

Guideline for compliance with the law on anti-money laundering and AML/CFT international standard by cooperatives

Rationale

In 2011, the Anti-Money Laundering Office (AMLO) announced the issuance of 6 ministerial regulations under the Anti-money Laundering Act, 1999 (AMLA), which require cooperatives as a financial institution to comply with additional transaction reporting obligations. For the understanding of the principle of the law and for all cooperatives to fully comply with the said ministerial regulations and notification of the Office of the Prime Minister, the AMLO hereby sets out a guideline for cooperatives' transaction reporting and customer identification.

Objective

To ensure that cooperatives as a financial institution is able to file transaction reports to AMLO and arrange for customer identification according to the principle of the ministerial regulations and notification of the Office of the Prime Minister issued pursuant to the Anti-money Laundering Act, 1999.

Transaction Reporting

Introduction

Cooperatives are classified as a financial institution under the Anti-money Laundering Act, 1999, and are obliged to report 3 types of transactions¹, namely cash transactions, property-related transactions, and suspicious transactions. The rules concerning threshold amount and type of transactions including transactions that are exempt from reporting appear in the ministerial regulations issued under the Anti-money Laundering Act, 1999.²

Cooperatives are a place for savings and investment with a simple management system having customers as members in confined area or organization. Cooperatives are a type of financial institution as it collects and manages funds of a large number of members. One cooperative may have a capital flow valuing one billion baht or more. In Thailand, there are a large number and many types of cooperatives. Although the cooperatives are founded voluntarily with the objective being focused on providing financial assistance to members as well as their occupations, the objectives have now been expanded from assisting local residents to include investment of well-to-do members and the expansion of membership to population beyond the specific area. Hence, at present, cooperatives are a source of large capital flows. However, supervision of this sector is inadequate because the main provisions of the Cooperative Act are based on the concept that cooperatives are formed to help members rather than the fact that cooperatives are a source of investment and profit seeking by organizations or groups of people with capital and managerial powers. In this respect, from the perspective of the Anti-money Laundering Act, cooperatives are financial institutions having a duty to report transactions and to manage risk of money laundering, as well as

¹ Section 13 of the Anti-money Laundering Act, 1999

² Ministerial regulations (No. 3) and (No. 5) issued under the Anti-money Laundering Act, 1999, 2000, and ministerial regulation “specifying the amount of cash and value of property in transactions that financial institutions have to report to the AMLO 2011)”, ministerial regulation “specifying the amount of money in cash transactions that the professions under Section 16 must report to the AMLO 2011”, and ministerial regulation (No. 13) issued under the Anti-money Laundering Act, 1999, 2011.

to monitor customers' financial movements. As there is no practical guidance on how to comply with the law, it is necessary to set out a guideline for reporting transactions by cooperatives to ensure that the sector is able to correctly report transactions and understand the principle of filtering transactions that need to be reported to the AMLO.

Definition

“Customer” means all types of members of cooperatives, regardless of whether or not the membership has a time limit.

Remark: customers in this instance refer to the customers of each cooperative, not the customers of cooperative clubs or groups.

“Occasional customer” means a type of customer who performs occasional transactions with the cooperative and does not have membership status with the cooperative such as the people or the private sector who invest with the cooperative by occasionally buying instruments issued by the cooperative to raise capital.

“Cash transaction”³ means transactions where the member brings cash to carry out activities with the cooperative or transactions where the customer receives cash from the cooperative as a result of activities that create value. Some of these examples are purchasing shares, receiving cash as share dividends, receiving a loan from the cooperative, etc.

“Property-related transaction”⁴ means transactions where the customer carries out activities with the cooperative using real estate or removable property with an appraised price as the main object of the transaction. In other words, without said property, the transaction that the customer wishes to conduct with the cooperative would not occur.

“Suspicious transaction”⁵ means transactions that the customer performed or wishes to conduct with the cooperative, of which the cooperative has initially examined

³ This transaction type has a threshold amount for reporting.

⁴ This transaction type has a threshold amount for reporting.

⁵ This transaction has no specific threshold amount and reporting classification.

and found that these transactions are unusually complicated, or may have the intention to avoid transactions reporting to the AMLO as required by law, or appear to be in discord with the customer's financial or professional status, or potentially related to a commission of offenses or money laundering or financing of terrorism.

“Transaction between cooperative and commercial partner” means transactions that the cooperative carries out with other cooperatives or business partners, whether this be financial institutions under the Anti-Money Laundering Act or foreign financial institutions or other business operators, where said transactions are carried out by the cooperative with the objective of management for its own operations.

1. Reporting obligations

Cooperatives that are obliged to comply with the Anti-money Laundering Act, 1999, including related ministerial regulations and notifications are:

“All types of cooperatives with an operating capital of shares valued at two million baht or more and which have the objective of operation related to receiving deposits, giving loans, granting credits, mortgaging, pawn brokerage, or arranging for the procurement of money or property by one means or another”

Cooperatives with an operating capital of two million baht or more are obliged to report transactions to the AMLO under Section 13 of the Anti-money Laundering Act, 1999.

1-1 Nature of Transactions

According to the Anti-money Laundering Act, transactions are classified into 3 types, i.e. cash transactions, property-related transactions, and suspicious transactions. For transactions between the cooperative and customers which are all types of customers including non-members who perform occasional transactions with the cooperative, the nature of each type of transaction may be considered as follows:

(1) Cash transactions may include customers carrying cash to pay for share, to deposit in the savings account they opened with the cooperative, to pay back loans, to repay their pawn or mortgage, or on the other hand the customer is receiving cash from

the cooperative which can be loans issued by the cooperative, dividends, withdrawals from the customer's savings account, or shares redeemed by the customer, etc..

(2) Property-related transactions may include contracts with property in the category of real estate (such as land, building, house) or removable property (vehicles and registered machinery only) as loan guarantee, including the redeeming of said property or repaying of debt over and above said property, or contracts which result in the change of hands of the property or change of ownership of the property, or any transaction that increases or decreases the value of said property.

The principle for considering reporting property-related transactions should be considered as follows:

- Where the transaction is relating to a property, the cooperative shall file a report when that property is appraised at five million baht or more. For example, in the case of mortgaging several plots of land where each plot is appraised at five million baht or more, the cooperative may file all transactions in one report.

- Where the transaction is relating to many properties together, the cooperative shall file a report when all properties are appraised together at five million baht or more. For example, in the case of mortgaging several plots of land where each plot is appraised at below five million baht, making up a total appraised price at five million baht or more, the cooperative has a duty to file all transactions in one report to the AMLO.

- Where the transaction is relating to land with future construction, the cooperative shall file a report concerning only the vacant plot (excluding the value of future construction) if that that plot of land is appraised at five million baht or more.

- Where the transaction is an increase of loans which is related to the property guaranteeing the loans, the transaction of which has previously been reported in the first lending contract (before the increase), the cooperative does not need to file any report again because the AMLO mainly considers the appraisal value of the property, not the value of the lending contract.

- Where the property-related transaction was previously reported to the AMLO, after which there is a change of ownership (change of the name of the property's

owner), the cooperative shall report such transaction to the AMLO. But if it is merely a change of the borrower's name in the contract and this does not affect property ownership, the cooperative does not need to report.

- In the case of change of rights in property appraised at five million baht or more, such as releasing mortgage, where the cooperative permitted the customer to make such transfer at the land office, the cooperative has to report said transaction.

- In the case of clearing and settlements related to a property having an appraised value of five million baht or more, the cooperative shall file a transaction report to the AMLO.

- In the case where the cooperative has previously reported a transaction relating to a property appraised at five million baht or more to the AMLO and subsequently there is a new transaction with the same property (this may be the case of making a new mortgage contract under a different customer's name because the property mortgaged has several owner names and each owner makes a mortgage contract in the part of which they are joint owner), the cooperative does not need to report said property-related transaction again.

- In the case of transactions using the rights to lease property as loan guarantee and the value of the rights to lease is at five million baht or more, the cooperative must report such the transaction to the AMLO. And if the rights to lease end and subsequently there is an extension of the lease valued at five million baht or more resulting in a new transaction based on the new rights to lease, this counts as a new rights over property and the cooperative must report the transaction to the AMLO.

- In the case of transactions relating to mortgaging several plots of land and mortgage redemption of each plot of land happens at a different time, the cooperative shall report the transaction when the redemption involved a property appraised at five million baht or more.

- In the case of transactions relating to mortgage redemption and the cooperative has made an endorsement, even if the customer comes to get the title deed or title document at a later date, it shall be deemed that the date of the

endorsement is date of making transaction as the change of rights over the property by law occurs on the day the cooperative endorses the redeeming of the mortgage.

Remark: property-related transactions through electronic transfers or payments are transactions by banks or service providers in the bahtnet network, credit card network, electronic money value transfer network, and provider of electronic payments service authorized by the Royal Decree on the Control of Electronic Payment Service Business, 2008. Cooperatives do not fall under the category and are therefore not obliged to report transactions related to electronic transfers or payments.

(3) Suspicious transaction may be a customer transaction where the cooperative finds it different from that made by other customers and unreasonable. To deal with this type of transaction, please see 3. as criterion for examination.

1-2 Value of transaction subject to reporting obligations

Cooperatives are obliged to report transactions of the value specified in the ministerial regulation specifying the amount of cash and value of property in transactions that financial institutions must report to the AMLO, 2011. The transaction value concerning cooperatives includes:

a. **Cash transactions** cooperatives are obliged to report when customers' transaction (in this respect meaning members and occasional customers) use cash in the value of two million baht or more.

b. **Property-related transactions** cooperatives are obliged to report when property-related transactions are transactions between the cooperative and members which include "transaction mortgaging or pawning property being real estate or property being removable property specifically Western seagoing ships with a tonnage of six tons or more, steamboats, motorboats with a tonnage of five tons or more, rafts, property which is vehicles, tools or other machinery"⁶. Moreover, the reporting of said property-related transactions must consider mainly the property's appraisal value, and the

⁶ Refer to ministerial regulation released under the AMLA (No. 5).

transaction must be reported every time it is directly related to the aforementioned property appraised⁷ at five million baht or more.

c. **Suspicious transaction** cooperatives are obliged to examine transactions made by customers or occasional customers which are overly complicated or dealing with a large amount of money or transactions which do not correspond to the customers' economic status, or may deal with the commission of predicate offenses or terrorist financing. And if there is reasonable cause to believe that said transactions are unusual or related to the commission of offenses, regardless of said transactions' value, cooperatives must report the suspicious transaction to the AMLO (see guidelines for determining suspicious transactions in 3.).

1-3 Transaction report forms

Cooperatives must report transactions to the AMLO by using the report forms as attached to the ministerial regulation (No. 4) issued pursuant to the Anti-money Laundering Act, 1999 (2000), together with ministerial regulation (No. 12) issued pursuant to the Anti-money Laundering Act, 1999 (2011), as follows:

- a. For cash transactions, the cooperative shall use the form AML 1-01;
- b. For property-related transactions, the cooperative shall use the form AML 1-02;
- c. For suspicion transaction, the cooperative shall use the form AML 1-03.

1-4 Method for sending transaction reports and reporting period:

(1) Method **for** sending transaction reports to AMLO

Cooperatives may file all categories of transaction reports by any one of the methods as follows:

- A. By hand;
- B. By registered post;
- C. By electronic data according to the Law Regarding Electronic Transactions, which has an electronic signature appended and is sent by means announced by the AMLO.

⁷ The appraised property being the main object of the transaction

Currently, the AMLO examines linkages of transactions using an Information Technology (IT) system. Sending the report as electronic data as in c. will be beneficial to the AMLO and the sender of the data, by reducing the problems from conventional storage of transaction report data which may be lost and difficult to examine for authenticity. Moreover, reporting transactions by c. absolves the sender from being the witness testifying to the transaction reporting in the court of law in the case that the transaction report is presented as evidence in money laundering cases or predicate crime cases.

Remark: AMLO seeks cooperation from reporting entities to file reports by electronic channel to reduce the risk of violating the law on anti-money laundering.

(2) Reporting period

a. Filing cash transaction reports and property-related transaction reports

Cooperatives are obliged to send cash transaction reports (using the form AML 1-01) and property-related transaction reports (using the form AML 1-02) in the following time limit:

a-1 Report of transactions occurring from the 1st to the 15th of each month must be sent to the AMLO between the 16th and the 22nd of said month.

a-2 Report of transactions occurring from the 16th to the 30th or 31st of each month (depending on which month has 30 or 31 days) must be sent to the AMLO between the 1st and the 7th of the following month.

b. Submitting suspicious transaction reports

Cooperatives are obliged to file suspicious transaction report within seven days from the examination and finding that the said transaction is suspicious, which should not exceed 30 days after the date of making the said transaction. For example, a customer makes a transaction on April 1st. The cooperative examines and finds reasonable suspicion that the customer's transaction is a suspicious transaction followed by the Board endorsing submission of the report to the AMLO on April 15th. The cooperative shall thus report said transaction within April 21st. However, the identification and examination of transactions with an unusual behavior as in the

aforementioned example including the process of reporting the suspicious transaction to the AMLO by the cooperative must be complete at the latest no later than April 30th.

Hence, in reporting suspicious transaction, the cooperative needs to set out internal procedures for examination and for the executive board to have power to sign and approve within 30 days before sending the report to the AMLO (see suspicious transaction in 3.).

2. Transactions exempt from reporting

The rules for transaction exempted from reporting are in accordance with the provisions in the ministerial regulations No. 5 and No. 13 issued under the provisions of the AMLA as summarized below:

Clause A. The transaction made by the following exempted persons or organizations:

A-1 The King, the Queen, the Heir Apparent or members of the royal family from the rank of prince or princess up to rank of crown prince or crown princess;

A-2 The Royal Thai Government, the central, provincial and local governments, state enterprises, public corporate or other state agencies;

A-3 The foundations as follows:

- Chai Pattana Foundation under patronage of H.M. the King;
- SUPPORT Foundation under patronage of H.M. the Queen;
- Saijaithai Foundation under patronage of H.M. the King.

b. Property-related transactions in the category of real estate which was transferred for public interest or transactions related to the acquisition by possession or by prescription under Section 1382 or Section 1401 of the Civil and Commercial Code (by adverse possession)

c. Property-related transactions in the category of removable property other than Western seagoing ships, ships with a tonnage of six tons or more, steamboats, motorboats with a tonnage of five tons or more, rafts, property which is vehicles, tools or other machinery

d. (Cooperatives do not have this transaction.) Transactions which are insurance contracts against casualty where the financial institution is expected to pay out compensation according to the contract of less than ten million baht. In other words, when property which is the object of the insurance contract was damaged and has the value of compensation of less than ten million baht.

e. (Cooperatives do not have this transaction.) Transactions related to the following procedures:

e-1 Transactions giving the service of credit card network where the financial institution uses the service provided by the operator of credit card network, and transactions where the business owner or commercial shop uses the service of the credit card network managed by the financial institution

e-2 Transactions related to operations in the EDC network, payment switching, account debiting, balance payment, which are made between financial institutions or between financial institutions and government bodies overseeing said network or system

f. (Cooperatives do not have this transaction.) Transactions where the customer pays for goods and services where the financial institution or the profession under Section 16 (9) is the agent receiving the payment, only where the value is less than seven hundred thousand baht

g. (Exception for banks) Transactions where the customer uses the service related to checks, drafts, bills of exchange, promissory notes, and financial instruments for the purpose of paying back debt, which are not cash transactions and transactions with the objective of investment

h. (Exception for banks) Transactions made by the customer using the automated deposit machine or the automated withdrawal machine

i. Transactions between cooperatives or between cooperatives and other financial institutions, or between cooperatives and the profession under Section 16 (9) which are made for the cooperatives' interest in investing and increasing capital, reducing risk in the cooperatives' own management

j. Transactions made by the cooperative for the objective of managing the cooperative's internal affairs, which is not the provision of service to the member (customer)

k. (Cooperatives do not have this transaction.) The electronic transfer or payment within a bank, only the one created for the same customer (transaction made for the same customer). In other words, transactions which are the transfer and receiving of transfer of monetary value of one customer or other, made between said bank customer's accounts which are accounts opened at the same bank

l. (Cooperatives do not have this transaction.) Transactions where the bank transfers monetary value into the customer's account which is a transfer of loans as a result of a legal act of lending made between the bank and the customer, except in the case where the bank makes a payment (in place of the customer) according to the bill to pay for goods in place of the customer to the customer's commercial partner which has an account in a foreign financial institution

m. (Cooperatives do not have this transaction.) Transactions where the bank is the "correspondent bank" in receiving and sending monetary value transfer orders to the destination bank receiving the transfer

Remark: Transactions exempt from reporting mean transactions which are exempt from reporting in the category of cash transactions, property-related transactions in the category of real estate and removable property which can be appraised, property-related transactions in the category of electronic transfer and electronic payment, cash transactions with the objective of electronic transfer and electronic payment, and electronic payments only, but do not include suspicious transactions. Therefore, cooperatives are obliged to report the "transaction exempted from reporting" if the said transaction is found to be "a suspicious transaction".

3. Suspicious transaction

Cooperatives are obliged to report a suspicious transaction when it is found that customers are making transactions or requesting transactions which are different from normal business practice.

3-1. Red flags for suspicious transactions

There are certain behaviors that may trigger the cooperative to examine and report as a suspicious transaction:

- a. The case where a member requests to buy a large number of cooperative shares which do not correspond to the member's economic status
- b. The case where a member deposits a large amount of money (be it cash or bank transfer or check) without declaring the source of the money or declaring an unreasonable source or not corresponding to the member's economic status
- c. The case where a member asks for credit or mortgaging/ pawning property of a high value and can bring money to redeem or pay back all or most of the loan in a short period of time, which can be considered to not correspond with the member's income or economic status
- d. The case where the cooperative sells promissory notes or other capital-raising instruments to raise capital, and a customer or occasional customer buys said instruments in an unusually high value and avoids giving information regarding their economic status or income, or details relating to the transaction
- e. In case of finding that the customer is connected with terrorism or committing offenses as named in the list notified by the state agency or being in the middle of the process of seizing or attaching property or requesting the property to be devolved on the state under the law on anti-money laundering, the cooperative must urgently report suspicious transaction to AMLO.

3.2. Process for reporting suspicious transaction

Cooperatives are obliged to examine all transactions of each customer to consider whether or not each transaction or each group of transactions of the customer is unusual and suspicious. The process of the transaction examination up to filing the

report to AMLO should be consistent with the provisions of the ministerial regulation prescribing rules and procedures for customer due diligence (2012) as follows:

Step 1: When the behavior of making a transaction by one customer or other is discovered to be unusual

Step 2: Proceed to examine initial information relating to the customer's property including their economic status or information on the customer's other transactions which may be related to the transaction found to be unusual (in cases where this can be examined)

Step 3: Report the results of examination and analysis to the executive with authority to examine customer's suspicious transaction;

Step 4: In the case where it is deemed appropriate to report to the AMLO, the management or the executive board with said authoritative power shall sign approval of the sending of the report of the customer's transaction as suspicious transaction to the AMLO whereas the whole process from the date of finding the conduct of unusual transaction up to the step of filing report to AMLO should not exceed 7 working days and should not exceed 30 days counting from the date of said transaction.

4. Record keeping

Reporting entity shall keep copies of transaction reports (in case of sending to AMLO by mail or by hand) or in the form of electronic file (in case of sending in electronic file) for a period at least five years from the date of transaction made by the customer.

5. Reporting information under suspicion

In case the reporting entity finds there is an unusual and suspicious request for making transaction, and wishes to report to AMLO but lacking sufficient information to fill in Form AML 1-03 in full, AMLO allows the information to be filled in the said form as much as available to the reporting entity at that time.

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