

Guideline for compliance with the law on anti-money laundering and AML/CFT international standard by real estate broker or agent

Introduction

The profession under Section 16 (4) is the legal person practicing the profession relating to real estate brokerage or agency¹. Therefore, most activities of such profession are acting as agent for buying/selling or making contact for leasing land, houses, buildings, offices, including factories, warehouses and all categories of removable property as required by the customers by receiving fees which may be part of the prices agreed by the parties or may be the expenses separately paid by the customers from the said prices.

The purchase of real estate, which is a high-priced property and may be resold for profits, could easily become the channel for transforming illegal money. The fact that AMLO is able to seize large quantity of land and houses from those committing predicate offenses shows that using illegal gains from committing offenses to buy real estate and resell it for money is one of the most common channels for money laundering.

The law on anti-money laundering is aimed at making the professions related to real estate brokerage or agency, specifically the group targeting customers in need of buying and selling real estate, in helping and becoming an instrument for the state to closely watch the customers' transactions which may be connected to using cash or holding funds in large quantity. As earlier mentioned, real property can be transformed into large amount of money particularly when land holding and investment in housing is lucrative. Therefore, using illegal money for conversion to real estate and vice versa through real estate brokerage business is deemed a form of money laundering and the real estate professionals are essential in helping the state to examine the transactions in such form.

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

¹ Amended by the Anti Money Laundering Act, 1999, (No. 3), 2009

guideline for compliance with the anti-money laundering law, specifically in reporting transactions and arrangement for customer identification which is directly related to such professions for the benefits of anti-money laundering operations.

Transaction reporting

The Anti-money Laundering Act, 1999, (amended by the Anti-money Laundering Act, 1999, (No. 2), 2009) sets a provision for the professions under Section 16 to report cash transactions and suspicious transactions to AMLO. Hence, real estate brokers and agents are obliged to report transactions to AMLO. In this guideline, the category of transactions to be reported by the professions and the category of transactions exempted from reporting obligations will be specified, as well as a guideline for examining customers' suspicious transactions, rules, procedures and period of the transaction reporting.

1. Reporting entity

Under this guideline, the person having duty to report transactions is the profession under Section 16 (4) of the AMLA, 1999, meaning:

“A legal person undertaking real estate brokerage or agency work”

2. Transaction subject to reporting obligations

(1) Cash transactions means the activity of receiving cash from the customer for payment under the contract of buying or selling or leasing real estate to the party of the contract whereas the agent or broker takes action on behalf of the customer or makes payment to each other at the acknowledgement of the agent or broker, including fee payment by the customer to the agent or broker, both in cash or by installment from the price payment in cash under the purchase/lease contract and these cash activities must have the cash value from “two million bahts or more.”²

² The ministerial regulation prescribes the threshold amount for filing cash transaction by the profession under Section 16 to AMLO, 2011.

(2) Suspicious transaction is under Section 3 of the AMLA, 1999, meaning buying, selling, leasing real estate, either in cash or non-cash such as by checks or bank transfer, or selling or receiving money from the buying, selling, leasing by whichever means and found to be suspicious as follows:

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

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

(4) The activity which could possibly be part of money laundering process or illegal activities, especially an economic crime, swindling, or public fraud, or activities related to criminal wrongdoing including the financing of terrorism;

(5) The activity whereas the customer who conducts it or the person related with such business activity is 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 reporting entity must urgently report it as a suspicious transaction to AMLO).

(2.1) Red flags for suspicious transactions:

For the benefits of filing suspicious transaction report, the professionals 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 or pay the rental of real estate whereas in general a small number of customers will make payment with cash in such quantity;

(2) The customer buys real estate at very high price while no other customers would buy it at that price owing to a slow down of property market, and the purchase may cause a loss to the buyer (in this case it may be because the customer is urgently in need of converting money to other property or both the buyer and the seller are associates in money laundering activities).

(3) The customer avoids answering questions related to the source of large amount of money (when talking with the professionals and being questioned) or answers questions which is considered that the customer has obtained money from any one offense or avoids answering questions about the source of real estate brought for selling to the other party.

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

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

(2.2) Process of initial transaction examination and approval prior to filing report

The professionals are obliged to file suspicious transaction report within seven days from the date of examination and finding that such executed transaction is suspicious transaction. In this regard, it should not exceed one month from the date making such transactions except in case of necessity causing the company to be delayed in the detection or examination, for example, when a customer conducts a transaction on March 1, the professionals find unusual activity/conduct and from initial examination it is found that such the transaction is suspicious and the executives or the professionals give approval of filing the suspicious transaction report to AMLO on March 5, the professionals 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 professionals should complete all process no later than March 31, etc.

The professionals have the duty 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 professionals 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.

(2.3) Guideline for specifying facts in report form

(1) In case of finding any one transaction believable to be under reasonable suspicion, the professionals 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 professionals to believe that the customer has suspicious behaviors (owing to many unusual transactions bringing about unusualness and reasonable suspicion), the professionals 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 the transaction report (reporting period, forms and methods for sending transaction report)

(3.1) Transaction report forms³ and the person filling out report forms:

(1) For cash transaction, the reporting entity shall fill in the information in Report Form AML 1-05-4;

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

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

Transaction type	Threshold amount for reporting	Report form	Person filling out the report form
Cash transactions	Two million baht or more	AML 1-05-4	Professionals
Suspicious transactions	No threshold amount	AML 1-05-10	Professionals

(3.2) Reporting period⁴:

(1) Cash transaction reporting:

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

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

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

(2) Suspicious transaction reporting⁵:

The professionals are 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 professionals 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 professionals find that the transaction is unusual and undertake examination until it can be concluded that such transaction is suspicious and the executive making examination or the professionals themselves have considered that there is probable cause to submit the transaction report to AMLO on March 5, thus, the professionals would have seven days from March 5 to file the report (in this example, the professionals have time from March 5 until March 11).

Table summarizing reporting period

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

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

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 transactions 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 orders goods in large quantity from foreign trader or major domestic wholesaler, it shall be considered as doing business with trading partners which is exempt from customer identification process.

Remark: A transaction being exempt from reporting refers to the threshold transaction only. It does not include suspicious transactions. Therefore, reporting entity is obliged to report the “transactions 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 transactions, 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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