

ATTACKING THE PROCEEDS OF CRIME IN THAILAND

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I. INTRODUCTION

The proceeds of crime in Thailand are derived from several criminal activities, namely, illicit drug trafficking, human trafficking, illegal smuggling of workers, smuggling of contraband, illegal oil trafficking, illegal logging, arms trade, contract killings, kidnapping, money laundering, bribing of government authorities and corruption. These activities have not only intimidated and disgusted people but also threatened the safety of lives and property, causing serious damage to national security, both economically and socially. Money and assets gained from illicit acts are frequently laundered and used to fund further illegal activities. The proceeds of crime can make criminals wealthy and healthy, particularly the organized ones. With their wealth, the criminal groups can have strong influence over government authorities by bribing them to keep officials out of their way or prevent them from obstructing the organization's activities.

Corruption is one of the most serious crimes which can generate huge proceeds. In a 2009 survey by Transparency International, Thailand ranked 84, with a Corruption Perceptions Index (CPI) score of 3.4, much behind some countries in the region.¹ The proceeds of corruption are increasing. Kickback proceeds are currently estimated at around 30% of the government's project budget.²

Money laundering is directly related to the proceeds of crime. Once the ill-gotten gains have been amassed, they are frequently transferred to others, who are proxies. The criminally earned money can then go through a money laundering process for safe keeping. There is an urgent need to explore effective countermeasures to handle money laundering and attack the proceeds of crime. If it succeeds, we can eradicate or reduce the criminals' strength and wipe out crime from our society.

II. CURRENT SITUATION OF ACCUMULATION OF PROCEEDS OF CRIME AND MONEY LAUNDERING

A. Accumulation of Proceeds of Crime

The accumulation of proceeds of crime in Thailand comes from several criminal activities. The drugs situation in Thailand has caused most grave concern, with an increasing trend in the extent of trade, the numbers of arrests of drug-related offenders and the number of drug users/abusers. The greatest percentage of crime proceeds, are thus derived from the drugs trade. The trafficking of Amphetamine-Type Stimulants (or ATS) generates the most income and proceeds for the criminals and their syndicates.³ On 24 February

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¹ Corruption Perceptions Index 2009, Transparency International, (visited 2 August 2010) < http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table, describing how Singapore ranked 3, with a CPI score of 9.2, Brunei Darussalam ranked 39, with a CPI score of 5.5, Malaysia ranked 56 with CPI score 4.5. The rank shows how one country compares to others included in the index. The CPI score indicates the perceived level of public-sector corruption in a country/territory.

² *'Corruption' now up to 30% of project costs*, Thailand Times, 17 July 2010 (visited 20 July 2010) <<http://news.forum.co.th/070-money/business/corruption-now-30-of-project-costs/>>, explaining that in a seminar on "Thailand's Investment Environment Looking Forward" the President of the Thai Chamber of Commerce and Board of Trade, Dusit Nontanakorn, revealed that corruption practices have increased to intolerable levels. The last decade saw bribes and corruption eat up, on average, 3% of a project's total value, however, that figure has since jumped to a whopping 30%. Mr. Dusit said that if no action is taken, bribery and corruption could well end-up costing up to between 50-80% of a project's cost.

³ See also Thailand Country Report (2009), (unpublished document, Office of the Narcotics Control Board, Thailand) (on file with the author), at 1.

2010, the Ministry of Justice released news of the arrest of a drugs trafficking *Usaman Samaelaeng* syndicate which operates its trafficking business in the southern parts of Thailand, including illicit cross-border trade with Malaysia.⁴ The authorities arrested four suspects and seized 134,000 amphetamine tablets, three cars, jewellery, luxurious electrical appliances and 6,000,000 Baht in cash. They also froze assets including one house and three condominiums.⁵

The proceeds of crime from the drugs trade also has a transnational organized nature. In 2009, Thai and Myanmar authorities jointly blockaded and searched an area where the gang of Nor Kham, a Myanmar drugs trafficker, who was the subject of both Thai and Myanmar arrest warrants, was hiding. During February 2009, the Myanmar army searched the area and found 414,098 tablets of methamphetamine, 4.5 kilograms of methamphetamine powder, one kilogram of heroin, one kilogram of ephedrine, 12.5 kilograms of caffeine and 162,000 tablets of pseudoephedrine, as well as 22,124,000 Thai Baht, 500,000 U.S. Dollars, a safe containing 1,000,000 Thai Baht and lots of weapons. Subsequently, Thai authorities searched an area near the border in Chiang Rai province and arrested four suspects of Nor Kham's gang.⁶

A large percentage of the proceeds of crime is also derived from misuse of power and the corrupt behaviour of politicians and civil officials. In 1998, Rural Doctor Solidarity, a watchdog group of doctors who work in remote rural hospitals, first exposed medicines and medical supplies scam. This is known as the *Medicines and Medical Supplies Case*. They alleged that the purchasing prices of medicines and medical supplies in 34 provinces were so unusually high that there must be some corruption in the purchasing process. Rakkiat Suksthana, the public health minister at the time, was suspected of involvement. The police and the National Anti-Corruption Commission investigated the case. The Minister was alleged to order his health authority subordinates to purchase medicines and medical supplies from two colluding firms with unusually high prices. A large sum of money appeared in the bank accounts of his wife and associates. In 2002, the NACC ruled that the Minister was "unusually wealthy" and the public prosecutor prosecuted both him and an adviser on corruption charges and filed a motion to confiscate his property, including 233 million Baht in bank deposits. They were both eventually sentenced to 15 years and 6 years of imprisonment respectively, and the property confiscated.⁷

Another well-known case of corruption is the *Klong Daan Sewage Treatment* case. The *Klong Daan* case incorporates a number of corrupt practices, including illegal land registrations, illegal bidding and construction of a waste treatment factory, and non-performing officials. The *Klong Daan* sewage treatment project was adopted in 1995 and expected to be the largest sewage treatment utility in Southeast Asia, with a total budget of 23,700 million baht. The project was located in Klong Daan Sub-district, Samudprakarn Province, in the vicinity of Bangkok. Corruption took place even before the project started up. Wattana Assawahaem, the most influential politician in Samudprakarn and deputy interior minister at the time, used inside information to buy 17 parcels of land, totalling 1900 *rai* (760 acres), from local people in areas where the project would be located. A number of plots of public land were illegally registered as private property and subsequently sold for the project. He paid 563 million baht for the land and sold it to the project owner, the Department of Pollution Control, for 1,900 million baht. The Klong Daan community and some authorities filed a complaint to the NACC for investigation. The case was submitted to the Office of the Attorney General, in 2007, for prosecution. In 2009, the Supreme Court sentenced the former Deputy Minister to 10 years' imprisonment, but he is alleged to have escaped to a neighbouring country prior to the date of the sentence. He is currently still at large.⁸

The amount of ill-gotten gains from illegal gambling is enormous as well in Thailand and South East Asia. The recent news released by INTERPOL relating to football gambling was that more than 5,000 people have

⁴ Press Release, Ministry of Justice, 24 Feb 2010, (visited 15 July 2010) <<http://www.moj.go.th/th/cms/detail.php?id=12738>>.

⁵ The exchange rate on 1 August 2010, 1 US. Dollar approximately equals to 32.50 Thai Baht.

⁶ Thailand Country Report (2009), *supra* note 4, at 8.

⁷ Supreme Court Judgment of the Supreme Court's Criminal Division for Persons Holding Political Positions, Ref. No. Or. Moh. 1/ 2545 and Or. Moh. 2/ 2546 respectively.

⁸ Supreme Court Judgment of the Supreme Court's Criminal Division for Persons Holding Political Positions, Black Or. Moh. No. 2/ 2550 and Red Or. Moh. No. 2/ 2551, see also, Charas Suwanmala, Fighting corruption from the bottom: The case of Thailand, Article 2.org, Asian Legal Resource Centre (ALRC), (visited 24 July 2010), < <http://www.article2.org/mainfile.php/0901/370/> >.

been arrested and nearly 10 million US dollars seized in an INTERPOL co-ordinated operation in Asia run throughout the 2010 FIFA World Cup targeting illegal soccer gambling linked to organized crime gangs. In the month-long operation code named SOGA III, police across China (including Hong Kong and Macao), Malaysia, Singapore and Thailand identified and raided nearly 800 illegal gambling dens which handled more than 155 million US dollars' worth of bets. Jean-Michel Louboutin, INTERPOL's Executive Director of Police Services said that as well as having clear connections to organized crime gangs, illegal soccer gambling is also linked with corruption, money laundering and prostitution. During the operation, which ran from 11 June to 11 July, officers also seized assets including cars, bank cards, computers and mobile phones. The information gathered will now be reviewed and analysed to determine the potential involvement of other individuals or gangs across the region and beyond.⁹

B. Money Laundering¹⁰

1. Where Thai Criminals Launder their Money

The criminals launder their ill-gotten gains through various channels. The general practices are depositing the proceeds in family members or associates' bank accounts, buying real property, and investing in bogus businesses. In the *Medicines and Medical Supplies* case, authorities found 33 million baht given in bribes in bank accounts of the Minister's wife.¹¹

Another renowned case was exposed by procedures in the United States. On 19 January 2010, the U.S. District Court for the Central District of California unsealed an indictment charging S., the former governor of the Tourism Authority of Thailand, and her daughter, J.S., with one count of conspiracy to launder money, seven counts of money laundering, and one count of aiding and abetting.¹² Between 2002 and 2007, Mr. and Mrs. Green, executives of a Los Angeles-based film festival management company, who were convicted at trial of nine substantive *Foreign Corrupt Practices Act* violations, six counts of money laundering, and conspiracy,¹³ paid then-governor S. approximately US\$1.8 million in exchange for more than US\$14 million worth of contracts. The Greens routed the payments through numerous businesses and U.S. bank accounts to bank accounts in the United Kingdom, the Isle of Jersey, and Singapore held in the name of J.S. and an unnamed friend. These payments were disguised as "commission" payments in the Greens' books and records.

In the *Usaman Samaelaeng* case, the authorities found out that the gang had opened a luxury car dealer enterprise in Bangkok as place to launder their drugs proceeds. The authorities seized their 17 sport cars,

⁹ *Thousands arrested in INTERPOL-led operation against illegal soccer gambling networks across Asia*, Interpol Media Release, INTERPOL, 16 July 2010 (visited 20 July 2010) <<http://www.interpol.int/Public/ICPO/PressReleases/PR2010/PR059.asp>>.

¹⁰ Introduction to money-laundering, UNODC, (visited 10 July 2010) <<http://www.unodc.org/unodc/en/money-laundering/introduction.html>> describing how money laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence. See also Money Laundering, Global Politician, 21 February 2008 (visited 10 July 2010), <<http://www.globalpolitician.com/24153-finance-crime>>, describing the three common factors identified in laundering operations: firstly, moving the funds from direct association with the crime; secondly, disguising the trail to foil pursuit; and thirdly, making the funds again available to the instigator, with their occupational origin hidden from view. See also Law Encyclopedia: Money Laundering, Answers.com, visited 10 July 2010, <<http://www.answers.com/topic/money-laundering>>, describing how money laundering usually consists of three steps: placement, layering, and integration. Placement is depositing funds in financial institutions or converting cash into negotiable instruments. Layering involves the wire transfer of funds through a series of accounts in an attempt to hide the funds' true origins. Integration involves the movement of layered funds, which are no longer traceable to their criminal origin, into the financial world, where they are mixed with funds of legitimate origin.

¹¹ See *Supra* text accompanying note 8.

¹² *United States v. J. Siriwan*, Case No. CR 09-00081 (C.D. Cal); See Thailand: Money Laundering Indictment Of Thai Government Official Underscores DOJ Efforts To Punish Recipients Of Foreign Bribes And The Increasing Intersection Between Money Laundering And FCPA Charges, O'Melveny & Myers LLP, 19 February 2010 (visited 25 July 2010). <<http://www.mondaq.com/article.asp?articleid=94160>>.

¹³ *United States V. Gerald and Patricia Green*, Case No. CR 08-00059 (C.D. Cal.); See Greens Get Six Months in Jail, The FCPA Blog, 13 August 2010 (visited on 18 August 2010) <<http://www.fcpcbog.com/blog/tag/gerald-green>> (describing how, on 12 August 2010, the court sentenced Mr. and Mrs. Green each to six months in jail and six months home confinement. They were also ordered to each pay US \$250,000 in restitution.

valued at 120 million baht, for examination.¹⁴ It is quite common for intellectual property infringers to launder the proceeds through their normal trade practices. For example, when an infringer deposits the money received from the sale of counterfeit products into a bank account and later withdraws the money to buy more counterfeit products for further trafficking, it constitutes money laundering.¹⁵

A pattern of money laundering used by Thai criminals to launder their ill-gotten gains overseas is through underground banking enterprises (in Chinese Thai “*poi-guwan*”) which are set up as travel agencies or trading firms doing both normal business and underground services. In particular, organized crime groups have a tendency to use money extravagantly, including illegal foreign currency, which is illegally sent out of the country to launder it. The gangs transfer money out of country through *poi-guwan*. In the *poi-guwan* system, there are no official records of the transactions, so they are impossible to trace.¹⁶

Casinos are alleged to be good places to launder the proceeds of crime. While casino businesses are illegal in Thailand, there are 37 casinos operating in neighbouring countries within very close proximity of the Thai border servicing Thai gamblers.¹⁷ These cross-border casinos have the involvement of Thai political figures and businessmen. According to press reports, four big Thai loggers and border traders are investors in the Cambodian ventures; the “son-in-law of a big politician” and an elder brother of a former deputy minister have stakes casinos in Myanmar.¹⁸ They are allegedly suitable for politicians and drug dealers to launder their kickbacks and drugs money respectively.¹⁹

2. Thailand - A Laundering Place

With nice beaches, resorts and weather, Thailand is known to be a popular destination for foreigners to visit and settle down. Unfortunately, some criminals also like to mingle with tourists and hide their ill-gotten gains in several resorts. The Acting Secretary-General of the Anti-Money Laundering Office (AMLO), Police Col. Sihanart Prayoonrat said there was a high risk Thailand would be named as a country prone to money laundering problems. There was a flow of suspicious funds into the country, and AMLO had been tracing the flows together with the Department of Special Investigation and the Customs Department to identify those behind the transactions. Thailand needs to step up its anti-money laundering measures to prevent the country from facing trade barriers imposed by G20 countries.²⁰ Police Lt. Gen. Wuthi Liptallop, Commander of the Immigration Bureau, revealed that Thailand has been regarded as a heaven for foreign fugitives. They are involved with child sex abuse, murder, robbery, money laundering and drugs. Many criminals, after committing crimes in their home countries, come to Thailand with a lot of money. They will often find Thai women to be their temporary wives, and use the wives’ documents to run businesses on their behalf.²¹

In 2007, the Office of the Attorney General successfully extradited Paulus Meyer and his three associates to Belgium. In the extradition trial and the Belgian request revealed that the Meyer gang trafficked large amount of narcotics to the European market. In two incidents, they found that the gang imported 45 tons of marijuana from Morocco and 118 kilograms of heroin from Turkey in containers containing

¹⁴ Press release, Supra note 5.

¹⁵ See Santanee Ditsayabut, *International Harmonization of National Laws and Policies for Effective Prevention and Suppression of Intellectual Property Violation*, Institute of Intellectual Property, Tokyo, March 2010, at 45.

¹⁶ See Wanchai Roujanavong, *Organized Crime in Thailand*, at 27 and 45 (First Edition, 2006). The author describes how, in 1999, the author received information from a Hong Kong narcotics control officer that his office often found several hundred million baht being transferred to Hong Kong from Thailand. Later, each sum was transferred back to Thailand. An investigation found that the money was not involved with narcotics activities; therefore, the officer did not take any action. However, these cases could in fact be money laundering, involving the transfer of money from one account to an overseas country, then back to the same country but a different account to create a semblance of overseas business, in order to launder money derived from illegal activities.

¹⁷ Thailand: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, International Monetary Fund, December 2007, at 21.

¹⁸ Pasuk Phongpaichit, *Gambling with Thailand* (Draft extract from *Utsahakam kan phanan*), February 1999, at 6.

¹⁹ Cambodia - Drugs and Casinos (map), *Geopolitical Drug Newsletter*, Centre for Geopolitical Drug Studies, No.6 March 2002, at 3.

²⁰ *Crack down on money laundering vital – AMLO*, Bangkok Post, 5 March 2010, <<http://www.bangkokpost.com/news/crimes/33893/crackdown-on-money-laundering-vital-amlo>>.

²¹ *The hunt for foreign fugitives*, Spectrum, Bangkok Post, Vol. 3 No. 31, August 1-7, 2010, at 12-13.

scrap metal and materials to the port of Antwerp, Belgium. They spent their drugs proceeds by buying luxury cars and goods, including investments in businesses such as a fitness club and a beauty parlour. At a certain period, they planned to move their capital to Thailand. They moved the money to Thailand by letting a gang member who was married to a Thai woman arrange the transfer through an underground bank. Subsequently, the gang fled Belgium and settled down in Samui Island, in the Gulf of Thailand. The investigation found that they purchased several plots of land and houses on the island through Thai nominees and deposited money in several bank accounts. They planned to possibly build martial arts school or fitness centres on the island. The request for confiscation of property is under consideration and further investigation by Thai authorities.²²

The media has recently reported the arrest of Ronald Paul Shade, a California man who was extradited to the United States to face charges relating to defrauding senior citizens in a real-estate Ponzi scheme. Shade has stolen about US\$14 million and been charged by the San Bernardino District Attorney's Office with nine counts of grand theft, three counts of theft from an elder adult, 12 counts of filing a forged document, and five counts of money laundering. Shade was living in Samui Island for about two years when authorities caught up with him. He was an entrepreneur-type of person, who had no prior contacts with law enforcement.²³

III. LAWS AND PROCEDURES TO ATTACK PROCEEDS OF CRIME

A. Identification and Tracing of Proceeds of Crime

1. Criminal Procedure Code

The Criminal Procedure Code, Part 2 Investigation, provides the investigator with the power to gather evidence to prove the facts of the offence and the guilt of the offender. Pursuant to Section 132, for the purpose of gathering evidence, the investigator can search the property for articles obtained through an offence or used or suspected of having been used for the commission of an offence. By conducting the search of property and articles found, the investigator can identify and trace the proceeds of crime. The investigator can order a person who possesses the articles related to the commission of the to hand over such articles as evidence. The power to gather evidence under the *Criminal Procedure Code* covers all crimes.

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

The Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534 (1991), which applies only to narcotics offences, established the Properties Examination Committee to identify and trace the proceeds of crime. The Permanent Secretary of the Ministry of Justice chairs the Committee and is assisted by the Secretary General of the Office of Narcotics Control Board. The Secretary General acts as secretary of the Committee and supervises all regular work.²⁴ Section 16 provides the Committee with the power to examine property connected with the commission of an offence relating to narcotics²⁵ and make determinations whether property is connected with the commission of an offence relating to narcotics. In case of urgent necessity, the Secretary General may issue a provisional order for the

²² Criminal Court Decision, Black Case No. Kor. 6/2550 Red Case No. Kor. 6/2550, Case dossier is filed with the Division 1, International Affairs Department, Office of the Attorney General.

²³ *An American wanted by US authorities for alleged money laundering was charged on Samui Island yesterday*, Nation, 18 July 2010 (visited 18 July 2010) <<http://www.nationmultimedia.com/home/2010/07/18/national/American-arrested-30134033.html>>. See also Here, now, the story of Ronald Paul Shade's extradition, The Sun, 23 July 2010 (visited 24 July 2010) <http://www.sbsun.com/news/ci_15561630>. See also *Court agrees to extradite Briton*, Bangkok Post, 7 August 2010, at 3, describing how the Criminal Court has endorsed a request submitted by the public prosecutor to extradite Paul John Stone, a Briton who has been charged in Thailand with theft and is wanted by the UK authorities in money laundering and document forgery cases. Mr. Stone was arrested in Surat Thani, Southern part of Thailand on 31 May 2010, after escaping the UK authorities to Thailand.

²⁴ Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E. 2534 (1991) [hereinafter "Narcotics Suppression Act"], Section 15.

²⁵ "properties connected with the commission of an offence" is defined in Section 3 to mean *money or properties obtained through the commission of an offence relating to narcotics, and shall include money or properties which are obtained by means of using such money or properties to purchase or by causing in any manner whatsoever to transform such money or properties irrespective of the number of such transformation and whether or not such money or properties will be in the possession of, or transferred to or apparently evidenced on the register as belonging to other persons.*

examination of the properties of the alleged offender, and then report to the Committee.²⁶

To examine the property, the Committee and the Secretary General can issue a letter of inquiry requesting, or issue an order requiring, any person concerned to give statements or give explanations or to submit any account, document or evidence for examination, which also includes examination through the banks, the Securities Exchange and the financial institutions.²⁷ The Committee or the Secretary-General may assign a competent officer to conduct the examination of the property on its or his or her behalf.²⁸ The competent officer can enter dwelling place, premises or conveyance where there is a reasonable ground to suspect that the property believed to be connected with the offence is hidden therein, for the purposes of searching or examining, seizing or attaching the properties.²⁹

3. The Anti-Money Laundering Act, B.E. 2542 (1999)

In the context of identification and tracing of proceeds of crime, the *Anti-Money Laundering Act*, which covers certain predicate offences,³⁰ is drafted similarly to the *Narcotics Suppression Act*. The *Anti-Money Laundering Act* establishes the Transaction Committee consisting of five members nominated by the Judicial Commission, the State Audit Commission, the National Human Rights Commission and the Public Prosecutor Commission, including the Secretary General of the Anti-Money Laundering Office, who acts as secretary to the Committee.³¹ The Committee has the power³² to examine transaction or property connected with the commission of an offence.³³ The Committee, the Secretary General and the competent officer entrusted by the Secretary General have the powers to issue a written inquiry towards or summon a financial institution, Government agency, State enterprise and any person, as the case may be, to give a statement or furnish written explanations or any account, document or evidence for examination or consideration.³⁴ To search and examine the property or evidence, the competent officer can enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offence or evidence connected with the commission of an offence of money laundering hidden or kept therein.³⁵

The *Anti-Money Laundering Act* requires the financial institutions, Land Offices and certain Business Professions to report specific transactions and suspicious transactions to the Anti-Money Laundering Office for examination.³⁶ The Anti-Money Laundering Office has the power and duty to receive, examine and

²⁶ The Narcotics Suppression Act, Section 19 paragraph 2.

²⁷ Id, Section 25(1) (2).

²⁸ Id, Section 21.

²⁹ Id, Section 25(3).

³⁰ There are 11 predicate offences covered by the Anti-Money Laundering Act, B.E. 2542 (1999) [hereinafter “Anti-Money Laundering Act”]. Nine offences provided in the Anti-Money Laundering Act, Article. 3, are Narcotics, Sexual Abuse of women and children, Public Fraud, Embezzlement, Corruption, Extortion, Customs Evasion, Terrorism, and Illegal Gambling. In addition, 2 offences of Election Fraud and Trafficking in Persons under the Organic Act on the Election of the Member of the House of Representatives and Senator B.E. 2541 (1998) and the Anti- Trafficking in Persons Act B.E. 2551 (2007) respectively are provided as predicate offences under the Anti-Money Laundering Act.

³¹ The Anti-Money Laundering Act, Section 32.

³² Id., Section 34 (1).

³³ Id., Section 3 defines “Property connected with the commission of an offense” as:

(1) money or property obtained from the commission of an act constituting 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 and abetting the commission of an act constituting a predicate offense under (8) of the definition of “predicate offense”;

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

³⁴ Id., Section 38 (1) (2).

³⁵ Id., Section 38 (3).

³⁶ Id., Section 3 provides that ‘Suspicious Transaction’ means a transaction of a differently complicated nature from similar transactions ordinarily made, transaction lacking economic feasibility, transaction reasonably believed to have been made in order to avoid the applicability of this Act, or transaction connected or possibly connected with the commission of a predicate offense, notwithstanding the transaction being single or multiple. Section 13 and 15 and Ministerial Regulation No. 2 and 3 of B.E. 2543 provide that the financial institutions and Land Offices handling cash transactions exceeding 2,000,000 baht or

analyse the transactions reported.³⁷ The authorities can identify and trace the ill-gotten proceeds through the function of reporting and examination of suspicious transactions.

4. Organic Act on Counter Corruption B.E. 2542 (1999)

The Organic Act on Counter Corruption B.E. 2542 (1999) establishes the National Anti-Corruption Commission (NACC).³⁸ The NACC is an independent authority for conducting corruption investigations of political persons, persons holding high-ranking positions and other government officials. Specific members of the national and local governments, as well as their families, are required to file a declaration of assets and liabilities within 30 days of taking office and again after leaving office.³⁹ The NACC has power to examine the declaration of assets and liabilities submitted.⁴⁰ In the case where the examination reveals an unusual change of the property, the NACC can request the person to explain the acquisition of such property before the NACC passes a resolution that such person has had an unusual increase of property.⁴¹

B. Freezing and Seizure of Assets

1. Criminal Procedure Code

The Criminal Procedure Code provides authorities the power to investigate crime by gathering the evidence to prove the facts and guilt of the offenders. The investigator can freeze and seize property during search. The properties which are illegal to possessed or obtained through the commission of offence or have been used or suspected of having been used for the commission of an offence can be frozen and seized. The main purpose of freezing and seizure under the *Criminal Procedure Code* is to use those properties to prove the facts or guilt of the offenders, not for confiscation of the proceeds of crime.⁴²

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

The power to freeze and seize property belongs to the Property Examination Committee chaired by the Permanent Secretary of the Ministry of Justice. During the examination of property by competent officials, if the owner of the property cannot produce evidence to prove that (1) the property examined is not connected with the commission of an offence relating to narcotics, or (2) he or she has received the transfer of such property in good faith and for value, or (3) has reasonably acquired property on account of good moral or public charity, the Committee can order the freezing or seizure of such property and proceed for confiscation.⁴³ The provisional freezing and seizing of property can be done where there is a reasonable ground to believe that the property may be transferred, removed, or concealed to avoid examination and confiscation. After temporary freezing and seizing, the Committee has to consider whether the property is connected with a commission of an offence relating to narcotics and will consequently be subject to confiscation.

property transaction exceeding 5,000,000 baht have to report such transactions to the Anti-Money Laundering Office (AMLO). Section 16 was amended in 2009 to provide certain business professions which have duty to report transactions: 1) professions relating to the investment or movement of funds, securities and stock exchange; 2) professions relating to trading of precious stones; 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; 6) professions relating to personal loans; 7) professions relating to electronic money cards; 8) professions relating to credit cards that are not a financial institution; and 9) professions relating to electronic payments. At the time of writing this paper, the draft ministerial regulation covered the reporting procedures of business professions is under consideration of the Juridical Council; Telephone interview with Apichat Tanomsup, Director of Litigation Bureau, The Anti-Money Laundering Office, (27 August 2010). The interview describes how pursuant to Section 38 paragraph 4, the AMLO can share or provide the information of transactions obtained from the reporting procedures with other competent authorities. Currently, the AMLO regularly shares the information with the Office of Narcotics Control Board, the Revenue Department and the Office of the Election Commission.

³⁶ Id., Section 40 (3) (4).

i.e.,

³⁸ The name of the agency, National Anti-Corruption Commission (NACC), has been changed from National Counter Corruption Commission (NCCC) by its resolution 40/2551 of 15 July 2008.

³⁹ The Organic Act on Counter Corruption, B.E. 2542 (1999) (hereinafter "Counter Corruption Act"), Section 32, 39 and 42.

⁴⁰ Id., section 19 (4), 36 and 42 paragraph 3.

⁴¹ Id., Section 38.

⁴² Criminal Procedure Code, Section 85, 132 (4).

⁴³ The Narcotics Suppression Act, Section 22.

3. The Anti-Money Laundering Act, B.E. 2542 (1999)

The power to freeze and seize property belongs to the Transaction Committee. In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offence may be transferred, moved, concealed or hidden, the Transaction Committee has the power to order freezing or seizure of such property for a duration of not more than 90 days.⁴⁴ In case of necessity or urgency, the Secretary General can make that order but he or she must report it to the Transaction Committee afterwards.⁴⁵

A person whose property has been frozen or seized, or any interested person, may produce evidence that the money or property is not connected with the commission of the offence in order that the freezing or seizure will be revoked by the Transaction Committee.

4. Organic Act on Counter Corruption B.E. 2542 (1999)

Before the confiscation process starts, the NACC has the power to temporarily freeze and seize property, when it finds that (1) the property is connected with the unusual wealth of corrupt officials, and (2) the property may be transferred, relocated, transformed or concealed. After the temporary freezing and seizing of property, the owner of the property can present evidence that it is not connected with the unusual wealth. If his or her evidence is not sufficient, the NACC will continue to freeze and seize the property and further proceed for confiscation.⁴⁶

C. Confiscation

1. Penal Code

The Penal Code authorizes the court to confiscate: (1) property of which possession is illegal;⁴⁷ (2) property used or intended for use in the commission of an offence; and (3) property acquired by a person through the commission of an offence.⁴⁸ The confiscation of property of which possession is illegal does not require the conviction of an offender. For property used or intended for use in the commission of an offence; and property acquired by a person through the commission of an offence, the court has discretion to confiscate or return to the owner. The confiscated property is vested in the State unless the court orders the property to be destroyed.⁴⁹

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

The Narcotics Suppression Act provides criminal forfeiture of the proceeds of crime. When the public prosecutor has indicted the offender on narcotics offences, the public prosecutor can file a motion with the court to request the confiscation of the property connected with the commission of an offence relating to narcotics which has been frozen or seized by the Property Examination Committee. The motion may be filed together with the indictment or at any time before the Court of First Instance passes judgment. In case where there is a reasonable ground to be identified that the public prosecutor cannot file the motion before the Court of First Instance passes judgment, the motion can be filed within one year from the date that the Court of First Instance passed judgment, unless there is a final judgment of acquittal.⁵⁰

The court has to conduct a trial in respect of all the properties that are the subject of the prosecutor's application for confiscation and has to be satisfied that there is a prima facie case that the properties are connected with the commission of a narcotics offence before ordering forfeiture.⁵¹ In the case where there is a final judgment dismissing the charge against the accused, the freezing or seizure of his or her property, including the property of other persons which has been frozen or seized, shall be terminated.⁵² The confiscation under the *Narcotics Suppression Act* is, therefore, a conviction-based scheme.⁵³

⁴⁴ The Anti-Money Laundering Act, Section 48 paragraph 1.

⁴⁵ Id., Section 48 paragraph 2.

⁴⁶ Id., Section 78.

⁴⁷ The Penal Code, Section 32.

⁴⁸ Id., Section 33.

⁴⁹ Id., Section 35.

⁵⁰ The Narcotics Suppression Act, Section 27.

⁵¹ Id., Section 29.

⁵² Id., Section 32.

⁵³ Interview with Surasak Trirattakul, Deputy Director-General of the Department of Special Litigation, Office of the Attorney General (15 July 2010), which also confirmed that the confiscation under the *Narcotics Suppression Act* is criminal forfeiture,

3. Anti-Money Laundering Act, B.E.2542 (1999)

The confiscation under the *Anti-Money Laundering Act* is a civil non-conviction based system. The proceeding begins following the freezing and seizure process. When there is sufficient evidence that any property is connected with the commission of an offence, the Secretary General shall submit the file to the public prosecutor to consider making an application to the court for confiscation.⁵⁴ The public prosecutor can consider the case and evidence involved. If the public prosecutor finds that there is no sufficient evidence, the public prosecutor has to immediately inform the Secretary General for further action. The Secretary General can conduct further investigation and gather more evidence relating to property. After additional actions have been completed, the Secretary General will refer the case back to the public prosecutor. And if the public prosecutor still finds that there is no sufficient *prima facie* case to make the application to the court, the public prosecutor will notify the Secretary General to refer the case to the Anti-Money Laundering Board (AMLB)⁵⁵ which will have to make a decision within 30 days whether to file the case to the court for confiscation or not. The decision of the AMLB is final and the Secretary General and the public prosecutor have to act in compliance with such decision.

The public prosecutor has to file the case to the Civil Court and the court proceedings will be conducted in accordance with the Civil Procedure Code.⁵⁶ The court will apply the *balance of probabilities*⁵⁷ standard of proof to decide whether the property is connected with the commission of an offence or not. If the court is satisfied that the property is connected with the commission of an offence, the court will confiscate the property by giving the order that the property be vested in the state.⁵⁸ However, if the real owner of the property enters into the proceedings and is able to prove to the court that (1) he or she is the real owner and the property is not connected to the offence; or (2) the property has been transferred to him or her in good faith with value consideration or has secured its acquisition in good faith and appropriately in the course of good morals or public charity,⁵⁹ the court will return the property to the real owner.

There is a presumption clause that where the owner or the transferee of the property was or has been associated with the offender of the predicate offence or the offence of money laundering, the property is presumed to be connected with the commission of an offence.⁶⁰ Consequently, the owner of the property has the burden of proving that the property is not involved in the offence or he or she has acquired it in good faith with value consideration.

(i) *The "Michael" Case*

Michael, a British citizen, was a member of an organized crime gang selling drugs in Europe. In 1979, He was arrested and charged with an offence of heroin possession in Germany. The German court sentenced him to five years' imprisonment and extradited him to the UK. In 1982, he moved to reside in Thailand. He was living with two Thai wives (one deceased) and had three children. Michael set up two bogus trading companies and travelled several times to Europe. In 2000, Michael was arrested by Belgian authorities with an Italian arrest warrant and was extradited afterwards to stand trial in Italy. The Florence prosecutor prosecuted him for the importation of 780 kilograms of cocaine from Africa to Italy. The Court of Florence sentenced him to 16 years' imprisonment and this was later reduced by the Italian Court of Appeal to 10 years. While standing trial in Europe, the UK authorities informed the Thai authorities of Michael's drugs business. The AMLO examined properties in the names of eight persons, i.e., Michael, his two wives, three children and two relatives of a wife. The AMLO found those persons owned several bank accounts, foreign bank notes and jewellery in bank's safety box, four vehicles and 11 plots of land valued at 21.3 million Baht.

based on two grounds: (1) a confiscation motion has to be filed with the prosecution indictment; and (2) assets cannot be confiscated if the defendant is acquitted of criminal charges.

⁵⁴ The Anti-Money Laundering Act, Section 49 paragraph 1.

⁵⁵ *Id.*, Section 24, 49 paragraph 1. The Anti-Money Laundering Board chaired by the Prime Minister consists of 24 members who are Minister of Justice, Minister of Finance, high level government officials, representatives of financial institutions and other qualified experts.

⁵⁶ *Id.*, Section 59.

⁵⁷ In the criminal forfeiture process under the Narcotics Suppression Act, the public prosecutor has more burden to prove *beyond reasonable doubt* in order to obtain confiscation order.

⁵⁸ The Anti-Money Laundering Act, Section 51.

⁵⁹ *Id.*, Section 50.

⁶⁰ *Id.*, Section 51 paragraph 3.

The Transaction Committee of the AMLO had reasonable ground to believe that all properties derived or connected with the narcotics offences Michael committed overseas. The Transaction Committee ordered the freezing and seizure of those properties. The AMLO passed the case to the public prosecutor to proceed for confiscation.

The motion for confiscation was filed to the Civil Court. The public prosecutor could prove that Michael committed narcotics offences and that seven other persons were associated with him. The burden of proof shifted to Michael and others to rebut the presumption that the properties were not connected or derived from the drugs trade. Michael and others failed to rebut the presumption. The Civil Court confiscated all properties except one plot of land which a relative could prove that he obtained before Michael committed the offence. The Court of Appeal upheld the Civil Court's confiscation order. In addition, both courts confirmed the extra-territorial jurisdiction of predicate offence that the properties could be confiscated, even though the predicate offence occurred outside Thailand.⁶¹

4. Organic Act on Counter Corruption B.E. 2542 (1999)

The confiscation process under the *Counter Corruption Act* is provided in Chapter VII, The Request for the Property to devolve on the State. In case where an allegation is made that any politician or any State official has become unusually wealthy, the NACC shall make a preliminary determination whether to accept the case for consideration. If the alleged culprit is a person who has already submitted a declaration of assets and liabilities, the NACC shall take such declaration into consideration.⁶² In case the NACC finds that any particular property owned by the accused may be transferred, relocated, transformed or hidden, the NACC is fully mandated to issue an order to freeze or to seize the property temporarily, pending further inquiry.⁶³ If the NACC concludes that the accused is in fact unusually wealthy,⁶⁴ it shall submit the case to the Attorney General to proceed with confiscation in the court.

The Criminal Division for Persons Holding Political Positions of the Supreme Court has jurisdiction over the proceeding against the politicians. For other government officials, the normal courts of civil jurisdiction have authority over the case.⁶⁵ The courts shall apply the *Civil Procedure Code* over confiscation proceedings.⁶⁶ The accused has the burden of proof to prove that the property does not result from the unusual wealth.⁶⁷ If the accused cannot prove his or her burden, the court will order confiscation of property. Further, in case the court passes the order of confiscation over the property unusually increased, but the execution of confiscation cannot be conducted in whole or in part over the property, the authority can execute confiscation over other property of the accused within 10 years.⁶⁸ The confiscation under the *Counter Corruption Act* is a non-conviction based scheme.

5. Administrative Forfeiture

Administrative forfeiture is the process by which seizing agencies may declare property forfeited to the state without judicial involvement. In Thailand, the authorities can freeze, seize and confiscate property without a court order in some legislation, namely the *Taxation Code* and the *Act on House and Land Tax, B.E. 2475 (1932)*.⁶⁹ Pursuant to the Taxation Code, the Director-General of the Revenue Department has the power to freeze or seize, and order the sale by auction of, the property of person who evades tax. The property is not limited to only proceeds of crime. All property can be seized and sold by auction. Money derived from the auction will be used to pay the unpaid tax first, and, if there is still some remaining, can be returned to the owner afterwards. *The Act on House and Land Tax* provides a similar format for the Governor and the Mayor of local authorities to exercise the administrative forfeiture scheme over the property of a person who evades house and land tax.

⁶¹ The Court of Appeal, Black Case No. 3860/2549, Red Case No. 7402/2551.

⁶² The Counter Corruption Act, Section 75.

⁶³ Id., Section 78.

⁶⁴ Id., Section 4 defines "unusually wealthy" as *having acquired or accumulated an unusual amount of wealth or a marked increase of assets or an unusual decrease of wealth or assets or having acquired an unjustifiable amount of assets as a result of performing or carrying out official duties and functions or of exercising power or authority, constitute a case of unusual wealth.*

⁶⁵ Id., Section 80.

⁶⁶ Id., Section 80 paragraph 3.

⁶⁷ Id., Section 81.

⁶⁸ Id., 83.

⁶⁹ Taxation Code, Article 12; the Act on House and Land Tax, B.E. 2475 (1932), Article 44.

D. Asset Recovery

The return of assets to the country of origin is a fundamental principle of the United Nations Convention against Corruption. The Convention emphasizes that State Parties shall co-operate and assist one another to the greatest extent for the return of the assets.⁷⁰ Currently, in Thailand, the asset recovery principle cannot be implemented. According to the legal system, assets confiscated by virtue of the *Penal Code*, the *Anti-Money Laundering Act*, and the *Organic Act on Counter Corruption* belong to the public treasury. The only exception is in the *Act on Measures for Suppression of Offenders in an Offense relating to Narcotics*, which stipulates that the properties forfeited shall devolve on the Narcotics Control Fund for the purpose of prevention and suppression of narcotics. The confiscated assets thus cannot be return to the country of origin.

The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (hereinafter "MLA Act") which covers all assistance requested or rendered by Thailand, also does not provide for asset recovery or asset sharing of the confiscated proceeds. The MLA Act provides that the forfeited property shall become the property of State.⁷¹ When there is a request to confiscate property in Thailand, and the public prosecutor successfully gets court order to confiscate the property, the property will be executed and sent to state treasury. Thailand cannot return the confiscated assets to the requesting country. The Thai authorities support the concept of asset recovery and the fundamental principle laid down in international Conventions, though there are some critics opposed to that principle. In 2008, the Office of the Attorney General proposed a Bill to amend the MLA Act, particularly the asset recovery clause. The amendment will provide an exception that confiscated assets will not fall into state treasury if there is a treaty providing otherwise. It means that Thailand can return the assets to the requesting state when there is a treaty permitted for sharing the assets.⁷² The Bill is under the consideration of the Parliament and is expected to be passed in 2011.⁷³

IV. CRIMINALIZATION OF MONEY LAUNDERING

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) requires State Parties to adopt the criminal offences of money laundering under their domestic law.⁷⁴ In 1999, *The Anti-Money Laundering Act* was promulgated to criminalize money laundering actions. *The Anti-Money Laundering Act* came into force as a result of the Thai Government's intent to accede to the Vienna Convention.⁷⁵ The criminal aspects of money laundering are provided in Chapter I, General Provision, from Section 5 to 12 with Penalty Clauses in Chapter VII, from Section 60 to Section 66.

⁷⁰ United Nations Convention against Corruption (2003), Chapter V. Asset recovery, Article 51.

⁷¹ The MLA Act, Section 35 states "*The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed.*"

⁷² Currently, Thailand has entered into MLA Treaty with 13 countries, namely; USA, Canada, UK, France, Norway, India, China, Republic of Korea, Poland, Sri Lanka, Peru, Belgium and Australia. Apart from 13 bi-lateral treaties, Thailand signed the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (ASEAN MLAT), which is pending in Thai Parliament for ratification. The ASEAN MLAT, Article 1 paragraph 2 provides that assistance which shall be rendered under the treaty included; the recovery, forfeiture or confiscation of property derived from the commission of an offence; Article 22 paragraph 5 provides that the Requested Party shall, subject to its domestic laws, transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order. If the Parliament ratifies the ASEAN MLAT, Thailand can return the confiscated assets to other 9 ASEAN countries, i.e., Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore and Vietnam.; ASEAN is an Association of Southeast Asian Nations established on 8 August 1967, <http://www.aseansec.org/about_ASEAN.html>.

⁷³ Interview with Torsak Buranaruangroj and Denduan Klanson, Public Prosecutor, Office of Law Development, Office of the Attorney General, on 4 August 2010.

⁷⁴ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, Article 3 paragraph 1 (b) (c).

⁷⁵ See Police Maj. Gen. Peeraphan Prembooti, Effective Countermeasures against Money Laundering in Thailand, Resource Materials No. 67, UNAFEI, Tokyo, December 2005, p. 158.

A. The Money Laundering Offences

Section 5⁷⁶ criminalizes money laundering actions into two offences, as outlined below.

1. Money Laundering Offence of Receiving a Transfer

Section 5 (1) provides that any person who transfers, receives a transfer of, or converts property connected with the commission of an offence for the purpose of covering or concealing the origin of such property or for the purpose of assisting other persons to avoid the penalty or receive a lesser penalty commits an offence of money laundering. The law states three actions of: transfer, receiving a transfer and conversion of proceeds of crime as *actus reus* or external elements of the offence. It requires a specific intent for the purpose of covering or concealing the origin of such property or for the purpose of assisting other persons to avoid the penalty or receive a lesser penalty in respect of the predicate offence. Examples of this offence are the general practices of money laundering; for instance, a mistress of drug dealer receives money which drug dealer obtained from selling drugs and deposits into her bank account as her savings.

2. Money Laundering Offence of General Actions

Section 5 (2) provides that any person who acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, location, distribution or transfer of property connected with the commission of an offence commits an offence of money laundering. The *actus reus* for this offence is broader than the one provided in Section 5(1) and can apply to any act of offender which is not limited to only transfer, receiving a transfer and conversion of property. Though, specific intent for the purpose of concealing or disguising the true nature of property is similarly required. For example, a corrupt official receives a bribe and deposits the money into his or her own account as savings.

Both offences of money laundering require the knowledge that the property being laundered is the proceeds of a predicate offence. It applies the general principle of intent element of the offences provided in the Penal Code.⁷⁷ Accordingly, the offence of money laundering takes place only if it is committed intentionally.

The penalty for a money laundering offence is imprisonment from one to ten years, and/or a fine from 20,000 to 200,000 baht.

(i) The “School Milk” Case

Nimit, a former Deputy Governor of Nong Khai Province in the Northeastern part of Thailand, was assigned by the Governor to chair a provincial committee to procure milk for students in the province. Nimit and a subordinate conspired to ask for kickback money from the milk contractors. A contractor reported the incident to the Anti-Money Laundering Office (AMLO). The AMLO assigned an undercover officer as a milk contractor and joined a group of contractors giving 140,000 baht to Nimit and the subordinate. Later, the police and AMLO officers searched Nimit’s house and found 140,000 baht in a desk in living room. Nimit alleged that the money was his savings which had just withdrawn from the bank. The public prosecutor separately prosecuted Nimit for corruption and money laundering offences. The court sentenced Nimit to five years’ imprisonment for corruption.⁷⁸ For the money laundering charge, the public prosecutor could prove beyond a reasonable doubt that Nimit acted for the purpose of concealing the true nature and

⁷⁶ Anti-Money Laundering Act, Section 5 provides “Whoever

(1) transfers, receives the transfer; or changes the form of a property connected with the commission of an offense, for the purpose of concealing or disguising the origin or source of that property, or for the purpose of assisting another person either before, during, or after the commission of an offense to enable the offender to avoid the penalty or receive a lesser penalty for the predicate offense; or

(2) acts by any manner which is designed to conceal or disguise the true nature, location, sale, transfer, or rights of ownership, of a property connected with the commission of an offense shall be deemed to have committed a money laundering offence.”

⁷⁷ Penal Code, Section 59 states “A person shall be criminally liable only when such person commits an act intentionally, except in the case where the law provides that such person must be liable when such person commits an act by negligence, or except in the case where the law clearly provides that such person must be liable even though such person commits an act unintentionally. To commit an act intentionally is to do it consciously and desiring its effect or with the capacity to foresee its effect. If the person committing the act does not know the facts constituting the element of the offence, it cannot be deemed that such person desired or could have foreseen the effects of such doing.”

⁷⁸ Nong Khai Provincial Court, Criminal Case, Black No. 1868/2547, Red No. 598/2550.

acquisition of the bribe which connected with the predicate offence of corruption. The court sentenced Nimit to two years' imprisonment for money laundering.⁷⁹

B. Self-Laundering

Section 5 does not make it clear whether the one who commits the predicate offence is capable of committing the offence of money laundering. However, several commentators commented that the perpetrator of the predicate offence can be found guilty of the laundering offence. In other words, a person convicted of a predicate offence may also be convicted of money laundering in connection with dealing with the proceeds arising from that offence. The Criminal Court confirmed this principle in the "School Milk" Case.⁸⁰

C. Ancillary Offences

1. Aiding and Abetting

Aiding and abetting an offender, either before or during the commission of the offence is penalized with same penalty as the principal offender. The acts of procuring or supporting with money, means of transportation, shelter, or any other object in order to assist the offender to escape punishment, or to gain a benefit from the commission of an offence are subject to same penalty. The Court has discretion to render a lesser penalty or not impose any punishment for such offence where the person assists his or her spouse, parents or children.

2. Attempt to Commit Crime

An attempt to commit a money laundering offence will be subject to the same penalty as the offence committed. It shows that the legislators consider money laundering to be a serious crime. Generally, an attempt to commit other ordinary crimes is punished with two thirds of the punishment provided for complete commission of the offence.⁸¹

3. Conspiracy

The *Anti-Money Laundering Act* criminalizes conspiracy to commit an offence of money laundering when there are at least two persons in the conspiracy.⁸² The construction of this offence has been drafted in terms similar to the *Narcotics Suppression Act*. The conspirator receives half of the punishment for such an offence. However, if a money laundering offence is committed as a result of the conspiracy, the conspirator shall receive the full punishment for such offence, even he or she does not participate in commission of the offence.

D. Extra-territorial Jurisdiction

The *Anti-Money Laundering Act* extends jurisdiction over money laundering offences committed abroad, provided that (1) the offender or any accomplice is a Thai person or has a place of residence in Thailand; or (2) the offender is a foreigner and intends its consequence to occur within Thailand or the Thai government is the victim; or (3) the offender is a foreigner and such act is an offence under the law of the country where the offence is committed, if such offender has appeared in Thailand and has not been extradited under the law on extradition.⁸³ The extra-territorial jurisdiction provision of the *Anti-Money Laundering Act* has drafted in similar to the same provision of the *Narcotics Suppression Act*.

E. Liability of Juristic Persons

There are several incidences of offenders laundering money through corporations or enterprises. Such corporations or enterprises, which are juristic persons, or legal persons, can also be liable for money laundering offences, if it or its representative has knowledge of such laundering activities. The juristic person is punished with a fine in the amount of 200,000 to 1,000,000 Baht. A director, manager, or any person responsible for the operation of the juristic person who is involved with the laundering is also punishable with imprisonment for one to ten years, and/or a fine of 20,000 to 200,000 Baht.⁸⁴

⁷⁹ Bangkok Criminal Court, Black Case No. Phor.Yor. 9/2546, Red Case No. Phor. Yor. 1/2548.

⁸⁰ Id.

⁸¹ Penal Code, Section 80.

⁸² Anti-Money Laundering Act, Section 7.

⁸³ The Anti-Money Laundering Act, Section 6. See also the Measures Suppression Act, Section 5.

⁸⁴ The Anti-Money Laundering Act, Section 61.

V. CHALLENGES AND EFFECTIVE COUNTERMEASURES

A. Joint Investigation

In general, the nature of money laundering crime and assets forfeiture relates to sophisticated and complicated matters involving organization, influential figures, business and financial activities. A single law enforcement agency with specific expertise or limited power might not be able to effectively deal with them. Some special investigative techniques, for instance, surveillance, wire tapping, internet access or controlled delivery, might not be permitted to by all agencies. A joint investigation conducted by a combined team of experts or a joint task force consisting of law enforcement officers, forensics scientists, lawyers, tax officers, and customs authorities, will be more effective to handle this complicated type of crime. The officers who have authority to apprehend culprits and officers who have authority to identify and seize the proceeds of crime have to closely co-ordinate and work together. The agencies concerned have to build channels for communication and information sharing. In addition, the involvement of the prosecuting authority at the early stage of investigation can bring high success in court proceedings.

B. Special Investigative Measures

Since the crime of money laundering and manner of concealing proceeds of crime generally involve sophisticated and complicated activities, it is thus rather difficult for investigators and officers involved to seek and compile enough evidence to effectively prosecute the culprits and get their money. The law should equip law enforcement authorities to apply special investigative measures in seeking vital evidence and tracing ill-gotten proceeds.

1. Access to Information through Communication and Electronic Technology

The officials should be able to adopt special measures to access information by employing electronic devices or tools to access information with regard to accounts of clients in financial institutions, data regarding communication or computers, which might have been used to commit activities of money laundering for the purpose of obtaining necessary and vital evidence in order to use against the offender and its proceeds. This special measure might interrupt normal business practices and life of innocent people, so an appropriate period and court permission should be required.

2. Controlled Delivery of Evidence

Controlled Delivery of Evidence is a means of making an arrest by allowing illegal objects or materials to be delivered under controlled methods and conditions to reach the wrongdoer or suspect. Once evidence of crime is delivered to a person or destination, the law enforcement officers arrest the person, who accepts the object or material as evidence of the crime, including others involved in the criminal network. The controlled delivery method has been frequently used in narcotics cases. Apart from drugs in narcotics case, other illegal objects, i.e., firearms, contraband goods, including money used to buy them and proceeds, should be permitted by law to be used as evidence in money laundering and proceeds of crime confiscation cases.

C. Reporting System

1. Transactions Report

The reporting system of specific transactions and suspicious transactions by financial institutions and related business entities to the anti-money laundering agency is an effective tool for monitoring and gathering information on the proceeds of crime. The authority can examine suspicious transactions and identify the illicit proceeds and suspected launderers. From tracing the trail of money, the investigator might be able to understand and map out the whole syndicate, including pinning down the group leader. To effectively fight money launderers and take their proceeds, the transaction reporting system has to be established.

The compliance of prospective laundering places, such as financial institutions, stock exchanges, casinos and real property authorities, with the rules and regulations of reporting, is required. The anti-money laundering authority has to meet regularly and ensure the co-operation and assistance of the institutions.

2. Declaration of Assets and Liabilities

An assets declaration or disclosure required by persons who are likely to be involved with ill-gotten

proceeds and money laundering is an effective reporting system. It should be required by law for officials who are at managerial or executive level, including political and high-ranking position holders to disclose assets and liabilities. Upon accepting their positions, they are strictly required to submit lists of assets and liabilities held by them, their spouses and their minor children. This disclosure of assets and liabilities should be strictly required at the time of assuming office and upon leaving office.

The anti-corruption authorities can examine their report of assets when there is suspicion or an allegation of corruption. If proved to have an unusual increase of accumulated assets, they are likely to be prosecuted and their assets forfeited.⁸⁵

D. Civil Forfeiture

Civil forfeiture is a proactive measure, which is not bound by criminal charges against the accused. Although no criminal action may yet have been taken against the suspect or even if the suspect had been charged with a predicate offence and was later acquitted, the government may file a case in civil court seeking a court order to have the assets confiscated. The standard of proof in civil forfeiture is only *balance of probabilities* which is much less burdensome than the *beyond reasonable doubt* standard in criminal trials. Civil forfeiture should be introduced in jurisdictions which have only conviction-based systems as a tool, to overcome the limitation in conducting confiscation under the traditional criminal law standard. This particular measure is an innovative legal concept to effectively take out financial resources from the sophisticated syndicates and prevent them from smoothly carrying out their criminal activities.

E. International Co-operation

1. Legal Framework

When money laundering and proceeds of crime cross borders and involve organized crime, it will be more difficult for authorities to handle. International co-operation among authorities in the jurisdictions concerned is necessary. The co-operation can be arranged under bi-lateral or multi-lateral schemes. The effective tool to tackle cross-bordered money laundering and proceeds of crime is an instrument for Mutual Legal Assistance in Criminal Matters, setting a formal comprehensive framework for co-operation covering various aspects of the criminal process, namely: investigation, compiling and providing documents or information, delivery of documentary evidence, tracing of subjects or individuals, search and seizure, initiating criminal proceeding upon request, and confiscation of assets.

Regional cooperation can also be a forum or means to implement a common policy against cross-border crime.⁸⁶ It can assist or establish effective mutual assistance in legal matters and law enforcement systems, including intelligence gathering and sharing as a key mechanism to overcome some pending obstacles in dealing with transnational organized crime.

2. Informal Consultation

Assistance dealing with freezing, seizure and confiscation of property should be expeditious. Properties or assets can be transferred very swiftly in the banking system with the help of current technology, for instance, by electronically enhanced account transfer. Thus, at international level if competent authorities have to wait for normal proceedings before rendering assistance, the properties and assets held by suspects or their associates may be hidden and transferred to the point that authorities would not be able to trace and confiscate them at all.

Informal consultation among authorities concerned is recommended before sending the formal request.⁸⁷ Once the request passes through formal functions or diplomatic channels, it is difficult or too much time-consuming to correct the inaccurate procedures. The establishment of a network or forum of authorities

⁸⁵ Constitution of the Kingdom of Thailand B.E. 2550 (2007), Articles 259-264; The Counter Corruption Act, Chapter 3 on Inspection of Assets and Liabilities, Articles 80 and 119.

⁸⁶ ASEAN sets up the Senior Officials Meeting on Transnational Crime (SOMTC) as a forum to implement the Plan of Actions to Combat Transnational Crime by targeting eight categories of crime, i.e.; trafficking in persons, illicit drugs trafficking, sea piracy, money laundering, arms smuggling, terrorism, international economic crime, and cybercrime.

⁸⁷ The author had an experience of informal consultation when handling a request from Japan to gather evidence and examine suspicious transactions in Thailand of a Japanese construction contractor allegedly colluded with a Thai contractor to bribe a former Bangkok Governor and his subordinates to win a drainage tunnel project in Bangkok. The Japanese authorities

concerned can facilitate such consultation.

F. Asset Sharing

The concept of asset sharing is to show appreciation for the hard work of all concerned agencies in the requesting state. The requesting state must spend a great amount of resources in tracing and freezing assets in foreign countries. It is thus appropriate to share the confiscated assets based on proportions agreed upon. In addition, the return of assets can be justified to compensate to the victims or legitimate owners of assets in the state of origin. In some countries this concept is applied as a reward for authorities who make serious efforts to trace and confiscate such assets. It, therefore, can be an incentive for authorities to effectively fight against money laundering crime.

VI. CONCLUSION

It is clear from the nature of crime, particularly the organized ones, that the proceeds of crime are an ultimate goal and motivation for criminals to commit wrong-doings. The process to obtain high ill profits is complicated and sophisticated. Once acquired, the process to safely hide and keep them is even more difficult. More people are needed to work and assist in laundering the ill-gotten gains. In order to cut criminals' resources and stop their activities, several measures and innovative practices have to be adopted. Special investigative techniques of IT access and controlled delivery of evidence can produce successful tracing of crime proceeds. The reporting system by financial institutions and self-declaration of property by politicians and government officials is necessary for examination of assets. The civil forfeiture principle is very valuable and effective for confiscation. In cases of cross-border proceeds and money laundering, the co-operation of countries concerned is a must. International legal frameworks and instruments have to be fully implemented to assist other countries in attacking transnational proceeds of crime. In the absence of such instruments, the assistance should be rendered to the fullest extent possible. If all effective countermeasures are utilized, there will be no safe place for criminals to hide their ill-gotten gains. Without earning anything from their risky businesses, criminals are supposed to stop their activities. Then, the public will have a safe place and better society to live in.

contacted the author through UNAFEI alumni link and asked for recommendation before drafting the request. The author gave some recommendations on the Thai mutual legal assistance laws and asked to see the draft of request, including the Thai translation of request before sending through the formal channel. The author found some inaccurate information in the draft of request, i.e., names and gender of the suspects, addresses of some companies involved, including several incorrect translations and informed the Japanese counterparts to correct them. The Japanese counterparts verified and corrected all information and formally submitted the request afterwards. In the meantime, the author started to prepare all procedures and documents for assistance based on the draft of request. When the author received the formal request through diplomatic channel, the author could finish all procedures needed to render assistance within few days. The author believes that without such consultation, it will take months to start the assistance procedures after sending back and forth of formal notes asking for new correct information and translation.; See also, *Nishimatsu 'planned Thai contract bribes'*, the Yomiuri Shimbun, 16 January 2009. (The article describes how Nishimatsu Construction Co. planned to offer about 350 million yen in bribes with its joint venture partner in Thailand to then Thai government senior officials to win a 2003 tunnel construction project. Nishimatsu, a Tokyo-based second-tier general contractor, and its Thai partner, reportedly prepared a total of 480 million yen for bribery maneuvering, with Nishimatsu contributing about half the amount. The Tokyo District Public Prosecutors Office arrested a former vice president of Nishimatsu Construction on suspicion of smuggling 70 million yen into Japan from abroad. The public prosecutors special investigation squad asked Thai prosecutors to co-operate in investigating the case as a violation of the Unfair Competition Prevention Law, as Nishimatsu and its Thai partner are suspected to have committed bribery.)

APPENDIX

Table 1

Frozen/Seized Property executed under the Act on Measures for the Suppression of Offences in an Offence Relating to Narcotics B.E. 2534 (1991)

Year	Number of Examinations (Persons)	Frozen/Seized Property (Million Baht)	Types of Property (Million Baht)			
			Cash	Bank Deposit	Movable Property	Real Property
2005	1, 238	869.8	102.6	151. 7	355. 1	260. 4
2006	1, 639	1, 036. 9	98. 4	244. 0	331. 3	363. 2
2007	1, 453	595. 0	112. 2	156. 8	255. 4	70. 6
2008	1, 834	768. 6	97. 1	257. 0	338. 2	76. 3
2009	2, 009	929. 5	159. 5	291. 0	348. 9	130. 1
Total	8, 173	4, 199. 8	569. 8	1,100.5	1, 628. 9	900. 6

Source: Assets Seizure Bureau, Office of the Narcotics Control Board.

Table 2

Types and Number of cases handled by the Anti-Money Laundering Office from 27 October 2000 (the inception) to 31 December 2009

Predicate Offence	Cases reported for examination	Frozen and Seized Property
Narcotics	3, 801	928
Human Trafficking	176	31
Public Fraud	393	24
Embezzlement	109	15
Corruption	619	24
Extortion	54	2
Customs	278	20
Terrorism	24	0
Gambling	5	0
Election Fraud	1	0
Money Laundering	6	0
Others	588	0
Total	6, 054	1, 044

Source: The Anti-Money Laundering Office.

Table 3

Types of Property kept and managed by the Anti-Money Laundering Office from 13 December 2000 - 31 December 2009

Types of property	Amount (Baht)
Cash	496,284,471.28
Bank Deposit	512,097,271.67
Vehicle	37,227,325.00
Jewelry	160,546,996.95
RealProperty	1,311,766,629.54
AuctionList	153,631,897.59
Others	517,309,873.87
Total	3,188,864,465.90

Source: The Anti-Money Laundering Office.

Table 4

Amount of Frozen/Seized and Confiscated Assets under the Anti-Money Laundering Act B.E. 2542 (1999)

Year	Assets filing to court for confiscation (Baht)	Confiscated Assets (Baht)
2005	518,626,133.38	495,262,316.41
2006	624, 998, 810. 39	195,736,807.41
2007	504, 017, 495. 22	495,459,532.22
2008	159, 947, 247. 78	137, 986, 968. 22
2009	86, 446, 268. 09	57, 608, 319. 90
Total	1, 894, 035, 954. 86	1,382,053,944.16

Source: The Department of Special Litigation, Office of the Attorney General⁸⁸ and the Anti-Money Laundering Office.⁸⁹

⁸⁸ Telephone interview with Surasak Trirattakul, Deputy Director-General of the Department of Special Litigation, Office of the Attorney General, (6 August 2010) (informing that the amount of confiscated assets in 2006 was proportionately less than other years, because several cases for confiscation of large amount of properties relating to an alleged narcotics defendant who operated truck transportation business in the north of Thailand were dismissed by the Civil Court. The public prosecutor appealed the Civil Court orders to the Court of Appeal. The case is under the consideration of the Court of Appeal.).

⁸⁹ Telephone interview with Apichat Tanomsup, Director of Litigation Bureau, The Anti-Money Laundering Office, 6 August 2010. The interviewee stated that the amount of frozen/seized assets filing to court for confiscation in 2008 and 2009 were less than other years, because in 2008 the Anti-Money Laundering Act was amended and changing the qualification of the Transaction Committee. Due to political uncertainties from 2008 till now, the governments have been changing and not be able to appoint the Transaction Committee to be in charge of examination, freezing and seizure of property yet. The amount of frozen/seized assets filed to court in 2008 and 2009 were the work of the last Transaction Committee before March 2008.