

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

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### Rationale

The Anti-Money Laundering Act, 1999 (AMLA), Section 15, stipulates that the Bangkok Metropolis Land Office, Provincial Land Office, Branch Land Office, and District Land Office are obliged to report transactions to the Anti-Money Laundering Office (AMLO) when there appears to be a request for the registration of rights and legal act related to real estate where the financial institution is not a party according to the rules prescribed by law.

The reason for designating Land Office as a reporting entity under the AMLA is that the Land Office is an organization dealing with property transactions, either a change or transfer of rights, making it vulnerable for money laundering. Criminals usually change the forms of illegal money by buying houses, lands, and these can be sold for profit and transformed into clean money through the buyer's or the transferee's hands, or criminals may use illegal money to buy land and structure in order to change cash into rights over real estate.

Reporting property-related transactions as well as cash transactions in buying or selling property will help the AMLO be informed of the holding of proprietary rights over real estate which the AMLO wishes to seize, or be informed of whether the real estate under the proprietary rights of the person is under investigation. Furthermore, reporting cash transactions may also find unusual transactions by the person carrying out the transactions.

To ensure that the reporting of transactions by the Land Office is in compliance with the intent of the AMLA, and that the Land Office can fully abide by law, the AMLO hereby sets out a guideline for reporting transactions by the Land Office.

## **Transaction Reporting**

### **Introduction**

Real estate such as land, building or structure on land is valuable property with price continually increasing in accordance with economic circumstances. Honest citizens may want to invest while criminals may choose the use of transforming cash acquired through wrongdoing into valuable property such as real estate, which can be transformed back into cash without loss and also creating additional profits. Hence, the buying or selling of real estate is a channel to transform illegal money into property that is difficult to trace its origin.

The AMLA stipulates that the Land Office is obliged to report transactions if the amount of cash payments, or when the real estate has the appraisal value for collecting the rights and legal act registration fee exceeding that specified in the ministerial regulation, except for inherited transfer to the legal heir or when the transactions are under reasonable suspicion.

Hence, for the benefit of interpreting and explaining the provisions of the law for common understanding and proper compliance, the AMLO hereby issues this guideline for the Land Office to use as a guide in its implementation of the law.

### **1. Type of Transactions Subject to Reporting Obligations**

Transactions made at the Land Office involve with registration of rights and legal acts related to real estate. According to the Civil and Commercial Code, such the legal acts may be as follows:

- Registration of sale
- Registration of sale with right of redemption
- Registration of giving
- Registration of mortgage
- Registration of rights related to real estate acquired through inheritance
- Registration of joint proprietary rights
- Registration of exchange
- Registration of lease
- Registration of servitude
- Registration of usufruct

- Registration of right of superficies
- Registration of right of habitation
- Registration of encumbrance in real estate

However, transactions that the Land Office is obliged to report to the AMLO under the AMLA shall include:

**1.1 Cash transactions** mean activity of cash payment in the value of two million baht or more as a result of, or in direct relation to, the request for the registration of rights and legal act related to real estate (where the financial institution<sup>1</sup> is not a party) such as the payment of rights registration fee or the payment according to the contract to buy/sell real estate.

**1.2 Property-related transactions** mean transactions related to property, i.e. real estate with an appraisal price as the basis for charging fee for the registration of rights of five million baht or more.

Land price is based on the Land Office's appraisal price, not the market price. In the case of buying and selling real estate at a price lower than the appraisal price, for example,

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<sup>1</sup> The Anti-Money Laundering Act, 1999, Section 3 defines financial institution as follows:

“Financial institution” means

(1) The Bank of Thailand according to the Law on the Bank of Thailand, commercial banks according to the Law on Commercial Banking\*, and banks founded specially by law (\*revoked by the Financial Institution Business Act, 2008)

(2) Finance companies and credit foncier companies according to the Law on the Operating of Finance Business, Securities Business, and Credit Foncier Business\*, and securities companies according to the Law on Securities and Securities Market (\*revoked by the Financial Institution Business Act, 2008)

(3) The Industrial Finance Corporation of Thailand (IFCT)\* according to the Law on the IFCT and the Small Industry Finance Corporation\*\* according to the Law on Small Industry Finance Corporation (\*closed down due to the merger with the Thai Military Bank on 1<sup>st</sup> September 2004) (\*\*changed to the Small and Medium Enterprise Development Bank of Thailand (SME Bank) on 20<sup>th</sup> December 2002)

(4) Life insurance companies according to the Law on Life Insurance and casualty insurance companies according to the Law on Casualty Insurance

(5) \*Cooperatives according to the Law on Cooperatives, specifically cooperatives with an operating capital the share value of which is two million baht or more and having the objective of operation related to receiving deposits, giving loans, granting credits, receiving mortgage, or pawn brokerage, or arranging for the acquisition of money and property by any means (\*revised by the Anti-Money Laundering Act (Number 2), 2008)

(6) Juristic persons operating other business related to finance according to ministerial regulations

the appraisal price is five million baht but the buying and selling occurs at one million baht, the Land Office must report the transactions to the AMLO based on the appraisal price (Considering the appraisal price on the date of the registration of rights and legal act).

**1.3 Suspicious transactions** mean transactions under reasonable suspicion according to the definition in Section 3 of the AMLA which means the registration of rights and legal act related to real estate as follows:

(1) The registration of rights which is more complicated than the steps followed by other persons registering rights and carrying out the legal act, and it is evident that such complicated undertaking has no reasonable normal business cause or may be an intent to conceal the trace of the real owner.

(2) Transactions where it can be considered that the person registering rights and carrying out the legal act has the intention of avoiding the reporting of cash transactions. In other words, the person carrying out the transactions would have to make cash transactions in amount of two million baht or more, but attempts to avoid being reported by not paying all two million baht at one time (although they have the capacity to pay at the time).

(3) The registration of rights and the legal act which does not correspond to the transactioner's financial status or is in discord with the economic situation at the time.

(4) Transactions or legal act 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 registration of rights and legal act where the parties are Thai but there is a foreigner involving in the transactions, giving reason to believe that the foreigner is interested person in the said registration of rights and legal act; or the parties are juristic persons with foreigners having the authority to sign or holding shares (to the extent known), where it can be considered that the legal act is for foreigners' land holding through the juristic person registered under Thai law.

(6) Activities where the person carrying out or related to the legal act or the registration of rights 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 (in this case, the Land Office must make a suspicious transaction reporting urgently).

## **2. Reporting entities**

Those persons having duty to report transactions according to this guideline include:

- (1) The Bangkok Metropolis Land Office
- (2) The Provincial Land Office
- (3) The Branch Land Office
- (4) The District Land Office

## **3. Transactions Exempt from Reporting**

**The Land Office does not need to report the following transactions:**

The first and second exempted transactions in Section 15, namely transactions carried out with a financial institution and transactions which are inheritance transfers to the legal heir; the third case is transactions exempt under article 1 (6) of ministerial regulation No. 5 (2000) issued under the AMLA. All of these can be considered as follows:

### **(1) Transactions with financial institutions as a party**

Section 15 of the AMLA specifies exceptions for transactions made between the person registering rights or carrying out the legal act and a party which is a financial institution, e.g. seeking loans from a financial institution by using property as collateral. In this case, the Land Office is not obliged to report cash transactions or property-related transactions, even when the transaction amount is under threshold as specified by law.

### **(2) Inheritance transfers to the legal heir**

Section 15 of the AMLA specifies exceptions for the registration of rights in real estate which is an inheritance transfer, meaning the transfer of the estate of the deceased to the deceased's legal heir (the case of inheritance transfer to the heir by will who is not a descendant does not fall under this exception).

The legal heir<sup>2</sup> means the heir by the Civil and Commercial Code. In the case that the owner of the inheritance (the previous owner of the real estate who is deceased) did not create a will giving said real estate to any particular person, the real estate will fall to the said deceased's legal heir.

In the case that the heir by will is the inheritance owner's descendant, it could be considered that the transfer of inheritance is made to a legal heir.

For the registration of real estate transfer which is the estate of the deceased to the legal heir, even when the real estate has an appraised price under threshold specified by the law, the Land Office is not obliged to report the transactions to the AMLO.

**(3) Transfers of real estate for public benefit and the registration of rights acquired by possession or by prescription according to Section 1382 and Section 1401 of the Civil and Commercial Code**

Ministerial regulation No. 5 (2000) issued under the AMLA specifies exceptions in reporting transactions related to real estate in 2 cases, which are:

(3.1) registration of proprietary rights in real estate acquired by hostile possession according to Section 1382 of the Civil and Commercial Code;

(3.2) registration of servitude rights acquired by hostile means according to Section 1401 of the Civil and Commercial Code

For both aforementioned cases, even when the real estate with the registration of rights has an appraisal price of five million baht or more, the Land Office is not obliged to report the transactions to the AMLO.

#### **4. Form, Reporting Period, Criterion, and Method for Reporting**

Table 1 showing transaction type, transaction value and report form

Transaction type	Transaction value	Report form
Cash transactions	Paid in cash of the value	Use the certified copy of

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<sup>2</sup> According to the Civil and Commercial Code, there are 6 levels to the legal heir which are (1) descendants (2) parents (3) siblings of the same parents (4) siblings of one same parent (5) paternal and maternal grandparents (6) uncles and aunts. Other than that, living spouses are legal heirs.

	from two million baht or more	the request for registration of rights and legal act, or electronic form with information according to the said request for registration of rights and legal act (in case of cash transactions, indicating “cash” at the top right corner of the copy of the request.
Real estate value	Real estate with an appraisal price of five million baht or more	
Suspicious transactions	No threshold	

**Remark:** In case of cash transactions, indicate “cash” at the top right corner of the copy of the registration request.

The AMLA, Section 17 together with ministerial regulation No. 4 (2000) issued under the AMLA, as amended by the ministerial regulation No. 12 (2011) issued under the AMLA, specifies the form, reporting period, criterion and method for reporting transactions by the Land Office as follows:

#### 4.1 Forms used for reporting transactions

For the registration of rights and legal act related to real estate in the case of cash payment in amount of two million baht or more according to Section 15 (1) or in the case where the real estate has a value based on the appraisal price to charge the registration of rights and legal act fee of five million baht or more according to Section 15 (2) or for suspicious transactions according to Section 15 (3), the Land Office must use the certified copy of the request for the registration of rights and legal act or electronic form which has the information according to said request for registration of rights and legal act.

**Remark:** For the registration of rights and legal act by the Land Office, ministerial regulation No. 42 (1993) issued under the Act for the Use of the Land Code, 1954, specifies that

Form L 1 is to be used as a request form for the registration of rights and legal act and the verification of rights over land for land with title deed. Form L 1a is to be used for land without title deed and other real estate. According to the Regulation of the Department of Land regarding Apartment House, 1980, Chapter 4, the registration of rights and legal act related to apartment house, article 28 specifies that Form AH 15 is to be used as the request form for the registration of rights and legal act and the verification of rights over apartment house.

The reporting by the Land Office does not need to use the AMLO... transaction report form, but may use a certified copy of the request form for registration of rights and legal act, or the Land Office may use electronic form with the information according to the request for registration of rights and legal act. **But only in the case of “reporting cash transactions, the Land Office making the report must indicate cash on the top left corner of the copy of the request for the registration of rights and legal act”.**

#### 4.2 Reporting period

##### 4.2.1 Cash transactions reporting

Monthly cash transactions reporting means that the Land Office must send cash transaction reports (certified copy of the request for the registration of rights and legal act) for each month between the 1<sup>st</sup> and the 5<sup>th</sup> of the following month.

##### Example

For cash transactions with the value of two million baht or more, which are made between 1<sup>st</sup> and 30<sup>th</sup> March, the Land Office shall send the report to the AMLO from 1<sup>st</sup> to 5<sup>th</sup> April.

##### 4.2.2 Transactions related to real estate

Monthly reporting of transactions related to real estate means that the Land Office must send transactions report related to real estate (certified copy of the request for the registration of rights and legal act) for each month between the 1<sup>st</sup> and the 5<sup>th</sup> of the following month.

##### Example

For transactions related to real estate with an appraisal price of five million baht or more which are made between 1<sup>st</sup> and 30<sup>th</sup> March, the Land Office shall send the report to the AMLO from 1<sup>st</sup> to 5<sup>th</sup> April.

Remark: In the case that the last day of the reporting period is a public holiday, the next working day after the holiday shall be counted as the last day of the reporting date.

For example, if the 5<sup>th</sup> of the month is a Sunday, the Land Office may report on Monday 6<sup>th</sup> which is a working day.

#### 4.2.3 Reporting of suspicious transactions

In case of reporting of suspicious transactions under Section 15 (3), the certified copy of the request for registration of rights and legal act, including a note of the cause for suspicion shall be submitted to the AMLO within five days from the discovery of the cause for reasonable suspicion.

It must be noted that the date of transactions and date of discovery of cause for reasonable suspicion may be different. In other words, the transactions may be made on the 1<sup>st</sup>, but the Land Office official may find cause for reasonable suspicion on the 3<sup>rd</sup>. Therefore, reporting must be made within 5 days starting from the 3<sup>rd</sup>. However, the discovery of cause for reasonable suspicion should not exceed 1 month from the date of the transactions, except when there is reasonable cause for the delay of discovery or examination of information.

Table 2 showing the reporting of transactions and reporting period

Transaction type	Report form	Person filling out the report form	Person submitting the report	Reporting period
Cash transactions under Section 15 (1)	Use the certified copy of the request for registration of rights and legal act, or electronic form with	The Land Office	The Land Office	Send the transactions report occurring in each month within the 1 <sup>st</sup> – 5 <sup>th</sup> of the next month.
Transactions related to real estate under Section 15 (2)		The Land Office	The Land Office	
Suspicious transactions under		The Land Office	The Land Office	Send the suspicious

Section 15 (3)	<p>information according to the said request for registration of rights and legal act. (1) In case of cash transactions, indicate “cash” at the top right corner of the copy of the request.</p> <p>(2) In case of suspicious transactions, note additional facts which are cause for the suspicion.</p>			<p>transactions report within 5 days from the discovery of cause for reasonable suspicion.</p>
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#### 4.3 Method for sending transaction report

Section 17 under the AMLA together with the ministerial regulation No. 4 (2000) issued under the AMLA as amended by ministerial regulation No. 12 (2011) issued under

the AMLA specifies the method for sending the report to the AMLO by one of the following means:

#### **4.3.1 By hand**

This is the case of delivering the original form in person or entrusting someone else to deliver at the AMLO, which is currently at the Anti-money Laundering Office (AMLO) building, 422, Phayathai road, Wang Mai sub-district, Pathumwan district, Bangkok 10330.

#### **4.3.2 By registered post**

Sending by registered post to the AMLO, the date of the post office stamp shall be counted as the date of sending of transaction report.

**4.3.3 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.

### **5. Transactions Exempt from Reporting**

Ministerial regulation No. 5 (2000) issued under the AMLA as amended by the ministerial regulation No. 13 (2011) issued under the AMLA specifies transactions exempted from reporting to the AMLO as follows:

5.1 Transactions where the King, the Queen, the Heir Apparent or members of the royal family from the rank of Prince or Princess up to the rank of Crown Prince or Crown Princess are parties.

5.2 Transactions where the Royal Thai Government, the central administrative government, the provincial administrative government, the local administrative government, state enterprises, public corporate or other state agencies are parties.

5.3 Transactions where the following foundations are parties:

- 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

## 6. Record keeping

The criterion specified in the Regulation of the Office of the Prime Minister Regarding Archives, 1983 shall be applied. In general, the copy of the registration of rights and legal act reported to the AMLO shall be kept for 10 years<sup>3</sup>.

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<sup>3</sup> Regulation of the Office of the Prime Minister Regarding Archives, 1983, No. 57