

## **Guideline for compliance with the law on anti-money laundering and AML/CFT international standard by dealers of gemstones, gold or jewelry**

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### **Introduction**

The business under Section 16 (2) is legal person trading gemstones, gold, or jewelry<sup>1</sup>, whereas most activities of this business are trading or buying gold, gemstones, or ornaments made of gems or gold.

As gold and gemstones are valuable, high priced assets which could have higher price and resold for money at high value, therefore, the chance is high for the person obtaining money from committing offenses and wishing to transform the money into property which could be converted thereafter back to money, to choose the business of trading gold and jewelry as his means for money laundering. Therefore, this type of business has been an alternative means for criminals to transfer value and generate proceeds that can be used in the economic system and difficult to trace thereafter.

The law on anti-money laundering is aimed at making the business instrument of the state in closely monitoring the customer's transaction which may involve the use of cash or fund in large quantity for buying asset sold by the business operator or selling gold, gems and jewelry or rare goods, (which may be obtained by using illegal money) to the business for converting money to property.

However, in order to be clearly understood and complied with the law on anti-money laundering in accordance with the intent of the law, AMLO thus sets out a guideline for compliance with the law on anti-money laundering, specifically in reporting the transaction and arrangement for customer identification which is directly related to such business for the benefits of further cooperation in efficient anti-money laundering operations.

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<sup>1</sup> Amended by the Anti-Money Laundering Act, 1999, (No. 3), 2009

## Transaction Reporting

The Anti-Money Laundering Act, 1999 (amended by the AMLA (No. 3), 2009) required the business under Section 16 to report cash and suspicious transactions to AMLO. This guideline will cover types of transaction subject to reporting obligations, exemption, as well as guidance in considering customer's suspicious transaction, rules, procedures and period in reporting the transaction.

### 1. Reporting entity

Under this guideline, reporting entity is the business under Section 16 (2) of the AMLA, meaning:

“A legal person who trades gemstones, gold or jewelry”

In this respect, dealers in gemstones, gold or jewelry having duty to comply with this guideline must sell or buy new gemstones, gold or jewelry as their main business. Buying of used commodities may be made as part of the business but the main activity must be trading of new commodities, otherwise the business must comply with this guideline along with the guideline for dealers in antiques, etc.

Dealers in gold ornaments who mainly sell new commodities but also buy used gold ornaments from customers must comply with the guideline for the dealers in gold under Section 16 (2), not the guideline for the dealers in antiques.

### 2. Transaction subject to reporting obligations

**(1) Cash transaction** means the activity of receiving cash from customer upon selling goods or paying cash to the customer upon buying goods and these cash activities must have a value from “two million baht or more”<sup>2</sup>.

**(2) Suspicious transaction** is the transaction under reasonable suspicion under Section 3 of the AMLA, meaning gemstones, gold or jewelry trading, either using cash or non-cash which may be the transactions being paid by checks or bank transfers or selling or buying goods by whichever means that are found to have the following nature:

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<sup>2</sup> The ministerial regulation prescribes the threshold for cash transaction reporting by the business under Section 16 to AMLO, 2011.

(2.1) The business activity appears excessively complex compared with usual steps taken by customers in the same group and it can be foreseen that the objective causing such complexity is unreasonable in the normal course of business or it may want to conceal the trace of the genuine money owner or buyer or seller and may be connected to any offenses whatever;

(2.2) The activity which can be considered that the customer intentionally tries avoiding not to be reported of the cash transaction, namely, the customer must make cash transaction at the value of two million baht or more but intends to avoid being reported which is unusually different from other customer in general;

(2.3) The activity is inconsistent with financial status of the customer or contrary to the economic condition at such time;

(2.4) The activity which is considered likely to be a part of money laundering process or any one process of committing offense, specifically the offenses of economic crime, fraud or public swindling or being the activity in connection with various criminal offenses, including financing of terrorism;

(2.5) The activity whereas the customer who conducts it or the person related with such business activity a designated person according to the United Nations Security Council's resolution, including the list of persons related to terrorism which was announced by the AMLO (if it is in this case, the business must urgently report it as a suspicious transaction to AMLO).

### **(3) Red flags for suspicious transactions**

#### **(3.1) Suspicious behaviors**

For the benefits of filing suspicious transaction report, the business may observe the following conducts to carefully determine that whether or not it is a suspicious transaction and should be reported to AMLO:

(1) The customer holds cash in large quantity to buy gemstones, gold or jewelry whereas in general a small number of customers will buy goods with cash in such quantity;

(2) The customer sells gemstones, gold or jewelry to the dealers whereas it can be seen that the customer could not be able to obtain such goods by legal means in view of the customer's profile or the goods obtained by the customer;

(3) The customer avoids answering questions related to the source of large amount of money (when talking with the dealers and being questioned) or answers questions which can be considered that the customer has obtained money from any one offense or avoids answering questions about the source of goods brought for selling to the business.

(4) The customer makes transaction inconsistent with the financial status (in case that the dealers are aware of the customer's financial profile).

(5) In case of finding that the customer or the person wishing to make transaction 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 reporting entity must urgently report suspicious transaction to AMLO.

### **(3.2) Process of initial transaction examination and approval prior to filing report**

The dealers have duty to file suspicious transaction report within seven days from the date of examination upon finding that such transaction is the transaction under reasonable suspicion. In this regard, it should not exceed one month from the date executing such transaction except in case of necessity causing the company to be delayed in the detection or examination, for example, when a customer conducts the transaction on March 1, the reporting entity finds unusual activity/conduct and from initial examination it is found that the transaction of the customer is suspicious and the executive or the dealers themselves gave approval of filing the suspicious transaction report to AMLO on March 5, the business operator must submit the report by March 11. However, for the examination of the said unusual transaction up to the process of filing suspicious transaction report to AMLO, the reporting entity should complete all process no later than March 31, etc.

The reporting entity is required 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 Upon finding the conduct of unusual transaction of either one of the customers;

Step 2 Examining the consistency of the transaction value and income information or economic status of the customer, including other customer's information in addition to the consistency with the economic conditions, i.e. investment or saving at that time;

Step 3 Examining the repetition of customer's behaviors whether there are more or less transactions in this same manner as compared to the transactions earlier;

Step 4 Reporting the results of examination and analysis to the executive with authority to examine customer's suspicious transaction;

Step 5 In case it is deemed expedient to file report to AMLO, the executive with the said authority shall sign the approval to file suspicious transaction report which must be submitted to AMLO within seven days from the date the executive with authority gives the approval, 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 one month from the date of making the transaction, except in case of necessity causing the company to be delayed in the finding or examination.

**Remark:** The above process is suitable for dealers registered as a legal person but in this regard an ordinary person may apply Step 2 and Step 3 and must also file the transaction report on schedule as specified in Step 5 should AMLO give written order.

### **(3.3) Guideline for specifying facts in report form**

(1) In case of finding any one transaction believable to be under reasonable suspicion, the reporting entity shall conduct initial examination and report

such transaction as suspicious transaction as well as specify the cause or information leading to the discretion of filing the report;

(2) In case of examinations of multiple conducts leading the reporting entity to believe that the customer has suspicious behaviors (owing to many unusual transactions bringing about unusualness and reasonable suspicion), the reporting entity should consider reporting the last transaction out of several transactions of such customer together with citing earlier transactions of the same manner in the column in which the reason shall be specified causing the reporting entity to use the discretion that it is the suspicious transaction.

### 3. Rules for filing out the transaction report (reporting period, forms and methods for sending transaction report)

#### 3.1 Transaction report form<sup>3</sup> and the person filling out the report form:

(1) For cash transaction, the reporting entity shall fill the information in Report Form AML 1-05-2;

(2) For suspicious transaction, the reporting entity shall fill the information in Report Form AML 1-05-10.

Table summarizing the report form and the person filling out the report form

Transaction type	Threshold amount for reporting	Report form	Person filling out the report form
Cash transaction	Two million baht or more	AML 1-05-2	Business operator
Suspicious Transaction	No threshold amount	AML 1-05-10	Business operator

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<sup>3</sup> Ministerial Regulation No. 12 (2011) as issued under the provisions of the Anti-Money Laundering Act, 1999.

### 3.2 Reporting period<sup>4</sup>:

#### (1) Cash transaction reporting:

The reporting entity is required to file cash transaction report on monthly basis, namely, the reporting entity under Section 16 shall file the transaction report conducted from the 1<sup>st</sup> day until the end of the month to AMLO by the following month. However, the reporting entity should file the transaction report of each month not beyond the 15<sup>th</sup> day of the following month, e.g., the reporting entity should file cash transaction report (cash transaction value from two million baht or more) conducted between the 1<sup>st</sup> day and the 31<sup>st</sup> day of January by the period from the 1st day until the 15<sup>th</sup> day of February, etc.;

#### (2) Suspicious transaction reporting<sup>5</sup>:

The reporting entity is required to file suspicious transaction report within seven days from finding the cause under reasonable suspicion meaning that upon the conduct of transaction and later on finding that the said transaction is suspicious, the reporting entity must file the suspicious transaction report within seven days from the date finding such suspicion, for example, the customer conducts his transaction on March 1, the reporting entity finds that the transaction is unusual and undertakes examination until it can be concluded that such transaction is suspicious and the executive making examination or the business operator himself has considered that there is probable cause to submit the transaction report to AMLO on March 5, thus, the reporting entity has seven days from March 5 to file the report (in this example, the reporting entity has time from March 5 until March 11).

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<sup>4</sup> Ministerial Regulation No. 12 (2011) as issued under the provisions of the Anti-Money Laundering Act, 1999.

<sup>5</sup> Ministerial Regulation No. 12 (2011) as issued under the provisions of the Anti-Money Laundering Act, 1999.

Table summarizing reporting period

Transaction type	Reporting period
Cash transaction	Transaction in each month should be filed by 1-15 of the following month
Suspicious Transaction	Each transaction shall be filed within seven days from the date of examination and consideration that such transaction is suspicious

### 3.3 Method for sending transaction reports to AMLO:

The reporting entity 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

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.



#### 4. Transactions exempt from reporting

The rules for transactions exempt 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.

Clause B. In case of transactions made between trading partners, for example, making transactions or having joint business with other operator of the same category but not as a customer (being the trader buying in large quantity each time for putting goods into the shop for sale), i.e., the business operator orders goods in large quantity from foreign trader or major domestic wholesaler, it shall be considered as doing business with trading partners which is exempted from customer identification process.

Remark: A transaction exempt from reporting refers to the threshold transaction only. It does not include suspicious transaction. Therefore, the reporting entity is obliged to report the “transaction exempt from reporting” if the said transaction is found to be “a suspicious transaction”.

#### 5. 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.

#### **6. 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 1-05-10 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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