets seized. For example, the informant will receive 10 Baht for each gram of seized heroin or 5,000 Baht per 500 tablets of Methamphetamine (for the portion over 500 tablets, the reward is 3 Baht each). The reward will be paid from the ONCB budget.

The informant, who gives information about property related to the commission of a narcotics offence, will receive not over 10 % of the appraisal value of the forfeited property less the expenses for appraisal or auction sale. In this case, the reward will be paid from the Narcotics Control Fund.

The AMLO will reward the informant, who gives information in the predicate offence or money laundering offence, or information concerning assets related to the commission of an offence. However, there must be a proceeding against any property in such case in order to qualify the informant for a reward. The AMLO uses its annual budget to pay the reward.

D. Witness Protection

The Witness Protection in Criminal Case Act B.E. 2546 (2003) will be effective by the end of this year. This Act will provide general protection to witnesses and their relatives. The general protection is to safeguard the witness or provide a cover name, address, picture or any personal identifying information as the case may be. Moreover, in some particular cases i.e. offences related to drugs, anti-money laundering, anti-corruption, customs or organized crime, the witness may receive special protection by requesting it from the Minister of Justice. The special protection includes providing suitable shelter, an allowance, education or a change of name or any registration records. The responsibility of witness protection will vest with the Witness Protection Office, Ministry of Justice.

III. LEGAL FRAMEWORK TO COMBAT DRUGS

A. Overview of Criminal Litigation in Thailand

The main provisions of criminal procedural law are contained in the Criminal Procedure Code B.E. 2478 (1935). This Code generally applies to trials of criminal cases, including drugs cases, in all Courts of Justice. However, asset forfeiture under the Anti-Money Laundering Act B.E. 2542 (1999) will be tried in the Civil Court and subject to the Civil Procedure Code.

Usually, four types of personnel of the law are involved in criminal proceedings. They are police officers, prosecutors, lawyers, and judges. The investigation and inquiry in order to find offenders and establish their guilt is the responsibility of the police officers. In many drug cases, the police officers may be teamed up with officials of the Office of the Narcotics Control Board (ONCB) or the Anti-Money Laundering Office (AMLO). When the investigation and inquiry is finished, the file of the inquiry will be submitted to the prosecutor for consideration and the offender will be indicted if the prosecutor concludes that there is enough evidence to support a conviction. As regards criminal cases, the court in a district where an accused resides or is arrested, or where an inquiry official makes an inquiry has jurisdiction over the cases. Nevertheless, the Criminal Court, which is situated in Bangkok, has discretion either to try or adjudicate criminal cases arising outside its territorial jurisdiction brought before it or to transfer them to the court having territorial jurisdiction. At the trial, it is the burden of the prosecutor to prove beyond a reasonable doubt to the court that the defendant is guilty as charged. The court will conduct a trial by hearing evidence from both sides in open court and in the presence of the defendant. It should

also be added that the accused or defendant is entitled to full legal representation. In certain cases, it is obligatory on the part of the judge to call upon and appoint a lawyer in his/her defence.

B. Narcotics Control framework

The narcotics control laws of Thailand may be classified into three groups:

1. Laws on Designating Powers and Duties of Competent Authorities

Narcotics Control Act B.E. 2519 (1976)

This Act codified the establishment of the Narcotics Control Board (NCB), the establishment of the Office of the Narcotics Control Board (ONCB), and the empowerment of the NCB, ONCB, and competent officials.

Act on Authorizing Naval Officials for the Suppression of Some Offences Committed at Sea (No. 4) 1991

This Act authorizes naval officers to inspect, search, and force a vessel suspected of having narcotic drugs to remove cargo or things in the vessel for examination. The Act also empowers them to seize or force the vessel or conduct any actions in order to bring the vessel to a convenient place for inspection, inquiry, or prosecution. The naval official may seize the vessel until a final non-prosecution order is issued or otherwise ordered by the court in case the accused is prosecuted, and may arrest and hold in custody the accused, not exceeding seven days. After that the accused has to be released or sent to the inquiry official together with the file of inquiry.

Act on Measures for Suppression of Offenders in an Offence Relating to Narcotics B.E.2534 (1991)

This Act codifies the provisions of the three significant measures to tackle illicit drug trafficking. These are 1) forfeiture of assets 2) conspiracy, and 3) expansion of jurisdiction. These measures are effective tools to eradicate drug trafficking networks because if they do not have vast assets, they cannot continue large-scale operations.

2. Laws on Controlling Narcotics and Drugs

Psychotropic Substances Act 1975

This Act codified the control of psychotropic substances by classifying psychotropic substances into four categories (schedule I-IV). The Act directly resulted from the Convention of Psychotropic Substances 1971 of which Thailand is a Party.

Narcotics Act 1979

This Act codified the control of narcotic drugs by classifying them into five categories depending on the degree of their harmful effects in order to establish the proper punishment for offenders committing drug offences in each category.

Emergency Decree on Controlling the Use of Volatile Substances 1990

This Emergency Decree codified the control of volatile substances by establishing offences and punishment.

Commodities Control Act, 1952 (No.11 as amended in 2000)

This Act codified the control of certain commodities, which are essential chemicals and precursors likely to be used in producing narcotic drugs in 76 provinces of Thailand, e.g. caffeine.

3. Law to Rehabilitate Drug Abusers

Narcotic Addict Rehabilitation Act B.E. 2545 (2002)

In the past, Thailand had two drug addict treatment and rehabilitation systems: 1) Voluntary System for drug addicts to voluntarily apply for treatment in various treatment centres, and 2) Correctional System for drug addicts who were sentenced to be imprisoned or on probation. However, they were not effective enough. The relapse rate of the addicts was very high or nearly 100%. Therefore, the Narcotic Addict Rehabilitation Act 2002 was enacted and enforces a compulsory system to improve the effectiveness and efficiency of the drug addict's rehabilitation, or to help them stop using narcotic drugs as much as possible with two major objectives: 1) drug users or addicts are required to be treated and rehabilitated properly, and 2) if the result of the rehabilitation is satisfactory, the drug addicted offenders shall be relieved from the alleged offence and be released at liberty so that they will not have a criminal record as a drug offender and can be reintegrated into society happily. This Act codifies the establishment of the Narcotic Addict Rehabilitation committee and their power and duties, localities for identification and rehabilitation, alleged offences, the procedure for identification of alleged drug offenders, the requirement of the procedure of rehabilitation and the assessment of rehabilitation results.

C. Anti-Money Laundering Framework

Thailand promulgated the Anti-Money Laundering Act B.E. 2542 (1999) (AML Act) in March 1999 and it has been effective since August 20, 1999. This Act directly resulted from the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which Thailand became a member of through the Instruments of Accession in 2002. This Act criminalizes money laundering and related conspiracy and establishes the Anti-Money Laundering Office (AMLO) to perform functions, among many things, as the financial intelligence unit in Thailand and pursue a civil forfeiture system to confiscate assets involving the predicate offences.

The AML Act consists of seven chapters and 66 sections, which includes eight predicate offences as follows:

1. Offences under the narcotics laws.
2. Offences of trafficking in or sexual exploitation of children and women.
3. Offences of cheating and fraud on the public.
4. Offences of misappropriation or cheating and fraud under the laws governing commercial banks and financial institutions.
5. Offences of malfeasance in office or judicial office.
6. Offences of extortion or blackmail committed by criminal organizations.
7. Offences of customs evasion under the customs law.
8. Offences of terrorism (This predicate offence was added to the AML Act on 11 August 2003).

D. Money Laundering Offences

The AML Act has criminalized the money laundering actions of any persons whoever:

1. Transfers, receives a transfer or converts an asset involved in the commission of an offence for the purpose of concealing or disguising the origin or source of an asset or for the purpose of assisting another person (s) to avoid or receive a lesser penalty for the predicate offence; or
2. Acts in any manner whatsoever for the purpose of concealing or disguising the true nature of the acquisition, source, sale, transfer or ownership of an asset involved in the commission of an offence (Section 5).

The penalties are imprisonment for one to ten years or a fine of 20,000 - 200,000 Baht or both. If the defendant is a corporation, it will face a fine of up to 200,000 - 2,000,000 Baht (Sec. 60-61). Whoever undertakes the action of aiding and abetting either before or during the commission of an offence, or materially assists the offender to escape or avoid the penalty or gains a benefit from the commission of an offence shall receive the same punishment as the principal offender (Sec. 7). Any person attempting to commit the offence of money laundering is subject to the full scale of the penalty (Sec. 8).

The AML Act imported the conspiracy and extraterritorial jurisdiction principals from the Act on Measures for Suppression of Offenders in an Offence Relating to Narcotics B.E.2534 (1991). In case two or more persons conspire to commit the money laundering offence, they will each receive a half penalty. However, if the offence is committed as a result of conspiracy, the conspirators shall receive the full penalty (Sec. 9). Regarding extraterritorial jurisdiction, even when the money laundering occurs outside the Kingdom of Thailand, the case may be prosecuted in Thai courts if (i) a Thai national or resident is an offender, or (ii) an alien commits the offence with the intention of having consequence in the country, or the Government is the injured party, or (iii) when an alien committed an offence under the other state's law and he appears on Thai territory and is not yet extradited under the Extradition Act (Sec. 6).

Money Laundering Criminal Cases Filed in the Criminal Court

Year	New Cases Filed	Predicate Offence	Cases Finished
2001	4	Narcotics (3), Malfeasance in Office (1)	1
2002	-	-	2
2003 (End of July)	5	Cheating (1), Narcotics (3) and Narcotics and Customs Evasion (1)	3

E. Financial Intelligence Unit

The AMLO has performed the financial intelligence functions under the AML Act. More specifically, the law requires that:

- Banking and Financial institutions (including credit financing businesses, securities dealers, insurance companies and other legal entities in the finance business), land registration offices and investment consultants are required to report cash transactions of 2,000,000 Baht or more, or 5,000,000 Baht or more in a property transaction to the AMLO.
- A suspicious transaction of any size must also be reported. Transactions of this type are, for instance, an unusually complicated transaction or with features that are unusual or seem uneconomic on their face or seem designed to avoid reporting under the AML Act or where there is any hint it is possibly connected to a predicate offence.
- Financial institutions are required to have their customers identify themselves and record certain statements of fact regarding reportable transactions. The records must be retained for five years.

F. Cooperation of the Financial Institutions

When the AML Act first came into effect, the banks and financial institutions, which are subject to the law, were confused with their new duties. Some bank staff advised their customers to separate

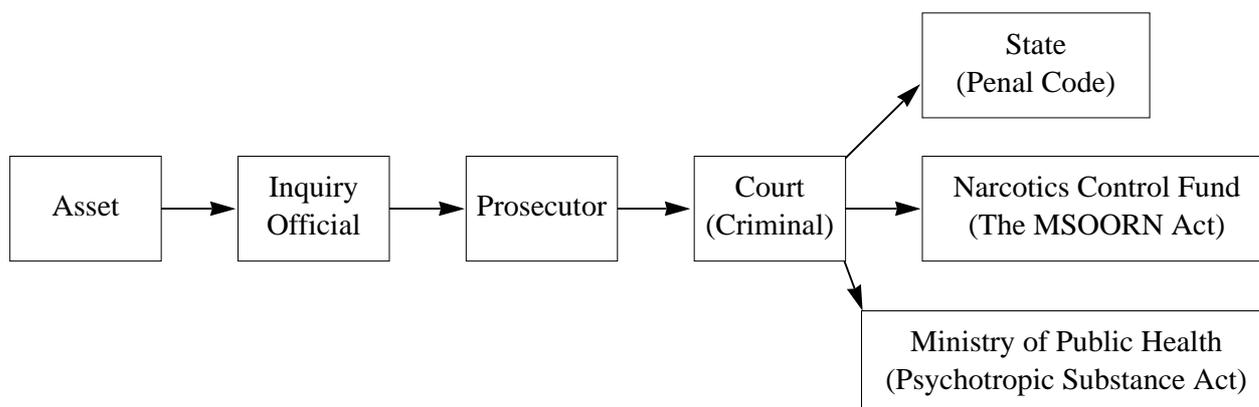
transactions into amounts less than the specific number prescribed by the law. The reason for this was to reduce the bank's responsibility to report the transactions. As time passed, the financial institutions began to understand the law and now cooperate quite well. The AMLO received 605,176 transaction reports during 27 October 2000-31 December 2001, valued at 36,633 Billion Baht. The transactions are classified into 232,013 cash transactions, 356,587 property transactions and 16,576 suspicious transactions. The AMLO also examined an additional 181 suspicious transactions reported by other intelligence agencies.

G. Assets Forfeiture

1. General Provisions

Under the Penal Code B.E. 2499 (1956) which generally applies to all criminal cases, any property as provided by the law that any person makes or possesses to commit an offence shall be forfeited (Sec. 32). In addition, the court may order forfeiture of the property, which is used or possessed for use in the commission of an offence by a person, or the property acquired by a person through the commission of an offence unless the owner of such property does not connive with the offence (Sec. 33). The property forfeited under the Penal Code shall become the property of the State.

In addition, Section 30-31 of the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E. 2534 (1991) (the MSOORN Act) and Section 116 of the Psychotropic Substances Act B.E.2518 (1975) have similar provisions and process to the Penal Code. However, when the court orders the forfeiture, the property will devolve to the Narcotics Control Fund or the Ministry of Public Health as the case may be.



2. Special Forfeiture under Narcotics Related Laws

According to the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E. 2534 (1991) (the MSOORN Act), the property connected with the commission of an offence related to narcotics may be forfeited. The Act provides a definition of narcotics offences that the production, importation, exportation, disposition or possession for disposition of narcotics, and also includes conspiracy, aiding and abetting, assisting or attempting to commit such offences. The Property Examination Committee and the Secretary-General of the ONCB have authority to issue both the property examining order and restraining or seizure orders. In case there exists a reasonable ground that the property is connected with the commission of an offence related to narcotics, the Committee or the Secretary-General will order an examination. If the owner of the property cannot adduce evidence to prove that the examined property does not relate to the offence, or he has accepted the transfer of the property in good faith and for value, or reasonably acquired

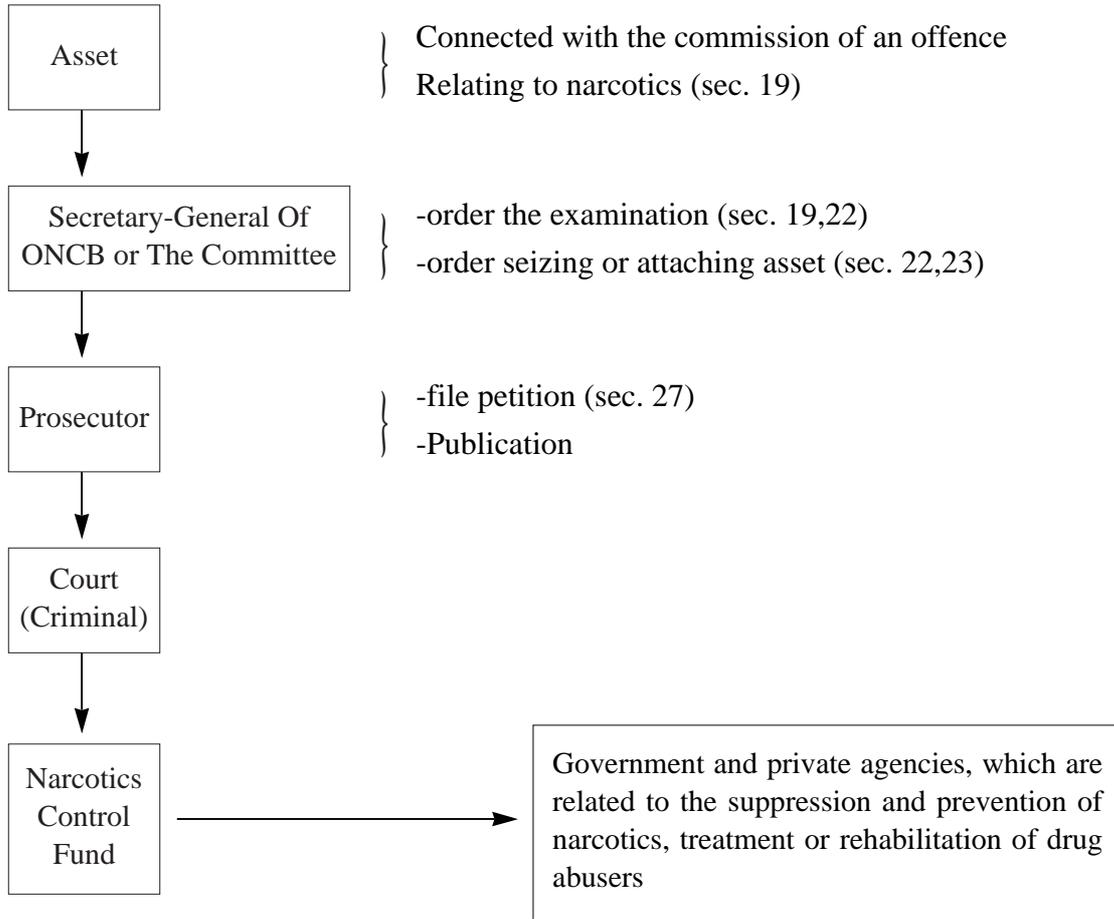
the property on account of good moral or public charity, the property will be seized or attached. The Committee may issue a provisional seizure order if there is a reasonable ground that the property will be transferred, removed or concealed during the examination. The seized property will be retained by the ONCB. In the case that the property is not suitable to retain, the Secretary-General may order an auction sale or utilize such property for official purposes. After the prosecutor has issued a prosecution order of the main narcotic case, he may file a petition to the (criminal) court to forfeit the seized property. The petition may be filed later but before the court passes the judgment. When the petition is filed, the Secretary-General of ONCB makes a petition published in a local newspaper for two consecutive days. A copy of the petition will be posted at the ONCB and police station as well. If there is evidence that shows that any person may be the owner of the property, a registered letter shall be sent to him. Such process is to ensure that a person's rights over their own property are protected. The court shall conduct the trial and the prosecutor has the advantage that prima facie the property connected to the commission of an offence related to narcotics, will be forfeited unless the person claiming to be the owner can prove his/her innocent ownership (see more details in Burden of Proof). The property forfeited under the MSOORN Act shall devolve to the Narcotics Control Fund. From 1 January 2001 to 20 March 2003, there were 2,139 cases of temporarily seized assets valued at 1,380.1 Million Baht. At present, there is a total value of 156.6 million Baht of property finally confiscated by the court and vesting to the Fund. However, this act still has some loopholes and difficulties in enforcement, as it only applies to criminal cases. If the court dismisses the criminal charge, the property will be freed too.

The Narcotics Control Fund is managed by a sub-committee comprised of many government agencies. The sub-committee has the authority to issue regulations of fund management, subject to the approval of the Narcotics Control Board. In 2000, the sub-committee issued regulations to allow government and private agencies, which are related to the suppression and prevention of narcotics, treatment or rehabilitation of drug abusers, to utilize the properties of the fund and to pay a reward to the informant and competent officials. In particular, the sub-committee may grant money payments or support properties of the fund to the government and private agencies:

1. Supporting the suppression and prevention of narcotics and the treatment or rehabilitation of drug abusers.
2. Supporting the education, training and seminars on the topic of the suppression and prevention of narcotics and the treatment or rehabilitation of drug abusers.
3. Supporting consultants, locally or abroad, to hire consultants or expertise on the training or seminars in the above clause.
4. Supporting activities or services which will be useful to the suppression and prevention of narcotics, treatment or rehabilitation of drug abusers.
5. Supporting the cooperation among relevant agencies connected with the above matters, domestically or internationally.

Therefore, the Narcotics Control Fund, in practice, has provided a channel to government agencies to share assets forfeited under the MSOORN Act.

Process to Forfeit the Asset under the MSOORN Act



Actions Undertaken under the MSOORN Act

Year	Examination (Case)	Seize/Attach (Million Baht)	Type of Asset: Million Baht			
			Cash	Deposit	Moveable Asset	Real Property
1998	284	174.3	70.7	60.1	22.2	21.3
1999	257	168.1	39.7	76.2	31.8	20.4
2000	449	240.2	44.2	99.5	50.1	46.4
2001	811	479.2	106.2	134	141.3	97.7
2002	1042	567.6	118.9	156.6	175.7	116.4

3. Forfeiture of Assets Under the AML Act

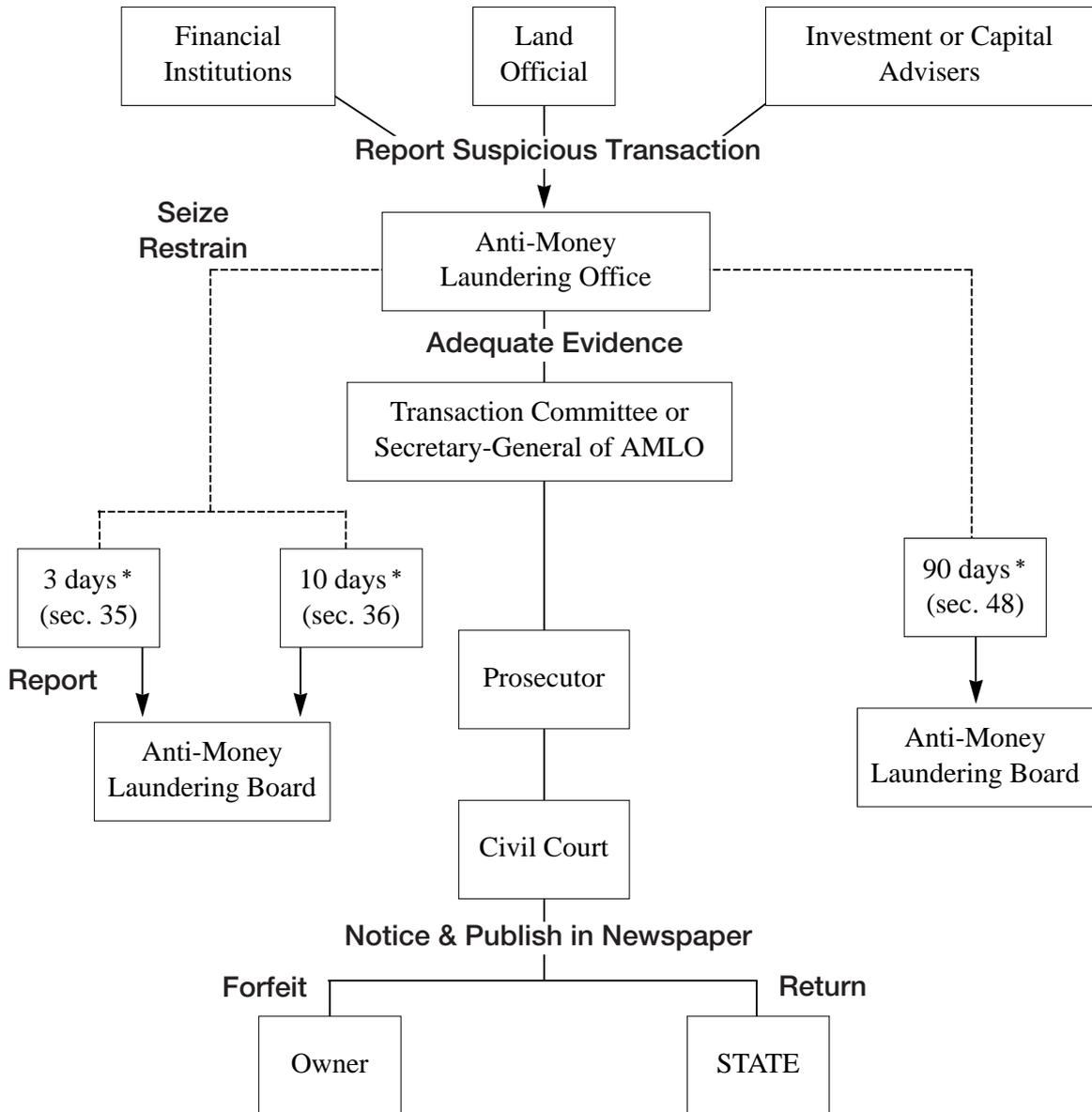
Narcotics offences are one of the eight predicate offences under the AML Act. This Act facilitates the forfeiture of drug-related assets, which may escape the loopholes under the MSOORN Act. It is easier to forfeit drug-related assets under this Act than under the MSOORN Act because it is civil forfeiture and need not be carried out along with criminal proceedings. Actually, the process is quite similar but the AMLO is responsible in this matter. When there is probable cause that any transaction is involved or may be involved in the commission of a money laundering offence, the Transaction Committee can provisionally restrain a suspicious transaction for examination three working days on “reasonable” grounds, or ten days with “convincing evidence”. When there is urgency, the AMLO Secretary-General can himself use the same power with the Committee. If there is a reasonable ground that there may be a transfer, distribution, placement, layering or concealment of any asset related to the commission of a (predicate) offence during the examination, the Transaction Committee or the Secretary-General of the AMLO can order provisional seizure for up to 90 days. The public prosecutor through a civil forfeiture system may then pursue forfeiture of the assets. In the case of provisional seizure and forfeiture, the burden of proof lies with the claimant to prove the assets were legally obtained. Third parties will have one year to file a petition to claim property after the Civil Court has rendered an order. Nevertheless, the forfeited asset under this Act will devolve to the State. The asset sharing under the AML Act, consequently, is practically much more difficult than the MSOORN Act.

Asset Forfeiture Under the Anti-money Laundering Cases Filed with the Civil Court

Year	New Cases Filed	Cases Completed	Outstanding
2001	37	7	30
2002	56	15	71
2003*	47	15	103

* As at the end of July

FLOWCHART OF ASSET FORFEITURE UNDER THE ANTI-MONEY LAUNDERING ACT



* There is probable cause that transaction may involve a money laundering offence

** There is evidence to believe that transaction may involve a money laundering offence

H. Burden of Proof

The prosecutor generally has a duty to prove the offence beyond a reasonable doubt in all criminal cases. In the asset forfeiture proceedings under the MSOORN Act and the AML Act, however, the burden of proof shifts to the person who claims ownership of the seized asset. These two laws have the same principal. If there is evidence showing that the offender is involved or used to be involved in the commission of an offence relating to narcotics (predicate offences or offences of money laundering), the presumption is the asset related to an offence. The offender then has a duty to prove that he is the true owner and the asset is not related to any (narcotics or predicate) offence; or he has received the transfer of ownership honestly and with compensation or he has acquired the asset honestly and morally, or by charity.

IV. INTERNATIONAL COOPERATION

Since the narcotics epidemic is a global problem that needs a global response and international cooperation, Thailand has acceded to be party to the three United Nations Conventions on Drugs Control:

1. Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol
2. Convention on Psychotropic Substances, 1971
3. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

As a result, some narcotics control laws of Thailand were enacted in order to harmonize with these conventions, e.g. Psychotropic Substances Act B.E.2518 (1975) that was harmonized with the Convention on Psychotropic Substances 1971, and the AML Act 1999, that follows the 1988 UN Convention. However, many of the measures required by the 1988 UN Convention had already been codified in previous narcotics laws that were enacted and enforced before the establishment of the 1988 UN Convention such as communication interception was codified in the Narcotics Control Act 1976 (Section 14 fourth); or Extradition Act 1929.

A. Extradition

Extradition to a foreign state is possible under the Extradition Act B.E.2472 (1929). Those fugitives who are accused or convicted of an extraditable crime may be surrendered on the request of a foreign state made through diplomatic channels to the Ministry of Interior. The prosecutor will apply to the court for an arrest warrant. The fugitive who has been arrested will be brought before the court. The court will hear evidence adduced to ascertain that the fugitive has been accused or convicted of the alleged offence and such offence is extraditable. However, the court may refuse to surrender the fugitive if the offence is one of a political nature or the conviction is made by political motive. So far, there are ten countries that entered the treaty on extradition with Thailand, namely the United Kingdom, Belgium, Indonesia, the Philippines, United States of America, China, the Republic of Korea, Laos, Bangladesh and Cambodia. Other countries may request extradition from Thailand by reciprocal practice.

B. Mutual Legal Assistance

Realizing that the growth of transnational crime has become a severe problem, Thailand enacted the Mutual Legal Assistance in Criminal Matters Act B.E. 2535 (1992) as an important piece of legislation to combat international crime. The Attorney General will be responsible as the Central Authority, who will have the authority and function to receive requests seeking assistance and carry out any acts necessary for the success of such assistance.

The scope of mutual assistance under this Act generally are:

1. Taking testimony and statements of persons
2. Providing documents and information in the possession of Government agencies
3. Serving legal documents
4. Search and seizure of articles
5. Transferring persons in custody for testimonial purpose
6. Locating persons for the purpose of investigation, inquiry, etc.
7. Initiating criminal proceedings
8. Forfeiting of Seized properties

Thailand may provide assistance to a country that has no mutual assistance treaty but the foreign country must state clearly that it commits itself to assist Thailand in the same manner upon request. In case of the forfeiture of property, the foreign court must render final judgment to forfeit such property and it is forfeitable under Thai law.

C. Investigative Cooperation with Neighbouring Countries

Thailand regularly exchanges drug information and intelligence with many countries, particularly with its neighbouring countries; i.e., Myanmar, Laos, Cambodia, and Malaysia. The exchange of intelligence and information has been carried out by agency to agency to make this cooperation run smoothly and successfully. There are also international meetings between concerned authorities of these intelligence agencies every year. Investigative cooperation is done both through formal and informal channels. A channel of cooperation was strengthened in 2002, when five Border Liaison Offices were established near border areas around the country. Two are located at the Thai-Myanmar border; one is located at the Thai-Laos border; the other two are located at the Thai-Cambodian border. In addition, successful intelligence exchange operations with Singapore, China, and Japan have also been carried out. The First Narcotics Control Cooperation Meeting between Thailand and the People's Republic of China was held in January 2002, and both sides agreed to organize this kind of meeting every year. In addition, both countries have exchanged their drug liaison officers to work closely in exchanging drug information for over a year while Japan has stationed a liaison officer in Thailand.

D. Technical Support for Intelligence Operations

Several countries have supported Thailand's drug control agencies by providing training and knowledge on drug intelligence and suppression both inside and outside the country. Such countries are the United States, Australia, United Kingdom, Japan, and UNDCP.