

**FINANCIAL INTELLIGENCE UNITS AND THE PREVENTION OF
MONEY LAUNDERING**

**A Comparative Analysis of Financial Intelligence Units in
the United Kingdom, Singapore and Thailand**

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ABSTRACT

This thesis examines the implementation of the international Anti-Money Laundering (AML) standards regarding the role of Financial Intelligence Units (FIU) under the Financial Action Task Force (FATF) Recommendations. The main research questions focus on ‘What is the AML policy relating to the roles of the Thailand FIU?’; ‘How effective has Thailand’s FIU been in implementing the FATF standards?’; ‘What additional strategies should Thailand implement to counter money laundering?’; as well as ‘What are the lessons that Thailand should learn from the UK and Singapore?’ This examination aims to determine whether the current role of Thailand FIU is ‘appropriate’ for the international AML standards. The thesis considers the extent to which the AML policies on the FIUs are implemented in the United Kingdom and Singapore to determine if there are any meaningful suggestions possibly adopted in Thailand. For this thesis, the term ‘appropriate’ means the AML legislation should support the FIU in operating its functions independently, and be able to apply to the FATF standards.

Applied by doctrinal, socio-legal, and comparative law research methods, the thesis responds to criticisms that the level of independence of the Thailand FIU is ‘ambiguous’, the rationale being that certain provisions relevant to its FIU regarding with sufficient operational independence from the government. The most serious criticism is that the Anti-Money Laundering Board (AMLB) can hold and use significant influence over the Transaction Committee, the Secretary-General and the Anti-Money Laundering Office (AMLO) according to section 25(3) of the Anti-Money Laundering Act 1999 (AMLA) that may undermine the AMLO’s functions. The thesis argues that the role is inappropriate, but it affects the independence of the Thailand FIU. The approach used to address this issue is the adaptation of the administrative-FIU model into Thailand’s FIU; as well as the implementation of soft law (i.e. FATF Recommendations, best practices, and industry guidelines). The thesis concludes that the AMLA 1999 is inconsistent with FATF Recommendation 29.

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- *Ahmad v HM Advocate* [2009] HCJAC 60; [2009] SCL 1093
- *Ang Jeanette v PP* [2011] 4 SLR 1

K

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L

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O

- *Ow Yew Beng v Public Prosecutor* [2003] 1 SLR 536

P

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R

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- *R v Cuthbertson* [1981] AC 470
- *R v Da Silva* [2006] [2007] 1 WLR 303
- *R v Gillard* (1988) 87 Cr App R 189
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- *R v Rollins* [2010] UKSC 39
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S

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W

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TABLE OF LEGISLATION

A

- Administrative Procedure Act B.E. 2539 (1996)
- Anti-Money Laundering Act B.E. 2542 (1999)

B

- Bank of Thailand Act B.E. 2485 (1942)

C

- Casino Control Act (2006)
- Chambers of Commerce Act B.E. 2509 (1966)
- Commercial Bank Act B.E. 2505 (1962)
- Constitution of the Kingdom of Thailand B.E. 2560 (2017)
- Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1939)
- Convention on the International Validity of Criminal Judgements (1970)
- Convention on Psychotropic Substances (1971)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) (CETS 141)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (1992) (Chapter 65A)
- Counter-Terrorist Financing Act B.E. 2556 (2013)
- Counter-Terrorism and Proliferation of Weapons of Mass Destruction Financing Act B.E. 2559 (2016)
- Crime and Courts Act (2013)
- Criminal Code B.E. 2499 (1956)
- Criminal Finances Act (2017)
- Criminal Justice Act (1988)
- Criminal Justice Act (1993)
- Criminal Justice Act (2003)
- Criminal Justice and Police Act (2001)
- Customs Act B.E. 2469 (1926)

- Customs Act B.E. 2560 (2017)

D

- Drug Trafficking Offences Act (1986)

E

- Exchange Control Act (No. 2) B.E. 2559 (2016)
- Extradition Act B.E. 2551 (2008)

F

- Financial Services Act (2012)
- Financial Services and Markets Act (2000)

I

- Insurance Commission Act B.E.2550 (2007)
- International Convention for the Suppression of the Financing of Terrorism (1999)

M

- Measures for the Suppression of Offenders in an Offence Relating to Narcotics Act B.E.2534 (1991)
- Money Laundering Regulations (2003)
- Monetary Authority of Singapore Act (1970) (Chapter 186)
- Money Laundering, Terrorist Financing and Transfer of Funds)Information on the Payer (Regulations (2017)
- Mutual Assistance in Criminal Matters Act (Chapter 190A) (1992)
- Mutual Assistance in Criminal Matters Act B.E.2535 (1992)

N

- Narcotics Control Act B.E. 2519 (1976)
- Narcotics Act B.E. 2522 (1979)

O

- Organic Act on Counter Corruption B.E. 2542 (1999)
- Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015)

P

- Police Act (1997)
- Police Reform Act (2002)
- Prevention of Corruption Act (1960) (Chapter 241)
- Proceeds of Crime Act (2002)

- Prosecution of Offences Act (1985)
- Psychotropic Substances Act B.E. 2518 (1975)
- Public Prosecution Organ and Public Prosecutors Act B.E. 2553 (2010)

S

- Sanctions and Anti-Money Laundering Act (2018)
- Securities and Exchange Act B.E. 2535 (1992)
- Serious Organised Crime and Police Act (2005)
- Singapore Banking Act (1970)
- Single Convention on Narcotic Drugs (1961)
- Special Cases Investigation Act B.E. 2547 (2004)
- Suppression of the Financing of Terrorism (1999)

T

- Terrorism (Suppression of Financing) Act (1992)
- Terrorism (Suppression of Financing) Act (2002) (Cap. 325)
- Terrorism Act (2006)
- Trade Association Act B.E. 2509 (1966)
- Transnational Organised Crime Act B.E. 2556 (2013)

U

- UK Serious Crime Act (2015)
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- United Nations Convention Against Transnational Organised Crime (2000)
- United Nations Convention Against Corruption (2003)

LIST OF ABBREVIATIONS

A

ABI	Association of British Insurers
ABS	Association of Banks in Singapore
ACAs	Anti-Corruption Agencies
ACIP	Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership
AG	Attorney General
AGC	Attorney-General's Chambers
AML	anti-money laundering
AMLA	Anti-Money Laundering Act
AMLB	Anti-Money Laundering Board
AMLO	Anti-Money Laundering Office
APG	Asia/Pacific Group on Money Laundering
ARA	Assets Recovery Agency
ASEAN	Association of Southeast Asian Nations
AUSTRAC	Australian Transaction Reports and Analysis Centre

B

BBA	British Bankers' Association
BCBS	Basel Committee on Banking Supervision
BCCI	Bank of Credit and Commerce International
BOT	Bank of Thailand
BSA	Building Societies Association

C

CAD	Commercial Affairs Department of Singapore
CBA	Commercial Bank Act
CDD	Customer due diligence
CDSA	Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
CFT	Counter Financing of Terrorism
CID	Criminal Investigation Department, Singapore Police Force
CMR	Cash movement report
CNB	Central Narcotics Bureau
CPC	Criminal Procedure Code
CPIB	Corrupt Practices Investigation Bureau
CPS	Crown Prosecution Service
CRA	Casino Regulatory Authority
CTF	Counter-terrorist financing
CTPF	Counter-Terrorism and Proliferation of Weapons of Mass Destruction Financing
CTR	Currency transaction reports

D

DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
DSI	Department of Special Investigation

E	
EPPO	European Public Prosecution's Office
EU	European Union
F	
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCO	Foreign and Commonwealth Office
FIB	Financial Investigation Branch
FID	Financial Investigation Division
FIG	Financial Investigation Group
FinCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
FSA	Financial Services Authority
FSB	Financial Stability Board
FSF	Financial Stability Forum
FSRBs	Financial-Style Regional Bodies
G	
GDP	Gross Domestic Product
GFIU	Global Financial Intelligence Unit
GIFCS	Group of International Finance Centre Supervisors
H	
HMIS	Her Majesty's Immigration Service
HMRC	Her Majesty's Revenue and Customs
I	
IAC	Inter-Agency Committee
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principles
IMF	International Monetary Fund
ING	Intelligence Group
INTERPOL	International Criminal Police Organisation
IOSC	International Organisation of Securities Commissions
J	
JFAC	Joint Financial Analysis Centre
JMLIT	Joint Money Laundering Intelligence Taskforce
JMLSG	Joint Money Laundering Steering Group
K	
KMPG	Klynveld Peat Marwick Goerdeler
KYC	Know your customer
L	
LEA	Law Enforcement Authority
LIBOR	London Interbank Offered Rate

LOU	Letters of Undertaking
M	
MACM	Mutual Assistance in Criminal Matters Act
MAS	Monetary Authority of Singapore
MDB	Malaysia Development Berhad
MER	Mutual Evaluation Report
MLAC	Money Laundering Advisory Committee
MLRO	Money Laundering Reporting Officer
MLRs	Money Laundering Regulations
MOAC	Ministry of Agriculture and Cooperative
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
N	
NACC	National Anti-Corruption commission
NAO	National Audit Office
NCA	National Crime Agency
NCARRB	NCA Remuneration Review Body
NCCTs	Non-Cooperative Countries and Territories
NCIS	National Criminal Intelligence Service
NIDA	National Institute of Development Administration
NRA	National Risk Assessment
O	
OAG	Office of Attorney General
OECD	Economic Co-operation and Development
OFCs	Offshore Financial Centres
OIC	Office of Insurance Commission
ONCB	Office of Narcotics Control Board
P	
PCA	Prevention of Corruption Act
PCU	Proceeds of Crime Unit
PEPs	Politically Exposed Persons
PCI	Proceeds of Crime Unit
PEPs	Politically Exposed Persons
POCA	Proceeds of Crime Act
R	
RBA	Risk-Based Approach
RCPO	Revenue and Customs Prosecution Office
RE	Reporting Entity
RICS	Royal Institute of Chartered Surveyors
RTC	Royal Thai Customs
RTP	Royal Thai Police

S	
SAR	Suspicious activity report
SCB	Standard Chartered Bank
SEC	Securities and Exchange Commission
SFO	Serious Fraud Office
SGX	Singapore Exchange Limited
SGX-ST	Singapore Exchange Securities Trading Limited
SIA	Singapore Airlines
SM&CR	Senior Managers and Certification Regime
SOCA	Serious Organised Crime Agency
SOP	standard operating procedure
SPF	Singapore Police Force
STR	Suspicious transaction report
STRO	Suspicious Transaction Reporting Office
SYSC	Senior Management Arrangements, Systems and Controls Sourcebook
T	
TA	Terrorism Act
TC	Transaction Committee
TCC	Thai Chamber of Commerce
TCSP	Trust and Company Service Providers
TSOFA	Terrorism (Suppression of Financing) Act
TF	Terrorist Financing
U	
UK	United Kingdom
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNTOC	United Nations against Transnational Organised Crime

CHAPTER ONE

Introduction

1.1 Introduction

Money laundering is the process of the conversion or transaction of an asset obtained from a criminal offence and illegal activities purposely to conceal, hide, or disguise the unlawful source of criminal property (i.e. the true origin). In some cases, it is the process to help any person involved with the criminal offence and realised that the asset is obtained from such offence to exploit to generate a crime profit and then make them legitimate.¹ Reuter and Truman identified that money laundering is the act of converting money from illicit activities into dirty money that finally appears legitimate, and its origin cannot be traced and investigated to the criminal proceedings.²

Ryder defined money laundering as an act of concealing the illicit origins of the proceeds of crimes to present themselves as a legitimate capital.³ Fisher noted

¹ See discussion in chapter 3; see also Financial Action Task Force (FATF), 'What is money laundering' <<http://www.fatf-gafi.org/faq/moneylaundering/>> accessed 3 October 2017; see also Joint Money Laundering Steering Group (JMLSG), *Prevention of Money Laundering/Combating Terrorist Financing Guidance for the UK Financial Sector: Part 1* (JMLSG 2011) 8.

² For example, human trafficking, government corruption, drug dealing, corporate fraud, arm sales, smuggling, prostitution rings, human trafficking, drug trafficking, illegal log trading, bribery, embezzlement, computer fraud schemes, tax, and insider trading, and terror financing; see Financial Action Task Force (FATF), *Global Money Laundering & Terrorist Financing Risk Assessment Report* (FATF 2010); see also *Financial Action Task Force* (n 1); see also Peter Reuter and Edwin M Truman, *Chasing Dirty Money: The Fight against Money Laundering* (Institute for International Economics 2004) 9; Nicholas Ryder, 'The financial services authority and money laundering: A game of cat and mouse' (2008) 67(3) *Cambridge Law Journal* 635, 635.

³ Nicholas Ryder, *Money Laundering - An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 1, 11; see International Monetary Fund (IMF), 'Anti-Money Laundering/Combating the Financing of Terrorism' <<https://www.imf.org/external/np/leg/am-lcft/eng/am11.htm>> accessed 30 May 2015; see also Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart 2003) 3.

that money launderers attempt to disguise illegal funds and hidden assets from relevant authorities and make them appear legitimate by using legislative obstacles.⁴ Reuter and Truman argued that money launderers hide the origins of their dirty money and clean it into legitimate to avoid suspicion.⁵ Gleeson noted that money laundering is a separate offence that commences with the illegal purpose to hide proceeds of crime and prevent the detection of a criminal offence.⁶ Gallant argues that money laundering is the circulation of the proceeds of crime by recycling or moving illicit money, which causes damage to the reputation of financial institutions, as well as the stability of the economic system.⁷

1.2 Research Context

The United Kingdom (UK) Financial Services Authority (FSA) asserted that the launderers use complicated techniques that appear to have a lawful origin in order to retain the asset permanently or recycle it to fund further crimes.⁸ The United Nations Office on Drugs and Crime (UNODC) identified that the launderers try to obscure the ownership or application of the proceeds of crime to avoid the suspension

⁴ Jonathan Fisher, 'Confiscating the proceeds of crime – Chapter four' in Arun Srivastava, Mark Simpson and Nina Moffatt (eds), *International Guide to Money Laundering Law and Practice* (4th edn, Bloomsbury 2013) 183, 207; see James O Finckenauer, 'Problems of definition: What is organised crime?' (2005) 8(3) *Trends in Organised Crime* 63, 66; see Jack A Blum, Michael Levi, R Thomas Naylor and Phil Williams, *Financial Havens, Banking Secrecy and Money-Laundering* Technical Series Issue 8 (UNDCP 1998) 6, 8; see also Ryder (n 2) 635, 635; Frances R Hill, 'Dark money in motion: Mapping issues along the money trail' (2015) 49 *Valparaiso University Law Review* 505, 507.

⁵ Guy Stessens, *Money Laundering – A New International Enforcement Model* (CUP 2000); Mary Michelle Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Edward Elgar 2005) 1; see also Jeffrey Robinson, *The Laundrymen: Inside the World's Third Largest Business* (Simon and Schuster 1994) 12, 213; see also Reuter and Truman (n 2) 32.

⁶ Simon Gleeson, 'The involuntary launderer: The banker's liability for deposits of the proceeds of crime' in Peter BH Birks (ed), *Laundering and Tracing* (Oxford University Press 1995) 115.

⁷ William C Gilmore, *Dirty Money: The Evolution of Money Laundering Counter-Measures* (Council of Europe 1995) 16; see also Gallant (n 5) 4.

⁸ Paragraph 2.1 of the Financial Services Authority (FSA) Consultation Paper 46 (CP46); see Financial Services Authority (FSA), 'Money Laundering: the FSA's new role' (April 2000) at 7 <<http://www.fsa.gov.uk/pubs/cp/cp46.pdf>> accessed 23 July 2018; see also Nicholas Ryder, *Financial Crime in the 21st Century: Law and Policy* (Edward Elgar 2011) 13.

of anti-money laundering (AML) authorities and refrain from leaving a trail of criminal evidence.⁹ For example, launderers transferred their dirty money to various countries through credit card clearances at high speed.¹⁰ Such secret characteristic of the laundering activity makes it difficult for governments and relevant agencies to trace dirty money and estimate the amount of money laundered in the world each year.¹¹ Therefore, it is difficult to identify and quantify how much money was laundered because it is an unquantifiable dark figure, which was not reported or prosecuted.¹² However, Robinson argued that money laundering is the World's third-largest industry after a currency exchange and the oil trade.¹³

Gallant noted that in the early 1990s, the annual amount of laundered funds was approximately \$1trn, or between three and five per cent of the world Gross Domestic Product (GDP).¹⁴ In 1990 the Financial Action Task Force (FATF) estimated that the proceeds of drug sales in the US and Europe approximately \$85bn annually were used for laundering and investment.¹⁵ However, Walker argued that criminals launder approximately \$2.85tn per year.¹⁶ Conversely, Allen noted that the total worldwide amount for money laundering is between \$800bn and \$1.5tn.¹⁷

⁹ United Nations Office on Drugs and Crime (UNODC), 'Introduction to money laundering' <<https://www.unodc.org/unodc/en/money-laundering/introduction.html>> accessed 1 April 2018.

¹⁰ Peter Grabosky, 'Globalisation and white-collar crime' in Sally S Simpson and David Weisburd (eds), *The Criminology of White-Collar Crime* (Springer 2009) 135.

¹¹ Brigitte Unger and Elena Madalina Busuioic, *The Scale and Impacts of Money Laundering* (Edward Elgar 2007) 9; see *Gallant* (n 5) 11; see also HM Government, 'Serious and Organised Crime Strategy' Present to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, Policy paper (October 2013) <<https://www.gov.uk/government/publications/serious-organised-crime-strategy>> accessed 27 March 2018; see also *Reuter and Truman* (n 2).

¹² *Alldrige* (n 3) 4.

¹³ *Robinson* (n 5) 12.

¹⁴ *Gallant* (n 5) 12.

¹⁵ William C Gilmore, 'International efforts to combat money laundering' (1992) 18 Cambridge University Press 1129, 1130.

¹⁶ John Walker, 'Just How Big is Global Money Laundering?' (John Walker Crime Trends Analysis) <https://www.academia.edu/568761/How_big_is_global_money_laundering> accessed 22 February 2016.

¹⁷ Daren Allen (ed), *Butterworths Money Laundering Law* (Butterworths 1998); see Simon Maylam, 'Prosecution for money laundering in the UK' (2003) 10(2) *Journal of Financial Crime* 157, 158; see

Interestingly, in 1998 the US State Department's Bureau for International Narcotics and Law Enforcement Affairs asserted that \$300bn and \$500bn was laundered, while the International Monetary Fund (IMF) declared that the scale of money laundering transactions was about two and five per cent of the world GDP.¹⁸ Unger studied that the effects of money laundering can bring about the losses due to crime, or approximately €2bn or about 0.4% of World GDP annually, including distorting of investment or savings through criminal activity, contamination of specific sectors with a crime, and the increase in crime rates.¹⁹

The UNODC assumed that criminal proceeds amounted to approximately 3.6 per cent of the world GDP, but there may have been laundered about \$1.6trn or around 2.7 per cent of GDP in 2009.²⁰ To fully understand the scale of money laundering, this amount represents about four times the 2013 GDP of Thailand²¹ or \$387.3bn.²² The UK Serious and Organised Crime Strategy²³ also asserted that organised crime in the UK laundered dirty money more than £1bn via money service

also *Ryder* (n 2) 635, 636; see also Nicholas Ryder, 'The fight against illicit finance: A critical review of the Labour government's policy' (2011) 12(3) *Journal of Banking Regulation* 252, 275

¹⁸ Financial Action Task Force (FATF), *Annual Report 1997-1998* (FATF 1998) 37 <<http://www.fatf-gafi.org/media/fatf/documents/reports/1997%201998%20ENG.pdf>> accessed 27 March 2018; see also *Gilmore* (n 7) 21.

¹⁹ Brigitte Unger, Melissa Siegel, Greg Rawlings, Joras Ferwerda, Wouter de Kruijf, Madalina Busuioc and Kristen Wokke, *The Amounts and the Effects of Money Laundering*, Report for the Ministry of Finance on 16 February 2006 at 3, 8.

²⁰ Financial Action Task Force (FATF), 'How much money is laundered per year?' <<http://www.fatf-gafi.org/faq/moneylaundering/>> accessed 23 February 2018; see also United Nations Office on Drugs and Crime (UNODC), 'Illicit money: how much is out there?' (25 October 2011) <https://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html> accessed 23 February 2018; see also United Nations Office on Drugs and Crime (UNODC), *Estimating Illicit Financial Flows Resulting from Drug Trafficking and other Transnational Organised Crimes Research Report* (2011).

²¹ Government Digital Service, 'Thailand' (*GOV.UK*, 11 February 2016) <<https://www.gov.uk/foreign-travel-advice/thailand>> accessed 27 July 2019.

²² World Bank, 'Thailand' <<http://www.worldbank.org/en/country/Thailand>> accessed 28 May 2015; see *Gilmore* (n 7) 322.

²³ *HM Government* (n 11).

businesses annually.²⁴ The National Crime Agency (NCA) and the UK Financial Intelligence Unit (FIU) estimates that there are several billion pounds of international dirty money laundered via the banks in the UK and their subsidiaries every year.²⁵ Furthermore, Gilmore asserted that criminal money is laundered internationally between \$300bn and \$500bn.²⁶

There are three stages to transform dirty money into a legitimate capital, namely placement, layering, and integration.²⁷ The first stage is the placement stage, which is the initial action for criminally gained money or other proceeds of crime, to change its pattern, source, originality, or location to place such illicit proceeds of crime into the typical financial system, such as banks, or place dirty money into accounts outside the jurisdiction of law enforcement.²⁸ For example, such a process includes the blending of illegal funds into bank complicity and asset purchases.²⁹ The criminals usually divide money into smaller sums, which are then deposited into various bank accounts in order to avoid the AML regulations, such as the suspicious transaction reports (STRs) or suspicious activity reports (SARs) to the FIUs in each country.³⁰ Simser identified this process as ‘smurfing,’ where launderers attempt to

²⁴ Barry Rider, Kern Alexander, Stuart Bazley and Jeffrey Bryant, *Market Abuse and Insider Dealing* (3rd edn, Bloomsbury 2016) 179.

²⁵ Basia Spalek, ‘Regulation, white-collar crime and the bank of credit and commerce international’ (2001) 40(2) *The Howard Journal* 166, 173; see also National Crime Agency (NCA), ‘The scale of the problem’ <<http://www.nationalcrimeagency.gov.uk/crime-threats/money-laundering>> accessed 14 January 2018.

²⁶ *Gilmore* (n 7) 21.

²⁷ *Ryder* (n 3) 12; see *Robinson* (n 5) 12; see also Dong Hopton, *Money Laundering: A Concise Guide for All Business* (2nd edn, Routledge 2009) 2, 3; *Stessens* (n 5) 4, 113; *Unger and Busuioic* (n 11) 4.

²⁸ Financial Action Task Force (FATF), ‘How is money laundered?’ <<http://www.fatf-gafi.org/faq/moneylaundering/>> accessed 23 February 2018; see *Ryder* (n 3) 12.

²⁹ Sarah N Welling, ‘Smurfs, money laundering, and the federal criminal law: the crime of structuring transactions’ (1989) 41 *Florida Law Review* 287, 289.

³⁰ *Ryder* (n 3) 12.

enter dirty money into a financial institution that is lower than the STR/SAR requirements.³¹ For example, to avoid the money laundering reporting officer (MLRO) reporting the suspicious transactions, launderers conduct several cash transfers from bank to other banks just below the reporting threshold (including converting the bulk dirty cash into the cashier's checks, money order, and traveller's checks) to finish transactions without the trace for competent authorities.³²

The second stage is the layering stage, which is the process of dividing the proceeds of crime or profits from their sources by putting them through numerous transactions, the online-banking system, letter of credit, smart cards, and insurance-based products in order to separate and distance the illicit funds from their original suspicious sources.³³ The criminals might disguise the transaction as payments for services or goods in any jurisdictions that do not cooperate in AML investigations to convert illicit funds to licit and inconspicuous form.³⁴ To avoid the investigation of law enforcement authorities (LEAs), launders use several complex transactions, such as transferring money through a legal bank account from another jurisdiction, including offshore banks to purchase luxury goods, for example, yacht, car, estate, or invest in the stock market.³⁵ Launderers widely also use mobile and electronic payment services via smartphones for the transaction of their dirty money.³⁶

³¹ Jeffrey Simser, 'Money laundering and asset cloaking techniques' (2008) 11(1) *Journal of Money Laundering Control* 15, 15; see also *Welling* (n 29) 287, 288.

³² Bonnie Buchanan, 'Money Laundering – A global obstacle' (2004) 18 *Research in International Business and Finance* 115, 117; see also *Welling* (n 29) 287, 289.

³³ *Ryder* (n 3) 12.

³⁴ *Financial Action Task Force* (n 28).

³⁵ Jonathan E Turner, *Money Laundering Prevention: Deterring, Detecting and Resolving Financial Fraud* (John Wiley & Sons 2011) 9.

³⁶ Sandra L Suarez, 'Poor people's money: the politics of mobile money in Mexico and Kenya' (2016) 40 *Telecommunications Policy* 945, 950; see also Celina B Realuyo, 'It's all about the money: Advancing Anti-Money Laundering efforts in the U.S. and Mexico to combat transnational organised crime' (2012) *Woodrow Wilson International Centre for Scholars* 1, 12.

The final stage is the integration stage, where the launderers re-enter their money to the legally financial system.³⁷ For example, such funds are usually launderer via investing their funds into routine living and lifestyle expenses, such as real estate, luxury assets, high levels of conspicuous consumption, or moving large amounts of money to invest in legitimate businesses in other countries or shell corporations, overseas bank complicity and fake import-export invoices for transfers.³⁸ Conversely, Koningsveld argued that the money laundering process should be divided into four stages, namely the placement, layering, justification, and investment.³⁹ He criticised that the final process should be separated into two processes; justification and investigation (namely integration).

The money laundering process can be operated by the organised crimes themselves or via other methods, including their accountants, trust and company formation agents, investment bankers, lawyers, or other intermediaries.⁴⁰ Such secret and complex processes make it difficult, if not impossible, for the governments and FIUs to tackle.⁴¹ The successful money launderers and criminals use the gaps among various legislative systems of jurisdictions in different parts of the world financial system to abuse and obtain access to commit their crimes.⁴² They attempt to hide

³⁷ *Ryder* (n 3) 12.

³⁸ *Financial Action Task Force* (n 28); see *Ryder* (n 3) 12.

³⁹ Jan van Koningsveld, 'Money laundering – you don't see it, until you understand it: rethinking the stages of the money laundering process to make enforcement more effective' in Brigitte Unger and Daan van der Linde (eds) *Research Handbook on Money Laundering* (Edward Elgar 2013) 435, 451.

⁴⁰ National Crime Agency (NCA), 'Money laundering' <<http://www.nationalcrimeagency.gov.uk/crime-threats/money-laundering>> accessed 15 May 2018; see Australian Transaction Reports and Analysis Centre (AUSTRAC), *Strategic Analysis Brief: Money Laundering through Legal Practitioners* (AUSTRAC 2015) 8; see also Keith Nuthall, 'Revealed: accountants aiding money laundering' (*Accountancy Age*, 7 April 2004) <<https://www.accountancyage.com/aa/analysis/1782104/revealed-accountants-aiding-money-laundering>> accessed 15 May 2018; see also *Ryder* (n 3) 11.

⁴¹ *Unger and Busuioic* (n 11) 4; *Financial Action Task Force* (n 1); see Jeffrey Lowell Quillen, 'The international attack on money laundering: European initiatives' (1991) *Duke Journal of Comparative & International Law* 213, 214.

⁴² Norman Mugarura, 'The global anti-money laundering court as a judicial and institutional imperative' (2011) 14(1) *Journal of Money Laundering Control* 60, 61.

their real origin of illicit proceeds to ensure that the illegal transactions or activities of money laundering are concealed without the detection of authorities.⁴³

To respond to this international problem, the United Nations (UN) introduced three important agreements regarding money laundering, namely the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention);⁴⁴ the Convention against Transnational Organised Crime 2000 (Palermo Convention);⁴⁵ and the Convention against Corruption 2003 (UNCAC or Merida Convention).⁴⁶ In 1989, the G-7 countries established the FATF, and the organisation developed its Recommendations to form the global AML standards.⁴⁷ However, the effectiveness of the FATF measures depends on the compliance among its member participation.⁴⁸ Each country has a different response to the threat of money laundering.⁴⁹ For example, the Member States of the European Union implements the FATF Recommendations into their regional Directives that forces its Member States to transpose its Directives into their national legislation.⁵⁰ Failure to

⁴³ *Stessens* (n 5); see *Gallant* (n 5) 1.

⁴⁴ See discussion in chapter 3; see United Nations (UN), *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* <https://www.unodc.org/pdf/convention_1988_en.pdf> accessed 20 February 2016.

⁴⁵ See discussion in chapter 3; see United Nations Office on Drugs and Crime (UNODC), *Convention against Transnational Organized Crime and The Protocols Thereto* (UNODC 2004); see also International Monetary Fund (IMF) and World Bank, 'Enhancing Contributions to Combating Money Laundering: Policy Paper' (April 26, 2001) 24 <www.imf.org/external/np/ml/2001/eng/042601.pdf> accessed 21 May 2015.

⁴⁶ See discussion in chapter 3; see United Nations Office on Drugs and Crime (UNODC), *United Nations Convention Against Corruption* (UNODC 2004).

⁴⁷ *Financial Action Task Force* (n 1).

⁴⁸ Financial Action Task Force (FATF), *High-Level Principles and Objectives for FATF and FATF-Style Regional Bodies* (FATF 2018) 1; see also Kenneth S Blazejewski, 'The FATF and its institutional partners: Improving the effectiveness and accountability of transgovernmental networks' (2008) 22(1) *Temple INT'L & Comp. L.J.* 1, 22.

⁴⁹ Miriam Goldby, 'Anti-money laundering reporting requirements imposed by English law: measuring effectiveness and gauging the needs for reform' (2013) 4 *Journal of Business Law* 367, 368; see also HM Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (OGL 2015) 3.

⁵⁰ Amandine Scherrer, 'Explaining Compliance with International Commitments to Combat Financial Crime: The G8 and FATF' (Paper presented at the 47th Annual Convention of the International Studies Association, San Diego, 22-25 March 2006).

comply with the FATF standards may result in FATF sanctioning countries and adding them to the Non-Cooperative Countries or Territories (NCCTs) list.⁵¹ For instance, in 2012 the FATF identified Thailand as a jurisdiction with strategic anti-money laundering/combating the financing of terrorism (AML/CFT) deficiencies because Thailand lacked the criminalisation of a robust AML/CFT supervision and the terrorist financing appropriately.⁵² Therefore, the thesis examines the legislative frameworks and the roles of the FIUs in Thailand, the UK and Singapore. To understand the subject of this thesis, it is crucial to define the term ‘FIU,’ outline the applicable concepts that justify the FIU as a ‘financial disclosure unit’ and briefly discuss the historical development of the evolution of the FIUs in three countries.⁵³

Therefore, the FIU is responsible for mainly gathering, analysing, and disseminating the STRs/SARs to relevant law enforcement authorities for further investigating and prosecuting money laundering activities.⁵⁴ Additionally, the Egmont Group of Financial Intelligence Units defined the FIUs based on their three core roles, which comprise receiving (and as permitted, requesting), analysing information relevant to suspected proceeds of crime and financing of terrorism, and disseminating financial intelligence to competent AML agencies.⁵⁵ The IMF and World

⁵¹ Gregory C Shaffer and Mark A Pollack, ‘Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance’ (Legal studies research series research paper no. 09-23, June 26, 2009, University of Minnesota Law School) <http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=1426123> accessed 21 June 2015.

⁵² See discussion in chapter 4; see also Financial Action Task Force (FATF), ‘High-risk and non-cooperative jurisdictions’ (27 February 2015) <www.fatf-gafi.org/topics/high-riskandnon-cooperative-jurisdictions/documents/publi-statement-february-2015.html> accessed 20 May 2015; see Financial Action Task Force (FATF), ‘FATF Public Statement – 19 October 2012’ (19 October 2012) <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperative-jurisdictions/documents/fatf-publicstatement-19october2012.html>> accessed 9 February 2018.

⁵³ Financial Crimes Enforcement Network (FinCEN), ‘The Egmont Group of Financial Intelligence Units’ <<https://www.fincen.gov/resources/international/egmont-group-financial-intelligence-units>> accessed 3 August 2018.

⁵⁴ The FATF Recommendations 29.

⁵⁵ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 32.

Bank define the FIUs as agencies who receive STRs from the financial sectors and other individuals, report entities and analyse them, and if the conclusion of the reports shows underlying criminal activity, refer them to relevant competent AML authorities and international FIUs.⁵⁶

The thesis focuses on the Recommendation 29 regarding the role of FIU in the implementation of international initiatives into the national legislation, in particular, the operational independence.⁵⁷ It is a challenge to examine how each country deals with the role of FIU in order to meet the international requirements. For example, s. 25(3) of the Thailand Anti-Money Laundering Act 1999 (AMLA) empowers the Anti-Money Laundering Board (AMLB) a significant power over the Anti-Money Laundering Office (AMLO).⁵⁸ FATF criticised that the AMLO has an issue regarding sufficient operational independence that might compromise its functions in countering money laundering.⁵⁹ Consequently, the FATF rated Thailand a ‘largely compliant’ level for implementing FATF Recommendation 29.⁶⁰ Conversely, Thailand had faced a number of the military coups that affected the democratic procedures in enacting the AML laws in line with the international instruments. It is challenging as the UK and Singapore use the administrative-FIU model for their FIU whether their FIU model supports the role of FIUs relating to the operational independence in fighting money laundering.

⁵⁶ *International Monetary Fund and World Bank* (n 55); see also Nomzi Gwintsa, ‘Challenge of Establishing Financial Intelligence Units (June 2006) <<https://issafrica.org/chapter-3-challenges-of-establishing-financial-intelligence-units>> accessed 4 August 2018.

⁵⁷ FATF Recommendation 29.

⁵⁸ AMLA 1999, s. 25(3).

⁵⁹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 182.

⁶⁰ *Ibid.*, 183.

The Anti-Corruption Agencies (ACAs) noted that the FIU is operational autonomy and independence to ensure that the responsibilities and roles of the FIU must be free from political interference and influence.⁶¹ Furthermore, an FIU's authority is supported by national law and regulations.⁶² Schott recommended that each government should empower the FIU to operate its core functions effectively and independently.⁶³ Sanchez and Hughes noted that the FIU institutes rules and procedures for reporting entities, especially the banking sector to create fruitful utilisation of financial information and reduce business information waste,⁶⁴ namely defensive reporting.⁶⁵ Furthermore, Sathye and Patel noted that the model of the FIU strengthens the prevention of money laundering in the STR regime.⁶⁶ They also argued that the FIU evaluates and analyses financial information and then it becomes financial intelligence for delivering to relevant law enforcement authorities.⁶⁷ Besides, the FIU's function is to provide helpful, timely and valuable feedback in the written form to the reporting sectors and persons in order to assist in identifying potential money laundering risk.⁶⁸ The FATF noted the most powerful instrument to deal with this

⁶¹ World Bank Group, 'Module 2: Role of the Financial Intelligence Unit (incorporating peer reviewers comments)' at 4 <<http://pubdocs.worldbank.org/en/834721427730119379/AML-Module-2.pdf>> accessed 4 August 2018.

⁶² The supreme legislation in Thailand is the Constitution of the Kingdom of Thailand; see U.S. Department of State, '2016 International Narcotics Control Strategy Report (INCSR)' (1 March 2016) <https://definedterm.com/financial_intelligence_unit_fiu> accessed 6 August 2018.

⁶³ Paul Allan Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2nd and Supplement on Special Recommendation IX, the World Bank 2006).

⁶⁴ Gonzalo Sanchez & Carmina Hughes, 'Separating gold from garbage in BSA/AML digging' (2009) ABA Banking Journal 50, 50.

⁶⁵ Serious Organised Crime Agency (SOCA), *Review of the Suspicious Activity Report Regime* (2006) para 35; see also *Goldby* (n 49) 367, 375; see also *Ryder* (n 3) 64, 93; see also Angela Veng Mei Leong, 'Chasing dirty money: domestic and international measures against money laundering' (2007) 10(2) *Journal of Money Laundering Control* 140, 142.

⁶⁶ See discussion in chapter 3; see Milind Sathye and Chris Patel, 'Developing financial intelligence: an assessment of the FIUs in Australia and India' (2007) 10(4) *Journal of Money Laundering Control* 391, 403.

⁶⁷ *Ibid.*, 391, 394.

⁶⁸ EU Financial Intelligence Units' Platform, 'Report on Feedback on Money Laundering and Terrorist Financing Cases and Typologies' (2008) at 2 <http://ec.europa.eu/internal_market/company/docs/financial-crime/fiu_report_en.pdf> accessed 11 August 2018; see also Waleed Alhosani,

issue is the FIU.⁶⁹ In consequence, the FIU is the main mechanism of the AML system under international standards to prevent the use of the global financial market from being misused under the purposes of money laundering crime.⁷⁰

The United States (US) Department of State identified that Thailand became one of the prevalent money laundering countries in 2016 because it is at risk of money laundering and cross-border crime.⁷¹ For example, wildlife trafficking, illegal narcotics, human trafficking, a centre for the fraudulent travel document, illicit gaming, official corruption, underground lotteries, illegal remittances, and other contraband smugglings.⁷² To achieve the research objectives, this research has chosen the UK and Singapore as the best practices of the financial centres because the UK has adopted an aggressive legislative AML framework towards money laundering.⁷³ The US Department of State noted that the UK acts as a leading role in European and international finance.⁷⁴ In addition, Singapore is one of the lowest domestic crime rates in the world.⁷⁵ The FATF also identified that Singapore has a well-established and comprehensive legal structure in combating money laundering and terrorist financing effectively.⁷⁶

Anti-Money Laundering: A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units (Palgrave Macmillan 2016) 9.

⁶⁹ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2012) 24.

⁷⁰ Financial Action Task Force (FATF), *Guidance for a Risk-Based Approach: Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement* (FATF 2015) 35.

⁷¹ United States Department of State, 'International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes' (US Department of State 2017) 8, 172 <<https://www.state.gov/documents/organization/268024.pdf>> accessed 15 August 2018.

⁷² *ibid.*

⁷³ *Ryder* (n 3) 4.

⁷⁴ *United States Department of State* (n 71).

⁷⁵ Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing measures – Singapore Fourth Round Mutual Evaluation Report of Singapore* (FATF 2016) 5.

⁷⁶ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing measures Third Round Mutual Evaluation Report of United Kingdom of Great Britain and Northern*

1.3. Research Importance and Contribution to Knowledge

It is questionable whether the role of Thailand's FIU should only receive, analyse and disseminate the intelligence as an administrative-model FIU or should have powers to obtain, analyse, disseminate the intelligence, seize the asset, confiscate asset, investigate the case, and arrest money launderer and supporter as hybrid-model FIU.⁷⁷ In other words, Thailand's FIU (namely, hybrid-model FIU) should change its FIU style into the UK and Singapore's FIU style (namely, administrative-model FIU).⁷⁸ This thesis analyses to understand how the FIUs of the UK and Singapore work under their domestic laws in line with international standards.⁷⁹ As being discussed in chapters four, five, and six, the FIU legislative framework has helped the development of FIU in the UK, Singapore and Thailand.

Consequently, this thesis hopes to discover how the government of Thailand can learn to benefit from the lesson of relevant AML legal provisions in the UK and Singapore. The thesis aims to (1) examine the AML legislation framework of FIU in Thailand; (2) evaluate how effective the Thailand FIU has been in implementing international standards; (3) consider whether Thailand FIU should implement further strategies against money laundering; and (4) Thailand should learn lessons from the UK and Singapore. To achieve such objectives, this thesis will address the following four research questions:

Ireland' (FATF 2007) <<http://www.fatf-gafi.org/documents/documents/mutualevaluationofunited-kingdomofgreatbritainandnorthernireland.html>> accessed 9 February 2018; see Monetary Authority of Singapore (MAS), 'Singapore has strong framework for combating money laundering and terrorism financing' (26 November 2016) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/Singapore-Has-Strong-Framework-for-Combating-Money-Laundering-and-Terrorism-Financing.aspx>> accessed 9 February 2018.

⁷⁷ See discussion in chapter 6.

⁷⁸ See discussion in chapters 4 and 5.

⁷⁹ See discussion in chapters 4 and 5; Thailand's main AML law is the Anti-Money Laundering 1999, the UK's main AML law is the Proceeds of Crime Act 2002; the Singapore's main AML law is the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Chapter 65A) (CDSA).

1. What are the legislative frameworks governing the FIU in Thailand?
2. How effective has the Thailand FIU implemented international standards?’
3. What additional strategies should the Thailand FIU implement to counter money laundering?
4. What are the lessons that Thailand should learn lessons from the UK and Singapore?

Since 2001, the FATF determined that the FIU deals with money laundering and the financing of terrorism by issuing the Eight Special Recommendations to tackling the terrorist financing threat. Then in 2004, it further launched the Ninth Special Recommendations.⁸⁰ This thesis will only discuss the legal framework because the financing of terrorism is different legal elements and laws. For instance, Thailand has a separate law on the financing of terrorism, namely the Counter-Terrorism and Proliferation of Weapons of Mass Destruction Financing Act B.E. 2559 (2016) (‘CTPF Act’), but Thailand’s primary AML legislation is the Anti-Money Laundering Act B.E. 2542 (1999).⁸¹ In the UK, the primary AML legislation is the Proceeds of Crime Act 2002 (POCA), but the Terrorism Act 2006 (TA) deals with the financing of terrorism.⁸² In the case of Singapore, the main AML law is the Corruption, Drug Trafficking, and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Chapter 65A) (CDSA), but the Terrorism (Suppression of Financing) Act 1992 concerns any terrorist financing offence.⁸³

⁸⁰ Financial Action Task Force (FATF), ‘FATF Recommendations’ <<http://www.fatf-gafi.org/about/historyofthefatf/>> accessed 14 August 2018.

⁸¹ See discussion in chapter 6.

⁸² See discussion in chapter 4.

⁸³ Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) 1992 (CDSA) ss 43(1), 44(1), 46(1), (2), (3), 47(1), (2), (3); see discussion in chapter 5.

Although the FATF recommends jurisdiction to adopt a risk-based approach (RBA) to identify and mitigate the money laundering and terrorist financing risks, the objectives of terrorist financing and money laundering are different. For instance, terrorist financing mainly involves a national security priority, as well as relates to the Terrorist Financing Convention.⁸⁴ Cassella defines the financing of terrorism as the process of reverse money laundering because the money is transferred from legitimate sources and that then it is conveyed to illicit objectives.⁸⁵ Consequently, terrorist financing is committed to supporting its political influence, including its funds may be obtained from illegal or legal sources.⁸⁶

Conversely, money laundering fund comes from criminal activities by the organised crime groups and the launderers. The origin of the fund will be disguised, and then the fund entered into the financial system for generating profits.⁸⁷ Generally, money laundering is a paperless crime and can be a victimless crime, in other words, without any physical attack or violence at victims.⁸⁸ However, the legitimate

⁸⁴ FATF Recommendation 29 involves with the FIU to manage the STR/SAR regime (i.e. the FATF launched the 40 Recommendations on money laundering+9 Special Recommendations on terrorist financing); normally the money laundering concerns with the three conventions, namely, the Vienna, Palermo and Merida Conventions, while the terrorist financing relates to the International Convention for the Suppression of the Financing of Terrorism 1999 (Terrorist Financing Convention).

⁸⁵ Stefan Dante Cassella, 'Reverse money laundering' (2004) 7(1) *Journal of Money Laundering Control* 92, 93.

⁸⁶ International Monetary Fund (IMF), 'IMF and the fight against money laundering and financing of terrorism' (30 October 2017) at 1 <<https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>> accessed 6 February 2018.

⁸⁷ This issue was discussed in Chapter 3; see U.S. Department of State, 'Money laundering and terrorist financing: A global threat' (1 March 2004) <<https://www.state.gov/j/inl/rls/nrcrpt/2003/vol2/html/29843.htm>> accessed 6 February 2018.

⁸⁸ Rowan Bosworth-Davies, 'Money laundering: chapter five – the implications of global money laundering laws' (2007) 10(2) *Journal of Money Laundering Control* 189, 202; see World Bank, *Domestic (Inter-Agency) and International Cooperation: Workbook* (International Bank for Reconstruction and Development/World Bank 2009) 6; see also European Parliament, *Offshore activities and money laundering: recent findings and challenge* (European Parliament 2017) 1, 30; see also Anja P Jakobi, 'Governing illicit finance in transnational security spaces: the FATF and anti-money laundering' (2018) 69 *Crime Law Soc Change* 173, 180; see also Gooch Graham and Michael Williams, *A Dictionary of Law Enforcement* (Oxford 2014); see also HG Mane, *Insider Trading and the Stock Market* (1st edn, New York Press 1966).

money can be brought into the jurisdiction to finance a specific terrorist activity through the channel that is not notoriously to spot, such as a money remitter, a humanitarian charity, imported goods exchange, political or religious activities.⁸⁹

The following chapter consists of a detailed research method. It illustrates and justifies the research methodological approach applied to gather data for this thesis. It examines the concept and background of the application of different research methods. It also reviews the literature on the FIU development identifying gaps within the literature and focusing the conclusion of the studies. An analysis of the historical evolution of FIU under international standards in chapter three determines the role of FIU (including competent AML authorities) of each country in implementing such regulations to counter money laundering. Chapters four, five, and six critically analyse and compare the impact of FIU legislative frameworks upon the development of FIUs in Thailand and best practices (namely the UK and Singapore, respectively), including an assessment of their implementation of international standards. Chapter seven provides comparative analysis in the context of the comparison of operational independence of the three FIUs in the UK, Singapore and Thailand. Finally, Chapter eight concludes and recommends the preceding chapters upon the additional AML strategies relevant to FIU from such countries.

⁸⁹ Stefan Dante Cassella, 'Terrorism and the financial sector: are the right prosecutorial tools being used?' (2004) 7(3) *Journal of Money Laundering Control* 281, 281.

CHAPTER TWO

Research Methodology and Literature Review

2.1 Introduction

To develop the anti-money laundering (AML) strategies of Thailand's financial intelligence unit (FIU), the thesis compares the roles of the United Kingdom (UK), Singapore and Thailand's FIU in preventing money laundering. This thesis comparatively examines the function of the Thailand FIU under the international standards of the Financial Action Task Force (FATF). Therefore, the thesis poses four research questions. Firstly, what is the AML policy relating to the role of the Thailand FIU? Secondly, how effective has Thailand's FIU implemented the FATF standards? Thirdly, what additional strategies should Thailand implement to counter money laundering? Fourth, what are the lessons that Thailand could learn from the UK and Singapore?

Thus, the comparison between the three countries illustrates several commonalities and differences in the FIUs in order to acknowledge the alternative ways to enhance the international financial-intelligence regime.¹ The examination of the literature illustrates that there are four factors to overcome money laundering. Firstly, strengthening internal auditing mechanisms. Secondly, emphasizing bank staff training. Thirdly, enhancing collaboration and finally, establishing a mechanism for preventing money laundering via cyber payments.² To achieve the second and third research objectives, it is essential to study the competent authorities and

¹ Milind Sathye and Chris Patel, 'Developing financial intelligence: an assessment of the FIUs in Australia and India' (2007) 10(4) *Journal of Money Laundering Control* 391, 392.

² Hsiao-Ming Wang and Dan TE Chan, 'A review of Taiwan's Money Laundering Act of 1997' (2003) 27(1) *International Journal of Comparative and Applied Criminal Justice* 107-116, 113.

CHAPTER TWO: Research Methodology and Literature Review

FIUs in order to determine how effectively the Thailand FIU has implemented the FATF Recommendations.³ Under the FATF Mutual Evaluation methodology, the comparison of the Thailand FIU with the best practices, of the FIUs in the UK and Singapore, assists the Thailand government to improve its FIU.⁴

The chapter is divided into two parts. The first part examines the research methodologies used in this thesis consisting mainly of doctrinal research in conjunction with socio-legal and comparative law methods. The second part presents the relevant literature looking at the international standards, the FATF Recommendations, and the soft laws that countries are required to acknowledge and transpose into their regional and domestic legislation. The next section of the chapter explains and justifies the research methodology adopted in this thesis.

2.2 Research Methodology

This section presents the research methodology,⁵ which is employed systematically and practically to examine the data to answer the research questions.⁶ The thesis reviews the appropriate methods to interpret and analyse the AML policies, including the relevant international standards, legislation, regulations, rules, codes of conduct, reports, commentary, and case law in order to understand the AML pol-

³ *Sathye and Patel* (n 1) 391, 392.

⁴ Financial Action Task Force (FATF), 'FATF Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems' (FATF 2013) <<https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>> accessed 26 May 2019.

⁵ David Silverman, *Doing Qualitative Research* (4th edn, Sage 2013) 446; see Dawn Watkins and Mandy Burton, 'Introduction' in Dawn Watkins and Mandy Burton, *Research Methods in Law* (Routledge 2013) 2; see also Tamara Hervey, Rob Cryer and Bal Sokhi-Bulley, 'Legal Research Methodologies in European Union & International Law: Research Notes (Part 1)' (2008) 3(2) *Journal of Contemporary European Research* 161, 162.

⁶ Matt Henn, Mark Weinstein and Nick Foard, *A Short Introduction to Social Research* (Sage 2005) 9; see *Silverman* (n 5) 446.

CHAPTER TWO: Research Methodology and Literature Review

icies. Then the thesis examines how effective the Thailand FIU has been in implementing the international standards by analysing and synthesising Thailand's Mutual Evaluation Report (MER), including relevant official reports to answer the second research question. In order to answer the third research question, this thesis uses the comparative method to compare different jurisdictions with differing legislative standards.⁷

2.2.1 Doctrinal Research Method

The doctrinal research method, or black letter methodology,⁸ focuses on the nature of law, and the theories behind certain areas of law such as liability, legislative authority, political, criminal law, constitutional law and justice.⁹ This method examines the concepts of law by analysing materials including legislation, case law, textbooks, commentaries, official periodicals, or websites to formulate a conclusion.¹⁰ Therefore, the examination of the legislation is the application of the related laws to the specific facts in the situation.¹¹ Additionally, the doctrinal research method assists in providing an enhanced understanding of how the law operates in each country,¹² as well as to understanding the AML laws.¹³ There are two processes of the doctrinal research method starting with locating the sources of the law, which relates to legislation, case law, regulations, rules, academic journal articles, law reform report, parliamentary material, and policy documents. Secondly, it is to analyse such

⁷ Selina Keesoony, 'International anti-money laundering laws: the problems with enforcement' (2016) 19(2) *Journal of Money Laundering Control* 130, 131.

⁸ Michael Doherty and Patricia Leighton, 'Research in law: who funds it and what is funded? A preliminary investigation' (2004) 38(2) *Law Teacher* 182, 183.

⁹ Paul Chynoweth, 'legal research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell 2008) 29.

¹⁰ *Ibid.*, 30.

¹¹ *Ibid.*, 29.

¹² Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 112-113.

¹³ HLA Hart, *The Concept of Law* (3rd edn, Oxford University Press 2012).

CHAPTER TWO: Research Methodology and Literature Review

legal texts in order to illustrate the systematic description of the regulations, the relationship between regulations, problem area.¹⁴

In answer to the first research question, this thesis looks at the AML policies, including the international AML regulations, interpretive guidelines, codes of conduct, judicial precedent, as well as legal commentary in the selected three countries. Therefore, the doctrinal research asks what law is on specific issues in order to identify and interpret the legal principles and rules.¹⁵ The doctrinal research method also involves the analysis of the legal doctrine and how it has been enhanced and applied by presenting the content of existing legislation in a systematic approach.¹⁶ Smits stated that the traditional doctrinal work is still the most vital type of research in which legal academics engage.¹⁷ The scope of the approach is narrow, limited, and restricted to emphasising the principle of law by using any interpretive instruments and analytical techniques to systemise and assess legislative regulations and then create suggestions on what legislative rules should be.¹⁸ Therefore, the doctrinalists as legal academics know what they do, and this knowledge is implicit.¹⁹ McCrudden noted that the doctrinal approach is like mother's milk to academic lawyers in the way students learn to consider cases like a lawyer.²⁰

¹⁴ Bryan A Garner (ed), *Black's Law Dictionary* (Deluxe 9th edn, Westlaw International 2009); see also Terry Hutchinson, *Researching and Writing in Law* (3rd edn, Reuters Thomson 2010) 37; see also Terry Hutchinson, 'The transnational lawyer: GATS, globalisation and the effects on legal education' (2006) 11(2) *Australian and New Zealand Journal of Legal Education* 93, 94, 97, 100.

¹⁵ Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart 2011) vi.

¹⁶ Fabio Perin Shecaira, 'Legal arguments from scholarly authority' (2017) 30(3) *Ratio Juris* 305, 306.

¹⁷ Jan M Smits, 'What is legal doctrine? On the aims and methods of legal-dogmatic research' (September 2015) Maastricht European Private Law Institute Working Paper No.2015/06, 3.

¹⁸ Douglas W Vick, 'Interdisciplinarity and the discipline of law' (2004) 31(2) *Journal of Law and Society* 163 165.

¹⁹ Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, 99.

²⁰ Christopher McCrudden, 'Legal research and the social science' (2006) 122 *Law Quarterly Review* 632, 634.

CHAPTER TWO: Research Methodology and Literature Review

However, the interpretation in the doctrinal research method differs from the Verstehen tradition of the social sciences. The Verstehen approach is traditionally based on the collection of empirical data for the basis for its theories or testing them by a procedure of empirical investigation. Schwandt asserted that the validity of the doctrinal research method findings is not affected by the empirical standard.²¹ In other words, the authoritative rules command how people ought to conduct their behaviour, but they do not describe, predict, or understand individual behaviour.²²

This thesis applies a doctrinal research methodology intending to critically analyse the AML policies, legislation, regulations, and relevant case law in each of the three countries.²³ Ogus supports that the analysis of law requires a systematic comparison of common law and continental civil law systems, which may present the benefits gained from the harmonisation between different legal systems of each jurisdiction.²⁴

In achieving the thesis' goals, it is necessary to undertake a comprehensive assessment of the primary sources of AML policies, legislation, rules, and case law in Thailand, and then to compare them with the UK and Singapore by studying the relevant measures concentrated on its doctrine, including asking 'what is the law?'²⁵ Such authoritative rules generally prescribe what the duty is and inform how people

²¹ Thomas A Schwandt, 'Three epistemological stances for qualitative inquiry: Interpretivism, hermeneutics and social constructionism' in Norman K Denzin and Yvonna S Lincoln (eds), *Handbook of Qualitative Research* (2nd edn, Sage 2000) 190.

²² Hans Kelsen, *The Pure Theory of Law* (Max Knight tr, University of California Press 1967).

²³ Terry Hutchinson, 'Interdisciplinary methods in reforming the law' (2015) 3ELR 130, 131; see also *Chynoweth* (n 9) 29.

²⁴ Anthony Ogus, 'What legal scholars can learn from law and economics' (2004) 79(2) *Chicago-Kent Law Review* 383, 392; *Salter and Mason* (n 12) 185, 186.

²⁵ The AML policy in this thesis includes the UN conventions, FATF Recommendations and the relevant AML policies of three countries; see *Hutchinson and Duncan* (n 19) 83, 101, 116; see Barry Rider and Jeffrey Bryant, *Market abuse and insider dealing* (3rd edn, Bloomsbury Professional 2016) 148; see also *Chynoweth* (n 9) 30.

CHAPTER TWO: Research Methodology and Literature Review

ought to conduct their behaviour.²⁶ Furthermore, the laws do not try either to forecast or even to understand human behaviour.²⁷

Therefore, to answer the first research question, this thesis applies the doctrinal research method,²⁸ focusing on studying the research in law²⁹ or the legal texts themselves and closely linking them with the doctrine of judicial precedent³⁰ to explore and examine what such law state on a specific issue and why it states it.³¹ The thesis acknowledges that this research method also concerns a systematic examination of the regulations, norms, and principles about a specific component of the law.³² The doctrinal research method helps explain how the FATF Recommendations are placed in the Thailand AML policies by analysing and synthesising the related policies, legislation, case law and guidelines.³³

The research starts with the identification of the international AML standards, such as the relevant United Nations (UN) Conventions (Vienna, Palermo and Merida Convention) and the FATF Recommendations. It then looks at the AML national policies and laws of three jurisdictions to examine what they are and to assess whether they are consistent with the international standards.³⁴ Consequently, the

²⁶ *Kelsen* (n 22).

²⁷ *Ibid.*

²⁸ *Vick* (n 18) 163, 163; see *Salter and Mason* (n 12) 44; see also *Chynoweth* (n 9) 29.

²⁹ Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (The Council 1983).

³⁰ *Hutchinson and Duncan* (n 19) 83, 84.

³¹ *Salter and Mason* (n 12) 44; see also Graham Virgo, 'Doctrinal Legal Research' <<http://www.oxfordreference.com/view/10.1093/acref/9780199290543.001.0001/acref-9780199290543-e-674>> accessed 21 February 2016.

³² Content analysis has been compared to doctrinal research. Content analysis refers to an analysis of documents and texts that need to quantify the content in terms of predetermined types and the systematic and replicable manner; see *Hutchinson and Duncan* (n 19) 83, 101; see also Alan Bryman, *Social Research Methods* (3rd edn, Oxford University Press 2008) 692.

³³ *Hutchinson and Duncan* (n 19) 83, 84.

³⁴ The Thailand Anti-Money Laundering Act 1999; the UK Proceeds of Crime Act 2002; as well as The Singapore Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992.

CHAPTER TWO: Research Methodology and Literature Review

doctrinal research method systemises and helps the researcher to evaluate the FATF rules and suggest what the Thailand AML policies should be.³⁵

In summary, this thesis examines, interprets, and analyses the AML policies at various levels about the international, regional, and national contexts in order to understand and explore the original rules of law, authoritative advice, and guidance by using the interpretative approach.³⁶ For example, the Vienna Convention, the Palermo Convention, the Merida Convention, or the FATF Recommendations relate to the interpretation of statutory provisions because these international laws require legal entities³⁷ to transpose them into the national laws.³⁸ The implication of such enactment will help the researcher to understand those policies clearly.

2.2.2 Socio-Legal Method

This thesis applies the ‘implementation of AML policies’ as a conceptual framework to address the critiques of a socio-legal method and to highlight the main aspects of the independence of the Anti-Money Laundering Office (AMLO) structure. The FATF Recommendations provide a conceptual basis in this literature of the thesis.

In order to determine the extent and effectiveness of how the Thailand FIU has implemented the international AML standards, the use of the doctrinal research method alone cannot answer the second, third, and fourth research questions because the legal doctrine is insufficient to identify the results of the levels of the international

³⁵ Vick (n 18) 163, 165.

³⁶ James A Holland and Julian S Webb, *Learning Legal Rules: A Students' Guide to Legal Method and Reasoning* (9th edn, Oxford University Press 2016) 16.

³⁷ *Ibid.*, 6.

³⁸ *Ibid.*, 179.

CHAPTER TWO: Research Methodology and Literature Review

regulations.³⁹ The doctrinal legal method could be construed as being far too narrow from an inter-disciplinary research project.⁴⁰ Therefore, the socio-legal approach is applied in this thesis to evaluate of legal instruments, case law, and secondary sources. Furthermore, the socio-legal method supplements the doctrinal approach because it looks beyond legal texts, *inter alia*, conventions, statutes, and case law, and seeking to acknowledge social considerations, which are crucial to complement the analysis of relevant law to understand the role of law in context.⁴¹ That means not only critically assessing different regulations but also assessing the implications of the legislation.⁴² It applies to secondary sources, such as the MER⁴³ of the three countries to identify, interpret, clarify, and evaluate how effective the FIUs have been implementing the international AML standards.

This research examines the deeper meaning of legal texts via the doctrinal approach to understand the roles and responsibilities of the FIU and related competent authorities in a wider context.⁴⁴ Cownie and Bradney note that the socio-legal method considers legal context, including sociology, history, economy, and geography.⁴⁵ Therefore, this approach is beneficial as it assists to explore how the AML legislation is applied, created, abolished, and amended to answer research question

³⁹ George L Priest, 'The growth of interdisciplinary research and the industrial structure of the production of legal ideas: A reply to Judge Edwards' (1993) 1929 Mich. L. Rev.

⁴⁰ *Smits* (n 17) 4.

⁴¹ Roger Cotterrel, 'Why must legal ideas be interpreted sociologically' (1998) 25(2) *Journal of Law and Society* 171, 173.

⁴² Amanda Kerry-Pessarlis, 'What does it mean to take a social-legal approach to international economic law' in Amanda Kerry-Pessarlis (ed), *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge 2013) 3.

⁴³ Financial Action Task Force (FATF), 'Topic: Mutual Evaluations' <[http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))> accessed 27 June 2018.

⁴⁴ *Salter and Mason* (n 12) 112-113.

⁴⁵ Fiona Cownie and Anthony Bradney, 'Socio-legal studies' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013) 35.

CHAPTER TWO: Research Methodology and Literature Review

number two, which aims to evaluate the effectiveness of Thailand's FIU in implementing such standards.

Therefore, the thesis adopts a socio-legal approach to examine Thailand FIU's application of the FATF Recommendations.⁴⁶ It aims to help Thailand learn apply the FATF Recommendations in order to meet international requirements.⁴⁷ The use of a socio-legal approach helps understand and predict future developments,⁴⁸ to determine how to make effective decisions in different types of cases,⁴⁹ and learn how the FATF Recommendations work in practice and how legislative instruments are affected by political, economic and social contexts in Thailand as in the case of the FATF blacklisting Thailand in 2012.⁵⁰ The socio-legal method presents a normative and analytical way to determine how and why such a blacklist affected Thailand.⁵¹

2.2.3 Comparative Law Method

The comparative law method involves the interpretation of national rules of law to understand the differences and similarities of more than one legal system.⁵² Dannemann explains that the comparative law method assists the researcher to comprehend the different legal systems (namely, Civil law and Common Law) with similar contexts (i.e. the implementation of the FATF Recommendations) in order to

⁴⁶ Michael Hill and Peter Hupe, *Implementing Public Policy: Governance in Theory and in Practice* (SAGE 2002) 118.

⁴⁷ *Holland and Webb* (n 36) 297.

⁴⁸ Terry Hutchison, 'Developing Legal Research Skills: Expanding the Paradigm' (2008) 32 *Melbourne University Law Review* 1065, 1068.

⁴⁹ Aleksander Peczenik, 'Legal research and growth of science' <http://biblio.jurid-icas.unam.mx/libros/1_468/3.pdf> accessed 16 June 2015.

⁵⁰ *Cownie and Bradney* (n 45) 35.

⁵¹ *Kerry-Pessarlis* (n 42) 3.

⁵² Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Oxford University Press 1998) 4, 18.

CHAPTER TWO: Research Methodology and Literature Review

deal with particular legal issues, such as the problems of the FIU's implementation of the FATF standards in Thailand, the UK and Singapore.⁵³

Thailand uses civil law while the UK and Singapore employ the common law. However, the three countries have AML legislation in the form of written law, such as the Singapore Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Chapter 65A) (CDSA),⁵⁴ the UK Proceeds of Crime Act 2002 (POCA),⁵⁵ and Thailand Anti-Money Laundering Act B.E.2542 (1999) (AMLA).⁵⁶ Therefore, this thesis analyses the two primary legal systems, namely the civil law system and the common law system.⁵⁷ As mentioned above, the thesis examines the AML policies in three jurisdictions in order to explore the alternative AML strategies as the most appropriate FIU model that should be implemented by Thailand's FIU to fight money laundering effectively.

It may be essential to conduct comparisons of several laws of the different legal systems such as those in Thailand, Singapore and the UK. Conversely, the comparison can be made in a legal system, such as between different paragraphs of Thailand Civil Code.⁵⁸ This thesis will look beyond national boundaries (including the

⁵³ Gerhard Dannemann, 'Comparative law: Study of similarities and differences?' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 411; see also Gary Jeffrey Jacobsohn, *Constitutional Identity* (Harvard University Press 2010) 144.

⁵⁴ Singapore Government, 'Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A)' (*Singapore Statute Online* 1 September 2014) <<https://sso.agc.gov.sg/Act/CDTOSCCBA1992>> Accessed 21 June 2018.

⁵⁵ National Archives, 'Proceeds of Crime Act 2002' <<http://www.legislation.gov.uk/ukpga/2002/29/contents>> accessed 21 June 2018.

⁵⁶ Anti-Money Laundering Office (AMLO), 'Anti-Money Laundering Act B.E.2542 (1999)' <[http://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4\(1\).pdf](http://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4(1).pdf)> accessed 11 June 2019.

⁵⁷ Joseph Dainow, 'The Civil Law and the Common Law: Some points of comparison' (1966-1967) 15(3) *The American Journal of Comparative Law* 419, 419.

⁵⁸ Comparative law started in Paris in 1900, the year of the World Exhibition; see *Zweigert and Kotz* (n 52) 2.

CHAPTER TWO: Research Methodology and Literature Review

FATF Recommendations) to find solutions to the AML legal problem that all jurisdictions have faced. Each country has different cultures, legal systems, and legislative frameworks, which are the important elements to respond to the threat of money laundering. Nevertheless, Del Bufalo said that international cooperation, as well as the exchange of information among relevant competent authorities and FIUs, enable countries and the private sectors to deal with the money laundering risks.⁵⁹

Murphy *et al.* noted that the variety of legal systems, such as differences between common and civil law systems, across the FATF Member States and incompatibilities between them could impact the effectiveness of the implementation of the international AML standards.⁶⁰ The relevant provisions of the international assessment are applied when it becomes an issue of implementing the processes of the three FIUs. The reason why we are using the UK and Singapore in this study is that the FATF rated them as best practices for the robust AML measures.⁶¹

Thailand, the researcher's home country, will be used as a case study, firstly because it is a developing country that needs foreign investment to promote its economy. Secondly, a part of Thailand is an area of the 'golden triangle,' where there are several narcotics trafficked to the illegal world drug market.⁶² Therefore, improving

⁵⁹ Giancarlo Del Bufalo, the President of the FATF between 2011-2012.

⁶⁰ Cian C Murphy, Aldo Zammit Borda and Lucy Hoyte, 'The perspectives of counter-terrorism operatives on EU counter-terrorism law and policy' in Fiona de Londras and Josephine Doody, *The Impact, Legitimacy and Effectiveness of EU Counter-Terrorism* (Routledge 2015) 171.

⁶¹ Secretary of State for the Home Department, *Money Laundering and the Financing of Terrorism* (The Stationery Office 2009) 9; Nicholas Ryder, *Money Laundering: An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 160; see also Financial Action Task Force (FATF), 'Singapore's measures to combat money laundering and terrorist financing' <<http://www.fatf-gafi.org/countries/s-t/singapore/documents/mer-singapore-2016.html>> accessed 8 August 2018.

⁶² The Golden Triangle is the geographic center of the Greater Mekong Sub-region, and plans are well underway to expand transport and infrastructure and lower trade barriers and border controls across the region. The organized criminal networks that benefit from Southeast Asia's illicit drug trade are well positioned to take advantage of regional integration. Consequently, opium poppy cultivation in Southeast Asia's Golden Triangle of Myanmar, Lao PDR and Thailand rose for the seventh consecutive year, see also United Nations Office on Drugs and Crime (UNODC), 'Southeast Asia

CHAPTER TWO: Research Methodology and Literature Review

the effectiveness of the fight against money laundering in Thailand would contribute to the international efforts to solve such problems. Thirdly, Thailand is a member of the Egmont Group of Financial Intelligence Units and the Asia/Pacific Group on Money Laundering (APG), which promotes the adoption, implementation, and enforcement of globally accepted AML standards. Thus, the study of the Thailand regime in fighting money laundering will be useful to other countries which share similar circumstance to Thailand and seek to strengthen the implementation of AML legislation.

The doctrinal research will identify the AML policy relating to the roles of the Thailand FIU. The doctrinal approach can address the first research question, but for the other research questions, this thesis also applies the socio-legal and comparative law method to answer such research questions. The evaluation of the implementation of international law and its role in the three jurisdictions needs to consider all aspects, including the government, competent AML authorities, and the independence of the FIUs. The thesis illustrates how effective the Thailand FIU has been in implementing international standards to combat money laundering, and the findings will indicate whether the AML legislation can address the money-laundering problem. This thesis will also answer research question number three, which asks whether Thailand needs to implement other strategies in fighting money laundering or not. Finally, the study considers what lessons Thailand should adopt the UK and Singapore. Therefore, these methodologies will help find ways to improve the performance of relevant actors in the AML regime.

Opium Survey 2013: Lao PDR and Myanmar' <<http://www.unodc.org/unodc/en/crop-monitoring/index.html>> accessed 13 February 2016.

CHAPTER TWO: Research Methodology and Literature Review

This thesis will also examine reliable non-legal sources to present the analysis with statistics (Suspicious Transaction Reports (STRs)/Suspicious Activity Reports (SARs)), prosecution and conviction for money laundering offences, and relevant data which include formal annual reports issued by the FATF, such as the FATF Public Statement, the MER and government publications (i.e. legislation and the international agreement). The analysis of the thesis will be augmented with secondary sources, academic texts, and journal articles. The literature review aims to build up a robust conceptual framework. This legislative framework will help to clarify the gap of knowledge in this thesis involving the implementation of AML legislation by competent authorities. The main sources are from the AMLO, including the Thailand Government, Ministry of Justice, Ministry of Finance, Royal Thailand Police (RTP), Office of Narcotics Control Board (ONCB), National Anti-Corruption Commission (NACC), Department of Special Investigation (DSI) and Thailand Chamber of Commerce, in addition to all formal documents from the UK, Singapore and international organizations, such as the FATF, the Egmont Group, the IMF, the World Bank, and the APG).

The study will carry out the following tasks: collecting relevant information; reviewing the literature on AML legislation and its implementation; and analysing the international AML standards and Thailand Anti-Money Laundering Act B.E.2542 (1999) (AMLA), the UK's POCA 2002 (POCA) and Singapore's CDSA 1992; as well as using data obtained from analysing the abovementioned legislation to evaluate the level of implementation of AML legislation and justify whether Thailand requires further strategies to fight money laundering regimes.

CHAPTER TWO: Research Methodology and Literature Review

2.3 Ethical Considerations

This dissertation will not involve human subjects. The author will apply and utilise documentary research mainly via library and database research.

2.4 Literature Review

Cooper noted that a literature review attempts to illustrate, encapsulate, assess, clarify, and amalgamate the content of primary research.⁶³ The objectives of relevant literature reviews include an examination of previous research on what should be studied further to identify the topics, ideas, strengths and weaknesses of the texts, and a map of the subject knowledge in current debates in this subject area.⁶⁴ Furthermore, the thesis critically evaluates the quality of previous works and identifies the appropriate research methods, practices in this thesis.⁶⁵

Literature reviews can assist in putting the thesis in context by identifying, analysing, and synthesising⁶⁶ the main points, gaps, inconsistencies,⁶⁷ issues, findings, research methods, and reasons in a body of existing knowledge to see how it

⁶³ Harris M Cooper, 'Organising knowledge syntheses: A taxonomy of literature reviews' (1988) 1 Knowledge in Society 104, 126; see also David N Boote and Penny Beile, 'Scholars before researchers: on the centrality of the dissertation literature review in research preparation' (2005) 34(6) Educational Researcher 3, 3.

⁶⁴ Chris Hart, *Doing a Literature Review: Releasing the Research Imagination* (2nd edn, SAGE 2018) 32.

⁶⁵ *Ibid*; see also Patricia Cronin, Frances Ryan and Michael Coughlan, 'Undertaking a literature review: a step-by-step approach' (2008) 17(1) British Journal of Nursing 38, 38; see also University of West Florida (UWF), 'Literature review: conducting & writing' <<https://libguides.uwf.edu/c.php?g=215199&p=1420520>> accessed 13 July 2018.

⁶⁶ Hart (n 64) 15.

⁶⁷ Denise F Polit and Cheryl Beck, *Essentials of Nursing Research: Methods, Appraisal, and Utilization* (6th edn, Lippincott Williams & Wilkins 2006).

CHAPTER TWO: Research Methodology and Literature Review

differs from that of other scholar research. The literature reviews also help the researcher understand the problem clearly in order to make a new contribution to the subject area.⁶⁸

This thesis was conducted to obtain an overview of what the roles of the FIUs are; what factors or areas related to the roles of the FIUs were identified by other scholars; key scholars in this field; what questions are asked; what appropriate and useful research methodologies were used to examine the roles of the FIUs; what advantages or disadvantages of such research methods are; and what principles other scholars apply to explain the roles of the FIUs.⁶⁹

This thesis is conducted to ensure that the roles, administration, responsibilities, and the level of the operational independence of Thailand's FIU is free from undue industry, government, and political influence and interference.⁷⁰ Thailand's MER noted that Thailand's FIU does not have sufficient operational independence and autonomy in its roles and responsibilities.⁷¹ The APG rated Thailand's FIU as 'largely compliant' with Recommendation 29 of the 2012 FATF Recommendations.⁷² Section 40(1) of the AMLA 1999 provides that Thailand's FIU shall carry out acts in the implementation of resolutions of the Anti-Money Laundering Board

⁶⁸ Hart (n 64) 41, 45; see Boote and Beile (n 63) 3, 3; see also David Nunan, *Research Methods in Language Learning* (Cambridge University Press 1992) 217.

⁶⁹ Emerald Publishing, 'How to write a literature review: Part 1' <<http://www.emeraldgrouppublishing.com/authors/guides/write/literature.htm>> accessed 14 July 2018.

⁷⁰ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2012) 99.

⁷¹ Sections 25, 40, 41 of the Anti-Money Laundering Act B.E. 2542 (1999); see Asia/Pacific Group on Money Laundering, *Anti-Money Laundering and Counter-Terrorist Financing Measures: Thailand Mutual Evaluation Report* (FATF 2017) 183.

⁷² *Ibid.*

CHAPTER TWO: Research Methodology and Literature Review

(AMLB).⁷³ Moreover, s. 41 of the AMLA 1999 determines that the Secretary-General shall act its roles independently as provided by the AMLA 1999.⁷⁴

Furthermore, s. 25 of the AMLA 1999 identifies that the AMLB has the powers and responsibilities to oversee, supervise, and control Thailand FIU, the Transaction Committee (TC), and the Secretary-General to act in their roles independently, including to restrain and hold any actions of Thailand FIU, the Secretary-General or the TC, which the AMLB sees as violation or discrimination of fundamental human rights.⁷⁵ Significantly, s. 40(5) of the AMLA 1999 determines that Thailand's FIU receives evidence to take legislative proceedings against criminals under the AMLA 1999, such as investigation or prosecution.⁷⁶ Nevertheless, Thailand is required to strengthen its legislation concerning the powers and responsibilities of Thailand's FIU to deal with the ambiguity issue of the level of its independence and the quality of the STRs. Accordingly, it is vital to analyse comparatively whether Thailand's FIU abides by international standards, as well as to evaluate whether Thailand's FIU has adequately independent and autonomous roles to cope with the STRs regime and undue political and government interference or influence.

The thesis argues that the AMLA 1999 should assure a degree of independence of Thailand's FIU from an undue government, industry, and political influence or interference in order to support its roles and responsibilities to deal with the STRs regime effectively, especially in amending the legal provision of Thailand FIU under the control of the AMLB. The APG's MER stated that available sanctions for AML/CFT failures are low, and the process for application of fines for breaches is

⁷³ Section 40(1) of the Anti-Money Laundering Act B.E. 2542 (1999).

⁷⁴ Section 41 para 2 of the Anti-Money Laundering Act B.E. 2542 (1999).

⁷⁵ Section 25 of the Anti-Money Laundering Act B.E. 2542 (1999).

⁷⁶ Section 40(5) of the Anti-Money Laundering Act B.E. 2542 (1999).

CHAPTER TWO: Research Methodology and Literature Review

limited to criminal prosecutions and related settling mechanisms, which undermines effective enforcement.⁷⁷ Consequently, the significance of this study is to examine the effectiveness of the AMLA 1999 in implementing international AML standards. The research findings might serve as information for the Thailand government to consider whether Thailand needs to provide further AML strategies for competent authorities to strengthen the implementation of the AMLA 1999. Policymakers and FIU authorities of Thailand working in the same context would also be particularly interested in improving their units and comparing themselves with other jurisdictions and standards.

The main area for examination in this thesis is the role of the FIUs under international standards.⁷⁸ The research includes looking closely at the wording of the legal provisions that describe the roles of the FIUs and examining its main requirements in terms of the international AML standards. Furthermore, it explores the impact of the roles of Thailand's FIU under Thailand AMLA 1999.⁷⁹ Next, the thesis will also examine the gaps in the AMLA 1999 in the interpreting of the FATF Recommendation 29 and its Interpretive Note, especially the level of independence of Thailand's FIU through a comparative examination of best practices in the UK⁸⁰ and Singapore.⁸¹ Lastly, the thesis will seek to investigate if the comparison of such best practices could improve Thailand's FIU functions.⁸² The next section examines the central theme of this thesis.

⁷⁷ *Financial Action Task Force* (n 71) 5.

⁷⁸ See discussion in chapter 3.

⁷⁹ See discussion in chapter 4.

⁸⁰ See discussion in chapter 5.

⁸¹ See discussion in chapter 6.

⁸² See discussion in chapter 4.

CHAPTER TWO: Research Methodology and Literature Review

2.5 Central Themes

The thesis presents a literature review determining primary themes and the areas of examination. Therefore, this literature review aims to present an academic commentary in the areas of the role of the FIU as an important AML mechanism in fighting against money laundering issues under the FATF Recommendation 29. The criteria of discussion in the literature review proceed on the fundamental of those sources that are chosen to cover the related themes for examination in this thesis. The central themes in this thesis are as follows:

2.5.1 The Role of Thailand's Financial Intelligence Unit

The FATF Recommendation 29 suggests that its Member States, including the UK, and Singapore, and other FATF-style bodies, such as Thailand, commit the implementation of this Recommendation without exception by establishing the FIU as a national centre to deal with the suspicious transactions or suspicious activities and financial intelligence consistent with the requirements of the international standards and the AMLA 1999.⁸³ Therefore, Thailand should amend the AMLA 1999 related to the role of the FIU in AML/CFT to achieve the FATF's goal.⁸⁴

There are several types of FIU that the Egmont Group of FIU introduces four FIU models,⁸⁵ including administrative, law-enforcement, judicial, and hybrid type of FIU that are adopted to fight against money laundering.⁸⁶ The UK and Singapore

⁸³ FATF Recommendation 29, s. 40(2) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E.2556 (2013); see Financial Action Task Force (FATF), *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF 2013) 114.

⁸⁴ Asia/Pacific Group on Money Laundering (APG), 'About APG' <<http://www.apgml.org/about-us/page.aspx?p=0a1d0dcc-e65f-4706-9d50-aa1d4dcefc07>> accessed 1 July 2019.

⁸⁵ Egmont Group of Financial Intelligence Units, 'Financial Intelligence Units (FIUs)' <<https://egmontgroup.org/en/content/financial-intelligence-units-fius>> accessed 16 July 2018.

⁸⁶ See discussion in chapter 3.

CHAPTER TWO: Research Methodology and Literature Review

adopt the administrative-FIU model,⁸⁷ but Thailand uses the hybrid-FIU model comprising administrative, law enforcement, and judicial-FIU model.⁸⁸

The thesis will concentrate on the main area in examining the role of Thailand's FIU in implementing international standards when fighting money laundering as the central theme. This thesis discusses the s. 40 of the AMLA 1999 relating to the powers and duties of Thailand's FIU.⁸⁹

2.5.2 The Operational Independence of Thailand's Financial Intelligence Unit

As mentioned above, the main requirement of the FATF Recommendation 29 aims to provide the FIU the operational independence, including having the authority and capacity to operate its functions independently and the autonomous decision to carry out its powers.⁹⁰ Section 40 of the AMLA 1999 determines that the AMLO is not under the Prime Minister's Office, Ministry, or Sub-Ministry and to function neutrally and independently.⁹¹ Thus, the second theme involves the level of the operational independence of Thailand's FIU, which is a valuable sub-theme throughout the thesis comparing those of the UK and Singapore. This thesis focuses on s. 25(3) of the AMLA 1999 relating to the powers and duties of the Anti-Money Laundering Board (AMLB) because this Provision provides the judicial power to the AMLB to control, hold, or restrain any activities of the AMLO, the TC, and the Secretary-General when the AMLB considers such the activities discrimination or

⁸⁷ See discussion in chapters 4 and 5, respectively.

⁸⁸ See discussion in chapters 6.

⁸⁹ Section 40 of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E.2556 (2013).

⁹⁰ Section 40 of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E.2556 (2013); see *Financial Action Task Force* (n 95) 114.

⁹¹ Section 40 of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E.2556 (2013).

CHAPTER TWO: Research Methodology and Literature Review

breach of fundamental human rights.⁹² This section may cause minor issues regarding sufficient operational independence of the AMLO under the FATF standards.⁹³

To reach the research objectives, the thesis analyses various academic commentaries on the role of Thailand's FIUs and its independence under the FATF Recommendations by comparing the best practices applied in the UK and Singapore via the FATF MERs. Stessens chose the comparative method to compare legislation contexts in the Benelux countries, Switzerland, the UK, and the US's national AML,⁹⁴ including the various kinds of confiscation of the proceeds of crime (including concerning specific property, value-confiscation, and object-confiscation), criminalisation of money laundering property, and the evolution of the money laundering offence and its associated predicate offences. Moreover, he explained the importance of AML instrument in the prevention of money laundering, namely the FIU, and the regulatory or supervisory bodies in each country.⁹⁵ He also examined the FIU models in such countries, such as the UK FIU, and the National Crime Intelligence Service (NCIS), as a law enforcement-FIU model, but he did not discuss the level of the operational independence of the UK FIU.⁹⁶ This thesis favours the comparative analysis between Thailand's FIU duties and best practices of the FIUs in the UK and Singapore to see whether Thailand's FIU is consistent with international standards, especially the FATF Recommendation 29. The thesis points out the alternative AML

⁹² Section 25(3) of the AMLA B.E. 2542 (1999) as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board; s. 38 of the AMLA 1999.

⁹³ *Financial Action Task Force* (n 71) 183.

⁹⁴ Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press 2000).

⁹⁵ *Ibid.*

⁹⁶ See discussion in chapter 5.

CHAPTER TWO: Research Methodology and Literature Review

strategies for enhancing the Thai AML policy in fighting money laundering. Therefore, this thesis contributes to knowledge to improve the FIU.

Next, Alldridge focused on the confiscation of proceeds of money laundering offences in the UK in line with the UK Money Laundering Regulations 1993 (MLRs).⁹⁷ However, he described an introduction to the UK AML legislation and its characteristics in the 2000s. He generally studied the roles of the regulatory agencies, such as the Assets Recovery Agency (ARA)⁹⁸ and the Financial Services Authority (FSA), but he did not emphasise the FIU in implementing international AML standards.⁹⁹ He critically examined the history, theory, and development of the POCA 2002 under international standards, for example, the UN AML Conventions, the EU directives, the Conventions of the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe, as the member states of such soft law.¹⁰⁰ He stated that the NCIS, the then UK FIU, was established by Part 1 of the Police Act 1997 as an enforcement agency.¹⁰¹ He explained that the roles of the UK FIU included receiving and analysing intelligence information to disseminate intelligence to national police forces.¹⁰²

The NCIS also cooperated with financial sectors and regulatory authorities regarding the training of money laundering reporting officer (MLRO),¹⁰³ as well as

⁹⁷ Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart 2003).

⁹⁸ Assets Recovery Agency (ARA) was the UK independently non-ministerial government department under the Proceeds of Crime 2002 (POCA), i.e. it was responsible for reducing crime by confiscating the proceeds of any crime. The ARA answered to the UK Parliament directly rather than to a minister. Then, it was merged with the Serious Organised Crime Agency (SOCA) in 2006; see National Audit Office (NAO), 'The Assets Recovery Agency' <<https://www.nao.org.uk/report/the-assets-recovery-agency/>> accessed 12 July 2018.

⁹⁹ Alldridge (n 97).

¹⁰⁰ Ibid., 13.

¹⁰¹ Ibid., 17.

¹⁰² Ibid., 17.

¹⁰³ Ibid., 260.

CHAPTER TWO: Research Methodology and Literature Review

the coordination of international FIUs for exchanging financial intelligence.¹⁰⁴ Although the UK FIU has now become the National Crime Agency (NCA) since 2013 under the Crime and Courts Act 2013, he noted that the low quality of the suspicious activity/transaction reports (SARs/STRs), namely ‘defensive reporting’, has continued.¹⁰⁵ He discussed the formation of the FIU in the UK under art 6 of the Money Laundering Directive 1991 (MLD), which identified the three FIU models, namely judicial, police, and independent-FIU models.¹⁰⁶

The thesis favours the comparison between Thailand’s FIU and those of best practices (i.e. the UK and Singapore) whether they are consistent with international standards, especially the FATF Recommendation 29. The thesis points out the alternative AML strategies for enhancing the Thai AML policy in fighting against money laundering and contributes to the knowledge on the subject.

Pieth and Aiolfi presented efforts to fight money laundering and the efforts of the AML legislation and regulations in four major financial centres (i.e. the UK, the USA, Singapore and Switzerland) until 2003.¹⁰⁷ They studied the evolution of the AML paradigm from its origins as an instrument to counter drug trafficking and financing of terrorism in order to examine whether the levels of implementation of the AML systems in these countries meet the international standards. They focused on the roles of financial institutions in implementing the international, national AML standards, including customer due diligence (CDD) and risk-based approach (RBA)

¹⁰⁴ See discussion in chapter 4.

¹⁰⁵ See discussion in chapter 4; see also *Alldrige* (n 97) 260.

¹⁰⁶ *Ibid.*, 99.

¹⁰⁷ Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004).

CHAPTER TWO: Research Methodology and Literature Review

standards. This report was published in 2004.¹⁰⁸ However, several pieces of legislation and regulations, such as the FATF Recommendations, have changed as they were revised in 2012. In the case of the UK, the Money Laundering Regulations 2003 (MLRs) were replaced by the 2007 MLRs, the 2017 MLRs and the 2020 MLR, respectively.¹⁰⁹ The UK government implemented the EU Commission's Third Money Laundering Directive 2007 by transposing such the international AML instruments into the UK 2007 MLRs.

To deter and detect money laundering regime effectively,¹¹⁰ the UK government enacted several AML regulations, such as the Serious Crime Act 2015 to strengthen the Proceeds of Crime Act 2002 in order to increase the protection from civil liability for companies conducting authorised money laundering disclosures.¹¹¹ Additionally, the UK parliament passed the Criminal Finances Act 2017 (CFA), the Joint Money Laundering Steering Group (JMLSG) guidance, the FCA Handbook, Senior Management Arrangements, Systems and Controls Sourcebook (SYSC), including the Sanctions and Anti-Money Laundering Act 2018, which created significant changes, especially in respect of the Suspicious Activity Reporting (SAR) regime to oblige all reporting entities (Res).¹¹² Furthermore, the UK FIU has changed

¹⁰⁸ Ibid.

¹⁰⁹ The Money Laundering Regulations 2003 (SI2003 No. 3075) (2003 MLRs); The Money Laundering Regulations 2007 (SI 2007 No. 2157); The Fourth Anti-Money Laundering Directive (EU) 2015/894 (MLD4); the Fifth Money Laundering Directive 2018/843 (MLD5); the Sixth Money Laundering Directive 2018/1673 (MLD6).

¹¹⁰ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017 No. 692) (2017 MLRs).

¹¹¹ Institute of Chartered Accountants in England & Wales (ICAEW), 'UK legislation and regulations' <<https://www.icaew.com/library/subject-gateways/law/money-laundering/uk-legislation-and-regulations>> accessed 9 July 2018.

¹¹² Lexis PSL, 'Anti-money laundering and counter-terrorist – issues for financial services firms' <<https://www.lexisnexis.com/uk/lexispsl/financialservices/synopsis/146930:146936/Financial-crime/Anti-money-laundering-and-counter-terrorist-financing%E2%80%94issues-for-financial-services-firms>> accessed 10 July 2018; see also ACA Compliance (Europe), 'UK's anti-money laundering legislation – understanding the recent changes and impact on your firm's procedure' (6 July 2017)

CHAPTER TWO: Research Methodology and Literature Review

from the NCIS,¹¹³ to the Serious Organised Crime Agency (SOCA),¹¹⁴ into the NCA to be responsible for the UK FIU in line with the Crime and Courts Act 2013.¹¹⁵ However, Pieth and Aiolfi did not focus on the different FIU models and the FIU's roles in the SAR regime. They, however, studied Singapore's AML legislation, rules, and practice by obtaining relevant data from the official media releases, legislation, academic texts, commentaries, and unofficial interviews with bankers and officials in Singapore since 2003, which were out of date. Therefore, this thesis will present seeks to deepen the understanding of the AML regimes in the UK, Singapore and Thailand. The thesis can consequently contribute to knowledge.

Further, Campbell focused on the FSA, a regulatory authority to fight against financial crime pursuant to the 1993 MLRs.¹¹⁶ He noted that the FSA would create the AML culture in the reporting entities, for instance, financial institutions under the AML regulations, such as the Financial Services and Markets Act 2000 (FSMA).¹¹⁷ Although the FSA had the power to authorise firms, to produce the AML regulations, to supervise and enforce all reporting entities, it failed to achieve the UK government's objectives.¹¹⁸ He also studied the role of the FSA in preventing money laundering problems that is monitoring financial institutions to ensure they complied

<<http://www.acacomplianceeurope.com/news/compliance-alert/uks-anti-money-laundering-legislation-understanding-recent-changes-and-impact>> accessed 9 July 2018.

¹¹³ The National Criminal Intelligence Service (NCIS), the UK FIU funding by the Home Office, was established in 1997 by the Part 1 of the Police Act 1997 and then replaced by the Serious Organised Crime Agency (SOCA) in 2006.

¹¹⁴ The Serious Organised Crime and Police Act 2005 established the Serious Organised Crime Agency (SOCA) as the UK FIU.

¹¹⁵ Government Digital Service, 'Serious Organised Crime Agency has closed' (7 October 2013) <<https://www.gov.uk/government/organisations/serious-organised-crime-agency>>. Accessed 9 July 2018.

¹¹⁶ Andrew Campbell, 'The Financial Services Authority and the Prevention of Money Laundering' (2000) 4(1) *Journal of Money Laundering Control* 7, 7.

¹¹⁷ See discussion in chapter 4.

¹¹⁸ See discussion in chapter 4.

CHAPTER TWO: Research Methodology and Literature Review

with the AML requirements, especially the MLRs 2007.¹¹⁹ He and Campbell critically analysed the role of solicitors in fighting money laundering.¹²⁰ Additionally, he and Cartwright examined the function of the legislation in preventing banks from failing to comply with international AML standards in the UK, Sweden, Italy, France, Austria, New Zealand, the US, and Canada.¹²¹ Consequently, it is important to use his literature to examine the roles of FIUs in preventing money laundering and meeting the international AML standards by looking at the UK FSA's development and failure in the past. Formerly in the UK, the FSA and the NCIS co-operated in fighting against money laundering. Now the Financial Conduct Authority (FCA) and the NCA deal with such problems.¹²²

Ryder considered the extent to which the international AML best practices and industry guidelines, which pre-dates the instruments introduced by the UN, the FATF, the Basel Committee on Banking Supervision, the Wolfsberg Group, the International Organisation of Securities Commission, and the Egmont Group of Financial Intelligence Units, have been transposed into the national aggressive measures of the USA, the UK, Australia and Canada in tackling money laundering.¹²³ He argued that the UK's AML framework goes beyond the fundamental requirements of such AML standards. Moreover, he examined and compared the roles of government, competent AML authorities, as well as the FIUs in each jurisdiction. He highlighted the evolution of the FIUs. However, he argued that the NCIS was merged into the SOCA because the NCIS did not achieve the UK government's goals.

¹¹⁹ *Campbell* (n 116) 7, 8.

¹²⁰ Andrew Campbell and Elise Campbell, 'Solicitors and complying with the anti-money laundering framework: reporting suspicious, applying for consent and tipping-off' in Nicholas Ryder, Umut Turksen and Sabine Hassler (eds), *Fighting Financial Crime in the Global Economic Crisis* (Routledge 2015).

¹²¹ Andrew Campbell and Peter Cartwright, *Banks in Crisis: The Legal Response* (Routledge 2002).

¹²² See discussion in chapter 4.

¹²³ *Ryder* (n 61).

CHAPTER TWO: Research Methodology and Literature Review

Furthermore, the SOCA arose due to pressure from the UK government and commentators, which stated the SOCA must be transferred to the NCA. He identified that the impact of the domestic AML regulations and the roles of FIUs caused defensive reporting and compliance cost to the reporting entities. Interestingly, he provided a detailed explanation of AML policies and regulatory frameworks in each jurisdiction, as well as examining how effective such countries have been in adopting international AML standards to fight against money laundering. He noted that the government should encourage the operational autonomy of the FIUs. This thesis will focus on the level of the operational independence of FIUs in three countries in order to assess their effectiveness pursuant to the FATF Recommendation 29 and the Egmont Group's objectives that FIUs must be free from the undue interfere and influence. Interestingly, he identified that the results of compliance of the aggressive AML measures cause defensive reporting to avoid punishment by the FIUs, as well as compliance costs for the reporting entities in SAR regimes. This thesis will also seek such a result in Thailand and Singapore.

Rider focused on economic crime, namely fraud, market abuse, insider dealing, corruption, money laundering, and the roles of regulatory and law enforcement agencies, especially financial regulators on countering misconduct through legislative intervention.¹²⁴ He argued that the use of civil enforcement and the good governance structure and procedures in companies could control financial crime.¹²⁵ Interestingly, Rider also argued that the transparency and disclosure of individuals and

¹²⁴ Barry Rider (ed), *Research Handbook on International Financial Crime* (Edward Elgar 2015) xxxix.

¹²⁵ Barry Rider, 'Strategic tools – for now and perhaps the future?' in Barry Rider (ed), *Research Handbook on International Financial Crime* (Edward Elgar 2015) 730; see Barry Rider, 'Blunting the sword of justice' (2012) 19 *Journal of Financial Crime* 324; see also Barry Rider, 'The practical and legal aspects of interdicting the flow of dirty money' (1996) 3 *Journal of Financial Crime* 234;

CHAPTER TWO: Research Methodology and Literature Review

organisations could be effective control instruments against financial crimes.¹²⁶ He stressed the importance of the independence of the Public Prosecution, which should be free from government intervention.¹²⁷

The FATF Mutual Evaluation Reports identifies to what degree each country complies with the FATF standards; and to know how well such country implements the standards in practice.¹²⁸ However, the reports process is not complete until the MER is published, as well as this process can promote the transparency into the ME process which the country can understand and improve global compliance with the FATF standards. In addition, transparency and good governance must be in place to adjudge a AML programme as efficient.¹²⁹

Gallant stresses on the regulation of financial crimes and money laundering, especially the international and national governance of tainted funds.¹³⁰ She argued that the primary crime control is the pursuit of monetary proceeds of criminal activity.¹³¹ She also noted that the approach of criminal prosecutions has changed into civil legal instruments, descriptively disclosure of the STRs/SARs. The study by Gallant was published in 2005, and despite its merits, several sections of the research are out-of-date and its scope is narrower than this thesis.

Finally, Goldby studied the financial services providers in particular banks to report suspicious activities to the UK FIU pursuant to AML requirements under

see Barry Rider, 'Corporate governance for institutions offering Islamic finance' in Craig Nethercott and David Eisenberg (eds), *Islamic Finance: Law and Practice* (Oxford University Press 2012).

¹²⁶ *Barry Rider* (n 124) 730.

¹²⁷ *Ibid.*

¹²⁸ Abdullahi Y Shehu, 'Promoting financial sector stability through an effective AML/CFT regime' (2010) 13(2) *Journal of Money Laundering Control* 139, 141

¹²⁹ *Ibid.*, 142.

¹³⁰ Mary Michelle Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Edward Elgar 2005).

¹³¹ *Ibid.*

CHAPTER TWO: Research Methodology and Literature Review

the UK 2007 MLRs.¹³² She argued that the coordination of the reporting entities in disclosing the high quality of information via the STR regime could help promote the effectiveness of the SAR system, including reducing defensive reporting.¹³³ Furthermore, she focused on the roles of the UK FIU, the SOCA (i.e. it was already taken the place by the NCA), with respect to the feedback to the reporting entities.¹³⁴ Consequently, the review of literature helps the researcher shape the research methods and the way to make a contribution to knowledge effectively.

2.6 Conclusion

Although there are several scholarly publications related to the AML policy on FIUs, this thesis will emphasise small areas for examination, namely the roles of the FIUs in implementing international AML instruments. Furthermore, the roles of Thailand's FIU remain under-researched in the sense that there are not many sources published looking at the roles of Thailand's FIU completely, such as what the pieces of AML legislation are relevant to Thailand FIU's responsibilities, how effective it has been in implementing international standards, and what additional strategies should be implemented.

In answer to the research questions, the thesis examines an academic commentary in the subjects of the role of the FIU as the theme and the independence of the FIU because they are the essential areas in supporting the implementation of the FATF Recommendations in fighting money laundering in Thailand. This thesis

¹³² Miriam A Goldby, 'Anti-money laundering reporting requirements imposed by English law: Measuring effectiveness and gauging the need for reform' (2013) *Journal of Business Law* 367, 390.

¹³³ *Ibid.*

¹³⁴ *Ibid.*; see discussion in chapter 4.

CHAPTER TWO: Research Methodology and Literature Review

achieves the research questions by comparing Thailand's FIU with the best practices under international standards, namely the UK and Singapore.

Chapter two of this thesis explores the research methodology applied, namely the adoption of the doctrinal legal method, socio-legal method, and comparative method, including an analysis of their advantages and disadvantages. This thesis applies those three research methods to answer the research questions. First, the thesis uses a doctrinal research method to interpret and understand various sources, such as legislation, commentary, and case law concerning the provisions of international AML regulations legislative frameworks in the UK, Singapore, and Thailand. Second, the thesis applies a socio-legal method to assess the effectiveness of the FIUs in implementing the international AML rules. Third, the thesis uses the comparative law method to look at the impact of the legislative framework of the roles of the FIUs in cross-cultural studies to determine, analyse, explain, and synthesise similarities and differences across jurisdictions, especially the respective legislation, and illustrate the significance of these for the evolution of the FIUs.

The existing literature generally looks at issues such as the implementation of the FATF, money laundering offences, FATF's sanctions, risk-based approaches, and the STR/SAR regime. This thesis will further examine the FATF Recommendation 29 for interpreting and understanding the roles of the FIU. This thesis will look at other provisions relating to the roles of the FIU, including the roles of competent authorities, the compliance of reporting entities, defensive reporting, compliance costs, and other things relevant to the central theme, which could assist in finding the gaps of knowledge in order to obtain the alternative AML policies to meet international requirements effectively.

CHAPTER TWO: Research Methodology and Literature Review

The next chapter will examine the international AML standards to acknowledge their history, scope, and objective. It will focus on the FATF Recommendations and their interpretation to understand how they can be applied to prevent and control money laundering problems, and also look at how the roles and responsibilities of the FIUs along with the sanctions to the countries which fail to comply with the standards.

CHAPTER THREE

International, Regional and National Anti-Money Laundering Standards

3.1 Introduction

Since President Richard Nixon instigated the War on Drugs in the 1970s, the international community has attempted to tackle the increasing threat presented by money laundering and its associated crimes (such as fraud, cybercrime, tax evasion, timber trafficking, corruption, drug-trafficking, or terrorism). As outlined in chapter one, money laundering involves criminals attempting to disguise their proceeds of crime, especially in countries with a weak anti-money laundering (AML) legislative framework.¹ Money laundering has a destructive impact on the economy, society, and on the integrity and reputation of the world's financial systems.² Criminals try to disguise or hide the nature, origin, or control of their illegal gains in order to make it legitimate.³ Thus, it is difficult for authorities to identify and trace how much dirty money is laundered at national and international levels.⁴

¹ John Walker, *A logical Approach to the Quantification of Global Money Laundering from the Illicit Drugs Trade* (Australian Transaction Reports and Analysis Centre 1999).

² United States Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) *FinCEN Advisory* (March 1996) 1(1) at 2; see also Peter Lilley, *Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism* (2nd edn, Kogan Page 2003) vii.

³ Michael Levi, 'E-gaming and money laundering risks: a European overview' (2009) 10 ERA Forum 533, 534; see Secretary of the Treasury, *A Report to Congress in Accordance with Section 356(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)* (December 2002) <<https://www.treasury.gov/press-center/press-releases/Documents/356report.pdf>> accessed 5 June 2018; see also Hinnerk Gnutzmann, Killian J McCarthy and Brigitte Unger, 'Dancing with the devil: Country size and the incentive to tolerate money laundering' (2010) 30 International Review of Law and Economics 244, 244; see also Ismail A Odeh, *Anti-Money Laundering and Combating Terrorist Financing for Financial Institutions* (Dorrance 2010) 1.

⁴ Nella Hendriyetty and Bhajan S Grewal, 'Macroeconomics of money laundering: effects and measurements' (2017) 24(1) Journal of Financial Crime 65, 77; see Peter Reuter and Edwin M Truman, *Chasing Dirty Money: The Fight against Money Laundering* (Institute for International Economics 2004) 6, 102; see also Nicholas Ryder, *Money Laundering – An Endless Cycle?: A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 2; see also Antoinette Verhage, 'Great expectations but little evidence: Policing money laundering' (2017) 37(7/8) International Journal of Sociology and Social Policy 477, 479.

Hopton noted that any countries that fail to comply with the FATF recommendations would have a negative impact on the integrity of its financial system because the FATF would call its members to request their financial sectors to pay special attention to their businesses and transactions with individuals, including financial institutions.⁵ The FATF defines the Financial Intelligence Unit (FIU) as a national centre body that receives and analyse the suspicious transaction reports (STRs) and other financial information related to money laundering, as well as delivering the results of its analysis to relevant competent AML authorities.⁶ Consequently, the FIU cannot produce effective intelligence to the law enforcement agency (LEA) to investigate and prosecute the offender.

Efforts to control money laundering depend on the implementation of the global AML initiatives and the level of compliance with such instruments.⁷ The thesis categorises the global AML policy into three sections: (1) the implementation of international legal AML frameworks such as the United Nations AML Conventions;⁸ (2) the implementation of the regional legal AML framework;⁹ and (3) the implementation of the global best practices and industry guidelines.¹⁰

The United Nations (UN) effort to counter the threat of money laundering is focused in three UN Conventions, including the international best practices and industry guidelines, which countries are required to implement into their national AML

⁵ Doug Hopton, *Money Laundering: A Concise Guide for All Business* (2nd end, Routledge 2009) 19, 20.

⁶ Financial Action Task Force (FATF) Recommendation 29; see Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2012) 24.

⁷ *Ryder* (n 4) 2, 11.

⁸ The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); the United Nations; the United Nations Convention Against Transnational Organized Crime (2000); and the United Nations Convention Corruption (2003).

⁹ The European Union Money Laundering Directives.

¹⁰ For example, the FATF Recommendation, the Egmont Group of Financial Intelligence Units, the Basel Committee, and the International Monetary Fund (IMF) and World Bank.

legislation.¹¹ Members of the UN are expected to comply with the international AML standards.¹² Gilmore noted that international co-operation and coordination are required to tackle money laundering.¹³

In this study, the AML instruments and proposals by several institutions, including the UN, the FATF, the European Union (EU), and the Asia/Pacific Group on Money Laundering (APG) are closely investigated. The thesis also examines the traditional global AML strategies, such as the Recommendation of the FATF and international best practices and industry guidance¹⁴ in place, the implementation of such instruments, and the role of competent authorities and the FIUs that are the key players in coping with money laundering risk.¹⁵

Although the FATF requires FIUs shall be independent body without the interference and influence whether government or industry.¹⁶ In certain country, in particular Thailand become more dependent from government control and political process for example, there were several military coups and the head of the coups has appointed the Thailand FIU's Secretary-General from the Royal Thai Police Force because they were the part of military coups, which are able to order confidentially and control easily rather than the civil servant. As reasons mentioned above, it is challenging to research how to adapt and increase the independence of the Thailand FIU

¹¹ *Reuter and Truman* (n 4) 89.

¹² European Union Council, 'Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing' (2005) Official Journal of the European Union L 309/15 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0060&from=EN>> accessed 25 August 2018.

¹³ William C Gilmore, *Dirty Money – The Evaluation of International Measures to counter Money Laundering and the Financing of Terrorism* (Council of European 2004) 51.

¹⁴ For example, the Basel Committee on Banking Supervision, the Wolfsberg Group, the Egmont Group of Financial Intelligence Unit, and the International Organisation of Securities Commission.

¹⁵ Financial Action Task Force (FATF), 'What do we do' <<https://www.fatf-gafi.org/about/what-wedo/>> accessed 2 July 2019.

¹⁶ FAFT Recommendation 29.

under the unstable politics in Thailand by learning from the best international practices. Regarding the independence of the FIU, this thesis focuses on the international AML instruments (e.g. the UN Conventions, EU Directives, FATF, Egmont Group and Basel) in order to examine such provisions how they refer to the FIU's independence. Then, the thesis compares and analyses how three countries work with these standards. The next section examines the main legal AML framework for an international standard.

3.2 Implementation of the International Legal AML Framework

The international AML efforts are heavily associated with the UN's drug policy, such as the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1939), which provides that competent authorities are able to confiscate the proceeds of drug trades.¹⁷ Due to the inadequacies of the 1939 Convention, the Single Convention on Narcotic Drugs (1961)¹⁸ and the Convention on Psychotropic Substances (1971)¹⁹ were introduced. Subsequently, the UN enacted the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) to tackle the serious problems.²⁰

¹⁷ Article 10 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1939).

¹⁸ Lane Porter, 'Comparative drug treatment policies and legislation' (1995) 29(3) *The International Lawyer* 697, 697.

¹⁹ Duncan E Alford, 'Anti-money laundering regulations: A burden on financial institutions' (1994) 19(3) *North Carolina Journal International Law and Commercial Regulation* 437, 441-442.

²⁰ *Ryder* (n 4) 12.

3.2.1 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

This Convention focused on tackling the manufacturing and distribution of unlawful drugs and the related money laundering.²¹ The Vienna Convention was the first international instrument to establish the confiscation of the proceeds of crime related to drug trafficking by providing the criminal offences of money laundering and empowering the authorities to detect, seize, and confiscate such criminal proceeds.²² The Convention encourages assistance in investigations, judicial cases, and court proceedings between the countries.²³ Gilmore identified that this Convention is one of the most important measures to counter the international traffic of illegal drugs.²⁴

The Vienna Convention determines that signatories have to transpose all measures into their national regulations.²⁵ This includes the criminalization of money laundering, confiscation of the proceeds of crime, extradition procedures, information sharing mechanisms, mutual legal assistance, and a risk-based approach

²¹ The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); see also Peter Lilley, 'The Asian money laundering explosion' (2006) 15 <http://www.dirtydealing.org/IMAGES/writing_presentation_slides/fightingcorruptioninasia.pdf> accessed 28 August 2018.

²² Articles 3 and 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); see United Nations, 'United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988' <https://www.unodc.org/pdf/convention_1988_en.pdf> accessed 24 March 2018; see Cheong-Ann Png, 'International Legal Sources I – The United Nations Conventions' in William Blair, Richard Brent and Tom Grant (eds) *Banks and Financial Crime: The International Law of Tainted Money* (2nd edn, Oxford University Press 2017) 17; see also Abdullahi Y Shehu, 'International initiatives against corruption and money laundering: An overview' (2005) 12(3) *Journal of Financial Crime* 221, 222.

²³ Lilley (n 21).

²⁴ Gilmore (n 13) 53; see also Ryder (n 4) 9.

²⁵ DW Sproule and Paul St-Denis, 'The UN Drug Trafficking Convention: An ambitious step' (1989) 27 *Can YB Int'l L* 263, 269.

into their national AML regulations.²⁶ Sproule and St-Denis argued that the effectiveness of the Convention relies on the determination of countries to coordinate in creating robust measures against the drug trade.²⁷ Therefore, all policy-makers, competent authorities, and FIUs have to implement the Convention's measures into their domestic policies.²⁸

Article 3(1)(a) of the Convention only applies to the proceeds of a crime relating to drug dealing but allows countries to determine additional forms of criminal activity.²⁹ Article 3(b)(i) also defines what activity of money laundering is.³⁰ Article 3(b)(ii) determines that the activity of concealing or disguising, including all means characteristic of the purpose to hide or disguise.³¹ Additionally, Article 5 provides the power to confiscate the proceeds of drug trafficking derived from criminal offences under art 3 of the Convention.³² Article 7 of the Convention involves international mutual legal assistance.³³

²⁶ Karen Harrison and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (2nd edn, Routledge 2016) 21; see also Nicholas Ryder, 'The fight against illicit finance: A critical review of the Labour government's policy' (2011) 12(3) *Journal of Banking Regulation* 252, 254.

²⁷ *Sproule and ST-Denis* (n 25) 263, 291.

²⁸ Financial Action Task Force (FATF) Recommendation 2.

²⁹ Article 3(1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); Article 3(1)(a) of the Vienna Convention, the Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering; see also Guy Stessens, *Money Laundering – A New International Law Enforcement Model* (Cambridge University Press 2008) 113.

³⁰ Article 3(b)(i) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

³¹ Article 3(b)(ii) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); see United Nations, 'Commentary on the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1998' at 64 <https://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_united_nations_convention_1988_E.pdf> accessed 31 August 2018.

³² Article 5(1-9) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

³³ Article 7 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

To tackle money laundering, the legislation should be applied in each stage of its process.³⁴ Therefore, the signatories have to improve its national criminal justice systems to enhance the law enforcement risk by criminalising money laundering in order to trace, freeze and confiscate the proceeds of criminal assets and profits received from the illegal activities or transactions.³⁵

In order to achieve the Vienna Convention's objectives, the FIUs play an essential role in overseeing the private sector and public authorities whether they comply with the risk-based approach to protect the international financial system from abuse and to ensure that they can tackle money laundering risk and threat, remain relevant, and be up to date.³⁶ The Vienna convention provides the competent authorities or the FIUs with powers to impose the reporting obligations on the reporting entities (REs) comprising the financial institutions (FIs) and the designated non-financial business and professions (DNFBPs) in accordance with Article 3(1)(b)(c) and Article 3(2) of the Vienna Convention. The reporting entities are required to submit suspicious transaction to the FIUs, who disseminates the intelligence to the competent authorities.³⁷

The FIUs and the competent authorities adopt the preventive AML measures, which can be referred to as the 'know your client (KYC),' the 'customer due diligence (CDD)' or the suspicious transaction/activity reports (STRs/SARs) provision to order the REs. For example, banking and other financial institutions report the

³⁴ Barry Rider, Lisa Linklater and Stuart Bazley, *Market abuse and insider dealing* (2nd edn, Tottel 2009) 148.

³⁵ *Gilmore* (n 13) 257.

³⁶ Financial Action Task Force (FATF), *Annual Report 2017-2018* (FATF 2018) 28 <<https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/FATF-annual-report-2017-2018.pdf>> accessed 2 July 2019.

³⁷ Article 3(1)(b)(c) and Article 3(2) of the Vienna Convention.

STRs/SARs to the FIUs to produce financial intelligence and disseminate to the relevant LEA for prosecuting offenders under the FATF Recommendation 29 and Article 5(3) of the Vienna Convention.³⁸ The creation of the FIU and these preventive measures are an essential part of the global AML procedures, AML policies, the FATF Recommendations, and the international advisory regulations, which the UN's Parties have implemented into their national AML legislation.³⁹ Otherwise, there will be sanctions, namely the civil and penal sanctions for the natural or legal persons who do not comply with the AML regulations.⁴⁰ Furthermore, the Vienna Convention encourages its Parties to improve a network of mutual legal assistance, including sharing intelligence in relation to money laundering and associated predicate offences for supporting the FIU in obtaining evidence for use in the investigations and prosecutions of such offences.⁴¹

Thus, it can be said that the effectiveness of the preventive AML measures and FIU in implementing the international standards was highlighted by the FATF, which relates to a number of money laundering prosecutions. Therefore, the preventive AML measure (such as the risk-based approach) affiliates the FIUs to focus risk close to the predicate offences, control cash transactions, to enhance regulations to oversee transfer, and to gather financial information flowing between the international and domestic financial institutions in order to detect, seize, confiscate and prosecute the drug proceeds under the Vienna Convention.⁴² The FIU and competent

³⁸ FATF Recommendation 29 and Article 5(3) of the Vienna Convention.

³⁹ *Ryder* (n 4) 39.

⁴⁰ FATF Recommendation 35.

⁴¹ Article 7 of the Vienna Convention and FATF Recommendations 37, 38.

⁴² Mark Pieth and Gemma Aiolfi, 'Synthesis: comparative international standards and their implementation' in Mark Pieth and Gemma Aiolfi (Eds), *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of System in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 416.

authorities use a stockpile of information and the STRs/SARs for generating financial intelligence to prosecute money laundering.

This Convention defines money laundering as a criminal activity aiming to disguise to conceal their illegal origins involving drug trade, as well as recommends the countries to criminalise in line with the Convention.⁴³ However, the Vienna Convention does not refer to the independence of FIU. It is essential to investigate the other AML instruments to analyse the reference of the independence of the FIU in order to answer the research questions regarding how evaluate the countries have implemented the international AML standards and how Thailand adapts the valuable lessons from the best practices. Next the thesis examines the United Nations Convention against Transnational Organised Crime (2000).

3.2.2 United Nations Convention Against Transnational Organised Crime (2000)

The UN Convention against Transnational Organised Crime (2000), or Palermo Convention, extended the narrow regarding remit of the Vienna Convention to other profit-driven crimes.⁴⁴ The Palermo Convention expanded the scope of the Vienna Convention by further covering ‘the proceeds of serious crime.’⁴⁵ The Con-

⁴³ The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

⁴⁴ Article 6 of The United Nations Convention Against Transnational Organised Crime (2000); see David Chaikin and JC Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan 2009) 16.

⁴⁵ *Hopton* (n 5) 10.

vention aims to tackle international organised crime, including Mafia-type organisations or criminal networks.⁴⁶ It extends the definition of money laundering,⁴⁷ and it encourages the signatories to establish an FIU.⁴⁸ The Convention affiliates the governments to apply the international guidelines against money laundering⁴⁹ and enhances international cooperation among FIU, financial regulatory, judicial, and relevant law enforcement authorities to fight money laundering.⁵⁰ In consequence, the private sector has to implement a comprehensive set of preventive measures, such as customer due diligence, record-keeping obligations, and the suspicious transactions/activities (STR/SAR) to the FIUs.⁵¹

The Palermo Convention extended the scope of Article 3 of the Vienna Convention regarding the criminalisation of drug trafficking to all serious crimes, which was introduced in the FATF Recommendations and the EU Money Laundering Directives.⁵² Therefore, the Convention needs its Parties and their FIUs to focus on confiscation of the proceeds of serious crime, especially the act of organised crime, namely participation in money laundering, an organised criminal group, obstruction of justice, and corruption.⁵³ The role of the FIU is to reduce the impact of money laundering by managing its confiscation regime via the preventive measures relating

⁴⁶ Michael Levi, 'Drug Law Enforcement and Financial Investigation Strategies: Modernising Drug Law Enforcement Report 5' International Drug Policy Consortium (2013) 2 <<http://orca.cf.ac.uk/88170/1/MDLE-5-drug-law-enforcement-financial-investigation-strategies.pdf>> accessed 26 March 2018.

⁴⁷ Article 6(1-2) of the United Nations Convention Against Transnational Organised Crime (2000).

⁴⁸ Article 7(1)(b) of the United Nations Convention Against Transnational Organised Crime (2000).

⁴⁹ Article 7(3)(4) of the United Nations Convention Against Transnational Organised Crime (2000); The United Nations Convention Against Transnational Organised Crime (2000), art 32; see also *Gilmore* (n 13).

⁵⁰ The United Nations Convention Against Transnational Organised Crime (2000), art 7(1)(b).

⁵¹ Article 7(1)(b) of the United Nations Convention Against Transnational Organised Crime (2000).

⁵² Article 3 of the Vienna Convention and art 6 of the Palermo Convention; see *Png* (n 22) 16.

⁵³ Palermo Convention, Articles 5, 6, 12, and 23.

to the risk-based approach, the pre-placement, the KYC, the CDD, client-identification-record keeping, risk assessment, the STRs/SARs, and the cooperation between the FIUs under the FATF Recommendations.⁵⁴

The FIU assists competent authorities to identify, trace, evaluate a property, which is subject to confiscation, including carrying out any appropriate investigative measure, as well as provisional AML measures, such as freezing and seizing in order to prevent people transacting illegal property.⁵⁵ However, the FIU recognises the rights of the third parties in good faith regarding the confiscation of criminal proceeds pursuant to Article 12(8) of the Convention.⁵⁶ The Convention ensures that the FIU has the capacity to cooperate, share, or exchange financial information at the domestic and international levels under the national law.⁵⁷ Furthermore, the Convention provides broad AML measures of mutual legal assistance to foreign FIUs and competent authorities for increasing the number of criminal investigations, prosecutions, and relevant proceedings for money laundering offence.⁵⁸ For example, Article 13 of the Convention provides the essential measures to support the competent authorities and FIUs for developing the level of international cooperation for purposes of confiscation of the proceeds of crimes.⁵⁹

This Convention determines that States Parties must set the legislative, administrative and prosecutorial measures to enhance their integrity and to prevent, detect and punish the corruption of public officers.⁶⁰ However, this Convention does

⁵⁴ *Harrison and Ryder* (n 26) 224; see also *Png* (n 22) 20.

⁵⁵ FATF Recommendation 3.

⁵⁶ Article 12(8) of the Palermo Convention.

⁵⁷ Article 7(1)(b) of the United Nations Convention Against Transnational Organised Crime (2000).

⁵⁸ *Ryder* (n 4) 59.

⁵⁹ Article 13 of the Palermo Convention and FATF Recommendation 3.

⁶⁰ The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

not refer exactly to the independence of FIU similar to the Vienna Convention.⁶¹ However, article 7 of the Palermo Convention regarding measures to combating money-laundering provides that the AML competent authorities shall have the ability to cooperate and exchange information at both levels, national and international levels, as well as each country shall establish its FIU to serve the core functions, collection, analysis and dissemination of AML intelligence to fight money laundering.⁶² Next the thesis examines the United Nations Convention against Transnational Corruption (2003).

3.2.3 United Nations Convention against Corruption (2003)

The United Nations Convention against Corruption (2003), or Merida Convention, requires its signatories to criminalise the corruption-related offences, such as ‘bribery of public officials’,⁶³ ‘bribery of foreign public officials and officials of public international organisation’,⁶⁴ ‘embezzlement, misappropriate or other diversions of property by a public official’,⁶⁵ ‘trading in influence’,⁶⁶ ‘abuse functions’,⁶⁷ ‘illegal enrichment’,⁶⁸ ‘bribery in the private sector’,⁶⁹ ‘embezzlement of property in the private sector’,⁷⁰ ‘laundering of proceeds of crime’,⁷¹ and the ‘the concealment⁷² and the obstruction of justice’.⁷³

⁶¹ Article 9(1). Those doing the prevention, detection and punishment must be provided with adequate independence.

⁶² Article 7 of the Palermo Convention

⁶³ Article 15 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁴ Article 16 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁵ Article 17 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁶ Article 18 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁷ Article 19 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁸ Article 20 of the United Nations Convention Against Transnational Organised Crime (2000).

⁶⁹ Article 21 of the United Nations Convention Against Transnational Organised Crime (2000).

⁷⁰ Article 22 of the United Nations Convention Against Transnational Organised Crime (2000).

⁷¹ Article 23 of the United Nations Convention Against Transnational Organised Crime (2000).

⁷² Article 24 of the United Nations Convention Against Transnational Organised Crime (2000).

⁷³ Article 25 of the United Nations Convention Against Corruption (2003).

The Merida Convention goes beyond the Palermo Convention because it applies the money laundering offence to the broadest scope of the predicate offences.⁷⁴ For example, Article 14 (1)(b) of this Convention determines the measures to protect money laundering regarding the establishment of a comprehensive domestic regulatory and supervisory regime (namely, an effective customer and beneficial owner identification, an accurate record-keeping, and an appropriate mechanism for the reporting of suspicious activities/transactions) to prevent money laundering.⁷⁵ Consequently, the FATF Recommendations cover all transactions, which provide the penalties for reporting entities failing to submit the suspicious activities/transactions reports (SARs/STRs).⁷⁶ However, legal systems in each country have several laws in dealing with criminal proceeds, but each government needs to promote the identification, pursuit, seizure, confiscation, or forfeiture of proceeds of crime.⁷⁷ Therefore, this Convention ensures that the FIUs in each country can cooperate and share financial information at national and international levels.⁷⁸

The Convention introduces legal standards to support the FIUs and competent authorities to confiscate both criminal proceeds and instrumentalities.⁷⁹ For example, Article 14(b) encourages the FIUs and competent authorities to cooperate and exchange financial intelligence.⁸⁰ Article 36 determines that the FIUs and the competent authorities shall have the operational independence to carry out their duties

⁷⁴ Article 23(2) of the United Nations Convention Against Corruption (2003).

⁷⁵ Article 14 (1)(a) of the United Nations Convention Against Corruption (2003).

⁷⁶ U.S. Department of State, 'Definitions' <<https://www.state.gov/j/inl/rls/nrcrpt/2016/vol2/253333.htm>> accessed 19 July 2017; The 2003 revisions of the FATF Recommendations include instituting customer due diligence measures and improving diligence measures regarding politically exposed persons (PEPs).

⁷⁷ Barry Rider, Stuart Bazley and Jeffrey Bryant, *Market Abuse and Insider Dealing* (3rd edn, Bloomsbury 2016) 182, 185.

⁷⁸ Articles 14 (1)(b) and 58 of the United Nations Convention Against Corruption 2003.

⁷⁹ Articles 2, 23(2)(e), 44 of the Merida Convention.

⁸⁰ Articles 14(b) and 14(5) of the Merida Convention.

and responsibilities effectively and without any undue interference or impact in accordance with the national AML law.⁸¹ Furthermore, the Convention identifies that the FIUs and competent authorities shall have the powers and responsibilities to request mutual legal assistance and information between foreign FIUs and competent authorities.⁸² Article 52 provides the powers to the FIU, competent authorities, and appropriate public officials to investigate any financial accounts in a foreign country and maintain records of such financial accounts for prosecution.⁸³ The next section explains the European Union AML Directives.

This Convention states that State Party shall ensure the body has the essential independence in order to carry out its functions effectively and free from any undue interference or influence, including the vital material resources and specialized official, as well as the training that such official may require to carry out their duties in order to prevent the corruption.⁸⁴ Furthermore, article 11 of this Convention promotes the independence of the national judiciary and the prosecution service and their necessary roles in fighting corruption.⁸⁵ In addition, article 36 states that the State Party also need to support the body or person specialised in fighting corruption via law enforcement.⁸⁶ According to article 14(b) supports that this Convention requires State Party to ensure the appropriate information exchange at the national and international levels, as well as to establish the FIU to act its functions effectively.⁸⁷

Similar to the 2000 Convention, this Convention does not refer exactly to the independence of FIU, but the Merida Convention encourages the State Party to meet

⁸¹ Article 36 of the Merida Convention.

⁸² Articles 46 and 49 of the Merida Convention.

⁸³ Articles 52 of the Merida Convention.

⁸⁴ Paragraph 3 of the Article 6 of the Merida Convention.

⁸⁵ Article 11 of the Merida Convention.

⁸⁶ Article 36 of the Merida Convention.

⁸⁷ Article 14(b) of the Merida Convention.

its fundamental principles of each national legal system by promoting the body, including the FIU to carry out its functions efficiently and free from any influence or interference whether from government or industry unlikely the 1988 UN Conventions.⁸⁸ Next the thesis examines the United Nations Convention against Transnational Corruption (2003).

3.3 Implementation of the Regional Legal AML Framework

3.3.1 European Union Anti-Money Laundering Directives

The EU has also adopted several legislative instruments to fight against money laundering.⁸⁹ For example, in 1970 the Council of Europe enacted the European Convention on the International Validity of Criminal Judgements, which encouraged the Member States to recognise the validity of criminal sentences and judgment transposed into the other Member States that have ratified this Convention.⁹⁰

In 1980, the EU established a Select Committee to deal with the criminal transfer of the proceeds of crime from one country to another, as well as the process of money laundering via the international and national financial markets.⁹¹ The Committee recommended the ‘Measures Against the Transfer and Safekeeping of Funds

⁸⁸ Article 9(1). Those doing the prevention, detection and punishment must be provided with adequate independence.

⁸⁹ The UN Conventions, such as the Vienna Convention, Palermo Convention, and Merida Convention.

⁹⁰ European Union enacted the European Convention on the International Validity of Criminal Judgements (1970); Mark Mackarel, ‘The European Arrest Warrant – the early years: Implementing and using the warrant’ (2007) 15(37) European Journal of Crime, Criminal Law and Criminal Justice 37, 39.

⁹¹ Committee of Ministers of Council of Europe, ‘Recommendation No. R (80) 10 of the Committee of Ministers to Member States on Measures against the Transfer and the Safekeeping of Funds of Criminal Origin These Recommendations were implemented on 27 June 1980’ <[http://www.masak.gov.tr/media/portals/masak2/files/en/Legislation/LaunderingProceedsofCrime/international_legislation/CE/R80\(10\).pdf](http://www.masak.gov.tr/media/portals/masak2/files/en/Legislation/LaunderingProceedsofCrime/international_legislation/CE/R80(10).pdf)> accessed 30 October 2018.

of Criminal Origins'⁹² to the Member States to focus on the role of their banks concerning the identification of the customers (know your customer principles),⁹³ international and national cooperation among private and public sector, and an effective establishment of the banking system for recognising the list of banknotes linked with criminal offences when such notes are used in the system.⁹⁴ These measures provide the competent authorities in the EU with the power to investigate the suspicious transactions for identification, freezing, and seizure of assets regarding money laundering.⁹⁵

Thus, the competent authorities have played an important role by encouraging reporting entities to verify the identity of clients, training cashiers in order to prevent money laundering, and reporting suspicious funds. Nevertheless, the Council of Europe Recommendations were not broadly transposed by Parties because of the character of the soft law of the Convention, which did not bind the Member States to implement due to the limited constitutional competence and the lack of enforcement mechanism.⁹⁶

Therefore, the European Committee on Crime proposed to create a parallel stance towards the proceeds of illegal drug trafficking via the introduction of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (1990).⁹⁷ The Convention was the first to harmonise the AML policies with the practices of the tracing,

⁹² Gilmore (n 13) 10.

⁹³ Dionysios S Demetis, *Technology and Anti-Money Laundering: A Systems Theory and Risk-Based Approach* (Edward Elgar 2010) 9, 15, 23, 45, 64.

⁹⁴ *Committee of Ministers of Council of Europe* (n 91); Kern Alexander, 'Multi-national efforts to combat financial crime and the Financial Action Task Force' (2000) 2(5) *Journal of International Financial Markets* 178, 182.

⁹⁵ *Committee of Ministers of Council of Europe* (n 91).

⁹⁶ Gilmore (n 13) 161.

⁹⁷ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141, 1990) (hereinafter the 1990 Strasbourg Convention'); see Mo Egan, 'Policing illicit

seizure, and confiscation of the proceeds of crimes in the EU member countries.⁹⁸

This Convention facilitated the sufficient international cooperation and the mutual assistance in criminalising the laundering of the criminal proceeds between the FIUs and the competent authorities, such as police and judicial authorities, in freezing of bank accounts, seizure of assets to prevent its removal and forfeiting instrumentalities and the proceeds of drug trafficking.⁹⁹

The 1990 Convention was extended by the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), or Warsaw Convention.¹⁰⁰ This Convention strengthened international cooperation and mutual assistance in investigating crime, pursuing, seizing, and confiscating the proceeds of crime.¹⁰¹ The Convention also defines the meaning of the FIU as a central, national agency dealing with financial information, who receives such information from reporting entities and delivers it to relevant competent and law enforcement authorities.¹⁰² The Convention supports the cooperation between the international FIUs by promoting the swift access to financial information on property committed by criminal organisations and terrorist

financial flows: multi-agency co-operation and legal developments' in Monica den Boer (ed), *Comparative Policing from a Legal Perspective* (Edward Elgar 2018) 209.

⁹⁸ Eleni Tsingou, 'Global governance and transnational crimes: Opportunities and tensions in global AML regimes' (May 2005) CSGR Working Paper No 161/05 at 6 <file://nstu-nas01.uwe.ac.uk/users3\$/k2-silathong/Windows/Downloads/WRAP_Tsingou_wp16105.pdf> accessed 7 November 2018; see also Norman Mugarura, 'The implications of Brexit for UK anti-money laundering regulations: Will the fourth AML directive be implemented or be binned?' (2018) 21(1) *Journal of Money Laundering Control* 5, 9.

⁹⁹ Council of Europe, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Explanatory Report* (Council of Europe Publishing 1995) 5; see also Council of Europe Portal, 'Details of Treaty No. 141' <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/141>> accessed 7 July 2019.

¹⁰⁰ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) was adopted in Warsaw; hereinafter the '2005 Convention'. The United Kingdom ratified the 1990 Convention in 2015.

¹⁰¹ Articles 3 and 46 of the 2005 Convention; see Council of Europe, 'The 2005 Warsaw Convention and its additional protocol' <<https://www.coe.int/en/web/counter-terrorism/cdct/warsaw-convention-and-additional-protocol>> accessed 8 November 2018.

¹⁰² Article 1 of the Warsaw Convention.

groups as the key mechanism to successful preventive and repressive instruments to stop such crimes.¹⁰³ This Convention provides the FIUs quick access to financial information or information regarding assets managed by organised crime groups or terrorists to support the FIUs and competent authorities in operating preventive and repressive measures effectively.¹⁰⁴

In 1999, the EU enacted the First Money Laundering Directive (1MLD), which required the Member States to implement a series of preventive measures, such as cross-border money transactions, the customer identification, the quality of the STR, the proper customer's record-keeping for five years after closing the account (or the end of customer relationship), the communication and cooperation between the competent authorities, and AML training programme for staff.¹⁰⁵ These measures, which required the FIUs to establish their internal procedures to monitor and report suspicious transactions to the FIUs based on the Vienna Convention and the FATF 40 Recommendations.¹⁰⁶ Thus, the FIUs take into account suspicious transactions, identification records, the policy of sufficient internal procedures, including appropriate AML training programmes for staff in line with the FATF Recommendations.¹⁰⁷

The 1MLD was replaced by the Second EU Money Laundering Directive (2MLD) because it was considered to be ineffective.¹⁰⁸ 2MLD focused on two main

¹⁰³ Article 46 of the 2005 Convention.

¹⁰⁴ *Council of Europe* (n 100).

¹⁰⁵ European Council, Directive on the Prevention of the Use of the Financial System to Laundering Money 91/308, 1993 OJ (L 166); see Valsamis Mitsilegas and Bill Gilmore, 'The EU legislative framework against money laundering and terrorist finance: A critical analysis in the light of evolving global standards' (2007) 56 *International and Comparative Law Quarterly* 119, 120, 123.

¹⁰⁶ Phillippe Blaquier-Cirelli and Pierre-Yves Couturier, 'France' in Wouter H Muller, Christian H Kalin and John G Goldsworth (eds), *Anti-Money Laundering: International Law and Practice* (John Wiley & Sons 2007) 491.

¹⁰⁷ *Mitsilegas and Gilmore* (n 105) 119, 120.

¹⁰⁸ *ibid.*

themes.¹⁰⁹ Firstly, the Directive extended the list of the predicate offences for the obliged entities to report suspicious transactions from only drug trafficking offences to all serious criminal offences. Secondly, the Directive expanded the extent of a number of professions and non-financial bodies required to report the SARs to the FIUs.¹¹⁰

The EU launched its Third Money Laundering Directive (3MLD) on the prevention of the use of the financial system for the purpose of money laundering in 2004,¹¹¹ which required its member states to establish an independent and specialised national agency to counter money laundering and extend the scope of the EU AML regimes to include terrorism financing.¹¹² Moreover, the Directive needed its Member States to increase the list of predicate offences of all serious crimes and issue more guidelines to enhance the client identification procedures in the relevant sector to fight money laundering regime effectively.¹¹³

In May 2015, the EU enacted the Fourth EU Money Laundering Directive (4MLD).¹¹⁴ This Directive was further developed than the FATF Recommendations and increased risk management under the Directive's new requirements (such as the broader scope of organisations from financial institutions and banking sector to the

¹⁰⁹ Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, Amending Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering, 2001 O.J. (L 344) 76.

¹¹⁰ The Money Laundering Regulations 2003 (SI 2003 No. 3075); The scope in this EU Second ML Directive included lawyers, accountants, notaries, art dealers, estate agents, casinos, jewelers, auctioneers, remittance offices, as well as insurance companies.

¹¹¹ The negotiation and agreement of the Third ML Directive was achieved in June 2005, but the EU Member States must be fully implemented by 15 December 2007.

¹¹² Article 21 of the Directive 2005/06/EC of the European Parliament and of the Council of 26 October 2005.

¹¹³ Jonathan Fisher, 'Recent international developments in the fight against money laundering' (2002) 17(3) *Journal of International Banking Law* 67, 67.

¹¹⁴ The Fourth EU Anti-Money Laundering Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, 2015 O.J. (L 141) 83, art. 1(5) (the 4th AML Directive).

auditors, tax advisors, including legal professionals) and expanded risk analysis.¹¹⁵ The Directive improved several key changes, such as the risk-based approach (RBA), new regulations relating to the electronic money, the central registers of ultimate beneficial ownership for the company and legal entities, the same standards between ‘internal’ and ‘external’ politically exposed persons (PEPs), enhancement of the sanction regime, and the degree of cooperation between national FIUs, including the practical operation.¹¹⁶ Thus, the FIUs realised the broad definition of money laundering, including the money laundering that occurs regardless of the ‘predicate crime’, which refers to any kind of criminal involvement in the act of serious crimes conducted in another EU Member State or in a third country.¹¹⁷ The 4MLD goes beyond the threshold set out in the FATF standards. For example, the CDD lowers the cash payment with a value of over €10,000 (previous value was €15,000).¹¹⁸ Furthermore, the FIU plays a crucial role to monitor the private sector in complying with a risk-based approach to introduce stricter transparency rules regarding the ownership of legal persons via cooperation among the international FIUs.¹¹⁹

Due to the increase of several risks,¹²⁰ the EU published its Fifth Money Laundering Directive (5MLD) on the 10 June 2018, and its Member States need to transpose into their national law by January 2020.¹²¹ This Directive extends the

¹¹⁵ Joachim Kaetzler and Tanja Kordys, ‘Fourth Money Laundering Directive - Increased risk management requirements’ (2015) 4(5) *Comp. & Risk* 2, 5.

¹¹⁶ *ibid.*

¹¹⁷ Fourth AML Directive, art 1(3) includes organised crime, fraud, corruption, and tax evasion.

¹¹⁸ Regulation 27(3) of the Fourth ML Directive.

¹¹⁹ Leonardo Borlini and Francesco Montanaro, ‘The evolution of the EU law against criminal finance: The ‘hardening’ of FATF standards within the EU (2017) 48 *Georgetown Journal of International Law* 1009, 1037.

¹²⁰ Several risks comprise the increase in money laundering, terrorist financing, the emerging of cryptocurrencies and the rise of new technologies.

¹²¹ The Fifth EU Anti-Money Laundering Directive (EU) 2018/843 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering or Terrorism Financing (the Fifth ML Directive).

scope of the previous EU Directive, such as the ‘obliged entities’ to deal with such risks, which relate to the virtual currencies and anonymous prepaid cards, including the constant technological evolutions in such fields.¹²² The Directive also focuses on the enhanced customer due diligence measures involving the context of financial transactions of high-risk third countries.¹²³ Furthermore, the Directive increases transparency measures concerning enhanced access and powers for the relevant supervisory authorities and the EU FIUs.¹²⁴ Therefore, the 5MLD is considered as a stricter approach to the problem of efficiently fighting ML/CFT, e.g. than the 4MLD in this respect. The FIUs and competent authorities require direct access to information on financial transactions and beneficial ownership information, including encouraging the FIUs to strengthen their risk assessment and policy to meet the FATF requirements.

¹²² The Member States should reduce the thresholds under which obliged entities (i.e. these obliged entities are required to register in their home Member State), are exempt from applying certain CDD measures to prepaid cards. The customer in a remote payment transaction exceeding EUR 50 will need to be identified. In addition, the use of anonymous prepaid cards issued outside the EU should be permitted where the cards comply with requirements equivalent to EU laws; see Barbara Jamieson, ‘European Union: Fifth Money Laundering directive (MLD5)’ Nexis (29 March 2018) <http://dd6lh4cz5h.search.serialssolutions.com/?ctx_ver=Z39.88-2004&ctx_enc=info%3Aofi%2Fenc%3AUTF-8&rft_id=info%3Aaid%2Fsummon.serialssolutions.com&rft_val_fmt=info%3Aofi%2Ffmt%3Akev%3Amtx%3Ajournal&rft.genre=article&rft.atitle=Fifth+Money+Laundering+Directive+%28MLD5%29&rft.jtitle=Mondaq+Business+Briefing&rft.date=2018-03-29&rft.pub=Mondaq+Ltd&rft.externalDBID=XI7&rft.externalDocID=A532706548¶mdict=en-UK> accessed 4 November 2018.

¹²³ The application of enhanced customer due diligence for third countries that are determined by the European Commission to be high risk countries. The EU Member States should apply additional measures, where appropriate; see Arun Srivastava, ‘The Fifth EU Money Laundering Directive: Latest developments’ Global Compliance News (2 January 2017) <<https://globalcompliance.com/the-fifth-money-laundering-directive-latest-developments-20170102/>> accessed 4 November 2018.

¹²⁴ The Member States should enhance the powers of and cooperation between FIUs, including giving them access to information and the ability to exchange it without impediments. This will include access to information on all types of virtual currencies, not only those that are serviced by providers of exchange services and custodian wallet providers. The Directive requires its Member States maintaining lists of specific functions that qualify as prominent public functions to assist in the identification of politically exposed persons (PEPs). The Directive also enhances access to information on beneficial ownership across the EU and improve transparency in the ownership of companies and trusts; see Samantha Sheen, ‘What is the 5th Anti-Money Laundering Directive?’ ACAMS (5 December 2016) <<https://www.acams.org/aml-resources/samantha-sheens-blog/5th-anti-money-laundering-directive/>> accessed 4 November 2018.

In 2020 the European Union's Sixth Anti-Money Laundering Directive (6MLD), replacing the 5MLD on 3 December 2020,¹²⁵ defines the regulatory requirements introduced in the 5 MLD in greater detail, as well as provides its member states with clarification on emerging money laundering threats. This Directive empowers FIs and authorities to do more in the counter against money laundering by expanding the range of existing regulation, law, clarifying particular regulatory details, toughening criminal punishment across the bloc, increasing predicate offences (e.g. certain tax-crimes, environmental crime and cyber-crime).¹²⁶

In summary, the EU ratified the UN AML Conventions into their Member States to criminalise money laundering and outline measures for the freezing and confiscation of criminal proceeds. The EU Member States and the FATF-Styled Regional Bodies (FSRBs) have attempted to adopt the UK and EU AML measures and introduced such policy into the national legislation to tackle the threats posed by money laundering. For example, the UK has fully transposed the UN AML Conventions and its requirements under the ML Directives into its national legislation. The UKFIU therefore improves the governance and transparency of the SARs regime, which the government has considered when develop the SARs regime as recommended by Sir Stephen Lander in order to enhance the confidential handling of SARs and to promote a channel for expression of concern in certain cases.¹²⁷

¹²⁵ The financial institutions in the EU member states must implement the 6MLD by 3 June 2021.

¹²⁶ The best International practices like the 6MLD, it strengthens the preventive framework to fight money laundering and terrorist financing and determines the minimum rules for criminal liability for money laundering by extending liability to legal persons, including imposing a five-year minimum imprisonment for serious money laundering offences; see the European Union's Sixth Anti-Money Laundering Directive (6MLD).

¹²⁷ The Institute of Chartered Accountants, 'The confidentiality of money laundering suspicious activity reports (SARs) in the United Kingdom' (September 2006) p. 3; see Serious Organised Crime Agency (SOCA), Review of the SARs Regime – Sir Stephen Lander (SOCA March 2006). 'Transparency International UK, Combating Money Laundering and Recovering Looted Gains: Raising the

Regarding the independence of the FIU, Directive 2015/849 (4MLD) promotes that the FIUs shall have operational independence as well as the authority and capacity to take autonomous decisions to conduct their core functions, analyse, request and deliver their intelligence to relevant competent authorities.¹²⁸ This was also consistent with the FATF Recommendations on the operational independence and autonomy of FIUs in order to discharge their functions effectively.¹²⁹

Similar to the 5MLD, the Directive also referred to the FIUs as the operationally independent units that have been established in the line with the Provisions and to meet the requirements of the FATF Recommendations.¹³⁰ The EU member states therefore, implement the 5MLD to ensure effective and impartial supervision of all obliged entities, preferably by the public competent authorities through a separate and independent national regulator or supervisor.¹³¹ From reasons mentioned above, the EU AML Directives does not refer clearly the independence of FIU. Therefore, it is necessary to examine the best international practices such as FATF, Egmont Group and Basel in this thesis in order to explore the valuable lessons for Thailand to adapt such best practices into domestic AML legislation to enhance its independence to meet the standards. This thesis then focusses on the implementation of the international best practices and industry guidelines.

UK's Game' p.19 <[https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Transparency Intl UK Recovering Looted Gains June 2009.pdf](https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Transparency%20Intl%20UK%20Recovering%20Looted%20Gains%20June%202009.pdf)> accessed 13 December 2020.

¹²⁸ Directive 2015/849 (4MLD); see European Commission, 'Impact assessment' Commission staff working document Strasbourg, 17.4.2018 SWD(2018) 114 final (p. 6) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180417_directive-proposal-facilitating-use-information-prevention-detection-investigation-prosecution-criminal-offences-cswd-ia_en.pdf> accessed 13 December 2020.

¹²⁹ FATF Recommendation 29.

¹³⁰ Directive (EU) 2018/843 (the 5th Anti-Money Laundering Directive), Article 65(2).

¹³¹ Directive (EU) 2018/843 (the 5th Anti-Money Laundering Directive) (5MLD).

3.4 Implementation of the International Best Practices and Industry Guidelines

The UN encourages its Member States to implement the international AML best practices and industry guidelines in terms of soft law, which does not create a legal obligation, such as the FATF Recommendations to fight money laundering effectively.¹³² However, the countries failing to comply with these AML measures could be subjected to financial sanctions from the international community by being announced as the country of the high-risk or the non-cooperative jurisdictions.¹³³ The next section examines the implementation of the FATF Recommendations.

3.4.1 The Financial Action Task Force Recommendations

The global AML policy is based on reviewing the international legal instruments as the soft law, namely the FATF Recommendations, or the international AML best practices and industry guidelines. These recommendations have been adopted by the EU and FSRBs,¹³⁴ including the International Monetary Fund (IMF) and World Bank.¹³⁵ Therefore, the UN Member States are required to apply for membership of the FATF; otherwise, the country could be subject to financial sanctions and be categorised as a non-cooperative countries and territories (NCCTs).¹³⁶ It is essential to examine the FATF Recommendations in shaping the AML policy.

¹³² Michael Pucci, 'FATF Recommendations: Becoming soft law' <<http://www.mjilonline.org/fatf-recommendations-becoming-soft-law-2/>> accessed 7 July 2019.

¹³³ Financial Action Task Force (FATF), 'High-risk and other monitored jurisdictions' <[https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate))> accessed 7 July 2019.

¹³⁴ For example, the Asia/Pacific on Money Laundering Group (APG) is the FSRB that Thailand is a member of this Group.

¹³⁵ Financial Action Task Force (FATF), 'Thailand' <<http://www.fatf-gafi.org/countries/#Thailand>> accessed 8 July 2019.

¹³⁶ Financial Action Task Force (FATF), 'Topic: high-risk and other monitored jurisdictions' <[http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate))> accessed 29 November 2018; see also Financial Action Task Force (FATF), *Financial Action Task Force on Money Laundering: Report on Non-cooperative Countries and Territories* (FATF 2000) 8; see also *Gilmore* (n 13) 154.

3.4.1.1 Overview of the 40 FATF Recommendations

The FATF is an independent inter-governmental and policy-maker body that was established in 1989.¹³⁷ It aims to set global AML standards and support the efficient implementation of its standards in order to prevent the international financial system from being used by money launderers and terrorism financiers.¹³⁸ In order to achieve this objective, the FATF closely monitors typologies and trends of money laundering, including the legal and practical effect of the FATF Recommendations.¹³⁹ Its members include the UN, the World Bank, IMF, the Basel Committee on Banking Supervision, and Egmont Group of Financial Intelligence Units.¹⁴⁰ The FATF encourages its Member States to facilitate and implement its Recommendations which are divided into three primary instruments, including money laundering preventive measures; AML enforcement measures; and measures to foster transnational co-operation.¹⁴¹ In 1996, the FATF Recommendations aimed to criminalise money laundering and drug trade offences, but in 2001 the terrorist attacks in the United States of America (US) forced the FATF revise its Recommendations to respond to the threats of terrorism.

¹³⁷ Financial Action Task Force (FATF), 'About' <<http://www.fatf-gafi.org/about/>> accessed 15 August 2018.

¹³⁸ *Ryder* (n 4) 7.

¹³⁹ *Mitsilegas and Gilmore* (n 105) 119, 123.

¹⁴⁰ Financial Action Task Force (FATF), 'FATF Members and Observers' <<http://www.fatf-gafi.org/about/membersandobservers/>> accessed 15 April 2018.

¹⁴¹ The pillars of money laundering preventive measures include (1) customer due diligence; (2) reporting obligations; (3) regulation and supervision; and (4) sanctions for non-compliance. Next, the pillar of AML enforcement measures consists of (1) criminalization of predicate (underlying criminal) acts and of money laundering; (2) investigation of predicate activities and of money laundering; (3) prosecution and punishment; and (4) tracing and confiscating proceeds. Finally, the pillar of measures to foster transactional co-operation includes (1) awareness of global trends; (2) co-operation agreements and real-time transnational economic crime situation reviews; and (3) effective mutual assistance processes; and (4) Transnational structures to trace and confiscate proceeds; see *Pieth and Aiolfi* (n 42) xvii; see also *Stessens* (n 29) 183; see also Institute for Security Studies (ISS), 'Money laundering in Zimbabwe, 2004 to 2006' <<http://www.issafrika.org/chapter-3-money-laundering-in-zimbabwe-2004-to-2006>> accessed 7 June 2015.

3.4.1.2 FATF Special Recommendations

The FATF has revised its Recommendations to ensure that it remains up to date to respond to the evolving threat from money laundering.¹⁴² As a result of the al Qaeda terrorist attacks in the US in September 2001, the UN responded by issuing Security Council Resolution 1373 that required all member states to criminalise illegal funds and prosecute safe havens for finances terrorist activities.¹⁴³ In consequence, the International Convention for the Suppression of the Financing of Terrorism (1999) defines the term ‘terrorist financing’ widely as the assets of every kind, whether tangible or intangible, movable or immovable, nevertheless obtained, and legal documents or instruments in any form.¹⁴⁴

In 2004, the FATF added the Nine Special Recommendations on Terrorist Financing to deal with the terrorism of finance.¹⁴⁵ In 2005, the UN then adopted the UN Security Council Resolution 1617 to require all member states to implement the 40 FATF standards.¹⁴⁶ In 2012, the FATF revised its provision regarding International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation Special Recommendations, the nine additional Special Recommendations to tackle financial crime in particular.¹⁴⁷ The FIUs play a crucial role in

¹⁴² Financial Action Task Force (FATF), ‘Best Practices Paper: Sharing among Domestic Competent Authorities Information Related to the Financing of Proliferation’ (February 2012) <www.fatf-gafi.org> accessed 10 May 2015; see also *Financial Action Task Force* (n 140).

¹⁴³ Kathryn L Gardner, ‘Fighting terrorism the FATF way’ (2007) 13(3) *Global Governance* 324, 342.

¹⁴⁴ International Convention for the Suppression of the Financing of Terrorism (1999), art 1 para 1.

¹⁴⁵ In 2001, there was eight Special Recommendations in the global fight against terrorist financing.

¹⁴⁶ United Nations Security Council Resolution 1617 (2005) S/RES/1617 (2005); see Cheong-Ann Png, ‘International legal sources III – FATF Recommendations’ in William Blair, Richard Brent and Tom Grant (eds), *Banks and Financial Crime – The International Law of Tainted Money* (2nd edn, Oxford University Press 2017) 61.

¹⁴⁷ *Harrison and Ryder* (n 26) 23.

fighting money laundering and terrorist financing. It is important to examine the role of FIU in line with the FATF Recommendations.

3.4.1.3 FATF Recommendations Relating to the Role of FIU

FATF emphasises on the relevant issues of criminal law, FIU, financial supervision, preventive measures (such as customer identification, and KYC), reporting the suspicious transactions/activities, and international cooperation.¹⁴⁸ The FATF set a working group on non-cooperative countries and territories (NCCTs) to identify the criteria to classify and define whether such countries practically meet the FATF's criteria.¹⁴⁹ Jurisdictions, which were identified as NCCTs, must first be approved that they have solved the deficiencies previously identified by legislating vital laws.¹⁵⁰ However, the FATF ensures that such countries concerned are really implementing the FATF's Recommendations effectively; it still monitors to ensure enough efforts in implementation.¹⁵¹

Thus, the countries that fail to comply with the international AML standards would be announced as higher-risk countries or NCCTs.¹⁵² Consequently, it will determine several NCCTs by listing these as having severe deficiencies in AML strategies.¹⁵³ The FATF Recommendation 19 forces the member states to comply with its rules as soft law or the rule of conduct¹⁵⁴ by threatening the country to fear the

¹⁴⁸ Financial Action Task Force (FATF), *Financial Action Task Force on Money Laundering: Annual Report 2001-2002* (FATF 2002) 20.

¹⁴⁹ *Financial Action Task Force* (n 140) 8; see also *Gilmore* (n 13) 154.

¹⁵⁰ *Gilmore* (n 13) 155.

¹⁵¹ *Financial Action Task Force* (n 140) 20.

¹⁵² FATF Recommendation 19 and its Interpretive Note; see *Financial Action Task Force* (n 137).

¹⁵³ Brigitte Unger and Joras Ferwerda, 'Regulating Money Laundering and Tax Havens: The Role of Blacklisting' (The ECPR Conference, Utrecht University, June 2008).

¹⁵⁴ Oana Stefan, 'Soft law and the enforcement of EU law' in Andras Jakab and Dimitry Kochenov (eds) *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (Oxford University Press 2017) 200.

economic sanctions, which endanger the states' financial system and cause the country to lose credibility.¹⁵⁵ The FATF Recommendations requires the regulated sector to submit various suspicious activity reports on transactions, including activities to the FIUs in order to disseminate such financial intelligence to the relevant law enforcement.¹⁵⁶

However, there is the amount of unnecessary information, little value, or low quality of the STRs/SARs (namely, defensive reporting/filing), which degrades the valuable files in the FIU's database and makes the FIUs information overwhelming and difficult to analyse and deliver such information to other agencies effectively.¹⁵⁷ Such reporting behaviour occurs in many regulated sectors because they avoid potential financial sanctions if they fail to report suspicious transactions pursuant to the FATF standards.¹⁵⁸ Furthermore, they likewise decrease such AML compliance costs by reducing internal review staff.¹⁵⁹ Therefore, the reporting entities require accurate and concise guidance on the SAR/STR obligations to help their staff deeply understand and comply with the requirements effectively.¹⁶⁰

The FATF assesses the cooperation of its Member States in order to prevent the usage of financial institutions by criminals. The implementation of the regulatory

¹⁵⁵ FATF Recommendation 19; see Jens Steffek, 'The legitimization of international governance: A discourse approach' (2003) 9(2) *European Journal of International Relations* 249, 254; see Jeffrey T Checkel, 'Why comply? Social learning and European identity change' (2001) 55(3) *International Organisation* 553, 558, 568; see also Ian Hurd, 'Legitimacy and Authority in international politics' (1999) 53(2) *International Organisation* 379, 402.

¹⁵⁶ FATF Recommendations 9-23; see Miriam Goldby, 'Anti-money laundering reporting requirements imposed by English law: measuring effectiveness and gauging the need for reform' (2013) 4 *Journal of Business Law* 367, 397.

¹⁵⁷ Ibrahim Warde, *The Price of Fear: Al-Qaeda and the Truth behind the Financial War on Terror* (I.B. Tauris 2007) 61.

¹⁵⁸ Michael Levi and Peter Reuter, 'Money Laundering' (2006) 34(1) *Crime and Justice* 289, 301.

¹⁵⁹ *ibid* 289, 301.

¹⁶⁰ John J Byrne, 'Improving financial oversight: A private sector view of anti-money laundering efforts' Testimony on behalf of the American Bankers Association before the House Financial Services Subcommittee on Oversight and Investigations (18 May 2004) 9; see also Rainer Hulsse, 'Creating demand for global governance: The making of a global money laundering problem' (2007) 21(2) *Global Society* 155, 167.

and legal system into their domestic legislation is assessed to consider their levels of compliance with its Recommendations.¹⁶¹ According to the FATF's assessment, it has used the assessment methodologies based on output indicators for a long time, but there is still less knowledge about the effectiveness of its evaluation methods.¹⁶² Thus, the FATF monitors its member states by periodically evaluating levels of compliance.¹⁶³

The FATF uses a specific methodology in assessing the effectiveness of the implementation of its Recommendations, which is also applied by the Council of Europe and the FATF's Member States.¹⁶⁴ The FATF assesses the effectiveness of each Member State from such criteria into four levels: largely compliant (LC), partially compliant (PC), non-compliant (NC), and not-applicable (NA).¹⁶⁵ The FATF Methodology 2013 presents an Immediate Outcome 7 (e.g. prosecution), as well as Immediate Outcome 8 (e.g. confiscation) in order to reduce criminal profits and predicate crimes, including money laundering.¹⁶⁶

¹⁶¹ *Demetis* (93) 21; see also Jackie Johnson, 'Is the global financial system AML/CFT prepared' (2008) 15(1) *Journal of Financial Crime* 7, 11.

¹⁶² Barbara Vettori, 'Evaluating anti-money laundering policies: Where are we?' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2013) 474; see also Economic and Legal Effectiveness of Anti-Money Laundering and Combat Terrorist Financing Policy (ECOLEF), *Project ECOLEF: The Economic and Legal Effectiveness of Anti-Money Laundering and Combat Terrorist Financing Policy* Final Report (Utrecht University 2013) 12.

¹⁶³ Financial Action Task Force (FATF), *Annual Report 2015-2016* (FATF 2017) 14, 31.

¹⁶⁴ Financial Action Task Force (FATF), 'Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations' (February 2009) <<http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>> accessed 12 June 2015.

¹⁶⁵ Largely compliant (LC) refers to 'there are only minor shortcomings, with a large majority of the essential criteria being fully met'. Partially compliant (PC) means that a country has taken some substantive action and complies with some essential criteria. Non-compliant (NC) illustrates that there are major shortcomings, with a large majority of the essential criteria not being met. Finally, not applicable (NA) presents that a requirement or part of a requirement does not apply, due to the structural legal or institutional features of a country (e.g. a particular type of financial institution does not exist in that country); see Financial Action Task Force (FATF), 'High-risk and non-cooperative jurisdictions' at 6 <<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>> accessed 28 June 2015.

¹⁶⁶ Financial Action Task Force (FATF), 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems' (OECD 2013) at 5 <<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>> accessed 26 March 2018.

To promote the compliance with the FATF Recommendations,¹⁶⁷ all FATF's Members States must accept multilateral observation, peer review, and the public statement of the NCCT list by applying an annual assessment process and MER.¹⁶⁸ Consequently, the FATF identified that countries have AML strategic deficiencies by rating such countries as high risk and NCCTs in order to encourage each jurisdiction to raise the quality of their AML supervision and the level of international co-operation.¹⁶⁹ For example, in 2012 Thailand had a low level of compliance, which illustrated a weak level of compliance and co-operation with the FATF Recommendations.¹⁷⁰ Such sanctions made the country's business transaction problematic in the world financial market.¹⁷¹ Conversely, London in the UK is one of the primary money laundering capitals of the world (i.e. there is a large amount of money laundered through the UK), but there is no blacklist or NCCTs for the UK.¹⁷²

The FATF created specialist networks such as the Egmont Group and the FSRBs to improve law enforcement standards.¹⁷³ The APG, an autonomous and collaborative international body, is the FSRB for Asia and Pacific regions in order to assess the degree of compliance of its member countries with the international AML standards through the periodic mutual evaluation exercises to understand the issues, gaps, and deficiencies in legal and administrative mechanisms for addressing money

¹⁶⁷ Robert O Keohane, *Power and Governance in a Partially Globalised World* (Routledge 2002) 214.

¹⁶⁸ *Ryder* (n 4) 16.

¹⁶⁹ Financial Action Task Force (FATF), 'FATF Public Statement – 19 October 2012' <<http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublicstatement-19october2012.html>> accessed 25 March 2018; see also Financial Action Task Force (FATF), 'About the Non-Cooperative Countries and Territories (NCCT) Initiative' <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/aboutthenon-cooperativedcountriesandterritoriesncctinitiative.html>> accessed 10 April 2018.

¹⁷⁰ Financial Action Task Force (FATF), High-risk and non-cooperative jurisdictions <<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>> accessed 28 June 2015.

¹⁷¹ Jackie Johnson, 'In pursuit of dirty money: identifying weaknesses in the global financial system' (2001) 5(2) *Journal of Money Laundering Control* 122, 123.

¹⁷² *Demetis* (n 93) 20.

¹⁷³ *Harrison and Ryder* (n 26) 200; see also Anja P Jakobi, 'Governing illicit finance in transnational security spaces: the FATF and anti-money laundering' (2018) 69 *Crime Law Soc Change* 173, 185.

laundering and terrorist financing threats.¹⁷⁴ The APG also facilitates international cooperation among the international organisations such as the FATF, IMF, the Asian Development Bank, the Egmont Group of Financial Intelligence Units, the World Bank, the United Nations Office on Drugs and Crime (UNODC), and the Group of International Finance Centre Supervisors (GIFCS), and raises AML awareness of its member states, including international bodies, state agencies (such as FIUs), and private sector actors, to understand the nature of the money laundering and requirement of legal changes.¹⁷⁵ Like the FATF, the APG has not got the power of the supranational ‘legislative authority’ over other jurisdictions.¹⁷⁶ The APG works with the FIUs, other relevant authorities, and the private sector to train their personnel and ensure that they have enough knowledge foundation to detect, deter, protect, and counter money laundering, or even to guide national risk management practices.¹⁷⁷

¹⁷⁴ The APG was established in 1997 consisting of 41-member jurisdictions (such as, Thailand and Singapore), including several observer bodies. The APG has five main functions, namely the mutual evaluations, technical assistance and training, AML/CFT typology research, world AML/CFT engagement, and private sector engagement, in order to help its member jurisdictions to set their national coordination mechanisms. The APG submits its report to the FATF; see Asia/Pacific Group on Money Laundering (APG), *APG Yearly Typologies Report 2014: Methods and Trends of Money Laundering and Terrorism Financing* (APG 2014); see also Asia/Pacific Group on Money Laundering (APG), Asia and Pacific Group on Money Laundering (APG), ‘About APG’ <<http://www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162>> accessed 16 November 2018; see also Shahar Hameiri and Lee Jones, ‘Regulatory regionalism and anti-money laundering governance in Asia’ (2015) 69(2) *Australian Journal of International Affairs* 144, 145.

¹⁷⁵ The APG also publishes the paper of the national and international typologies (including red flags and case studies) of money laundering and terrorist financing on its website in understanding how to target resources to prevent such crimes and to exchange information, to support a better understanding of the nature of the money laundering and terrorist financing approaches, techniques and trends in such a region; Asia/Pacific Group on Money Laundering (APG), ‘APG Typology Report on Trade Based Money Laundering’ Adopted by APG Members at the 15th Annual Meeting at 7, 8 (20 July 2012) <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade_Based_ML_APGReport.pdf> accessed 15 November 2018; see also Hameiri and Jones (n 174) 144, 145.

¹⁷⁶ *ibid* 144, 158.

¹⁷⁷ For sectoral risks, these are likely to include, but will not be limited to, the jurisdiction’s national risk assessments, domestic or international typologies and supervisory expertise, as well as FIU feedback; see Financial Action Task Force (FATF), *Guidance for a Risk-Based Approach* (FATF 2014) 13; see also World Bank, *Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide* (The World Bank 2009) 32.

A country transposes the FATF standards to criminalise money laundering, oversee the FIUs, CDD, KYC, STRs/SARs, and sharing of financial information internationally and nationally. In other words, the FIUs analyse the STRs/SARs from a wide range of reporting entities (REs) and change them into financial intelligence for relevant competent authorities to investigate and prosecute money laundering or terrorist financing in line with the national AML legislation.¹⁷⁸ The FATF conducts the evaluations and make on-site visits for considering and producing the Mutual Evaluation Report (MER) how each member state has implemented its Recommendations, such as the assessment of FIUs in line with Recommendation 29 regarding the role of FIU.¹⁷⁹

The independence of the FIU

By virtue of United Nations Convention against Corruption 2003, signatories are required to provide the FIU with operational independence in order to carry out its responsibilities efficiently and free from any undue influence or interference.¹⁸⁰ Moreover, the UN encourages that governments should respect to the independence of judges and the selection, professional training and status of judges lawyers, members of the executive and the legislature, the prosecutors, the public in general.¹⁸¹ As

¹⁷⁸ In the UK, the SAR requirements were enacted in the Drug Trafficking Offences Act 1986, which was repealed by the Criminal Justice Act 1993 and the UK POCA 2002, respectively. Thailand is contained in the AMLA 1999 and Singapore is contained in the CDSA 1992.

¹⁷⁹ FATF Recommendation 29.

¹⁸⁰ The important material resources and specialised staff, including the training that such staff may require to carry out their functions, should be provided. The United Nations Convention against Corruption 2003, Article 6 Preventive anti-corruption body or bodies.

¹⁸¹ United Nations Human Rights, Office of the High Commissioner, 'Basic Principles on the Independence of the Judiciary' Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/ 32 of 29 November 1985 and 40 / 146 of 13 December 1985
<<https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx#:~:text=1..the%20law%20of%20the%20country.&text=This%20principle%20is%20without%20prejudice,in%20accordance%20with%20the%20law.>> accessed 30 November 2020.

a result, it is crucial that every nation state enacts legislation to guarantee the operational independence of the FIU and that it takes effective measures to strengthen the integrity of the FIU.¹⁸² The FIU should have a budgetary independence, which is the FIUs to spend independently.¹⁸³ In order to meet the international standards, the government should guarantee the independence in the State Constitution or the law of the country. In order to protect the FIU's independence, it is the responsibility of all governmental and other political institutions to respect and observe the independence of the FIU.¹⁸⁴

International Monetary Fund (IMF) divides FIU into four typologies comprising: administrative, law enforcement, judicial and hybrid models under the investigative and institutional position responsibility of the FIUs.¹⁸⁵ The administrative FIU model is considered a separate body from the LEAs, this FIU acts as a buffer in connecting between the REs and the LEAs when performing the FIU's main responsibilities. The administrative FIU communicates between them to reduce the pressure on the private and public sector agencies. This model has limited direct access to the information from the other public agency, such as the police force, Interpol or other

¹⁸² The United Nations Convention against Corruption 2003, Article 11: Measures relating to the judiciary and prosecution services.

¹⁸³ Ioana Deleanu, 'FIUs in the European Union – facts and figures, functions and facilities' in Brigitte Unger, Joras Ferwerda, Melissa van den Broek and Ioana Deleanu, *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar 2014) p.101.

¹⁸⁴ United Nations Human Rights, Office of the High Commissioner, 'Basic Principles on the Independence of the Judiciary' Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/ 32 of 29 November 1985 and 40 / 146 of 13 December 1985
<[¹⁸⁵ International Monetary Fund \(IMF\), 'Financial Intelligence Units: An Overview' \(June 2004\) p. 97
<\[>\]\(https://www.imf.org/external/pubs/ft/FIU/fiu.pdf\).](https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx#:~:text=1..the%20law%20of%20the%20country.&text=This%20principle%20is%20without%20prejudice,in%20accordance%20with%20the%20law.> accessed 30 November 2020.</p></div><div data-bbox=)

LEAs, including a lack of operational independence because its might subject to the supervision of Prime Minister, Office of Ministry, or political agencies.¹⁸⁶

In summary, the FATF Recommendations are clear on international cooperation and unduly restrictive regulations, for example as indicated in the Interpretive Note to Recommendation 29.¹⁸⁷ FIUs should have the right to conduct a decision along with the FATF Recommendations without undue influence or interference.¹⁸⁸ Such national laws should place undue restrictions on FIU's ability to operate its key functions under the international standard purposes. Any limitations restrict operational independence should be terminated. The next section explains the implementation of the Egmont Group of FIUs.

3.4.2 The Egmont Group of Financial Intelligence Units

The Egmont Group¹⁸⁹ was established in 1995 as an informal global association to support international cooperation and help the financial intelligence exchange international jurisdictions through its international professional networks of the FIUs to reduce money laundering and terrorist financing.¹⁹⁰ The Egmont Group's objectives aim to improve the system of the financial information intelligence exchanging domestically and internationally, encourage the abilities of relevant author-

¹⁸⁶ As in this case with the three countries' FIUs (the UK, Singapore and Thailand), please see the analysis in chapter 4, 5 and 6 respectively.

¹⁸⁷ FATF Recommendation 29.

¹⁸⁸ The Interpretive Note to Recommendation 29

¹⁸⁹ Hereinafter 'Egmont Group.'

¹⁹⁰ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 2; see Mohammad Al-Rashdan, 'An analytical of the financial intelligence units' enforcement mechanisms' (2012) 15(4) *Journal of Money Laundering Control* 483, 483; see also *Jakobi* (n 173) 173, 182.

ities, assist the FIUs, secure operational independence, and promote mutual communication between FIUs effectively.¹⁹¹ Therefore, the Group forms the network in the AML governance.¹⁹² The Egmont Group also endorsed the UN conventions against crime, such as Article 7 (1)(b) of the Palermo Convention,¹⁹³ as well as Article 14 (1)(b) of the United Nations Convention against Corruption 2003 so that countries establish the FIUs and ensure the competent authorities to have their ability to cooperate and exchange intelligence amongst FIUs efficiently.¹⁹⁴

The Egmont Group identifies the FIU's powers and responsibilities as a central, national authority accountable for receiving (including permitted requesting), analysing financial information concerning suspected proceeds of crime, and sharing financial intelligence to the relevant competent authorities in order to further investigate, convict, and prosecute money laundering offence.¹⁹⁵ Additionally, the FATF authorised the Egmont Group to act as an observer body, including as a coordinator for affiliating an effective mutual assistance between national FIUs.¹⁹⁶ In 2000, the Egmont Group published over 100 money laundering cases, which involved with all trends of money laundering that were investigated by the worldwide FIUs.¹⁹⁷ The Egmont Group published several reports and revised its Charter (2013) in line with the revised 2012 FATF Recommendations to meet its objectives and international

¹⁹¹ FATF Recommendation 29; see *International Monetary Fund (IMF) and World Bank* (n 190) 3; see also *Ryder* (n 4) 21; see also House of Lords, *Money Laundering and the Financing of Terrorism* Volume I: Report of European Union Committee (19th Report of Session, The Stationery Office 2009) 22; see also *Hopton* (n 5) 19-20, 192.

¹⁹² *Jakobi* (n 173) 173, 184.

¹⁹³ Article 7 (1)(b) of the United Nations Convention Against Transnational Organised Crime 2000.

¹⁹⁴ FATF Recommendation 29 and Article 14 (1)(b) of the United Nations Convention Against Corruption 2003.

¹⁹⁵ Egmont Group of Financial Intelligence Units, 'Information Paper on Financial Intelligence Units and the Egmont Group' (September 2004) <<http://www.fatf-gafi.org/dataoecd/44/56/34345425.pdf>> accessed 4 February 2018.

¹⁹⁶ *Shehu* (n 22) 221, 235.

¹⁹⁷ Mohammed Ahmad Naheem, 'TBML suspicious activity reports – a financial intelligence unit perspective' (2018) 25(2) *Journal of Financial Crime* 1, 13.

standards.¹⁹⁸ Clifford stated that the Egmont Group,¹⁹⁹ needs all FIUs to achieve the implementation of the FATF Standards and attempts to set an informal Global Financial Intelligence Unit (GFIU) to make a cooperative and highly responsive global attack on international money laundering.²⁰⁰

The obvious advantages of international mutual sharing of financial intelligence through FIUs will rely on the transnational collaboration to solve the risks and threats of money laundering.²⁰¹ The Egmont Group assists FIUs in increasing and systematising the interchange of financial information that enables them to bridge the gaps by enhancing better legislation, operation, training, and communication among the international FIUs.²⁰² However, there are several issues that the certain State Members of the United Nations have not established FIUs, and some have not joined the Egmont group.²⁰³

¹⁹⁸ For instance, the Principles for Information Exchange between FIUs for Money Laundering and Terrorism Financing Cases; Best Practices for the Formal Exchange of Information between Competition Authorities in Hard Core Cartel Investigations; and Egmont Group of FIUs Operational Guidance for FIU Activities and the Exchange of Information, see U.S. Department of State, 'The Egmont Group of Financial Intelligence Units' <<https://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239473.htm>> accessed 25 June 2018; see also Egmont Group of Financial Intelligence Units, 'Principles for Information Exchange between FIUs for Money Laundering and Terrorism Financing Cases' (13 June 2001) <[http://www.apml.gov.rs/RE-POSITORY/422_5-princ_info_exchange\[1\].pdf](http://www.apml.gov.rs/RE-POSITORY/422_5-princ_info_exchange[1].pdf)> accessed 10 October 2018; see also Organisation for Economic Cooperation and Development (OECD), 'Best Practices for the Formal Exchange of Information between Competition Authorities in Hard Core Cartel Investigations' (October 2005) <<https://www.oecd.org/competition/cartels/35590548.pdf>> accessed 10 October 2018; see also Egmont Group of Financial Intelligence Units, 'Egmont Group of FIUs Operational Guidance for FIU Activities and the Exchange of Information' (July 2013) <file://nsta-uwe03/users3\$/k-silathong/Windows/Downloads/Operational_Guidance%20-%20revised%20Feb%202017%20-%20final.pdf> accessed 10 October 2018.

¹⁹⁹ Milind Sathye and Chris Patel, 'Developing Financial Intelligence: An Assessment of the FIUs in Australia and India', (2007) 10(4) *Journal of Money Laundering Control* 391, 392.

²⁰⁰ Clifford Williams, 'Artificial Harmony: Why Cooperative Efforts to Create a Global Financial Intelligence Unit have Faltered' (2014) 17(4) *Journal of Money Laundering Control* 428, 436.

²⁰¹ James H. Freis, Jr., 'Global Market and Global Vulnerabilities: Fighting Transnational Crime through Financial Intelligence' (2008) 2 <www.fincen.gov/news_room/speech/pdf/20080425.pdf> accessed 16 September 2015.

²⁰² Egmont Group of Financial Intelligence Units, 'About' <<https://www.egmontgroup.org/content/about>> accessed 9 April 2018.

²⁰³ Williams (n 200) 428, 436.

The Egmont Group has supplemented the FATF efforts in increasing and promoting the cooperation between FIU worldwide to share information to assist counter money laundering in line with the UN Global Programme against Money Laundering.²⁰⁴ The FATF Recommendation 29 requires all FIU to fully apply for the Egmont Group member.²⁰⁵ The Egmont focuses on the promotion of the operational autonomy and independence of the FIUs in its Member States because the independent and autonomous FIU is crucial to an effective AML/CFT regime to support the operation of competent authorities and law enforcement authorities, AML supervisors, as well as foreign counterparts.²⁰⁶ Therefore, the lack of autonomy or operational independence hinders the effectiveness of the national FIUs and the investigations and prosecution of money laundering.²⁰⁷ However, the Egmont Group did not identify which model of the FIUs (namely, judicial, law enforcement, administrative, and hybrid models) is the best FIU model for the countries to implement.²⁰⁸

The independence of the FIU

The Egmont Group focuses on the an operational independence of an FIU and it categorises the features of an operationally independent and autonomous FIU into six groups, including FIU governance and organisational structure; the prevention of information and exchanges of information; the appointment and dismissal of

²⁰⁴ *Tsingou* (n 98) 617, 619.

²⁰⁵ FATF Recommendation 29.

²⁰⁶ Egmont Group of Financial Intelligence Units, 'New publication: understanding FIU operational independence and autonomy' (October 2018) <<https://egmontgroup.org/en/content/new-publication-understanding-fiu-operational-independence-and-autonomy>> accessed 8 July 2019.

²⁰⁷ *ibid.*

²⁰⁸ Egmont Group of Financial Intelligence Units, 'Financial Intelligence Units (FIUs)' <<https://egmontgroup.org/en/content/financial-intelligence-units-fius>> accessed 8 July 2019.

FIU senior management and staff; budget and resources; as well as characteristics connected to accountability, integrity, transparency and leadership.²⁰⁹

Governments should provide full autonomy to the FIU to fight financial crimes independently by issuing the national legislation bestowing with operational independence.²¹⁰ Furthermore, the government should ensure the independence of the FIU and provide it the power without any undue influence in functioning its duties effectively.²¹¹ The Egmont Group has explored and discussed issues of the operational independence, especially the lacking of understanding of the operational understanding of independence by key stakeholders, restrictive governance structures and practices, as well as undue influence by politicians and/or criminal organizations are referred as the common interfere of the progress of operation of FIUs.²¹²

Every member of the Egmont Group should promote and implement operational independence in their own jurisdictions.²¹³ A country must be asked to ensure that the FIU has operational independence in order to be able to independently and effectively manage the incoming flow of the STRs.²¹⁴ As a member states of Asia/Pacific Group on Money Laundering, Thailand needs to comply with the FATF Recommen-

²⁰⁹ Egmont Group of Financial Intelligence Units, *Understanding FIU Operational Independence and Autonomy*

(The Egmont Group of Financial Intelligence Units, October 2018), p 3.

²¹⁰ M.Anwarul Azia Kanak, 'Role of Financial Intelligence Unit in Combating Money-Laundering and Terrorist Financing: An Analysis on the Functioning of Bangladesh Financial Intelligence Unit' *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* (2016) 21(7) 148, 152.

²¹¹ Financial Action Task Force (FATF) Recommendation 29.

²¹² Egmont Group of Financial Intelligence Units, *Understanding FIU Operational Independence and Autonomy* (The Egmont Group of Financial Intelligence Units, October 2018), p 5.

²¹³ *Ibid.*

²¹⁴ Ioana Deleanu, 'FIUs in the European Union – facts and figures, functions and facilities' in Brigitte Unger, Joras Ferwerda, Melissa van den Broek and Ioana Deleanu, *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar 2014) p.98.

dations, especially the Recommendation 29 to position the country effective compliance of the international standards to deal with money laundering and its associated predicate offences and terrorist financing.²¹⁵

Principle 13 of the Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases determines that independence enhances the trust between the REs and the justice system when analysing and disseminating of the intelligence.²¹⁶

As reasons mentioned above, the FIU should carry out its independent functions in the STRs/SARs regime to meet the international AML standards. Therefore, more independent FIU in turn tend to be more transparent, while the transparency is also positively correlated with AML measures of the national institutional quality.²¹⁷

In this case, the independence links with the transparency dimension, as well as allows relevant authority to pursue its long-term policy objective without political influence or interference.²¹⁸ Therefore, the failure of the FIU could impact on the country's transparency including the rule of law, trust, governance and reputation.²¹⁹ Regarding the independence of the FIU, the government shall protect the FIU from influence and interfere whether political or industry. For example, notwithstanding, FATF and Egmont Group concerned with the operational independence of the FIU

²¹⁵ Financial Action Task Force (FATF) Recommendation 29.

²¹⁶ European Commission, 'Report from the Commission to the European Parliament and the Council: Assessing the framework for cooperation between Financial Intelligence Units' (Brussels, 24 July 2019) p. 5 <https://ec.europa.eu/info/sites/info/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf> accessed 8 September 2020.

²¹⁷ International Monetary Fund (IMF), 'Central Bank Independence and Transparency: Evolution and Effectiveness' IMF Working Paper Research Department WP/08/119

²¹⁸ Kenneth N. Kuttner and Adam S. Posen, 'Do markets care who chairs the central bank?' Working Paper No. W P 07 -3 (July 2008) p. 12.

²¹⁹ Ibid.

in each country, but in behalf of the German Public Prosecutor, it ordered investigators and police officers raid and searched the Germany's anti-money laundering agent.²²⁰ Egmont Group considered that this action would undermine and pressure the FIU's independence of its key function, including the whole of FIU system. According to the raid, the prosecutors were probing claims that the staff of the FIU failed to comply with the STR regulations that three German banks submitted from mid-2018 to the beginning of this year flagging a dozen accounts suspected of funneling around €1.7m from illicit gains to lenders across Africa. Furthermore, the German prosecutor noted that the FIU's failure to forward the filings hindered investigators' caliber to deal with the suspicious transactions within an appropriate time frame. As reasons above, FATF attempts to support FIU to improve value to the financial information which FIU receives via the STRs/SARs, not to deliver all reports to relevant LEAs indiscriminately operational independence along with international standards.²²¹ Scherschneva, former head of Austria's financial intelligence unit, said that the action could undermine and go against the principle of the independence of German FIUs, including increases pressure on the whole FIU process.²²²

In summary, the FATF Standards are clear on international cooperation and unduly restrictive regulations should be avoided, for example as indicated in the Interpretive Note to Recommendation 29.²²³ FIUs should have the right to conduct a

²²⁰ Verbeek-Kusters, Chair of the Egmont Group, noted that the raid could compromise the role of FIU under the global standards; see Koos Couv'ee, 'Exclusive: Egmont Group raises concern over raid on German FIU' (ACAMs, 22 July 2020) <<https://www.moneylaundering.com/news/exclusive-egmont-group-raises-concern-over-raid-on-german-fiu/>> accessed 19 September 2020.

²²¹ *ibid.*

²²² Koos Couv'ee, 'Exclusive: Egmont Group raises concern over raid on German FIU' (ACAMs, 22 July 2020) <<https://www.moneylaundering.com/news/exclusive-egmont-group-raises-concern-over-raid-on-german-fiu/>> accessed 5 October 2020.

²²³ FATF Recommendation 29.

decision along with the FATF Recommendations without undue influence or interference.²²⁴ Such national laws should place undue restrictions on FIU's ability to operate its key functions under the international standard purposes. Any limitations restrict operational independence should be terminated.

3.4.3 The Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision (BCBS) is an international group of central bankers²²⁵ aiming to support the banking sector to comply with best practices.²²⁶ The Basel issued the best-practice guidelines to encourage vigilance against criminal use of the financial system.²²⁷ For example, in 1988 the Basel enacted its statement of principles on the 'Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering'.²²⁸ The Basel issued the first a general statement of ethical principles and brought about the establishment of FATF as an independent inter-governmental body to fight money laundering, which FIs and non-FIs to comply with the standards.²²⁹ Furthermore, in 1997 Basel Committee on Banking Supervision published its Core Principles on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering.²³⁰ The guidance requires all banks to operate the risk management process as corporate governance to diminish incidents and money laundering risks by reporting the SARs/STRs to the FIUs.²³¹

²²⁴ The Interpretive Note to Recommendation 29

²²⁵ Michael S Barr and Geoffrey P Miller, 'Global Administrative Law: The view from Basel' (2006) 17(1) *European Journal of International Law* 15, 15.

²²⁶ *Png* (n 146) 97.

²²⁷ *Lilley* (n 2) 58.

²²⁸ *ibid.*

²²⁹ Financial Action Task Force (FATF) was established in 1989 on the invitation of the G7 to develop policies to counter money laundering; see Financial Action Task Force (FATF), 'History of the FATF' <<https://www.fatf-gafi.org/about/historyofthefatf/>> accessed 26 November 2020.

²³⁰ Mark Simpson, 'International initiatives' in Mark Simpson, Nicole Smith and Arun Srivastava (eds), *International Guide to Money Laundering Law and Practice* (3rd edn, Bloomsbury 2010) 238.

²³¹ Basel Core Principles 15, 29.

Furthermore, in 2001 the Basel also published its guidance, namely ‘the customer due diligence for banks’ that introduced the principles of the KYC to encourage the banking sector to protect the integrity and reputation of the banking system from financial crime with risk management such as money laundering.²³² In 2006, Basel issued the Core principles for effective banking supervision and the Core Principles methodology to help banks have appropriate AML policies and procedures to deal with AML risk management and meet international AML standards.²³³ For instance, the Basel Core Principle 29 obliges all kinds of financial services to work closely with the FIUs of each jurisdiction to prevent banks from the abuse of financial institutions, especially money laundering and financing of terrorism for the consistency and transparency of the financial system.²³⁴ Therefore, the regulatory supervisor requires monitoring all banks to establish CDD policies and mitigate the AML/CFT risks consistent with such Basel Core Principles and international standards.²³⁵

The IMF identified that the AML preventive measures of the Basel Core Principles and the International Organisation of Securities Commissions (IOSCO) Principles are consistent with the FATF Recommendations to fight money laundering efficiently.²³⁶ Thus, the Basel Committee on Banking Regulation and Supervisory Principles is an industry guideline that is consistent with the FATF Recommendations to present the approaches to protect the financial system from being used by

²³² *Ryder* (n 4) 18.

²³³ Bank for International Settlements (BIS), ‘Core principles for effective banking supervision’ <<https://www.bis.org/publ/bcbs230.htm>> accessed 7 May 2018.

²³⁴ Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision* (Bank for International Settlements 2012) 9.

²³⁵ *ibid* 65.

²³⁶ *Simpson* (n 230) 217, 557.

criminals.²³⁷ Therefore, the FIUs encourage the banking sector to implement the Principles as the best practices of banking governance regarding the Basel CDD, the Basel Risk Management the reporting STR/SAR to the FIU, as well as effective procedures and training in order to meet the FATF requirements.²³⁸

The independence of the FIU

The Basel Committee on Banking Supervision (Basel Committee) issued guidelines on supervisory standards covering three sectors consisting of banking, insurance, and securities in order to fighting money laundering and its associated predicate offences and terrorist financing under the IAIS and the IOSCO. The Core Basel Committee Principle 2 focuses on independence, accountability, resourcing, and legal protection for supervisor.²³⁹ Like FATF and Egmont Group, the Basel possesses operational independence, transparent processes, as well as is accountable for the discharge of its duties and use of its resource, which support the supervisor independently functions without undue influence. Therefore Basel encourages banks' management to ensure that all customers are appropriately identified STRs and raise their AML policies and procedures along with the Committee's Core Principles for Effective Banking Supervision, in particular on independence and transparency in Principle 2 of the Core Principles.²⁴⁰

²³⁷ Ibid., 238.

²³⁸ Basel Committee on Banking Regulation and Supervisory, 'Customer Due Diligence for Banks' Consultative Document Issued for comment by 31 March 2001 (Basel Committee on Banking Supervision 2001) 13 <<https://www.bis.org/publ/bcbs77.pdf>> accessed 8 July 2019.

²³⁹ Principle 2: Independence, accountability, resourcing and legal protection for supervisors; see Bank for International Settlements (BIS), 'Guidance on the application of the Core Principles for Effective Banking Supervision to the regulations and supervision of institutions relevant to financial inclusion' (BIS, September 2016) <<https://www.bis.org/bcbs/publ/d383.pdf>> accessed 29 November 2020.

²⁴⁰ Principle 2: Independence, accountability, resourcing and legal protection for supervisors; see Bank for International Settlements (BIS), 'Guidance on the application of the Core Principles for Effective Banking Supervision to the regulations and supervision of institutions relevant to financial inclusion' (BIS, September 2016) <<https://www.bis.org/bcbs/publ/d383.pdf>> accessed 29 November 2020.

In many countries, governments have established new or have extended the scope of activities of existing, state-owned FIs with the objective of supporting financial inclusion and FinTech. As above reasons, legislation should ensure that supervisors have appropriate powers and operational independence to function effective supervision of such agencies without political, government or industry influence and interference.²⁴¹ Supervisors responsible for several kinds of FIs and non-FIs also need sufficient resources to conduct efficient oversight and supervision. Therefore, they should be financed in a manner that does not impact or undermine their autonomy or operational independence.²⁴²

Article 65(2) of Directive (EU) 2018/843 determines that the European Commission requires to assess the framework for FIUs' cooperation with third jurisdictions, as well as opportunities to improve cooperation between FIUs in the European, including the possibility of establishing a coordination and support mechanism. As reason mentioned above, the operational independence of FIU is mainly regulated by the AMLD.²⁴³ It is an essential for each government that the role of FIU should have sufficient operational independence.²⁴⁴

3.4.4 The Wolfsberg Money Laundering Principles

Under the FATF 40 Recommendations, the international's leading banks created the Wolfsberg Money Laundering Principles²⁴⁵ of the global AML guidelines

²⁴¹ Bank for International Settlements (BIS), 'Guidance on the application of the Core Principles for Effective Banking Supervision to the regulations and supervision of institutions relevant to financial inclusion' (BIS, September 2016) p. 8 <<https://www.bis.org/bcbs/publ/d383.pdf> > accessed 29 November 2020.

²⁴² Bank for International Settlements (BIS), 'Guidance on the application of the Core Principles for Effective Banking Supervision to the regulations and supervision of institutions relevant to financial inclusion' (BIS, September 2016) p. 7 <<https://www.bis.org/bcbs/publ/d383.pdf> > accessed 29 November 2020.

²⁴³ Directive (EU) 2018/843 (the 5th Anti-Money Laundering Directive), Article 65(2).

²⁴⁴ Kanak (n 210).

²⁴⁵ Hereinafter the 'Wolfsberg Principles'.

for private banking in 2000 to enhance the world banking standards in order to strengthen the disclosure requirements and eliminate the possible abuse of the banking system,²⁴⁶ including the diversities and uncertainties emerging from operating multi-national banks in money laundering and terrorist financing purposes.²⁴⁷ The Wolfsberg Group²⁴⁸ published its preventive AML guidelines focusing on the KYC principles, client identification, the beneficial ownership, record-keeping regulations, and the STRs requirement for all private banking sector to meet the international standards.²⁴⁹

The Basel Committee Report noted that the Wolfsberg Principles have no legal effect by themselves and lack a special enforcement mechanism to oblige the banks to comply with their voluntarily administrative guidelines.²⁵⁰ The Wolfsberg Group is just the group of private banks, i.e. not an organisation that agreed to join

²⁴⁶ Wolfsberg AML Principles on Private Banking Principle 1.1; Pieth and Aiolfi presumed that the private banks involving more than 60% of the world financial market; see Mark Pieth and Gemma Aiolfi, 'The private sector becomes active: the Wolfsberg process' at 5 <<https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/Wolfsberg-Process.pdf>> accessed 5 November 2018.

²⁴⁷ The diversities and uncertainties of banking may emerge from the expansion of the worldwide trade and industry, which has caused criminal risks; see Kris Hinterseer, 'The Wolfsberg anti-money laundering principles' (2001) 5(1) *Journal of Money Laundering Control* 25, 40; see also Andrew Haynes, 'The Wolfsberg Principles: An analysis' (2004) 7(3) *Journal of Money Laundering Control* 207, 208; see also Sideek Mohamed, 'Legal instruments to combat money laundering in the EU financial market' (2003) 6(1) *Journal of Money Laundering Control* 66, 68.

²⁴⁸ The Wolfsberg Group of Financial Institutions (the Wolfsberg Group) comprised 13 banks, namely Bank of America, Citigroup, JP Morgan Chase, HSBC, Barclays, Banco Santander, Societe Generale, Deutsche Bank, Goldman Sachs, MUFG Bank, Standard Chartered Bank Credit Suisse, and UBS; see Wolfsberg Group, 'Global banks: Global standards' <<https://www.wolfsberg-principles.com/>> accessed 5 November 2018.

²⁴⁹ Wolfsberg AML Principles on Private Banking Principle 1.2, 1.2.1, 1.3 of the Wolfsberg AML Principles for Private Banking (published in October 2000); furthermore, the Wolfsberg Group published a Statement on the Suppression of the Financing of Terrorism in January 2002, and the Wolfsberg AML Principles for Correspondent Banking in November 2002; see Martin Peter and Hans-Peter Bauer, 'Global standards for money laundering prevention' (2002) 10(1) *Journal of Financial Crime* 69, 70; see also Angela Veng Mei Leong, 'Chasing dirty money: domestic and international measures against money laundering' (2007) 10(2) *Journal of Money Laundering Control* 140, 151; see also Louis de Koker, 'Money laundering control and suppression of financing of terrorism: Some thoughts on the impact of customer due diligence measures on financial exclusion' (2006) 13(1) *Journal of Financial Crime* 26, 29, 37.

²⁵⁰ Basel Committee on Banking Supervision (BCBS), 'Consultative Document: The Standardised Approach to Credit Risk' Supporting Document to the New Basel Capital Accord (Bank for International Settlements 2001), para 17 <<https://www.bis.org/publ/bcbcsca04.pdf>> accessed 5 November 2018; see also Pieth and Aiolfi (n 246) 7.

the flexible volunteer policies²⁵¹ as an internal rule for the banking sector rather than a policy matter for formal regulators.²⁵² As a result, Wolfsberg roles are an important partner in developing the FATF standards.²⁵³

The Wolfsberg Group takes into account the management of financial crime risks regarding a risk-based approach, KYC, AML/CFT policies, and the STR/SAR when conducting their national private banking businesses in line with the FATF regulations.²⁵⁴ For example, Principle 1.3 states that banks require the CDD to process their customers and submit the SAR/STR to the FIUs.²⁵⁵ Principle 4.1–4.3 concern the STRs/SARs and how to report them to the FIUs.²⁵⁶ This Group aims to promote the effectiveness of global AML/CFT programmes by providing FIs with industry guidelines on successful crime risk management.²⁵⁷ The Wolfsberg Group advocates the operation of the FIU in enhancing the FIUs to identify gaps and reduce the money laundering risks, including improving the quality of STRs/SARs submitting to the FIUs.²⁵⁸

The independence of the FIU

The Wolfsberg Group launched its control policy, which will be in place setting standard control procedures to be undertaken by the different ‘control layers’, such as private banker, independent operations unit, Compliance, Internal Audit).

²⁵¹ *Peter and Bauer* (n 249) 69, 70; see also Federal Reserve Board, ‘Remarks by Richard Spillenkothan, Director, Division of Supervision and Regulation’ At the New York State Banking Department, New York (25 October 1999); see also Zabihollah Rezaee, *Financial Institutions, Valuations, Mergers, and Acquisitions: The Fair Value Approach* (2nd edn, John Wiley & Sons 2001) 37.

²⁵² *Basel Committee on Banking Supervision* (n 234); see also *Mohamed* (n 237) 66, 69.

²⁵³ Effective bank supervision bases on the appropriate implementation of these strategies (namely the quality of internal procedures such as customer identification; risk management; and disclosure requirement); see *Pieth and Aiolfi* (n 246) 7.

²⁵⁴ *Haynes* (n 247) 207, 207; see *Wolfsberg Group* (n 248).

²⁵⁵ Wolfsberg Principle 1.3.

²⁵⁶ Wolfsberg Principles 4.1– 4.3; see *Hinterseer* (n 247) 25, 36.

²⁵⁷ *Wolfsberg Group* (n 248).

²⁵⁸ Wolfsberg Group ‘Mission’ <<https://www.wolfsberg-principles.com/about/mission>> accessed 8 July 2019.

Such control policy will cover the issues of timing, level of control, spaces to be controlled, duties, responsibilities and the follow-up, but the Wolfsberg Group do not refer to the independence of the FIU.²⁵⁹ To solve such issues, the next section thesis investigates the World Bank and International Monetary Fund.

3.4.5 The World Bank and International Monetary Fund

Money laundering is a financial crime with economic impacts on the financial sector and the external stability of the IMF.²⁶⁰ Therefore, the effective AML/CFT regimes are necessary to protect the integrity of world financial systems by mitigating the factors, which cause financial abuse.²⁶¹ Fisher noted that the World Bank and the IMF commit a key role in fighting money laundering regime.²⁶²

The IMF has collaborated with the FATF by contributing to the exchange of information, producing a world common methodology to evaluate the degree of countries' legal AML frameworks, providing technical assistance, closely surveilling and assessing the economic and financial systems of its member countries,²⁶³

²⁵⁹ United Nations Office on Drugs and Crime, Anti-Money Laundering Unit/ Global Programme against Money Laundering, *An overview of the UN Conventions and the international standards concerning anti-money laundering legislation* (February 2004)

²⁶⁰ International Monetary Fund (IMF), 'Anti-money laundering/combating the financing of terrorism (AML/CFT)' <<https://www.imf.org/external/np/leg/amlcft/eng/>> accessed 6 November 2018.

²⁶¹ Min Zhu, Deputy Managing Director of the IMF; see *International Monetary Fund* (n 260).

²⁶² IMF released a Statement to its members to implement the UN counter-terrorist resolutions; see *Fisher* (n 113) 67, 67; see also *Hopton* (n 5) 16.

²⁶³ Article IV: Obligations Regarding Exchange Arrangements of the IMF, is part of the Articles of Agreement of the IMF adopted in 22 July 1944; see International Monetary Fund (IMF), 'Surveillance' <<https://www.imf.org/external/about/econsurv.htm>> accessed 6 November 2018; see also Bruce Zagaris, *International White Collar Crime: Cases and Materials* (Cambridge University Press 2010) 60-63.

gathering data, researching and promoting the best AML/CFT practices and policies²⁶⁴ among its member countries²⁶⁵ in order to counter against money laundering risk effectively.²⁶⁶ Consequently, the IMF increases international awareness of the issues related to money laundering and financing terrorism by conducting the research to identify the risk of financial abuse.²⁶⁷ The IMF identifies whether or not a country's AML regime complies with the FATF Standards.²⁶⁸ As a result, the IMF conducts the assessments of the AML framework of the member of FATF or a participating FSRB, including their financial sector²⁶⁹ to bridge their legislative and institutional AML loopholes and weaknesses.²⁷⁰ Similar to the Basel Committee and Wolfsberg Group, the IMF does not have legislative enforcement of the international AML instruments²⁷¹ and lack the power to impose legal sanctions.²⁷²

The World Bank aims to support the member countries to fight corruption and provides member countries with instruments for growing transparency with the

²⁶⁴ IMF focuses on the promotion of the financial crime policy, both at international and national levels in order to prevent the integrity of the financial market from the criminal purpose, in particular the money laundering and terrorist financing; see *Leong* (n 215) 140, 151.

²⁶⁵ Lauren A Dellinger, 'From dollars to pesos: A comparison of the US and Colombian anti-money laundering initiatives from an international perspective' (2008) 38 *California Western International Law Journal* 419, 433.

²⁶⁶ The World Bank enhances the international compliance with the FATF Recommendation by contributing the technical assistance on AML/CFT to improve the institutional capacity and financial sector in each country to meet the FATF requirements; see William E Holder, 'The International Monetary Fund's involvement in combating money laundering and the financing of terrorism' (2003) 6(4) *Journal of Money Laundering Control* 383, 387; see also Pierre-Laurent Chatain, 'The World Bank's role in the fight against money laundering and terrorist financing' (2004) 6 *International Law FORUM du droit international* 190, 191 <<http://booksandjournals.brillonline.com/content/journals/10.1163/1571804042341802>> accessed 5 November 2018 ; see also *Leong* (n 215) 140, 149.

²⁶⁷ *Chatain* (n 266).

²⁶⁸ Lauren A Dellinger 'From dollars to pesos: A comparison of the US and Colombia anti-money laundering initiatives from an international perspective' (2008) 38 *California Western International Law Journal* 419, 433.

²⁶⁹ *Leong* (n 249) 140, 149.

²⁷⁰ The IMF and World Bank publish the country assessments to illustrate the level of implementation of the FATF Standards; see *Holder* (n 266) 383, 387.

²⁷¹ Alison S Bachus, 'From drugs to terrorism: The focus shifts in the international fight against money laundering after September 11, 2001' (2004) 21 *Arizona Journal of International and Comparative Law* 835, 856, 857.

²⁷² *Holder* (n 266) 383, 386.

integrity of the financial market.²⁷³ The World Bank also jointly works on the FATF 40 Recommendations with the IMF by conducting the AML/CFT assessment methodology and improving the institutional ability in fighting money laundering and terrorist financing regime.²⁷⁴ Furthermore, the World Bank promotes the AML measures hindering or decelerating the flow of illicit money into the financial systems.²⁷⁵ The World Bank has improved advisory guidance for the member countries in conducting their national AML/CFT risk assessment.²⁷⁶

The IMF encourages its Member States to promote AML/CFT policy at national and international levels to preserve the integrity of the financial market.²⁷⁷ According to the AML/CFT assessment methodology, the IMF assesses the country's AML regime in implementing the FATF standards, including the level of compliance of the Recommendation 29 concerning the role of FIU.²⁷⁸ The IMF, World Bank, the UN, EU, and FATF have developed the FATF standards for effective

²⁷³ World Bank also helps the developing countries achieve sustainable solutions that decrease poverty and create shared prosperity; see World Bank, 'Who we are' <<http://www.worldbank.org/en/who-we-are>> accessed 8 November 2019; see also World Bank, 'Financial Integrity' <<https://www.worldbank.org/en/topic/financialmarketintegrity>> accessed 8 November 2018.

²⁷⁴ Macro Arnone and Pier Carlo Padoan, 'Anti-money laundering by international institutions: A preliminary assessment' (2008) 26(3) *European Journal of Law and Economics* 361, 363, 364; see also *Dellinger* (n 265) 419, 428.

²⁷⁵ Haitham Nobanee and Nejla Ellili, 'Anti-money laundering disclosures and banks performance' (2018) 25(1) *Journal of Financial Crime* 95, 95.

²⁷⁶ The World Bank's Risk Assessment comprises a risk assessment tool to identify main drivers of ML/TF risks, and a process to let the countries enhance their own ability to deal with future risk assessment; see World Bank, 'Money laundering/terrorist financing risk assessment' (20 January 2016) <<http://www.worldbank.org/en/news/infographic/2016/01/20/money-laundering-terrorist-financing-risk-assessment>> accessed 8 November 2018.

²⁷⁷ *Dellinger* (n 265) 419, 433.

²⁷⁸ *Fisher* (n 113) 67, 67.

AML/CFT policy in dealing with the threats of money laundering and terrorist financing.²⁷⁹ The World Bank and IMF have assisted their members to comply with the FATF Recommendations effectively.²⁸⁰

The independence of the FIU

The best practice way for a achieve central bank comprises independence from the political pressures, transparency beyond its actions, accountability over the society as well as an efficient programme of communicating with the financial market and broad public.²⁸¹ Dumiter noted that independence is the most crucial one because transparency, accountability and communication channels become important only after providing independence to the central bank.²⁸² Therefore, the thesis explores that the FIU requires operational independence to discharge its functions efficiently. The thesis argues how to structure the relationships between the FIU, the AML legislation, the politician and the government, including how to manage the FIU model in order to ensure that the FIU performs its independent functions to best effect.²⁸³ The next section describes the role of the International Organisation of Securities Commissions.

3.4.6 The International Organisation of Securities Commissions

²⁷⁹ David Samuel-Strausz Vernon, 'A partnership with evil: money laundering, terrorist financing and Canadian financial institutions (2004) 20 Banking & Finance Law 89, 132.

²⁸⁰ *Arnone and Padoan* (n 274) 361, 363, 364.

²⁸¹ Florin Cornel Dumiter, 'Central bank independence, transparency and accountability indexes: A survey' (2014) 7(1) Timisoara Journal of Economics and Business 35, 39.

²⁸² Yoshiharu Oritani, *Public Governance of Central Banks: An Approach from New Institutional Economics* BIS Working Papers, No. 299, Bank for International Settlement (2010) 1-44. <<https://www.bis.org/publ/work299.pdf>> accessed 14 December 2020.

²⁸³ Yoshiharu Oritani, *Public Governance of Central Banks: An Approach from New Institutional Economics* BIS Working Papers, No. 299, Bank for International Settlement (2010) p.1 <<https://www.bis.org/publ/work299.pdf>> accessed 14 December 2020.

The International Organisation of Securities Commissions (IOSCO) (i.e. the international standard-setting and non-state body of transnationalisation of securities, international mobility of capital, and future markets) improves, facilitates, supports, and implements adherence to the international high standards of securities regulation to improve investor prevention and decrease financial-system risk.²⁸⁴ IOSCO and related international networks also support the global coordination and intelligence exchange among relevant regulatory agencies²⁸⁵ and introduce the standards toward monitoring world investment transactions across borders and markets to improve the accountability for the world financial integrity.²⁸⁶ For example, IOSCO published the ‘Principles for Financial Market Infrastructures’ in 2004 as the international set of practical standards,²⁸⁷ which introduced the Regulatory principles for corporate financial disclosure and transparency.²⁸⁸ Moreover, IOSCO, IMF, the Basel Committee, the International Association of Insurance Supervisors, and the Financial Stability Board (FSB) seek to identify and assess risks impacting the world financial system and then address them.²⁸⁹ In 2012, IOSCO released the ‘Principle

²⁸⁴ The member countries of IOSCO are main securities and/or futures regulators in a national jurisdiction or the primary financial regulator in each country; see Rebecca Lewis, ‘A principled approach to international guidance for central counterparties’ (2018) Chicago Fed Letter No. 400 <<http://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=2&sid=09c8f767-dd5e-482d-8489-fc45cf0bc89d%40sessionmgr120>> accessed 8 November 2018; see also Geoffrey RD Underhill, ‘Keeping governments out of politics: Transnational securities markets, regulatory cooperation, and political legitimacy’ (1995) 21 *Review of International Studies* 251, 252, 253; see also Nicolas Veron, ‘An assessment of the G20’s initial action items’ Working Paper of Bruegel policy contribution, No. 2010/08 at 9, 10.

²⁸⁵ Basel Committee, IOSCO and the FATF can also be as the regulators; see Douglas W Arner and Michael W Taylor, ‘The global financial crisis and the Financial Stability Board: Hardening the soft law of international financial regulation’ (2009) 32(2) *UNSW Law Journal* 488, 494.

²⁸⁶ Lewis (n 246); see also Lev Bromberg, Andrew Godwin and Ian Ramsay, ‘Cross-border cooperation in financial regulation: Crossing the Fintech bridge (2017) 13(1) *Capital Markets Law Journal* 59, 60; see also Paul Guy, ‘Regulatory harmonisation to achieve effective international competition’ in Franklin R Edwards and Hugh T Patrick (eds), *Regulating International Financial Markets: Issues and Policies* (Kluwer Academic 1992) 291.

²⁸⁷ Lewis (n 284).

²⁸⁸ International Organisation of Securities Commissions (IOSCO) ‘Principle for Ongoing Disclosure and Material development Reporting’ (October 2002) <<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD132.pdf>> accessed 8 November 2018.

²⁸⁹ Lewis (n 284).

for Oil Price Reporting Agencies Starting' with the LIBOR, the Financial Conduct Authority (FCA) to recommend the quality of the oil benchmarks and transparency.²⁹⁰ IOSCO and the FATF refer to a multilateral memorandum of understanding (MMoU),²⁹¹ which is relied on a combination of soft law and the robust membership obligations.²⁹²

As the regulators, the IOSCO produces its AML guidelines, particularly the CDD, namely Objectives and Principles of Securities Regulation,²⁹³ which is in line with the FATF Recommendations, for its members to help the FIUs and competent authorities in money laundering investigations and prosecutions.²⁹⁴ According to the IOSCO Principles for Cooperation in Regulation, the IOSCO states that the regulator shall have the authority to exchange both public and private information with national and international counterparts, including the FIUs and competent authorities.²⁹⁵ Furthermore, the Principles for Auditors, Credit Rating Agencies, and other information service provider determine that the auditors shall have operational independence in issuing entity that they audit in line with the FATF Recommendations.²⁹⁶ The IOSCO does not refer to the independence of the FIU, but only refers

²⁹⁰ Alex Frino, Gbenga Ibikunle, Vito Mollica and Tom Steffen, 'The impact of commodity benchmarks on derivatives markets: The case of the dated Brent assessment and Brent futures' (2018) *Journal of Banking and Finance* 95 27, 28.

²⁹¹ International Organisation of Securities Commissions (IOSCO), 'Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information' (May 2002) <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>> accessed 8 November 2018.

²⁹² *Arner and Taylor* (n 285) 488, 498.

²⁹³ International Organisation of Securities Commissions (IOSCO), 'Objectives and Principles of Securities Regulation' (IOSCO 2017) <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf>> accessed 8 July 2019.

²⁹⁴ *De Koker* (n 249) 26, 38.

²⁹⁵ *International Organisation of Securities Commissions* (n 288) 7.

²⁹⁶ *ibid* 9.

to the independence of the auditor. In order to find out which best international practices refer to the independence of the FIU, the next section examines the role of the International Association of Insurance Supervisors.

3.4.7 The International Association of Insurance Supervisors

The International Association of Insurance Supervisors (IAIS), a non-governmental international body, is a voluntary membership agency of insurance regulators and supervisors.²⁹⁷ The IAIS is the global standard-setting body accountable for improving and helping in the implementation of principles, standards, and relevant supporting material for insurance supervision.²⁹⁸ Its mission is to promote effective and internationally consistent supervision of the insurance industry in order to improve the cooperation among the supervisory agencies and to support the robust insurance markets for the advantage and protection of insurance policyholders, to remain alert to merge AML risks and chances,²⁹⁹ and to form the global financial stability.³⁰⁰

²⁹⁷ IAIS has more than 200 member jurisdictions; see International Association of Insurance Supervisors (IAIS), ‘International Association of Insurance Supervisors (IAIS)’ <<https://www.iaisweb.org/home>> accessed 9 November 2018.

²⁹⁸ Federal Financial Supervisory Authority, ‘International Association of Insurance Supervisors (IAIS)’ <https://www.bafin.de/EN/Internationales/GlobaleZusammenarbeit/IAIS/iaais_artikel_en.html> accessed 9 November 2018.

²⁹⁹ The IAIS’s role plays as a global standards-setter similar to the FATF, including assesses the risk-sensitive capital evaluation (i.e. Risk-Based Global Insurance Capital Standard); see Craig Turnbull, ‘Some notes on approaches to regulatory capital assessment for insurance firms’ (2018) 23(6) British Actuarial Journal 1, 2; see also Ross Buckley, Emiliios Avgouleas and Douglas Arner (eds), *Reconceptualising Global Finance and its Regulation* (Cambridge University Press 2016); see also Kathryn L Dewenter and Leigh A Riddick, ‘What’s the value of a TBTF guaranty? Evidence from the G-SII designation for insurance companies’ (2018) 91 Journal of Banking and Finance 70, 71; see also Robert O’Connor, ‘The new secretary-general of the IAIS says the move toward a global capital standard and development of a common framework for the supervision of international insurance groups are key priorities’ (Convergence, December 2017) Best’s Review 66, 66 <<http://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=69f40e7e-60cd-48bd-8d6b-4d527e9600c9%40sessionmgr104>> accessed 9 November 2018.

³⁰⁰ *International Association of Insurance Supervisors* (n 297).

To protect and control the money laundering risk via the insurance sector, the IAIS released the ‘Insurance Core Principles and Methodology’ for all insurance sectors pursuant to the FATF Recommendations.³⁰¹ In 2003, the IAIS then issued the ‘Insurance Core Principles (ICP)’ by putting new measures solving supervisory standards into the approach to fight against AML/CFT. It includes financial crime consistent with the FATF requirements, the Basel Committee, IOSCO, and the EU initiatives,³⁰² in particular the information sharing among insurer sector, FIUs, law enforcement and competent authorities, and the reporting of a case of suspicious transaction to the FIUs without delay.³⁰³ Furthermore, in 2016, the IAIS issued its new regulations on world systemically crucial insurers, which adopted industry recommendations on focusing private company risk to better judge threats to the global economy.³⁰⁴ The IAIS has worked closely with Basel and FIUs in producing its guidelines based on the risk-based approach, which is in relation to the incorporation of the KYC, CDD, and the STR/SAR.³⁰⁵ Nevertheless, the IAIS does not refer to the independence of the FIU. Therefore, the next section investigates the role of the Group of International Finance Centre Supervisors.

3.4.8 The Group of International Finance Centre Supervisors

³⁰¹ The Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism was replaced the 2002 AML Guidance Notes for Insurance Supervisors and Insurance Entities’ see also International Association of Insurance Supervisors (IAIS), *Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism* Guidance Paper No. 5 (IAIS 2004) 16, see also Hae-mala Thanasegaran and Bala Shanmugam, ‘Exploitation of the insurance industry for money laundering: the Malaysian perspective’ (2008) 11(2) *Journal of Money Laundering Control* 135, 136.

³⁰² Richard John Herring, ‘International coordination of financial supervision: Why has it grown? Will it be sustained?’ (2018) 10(2) *Journal of Financial Economic Policy* 213, 222.

³⁰³ Paragraphs 18.1, 22.0.5, 22.0.8, 22.2 of the Insurance Core Principles; see International Association of Insurance Supervisors (IAIS), ‘Insurance core principles’ (Updated November 2017) at 270, 344 <file://nstu-nas01.uwe.ac.uk/users3\$/k2-silathong/Windows/Downloads/Insurance_Core_Principles_updated_November_2017%20(1).pdf> accessed 9 November 2018.

³⁰⁴ O’Connor (n 299).

³⁰⁵ Ryder (n 4) 23.

The money laundering, including tax havens, is a serious threat of globalisation,³⁰⁶ which generates mobility of fund overseas by granting no/low tax, no/low rule, confidentiality, and anonymity to allow money laundering, degradation of regulation, instability, and economic underdevelopment in the world.³⁰⁷ The IMF recognised that the offshore financial centres (OFCs) play an underlying role in money laundering because they offer tax and regulatory services, including confidentiality and secrecy to their customers by hiding money away in offshore accounts.³⁰⁸ Several offshore jurisdictions, which avoid the effective national and governmental tax regime, are crucial characteristics of the world financial market and redistributive connections with the global financial flows.³⁰⁹

The Group of International Finance Centre Supervisors (GIFCS)³¹⁰ is an association of the relevant authorities in jurisdictions concerned with the supervision of banks and related financial services primarily engaged in cross-border activities in order to contribute to global financial stability through the support, the adoption of international AML/CFT regulatory standards, as well as the promotion of best practices for the supervision of financial services in fighting money laundering and

³⁰⁶ Globalisation is also at the roots of the increased capacity of criminal proceeds to successfully enter the legal economy; see Leila Simona Talani, 'Globalisation, money laundering and the city of London' in Colin King, Clive Walker and Jimmy Gurule (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018).

³⁰⁷ Criminals hide their criminal funds in offshore accounts in order to generate and facilitate money laundering system via tax havens; see *Harrison and Ryder* (n 26) 200; see also Prem Sikka, 'The role of Offshore Financial Centres in Globalisation' (2003) 27 *Accounting Forum* 365, 365; see also Roberto Saviano, 'Drug trafficking taught the rich how to hide money in tax havens' (*Guardian*, 18 November 2017) <<https://www.theguardian.com/commentisfree/2017/nov/18/paradise-papers-tax-havens-mafia-roberto-saviano>> accessed 29 November 2018.

³⁰⁸ Chizu Nakajima, 'Politics: Offshore Centres, transparency and integrity: The Case of the UK Territories' in Donato Masciandaro (ed) *Global Financial Crime: Terrorism, Money Laundering and Offshore Centres* (Routledge 2004) 239.

³⁰⁹ From 1/3 to half of the world fund revenue emerges via the offshore business channels, and thus, almost half of non-resident bank deposits are conducted in the world offshore centres; see Zoriana Lutsyshyn and Elnur Mekhtiev, 'Offshore financial centres in global capital flow' (2017) 2(27) *International Economic Policy* 59, 59.

³¹⁰ Hereinafter 'the Group'.

terrorist financing as appropriate.³¹¹ The Group requires its member jurisdictions to implement the best practices such as the ‘Standards on the regulation of Trust and Company Service Providers (TCSPs)’ consistent with the international AML/CFT standards such as the Basel Core Principles and the FATF Recommendations.³¹²

The Group also aims to apply its collective expertise to participate in the change, efficiently influence debate and consultation on evolving regulatory standards, and provide mutual support to each other and a forum for promoting common interests.³¹³ The Group encourages cooperation between all relevant supervisors in order to deal directly with the private economy of offshore financial centres, as well as to facilitate global financial stability.³¹⁴ To achieve the solution of potential risks in the world financial markets, in 1999 the Financial Stability Forum (FSF)³¹⁵ asked a working group to scrutinise the adoption of the OFCs to support global financial stability and to make recommendations for solving any troubles identified.³¹⁶ The Financial Stability Board (FSB) has continued to oversee the regulatory policies and the global financial system.³¹⁷

³¹¹ Group of International Finance Centre Supervisors (GIFCS), ‘Structure’ <<http://gifcs.org/index.php/8-about-us>> accessed 10 November 2018.

³¹² Group of International Finance Centre Supervisors (GIFCS), ‘Standards on the Regulation of Trust and Corporate Service Providers’ <<http://gifcs.org/images/GIFCSStandardonTCSPs.pdf>> accessed 13 November 2018.

³¹³ *Group of International Finance Centre Supervisors* (n 311).

³¹⁴ Pierre M Picard and Patrice Pieretti, ‘Bank secrecy, illicit money and offshore financial centres’ (2011) 95 *Journal of Public Economics* 942, 942.

³¹⁵ In 1999, the G7 nations set the Financial Stability Forum (FSF), i.e. a group comprising principal national financial authorities, such as Finance Ministers, Central Banker Governors, and international financial bodies. Then in 2009, the G20 nations replaced the FSF by establishing the ‘Financial Stability Board’ (i.e. FSF successors) with an extended membership and widened authorisation; see Financial Stability Board (FSB), ‘Our history’ <<http://www.fsb.org/>> accessed 14 November 2018; see also Hong Kong Monetary Authority (HKMA), ‘Financial Stability Forum (FSF)’ <https://www.hkma.gov.hk/gdbook/eng/f/fin_stability_forum.shtml> accessed 14 November 2018.

³¹⁶ Bank for International Settlements (BIS), ‘Financial Stability Forum releases Grouping of Offshore Financial Centres (OFCs) to assist in setting priorities for assessment’ <<https://www.bis.org/press/p000526.htm>> accessed 13 November 2018.

³¹⁷ Banco Bilbao Vizcaya Argentaria (BBVA), ‘Financial Stability Board: What is it and what are its functions’ <<https://www.bbva.com/en/financial-stability-board-functions/>> accessed 14 November 2018.

To achieve the FATF requirements, the GIFCS Guidance indicates that the regulators should ensure that they have the legal power and effective instruments in place which enable them to cooperate when appropriate and coordinate with the FIU, LEAs, regulators, AML policy-makers, and other relevant competent authorities regarding the evolution and adoption of AML strategies of correspondent banking to fight money laundering and its associated crimes.³¹⁸ As reasons mentions above, the GIFCS does not refer to the independence of the FIU. Then the next section explains the role of competent AML authorities in countering money laundering.

3.5 The Establishment of the Competent Authorities

The Vienna Convention determined that each government must support its competent authorities to order the production or seizure of financial institutions, banks, and commercial records in order to identify, trace, freeze and finally confiscate the proceeds of crime.³¹⁹ The FATF Recommendation 29 requires all member states to establish the national FIUs to receive the STRs, including other information in respect of money laundering, associated predicate offences, and terrorist financing, to analyse such information, and then to disseminate the financial intelligence to the relevant competent authorities in order to further investigate and prosecute money laundering offences.³²⁰ Recommendation 29 determines the FIU's functions,

³¹⁸ Group of International Finance Centre Supervisors (GIFCS), 'Standard on the Regulation of Trust and Corporate Service Providers' 30 <<https://www.gfsc.gg/sites/default/files/GIFCS%20Standard%20on%20TCSPs.pdf>> accessed 8 July 2019; see also Group of International Finance Centre Supervisors (GIFCS), 'GIFCS meets in Bermuda: Focus on and cybercrime, and new member joins' GIFCS Plenary Press Release on 7 November 2017 <<http://www.gifcs.net/images/GIFCSmeetsinbermuda.pdf>> accessed 8 July 2019.

³¹⁹ Articles 5(1) and 5(2) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

³²⁰ Financial Action Task Force Recommendation 29; Competent authorities are defined as all public authorities (including financial supervisors set as autonomous non-governmental authorities with regulatory powers) with authorised duties in fighting money laundering and/or terrorist financing, for

namely gaining additional information from reporting entities³²¹, including available access on a timely principle to the other information³²² relating to the FIUs' functions appropriately.³²³ The Organisation for Economic Co-operation and Development (OECD) needs its member states to implement such Recommendations in order to ensure that competent authorities are able to access and exchange essential information on financial institutions timely.³²⁴ Additionally, the reporting entities must report the suspicious transactions (STRs) or activities (SARs) to the FIUs to examine and deliver such STRs/SARs to relevant competent authorities consistent with the FATF requirements.³²⁵

The FATF identified that competent authorities refer to all public agencies with designated accountabilities for tackling money laundering (including terrorist financing).³²⁶ Ryder divided the competent authorities into three groups, consisting of the primary authorities, the secondary authorities, and the tertiary authorities.³²⁷ Thus, the AML regime requires the coordination between competent authorities, policy-makers, supervisors, regulators, law enforcement bodies, financial institutions, prosecutors, and the FIUs to enhance the effectiveness of the prevention of money laundering.³²⁸ For instance, they should cooperate to increase personal awareness of

example the FIU; see Financial Action Task Force (FATF), 'Competent authorities' <<http://www.fatf-gafi.org/glossary/>> accessed 21 November 2018.

³²¹ For example, financial institutions and private sector.

³²² For example, the financial information, law enforcement information, and administrative information.

³²³ Financial Action Task Force (FATF) Recommendation 29.

³²⁴ *Harrison and Ryder* (n 26) 207; see also Chizu Nakajima, 'Panama Papers conference in Madrid: Transparency vs confidentiality – a conflict' (2017) 20(4) *Journal of Money Laundering Control* 322, 323.

³²⁵ Financial Action Task Force Recommendation 4, 20, 26; see *Financial Action Task Force* (n 6).

³²⁶ *Financial Action Task Force* (n 6).

³²⁷ Henry Duggan & Peter Drewry 'UK money laundering-typological considerations' in Arun Srivastava, Mark Simpson and Nina Moffatt (eds) *International Guide to Money Laundering Law and Practice* (4th ed, Bloomsbury 2013) 25.

³²⁸ Pierre-Laurent Chatain, John McDowell, Cedric Mousset, Paul Allan Schott and Emile van der Does de Willebois, *Preventing Money Laundering and Terrorist Financing: A Practical Guide for Bank Supervisors* (The World Bank 2009) 10.

money laundering risk, as well as a deeper understanding of the most current trend and typologies of money laundering.³²⁹ In some legal provisions pursuant to the FATF Recommendations, the competent authorities have the power to impose a financial sanction on obliged entities, which have breached or failed to comply with the STR/SAR regulations (such as the Fourth EU AML Directive, the UK Money Laundering Regulations 2017) in order to enable them to enforce and punish their supervisory or monitoring function properly.³³⁰

Ryder refers to competent authorities as the significant mechanisms to eliminate the proceeds of crime.³³¹ Competent authorities accountable for the implementation of the AML system must have enough monetary, human, practical, and technical resources to ensure that the relevant staff keep highly skilled standards.³³²

The Egmont Group assists in increasing and enhancing the communication and cooperation between the FIUs worldwide to address money laundering in line with the FIU requirements.³³³ The FIU disseminates intelligence concerning the STR/SAR to the AML competent authorities for investigation and prosecution of money laundering.³³⁴ Therefore, the FATF Recommendation 1 requires the private sector complying with the risk-based policy to identify and reduce the money laundering risks.³³⁵ The Recommendation also determines that the private sector shall

³²⁹ *Chatain, McDowell, Mousset, Schott and De Willebois* (n 328) 26.

³³⁰ Under the Financial Conduct Authority Handbook or the Senior Management Arrangements, Systems and Controls (SYSC) and the Financial Services Act 2012, the FCA can issue warning notices, impose a fine or imprisonment and suspend or restrict a firm or individual; see Financial Conduct Authority (FCA), 'Financial sanctions' (17 May 2016) <<https://www.fca.org.uk/firms/financial-crime/financial-sanctions>> accessed 24 February 2018; see also *Chatain, McDowell, Mousset, Schott and De Willebois* (n 329) 120 121; see also *Mugarura* (n 98) 5, 13.

³³¹ Nicholas Ryder, *Financial Crime in the 21st Century: Law and Policy* (Edward Elgar 2011) 214.

³³² Salwa Zolkafliil, Normah Omar and Sharifah Nazatul Faiza Syed Mustapha Nazri, 'Comprehensive cross-border declaration system as money-laundering prevention mechanism' (2017) 20(3) *Journal of Money Laundering Control* 292, 296.

³³³ *Hopton* (n 5) 18.

³³⁴ *ibid.*

³³⁵ FATF Recommendation 1.

report information regarding the risk assessment to all relevant competent authorities such as the FIUs that aim to prevent or mitigate such risks.³³⁶ The understanding of the AML legislation, the role of competent AML authorities, money laundering risks, and assessment of the money laundering threats would help the country deal with the risk of ML/TF effectively. Thus, the next section explains the first type of competent authorities as to the ‘primary authorities’ in combating money laundering.

3.5.1 The Primary authorities

To promote financial transparency and to protect the integrity of the financial market, the national competent authorities should improve the AML policy to meet the FATF requirements.³³⁷ Ryder noted that the primary authorities, such as a Finance Department, are responsible for the national AML strategy and compliance with such policy.³³⁸ The Justice Department superintends the enforcement of its AML criminal legislation; for instance, a Foreign Ministry supervises the implementation of the AML international legal instruments.³³⁹ The primary authorities collaborate with the secondary authorities, namely the FIUs, law enforcement bodies, and financial regulatory agencies.³⁴⁰ If the additional AML measures are insufficient, the primary competent authorities should consider appropriate AML policies to bridge and solve the gaps. For example, in 2012 the FATF categorised Thailand into the

³³⁶ FATF Recommendation 1.

³³⁷ Financial Action Task Force (FATF), ‘Public Consultation on the Draft Guidance for Private Sector Information Sharing’ at 3 <[<https://www.fatf-gafi.org/fr/publications/recommandationsgafi/documents/public-consultation-guidance-info-sharing.html?hf=10&b=0&s=desc\(fatf_releasedate\)>](https://www.fatf-gafi.org/fr/publications/recommandationsgafi/documents/public-consultation-guidance-info-sharing.html?hf=10&b=0&s=desc(fatf_releasedate))> accessed 9 July 2019.

³³⁸ *Ryder* (n 4) 25.

³³⁹ *ibid.*

³⁴⁰ *ibid.*

NCCT list as Thailand lacked the AML policies that are in line with the FATF standards. However, in 2013 Thailand Government enacted the AML legislation to meet the international requirements, and the FATF later removed Thailand from such list.³⁴¹

3.5.2 The Secondary authorities

The secondary authorities, particularly the FIU, support the primary bodies to implement the AML policies.³⁴² To illustrate, the FIU and immigration and customs³⁴³ trace, seize, confiscate the identified proceeds of crime and arrest the other criminal participants via the utility of financial intelligence.³⁴⁴ Furthermore, in 2009 the EU Member States created the European Public Prosecution's Office (EPPO) as the secondary authorities in order to improve international AML cooperation, including freezing and seizure assets, and action cross-border operations.³⁴⁵

3.5.3 The Tertiary authorities

³⁴¹ Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press Release: FATF removes Thailand from Public Statement on Money Laundering/Financing of Terrorism' (1 May 2013) <<http://www.mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>> accessed 9 July 2019.

³⁴² *Ryder* (n 4) 80.

³⁴³ *Zolkafli, Omar, Omar and Nazatul Faiza Syed Mustapha Nazri* (n 332) 292, 296.

³⁴⁴ Nicholas Alan McTaggart, 'Follow the money to achieve success: Achievable or aspirational' (2017) 24(3) *Journal of Financial Crime* 425, 427, 431; see also Anatasia Suhartati Lukito, 'Financial intelligence investigations in combating money laundering crime: An Indonesian legal perspective' (2016) 19(1) *Journal of Money Laundering Control* 92, 97.

³⁴⁵ Excluding the UK, Ireland, Denmark, Sweden, Hungary, Malta and the Netherlands. Therefore, the EPPO will be autonomy from each national prosecution agencies; see Aperio Intelligence, 'UK publishes 2017 National Risk Assessment of money laundering and terrorist financing' (October 2017) *Financial Crime Digest* 1, 5 <https://www.aperiointelligence.com/wpcontent/uploads/2015/03/aperio_intelligence_fcd_october2017.pdf?utm_source=October+2017++Financial+Crime+Digest&utm_campaign=b552c9bf13Aperio_Intelligence_FCD_October_2017&utm_medium=email&utm_term=0_1bcf699e5b-b552c9bf13-198192249> accessed 3 November 2017.

The tertiary authorities include the trade associations and the professions, which are threatened by illicit transactions and activities concerning money laundering, such as UK Finance³⁴⁶ and the Law Society.³⁴⁷ Thus, the competent authorities need to understand the threats of money laundering in order to improve risk management, especially the banking sector being abused by the criminals. Furthermore, the quality of information-sharing from the competent authorities would become helpful for the FIU and LEAs for detection, investigation, and prosecution of money laundering purposes. In consequence, the thesis examines the role of competent authorities in the implementation of the FATF standards. The next section explains the creation of the FIUs.

3.6 The Creation of the Financial Intelligence Units

The threat of money laundering causes extensive damage to the integrity and stability of the international financial system. As mentioned above, the requirement for creating an independent national agency, the FIU, as the centralised, independent, and autonomous agency should be set up and guaranteed by the statute of each jurisdiction to deal with money laundering problems.³⁴⁸ The FATF Recommendation 29 provides that the FIU should have the power and ability to operate its duties freely, as well as the autonomous decision to receive, analyse, request, and/or distribute special information to relevant competent authorities and law enforcement agencies.³⁴⁹

³⁴⁶ British Bankers' Association (BBA), 'Policy' <<https://www.bba.org.uk/policy/financial-crime/anti-money-laundering/>> accessed 20 November 2018.

³⁴⁷ Law Society, 'Anti-money laundering' <<https://www.lawsociety.org.uk/support-services/risk-compliance/anti-money-laundering/>> accessed 20 November 2018; see also *Ryder* (n 4) 25.

³⁴⁸ *Harrison and Ryder* (n 26) 21; see also *International Monetary Fund and World Bank* (n 190) 1; see *Egmont Group of Financial Intelligence Units* (n 195).

³⁴⁹ Financial Action Task Force Recommendation 29.

The FIUs have been established in the FATF's Member States and the FSRBs, e.g. the APG, pursuant to the FATF Recommendation 29.³⁵⁰ Jurisdictions should establish their FIUs that roles as a national centre for receiving and analysing the STR and other information concerning money laundering, associated predicate offences, and financing of terrorism, as well as then disseminating the results of such analysis.³⁵¹ The FIU could obtain additional information from all reporting entities (REs), and shall have access on an appropriate basis to the administrative, law enforcement, and financial information that requires to operate its responsibilities properly.³⁵² The Recommendation 29 defines the FIUs as a national central body with a computerised database and be accessible to competent authorities for using financial intelligence in further investigating, prosecuting, and convicting money laundering cases (including financial crime).³⁵³

Therefore, the FIUs should be the body, which has the separated and specialised authority, to receive, analyse financial information from the financial sector in

³⁵⁰ FATF Recommendations 29 and its Interpretative Note. In Singapore government established its FIU, namely the Suspicious Transaction Reporting Office (STRO); The UK government also set the National Crime Agency (NCA) as its FIU; Thailand government formed the Anti-Money Laundering Office (AMLO) as the Thailand's FIU; The AMLO and STRO has been the member of Asia-Pacific Group on Money Laundering (APG), the FATF-style regional body for the Asia/Pacific region in combating money laundering; see Egmont Group of Financial Intelligence Units, 'List of Members' (at 231) <<http://www.egmontgroup.org/membership/list-of-members>> accessed 1 June 2015; see also Egmont Group of Financial Intelligence Units, 'FAQs' <<http://www.egmontgroup.org/about/faqs>> accessed 31 May 2015; see also Asia-Pacific Group on Money Laundering (APG), 'Overview of APG Member' <<http://www.apgml.org/members-and-observers/page.aspx?p=8c32704a-5829-4671-873c-7b5a23ced347>> accessed 31 May 2015; The FSRB must implement the FATF Recommendations as the FATF's Member State do; see also see *Egmont Group of Financial Intelligence Units* (n 195).

³⁵¹ *Egmont Group of Financial Intelligence Units* (n 206).

³⁵² *ibid.*

³⁵³ The Financial Action Task Force Recommendation 29.

order to avoid any undue industry, governmental or political influence, and interfere.³⁵⁴ Moreover, the Interpretive Note to Recommendation 29 determines that jurisdictions should ensure that the FIU applying for the Egmont Group's membership properly implements the Egmont Group statement of purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Financing of Terrorism Cases (Egmont Group Guidance relating to the role and responsibilities of the FIUs and important tools for interchanging intelligence between FIUs).³⁵⁵ However, the existence of a specialised FIU may increase more compliance costs for the reporting entities, as well as causing more defensive reporting from such reporting entities.³⁵⁶

FIUs play a vital role as a decision-maker in allowing the other authorities to perform quickly, investigating assistant for police and judicial authorities, and negotiators between financial institutions and law enforcement authorities.³⁵⁷ Using the administrative-FIU pattern, the FIUs have their functions as an important safeguard between the involving law enforcement agencies and the reporting entities in the SAR/STR regime,³⁵⁸ so the reporting entities should not be afraid to communicate and submit the SARs/STRs to the FIUs directly. An effective FIU enhances a significant contribution to fighting financial crimes particularly money laundering nationally and internationally.³⁵⁹ The significant functions of the FIUs in SAR/STR regime are to enhance the ability of the reporting entities to deal with SARs/STRs, support

³⁵⁴ FATF Recommendation 29 and its Interpretative Note Egmont Group of Financial Intelligence Units, 'Communique: Egmont Group commits to combat corruption' (15 March 2018) <<https://www.egmontgroup.org/en/content/communique%20C3%A9-egmont-group-commits-combat-corruption>> accessed 19 June 2018.

³⁵⁵ *Egmont Group of Financial Intelligence Units* (n 206).

³⁵⁶ Donato Masciandaro, 'Financial Supervisory Unification and Financial Intelligence Units' (2005) 8(4) *Journal of Money Laundering Control* 354, 360.

³⁵⁷ *Stessens* (n 29) 183.

³⁵⁸ *Masciandaro* (n 356) 354, 359.

³⁵⁹ *Sathye and Patel* (n 199) 391, 391.

the investigation of relevant law enforcement authorities, exchange information between international FIUs, and implement the national AML legislation to meet the FATF requirements.³⁶⁰ The next section illustrates the models of FIUs in combating money laundering.

3.6.1 The Models of Financial Intelligence Units

The FIUs leads the international and national fight against terrorist and transnational organised crime more practically and becomes a major apparatus in the hands of the government and the global community.³⁶¹ The IMF and the World Bank have attempted to provide technical assistance to countries to strengthen international cooperation of the FIUs to fight money laundering.³⁶² Therefore, the IMF emphasised that the international cooperation and development of the implementation of the FATF standards and the effectiveness of FIUs is at a primary state of the FATF's core function.³⁶³ Although the FIUs globally share the same core functions of receiving, analysing, and disseminating intelligence to relevant law enforcement authorities, they differ in several ways, such as the operational and policy areas of their operations. For example, certain FIUs are a part of the judicial, police force, LEA, treasury, or central bank.³⁶⁴ Furthermore, the specific legal and socio-political national reality of each country has produced the various FIU forms of reporting systems.³⁶⁵ The Egmont Group also aims to enhance information exchange between

³⁶⁰ The Financial Action Task Force (FATF) Interpretive Note to Recommendation 29; see *Egmont Group of Financial Intelligence Units* (n 206).

³⁶¹ *Masciandaro* (n 356) 354, 354.

³⁶² *Sathye and Patel* (n 199) 391, 392.

³⁶³ *ibid.*

³⁶⁴ Nigel Morris-Cotterill, 'International money laundering update' (2007) *Compliance Officer Bulletin* 1, 3

³⁶⁵ *Mitsilegas and Gilmore* (n 105) 119, 122.

the national FIUs regardless of whether they have different FIU models or financial and legislative systems.³⁶⁶ Thony identified that the architecture of FIUs is based on each country's decision, namely the structure of the agency engaged in efforts to deal with money laundering and the responsibilities delegate the power to such agency, including the kind and quantity of financial information accessible to the AML agencies.³⁶⁷

The IMF and World Bank divided FIUs into four models, including the administrative-type FIU, the law-enforcement-type FIU, the judicial-or prosecutorial-type FIU, and the mixed or hybrid FIU.³⁶⁸ Stessens also divided FIUs into four styles, namely an administrative model, the police model, the judicial model, and the mixture between the judiciary and supervisory authorities.³⁶⁹ Whilst, Deleanu divided FIUs into four models, including the administrative FIU model, the Law Enforcement FIU model, the judicial type of FIU, and FIU - the optimal filter model.³⁷⁰ Van den Broek categorised four models, including the FIU model, the external model, the internal model, and the hybrid model.³⁷¹ Each of the models has both advantages and disadvantages.³⁷² However, the thesis presents that the Egmont Group divided the FIUs into four models (namely, administrative, law enforcement, judicial, and hybrid-model FIUs).³⁷³ The next section explains administrative-model FIU.

³⁶⁶ *Egmont Group of Financial Intelligence Units* (n 195).

³⁶⁷ Jean-Francois Thony, 'Processing Financial Information in Money Laundering Matters: The Financial Intelligence Units' (1996) *Eur. J. Crime Crim. L. & Crim. Just* 257, 258.

³⁶⁸ *International Monetary Fund and World Bank* (n 190) 189.

³⁶⁹ *ibid.*

³⁷⁰ Ioana Deleanu, 'The Role of Information for Successful AML Policy', in Brigitte Unger and Daan van der Linde (eds) *Research Handbook on Money Laundering* (Edward Elgar 2013) 465.

³⁷¹ Melissa van den Broek, 'Designing Supervision under the Preventive Anti-Money Laundering Policy in the European Union' (2014) 10(5) *Utrecht Law Review* 151, 154.

³⁷² *International Monetary Fund and World Bank* (n 190) 10-17.

³⁷³ *Egmont Group of Financial Intelligence Units* (n 204).

3.6.1.1 The Administrative-Model FIU

The administrative-model or independent-model FIU refers to an independent, centralised, and administrative authority, which is based within a government agency (e.g. the National Bank and Ministry of Finance) in order to obtain and process financial information and the suspicious activity reports/suspicious transaction reports (SARs/STRs) from reporting entities to an autonomous unit, and then deliver disclosures to relevant law enforcement authorities, or judicial bodies for further investigation, prosecution, and conviction of money laundering offence.³⁷⁴ The functions of the administrative-FIU model act as a significant buffer between the reporting entities (e.g. financial institutions), and the relevant law enforcement authorities (e.g. police).³⁷⁵ The UK, Singapore, Australia, and the US employ this model, for example.³⁷⁶

According to the FIU of the UK and Singapore, the independence of FIU is important to the administrative-FIU type because their FIUs act as supervision like the independent FIUs. This type focuses on the role of buffer between the REs and relevant LEAs in charge of financial crime investigations and prosecutions. Furthermore, this FIU often locates in the ministry of finance, the central bank, a regulatory agency or as separate structure, independent of any ministry.³⁷⁷ It is important that this FIU deals with the STRs/SARs, financial information or intelligence in order to disseminate the intelligence to the relevant LEAs for investigating and prosecuting.

³⁷⁴ *ibid.*

³⁷⁵ *Masciandaro* (n 356) 354, 359.

³⁷⁶ *ibid* 354, 364; see also World Bank, 'Module 2: Role of the Financial Intelligence Unit (incorporating peer reviewers comments) at 6 <<http://pub-docs.worldbank.org/en/834721427730119379/AML-Module-2.pdf>> accessed 19 June 2018.

³⁷⁷ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 10.

Since the REs are required to disclose the customer's financial information, the FIU shall be independent, autonomous and neutral agency rather than the LEAs. The independence of the FIU is essential to create the great cooperation between the REs and LEAs under the STRs/SARs regime. The next section describes the law enforcement model FIU.

3.6.1.2 The Law Enforcement- Model FIU

The law enforcement-model FIU, where the STRs/SARs are reported to an intelligence or police agency, supports the judicial and relevant law enforcement authorities to investigate money laundering offence in line with AML legislation, but competes for jurisdictional authority to investigate money laundering in some cases.³⁷⁸ Germany's FIU, Hong Kong's FIU, Estonia's FIU, Papua New Guinea's FIU, and Japan's FIU apply this model.³⁷⁹

The law-enforcement FIU type brings about the establishment of the FIU as the part of a law-enforcement body under the government (reporting to the Home Secretary or government) in order to have the appropriate law-enforcement powers such as the powers for issuing the order to the REs, in particular the order to freeze or seize the criminal proceedings.³⁸⁰ As reasons mentioned above, this FIU type does not focus on the independence of the FIU, but emphasises on the proper law-enforce-

³⁷⁸ *Egmont Group of Financial Intelligence Units* (n 204).

³⁷⁹ *Masciandaro* (n 356) 354, 362; see also *World Bank* (n 341) 7.

³⁸⁰ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 13.

ment powers to access and deal with the financial information, intelligence, investigation and prosecution via the application of current international and national criminal intelligence exchange networks.³⁸¹

3.6.1.3 The Judicial/Prosecutorial-Model FIUs

The judicial/Prosecutorial-Model FIUs are established within the judicial branch of state or the public prosecution service where the disclosures of the SARs/STRs are obtained by the investigative bodies from its reporting entities.³⁸² Because these FIU type have authority over the LEAs or investigatory agencies.³⁸³ The authorities of these FIU type have powers to seize illegal funds, freeze bank accounts, conduct interrogations, detain suspects, and conduct effective searches.³⁸⁴ Denmark's FIU, Cyprus's FIU, and Switzerland's FIU use these models.³⁸⁵

These FIUs require the higher degree of the independence of the FIUs from the political interference and influence because they work with the freedom of the people under the Constitution law.

3.6.1.4 The Hybrid-Model FIU

The hybrid-FIU model, as a disclosure intermediary, combines elements of at least two of the FIU models, such as administrative and law enforcement-FIU

³⁸¹ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 14.

³⁸² *Egmont Group of Financial Intelligence Units* (n 204).

³⁸³ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 16.

³⁸⁴ *Masciandaro* (n 356) 354, 359.

³⁸⁵ World Bank, 'Module 2: Role of the Financial Intelligence Units (incorporating Peer reviewers comments)' at 8 <<http://pubdocs.worldbank.org/en/834721427730119379/AML-Module-2.pdf>> accessed 18 December 2020; see also *Masciandaro* (n 356) 354, 364.

models, or judicial and law enforcement-FIU models.³⁸⁶ Thailand's FIU uses the model that combines law enforcement, judicial and administrative-FIU style.³⁸⁷ The next section describes the evaluation of the FIU Models.

The IMF has made an assessment of FIU in the context of jurisdiction compliance with FATF recommendations, but such assessment is confined to checking whether an FIU has been established properly and whether it has sufficient legal backing effectively.³⁸⁸ Masciandaro supports that the political institutional environment may impact the capability of policymakers and lawmakers to implement their alternatives, which can also determine the model of the FIUs.³⁸⁹ He also argued that the establishment of the administrative-styles FIUs in the institutional form of financial and special agency, such as in the UK and Singapore, will be rather useful than other forms.³⁹⁰ The Egmont Group state that there are 112 FIUs in the world applying the administrative-type FIUs, while there are 17 hybrid-model FIUs (i.e. combining between administrative and law enforcement), five judicial-model FIUs, 21 law enforcement-model FIUs, and four hybrid-model FIUs (i.e. combining between judicial and law enforcement).³⁹¹ Stessens also asserted that administrative FIUs have a substantial level of independence because the financial institutions well link with the central bank or treasury ministry.³⁹²

³⁸⁶ *Mitsilegas and Gilmore* (n 105) 119, 122; see also *Egmont Group of Financial Intelligence Units* (n 204).

³⁸⁷ Sehanat Prayoonrat, 'The Need and Compliance Issue of Thailand's Regime on Anti-Money Laundering and Combating the Financing of Terrorism' (D Juridical Science thesis, Chulalongkorn University, 2007).

³⁸⁸ Financial Action Task Force Recommendation 29.

³⁸⁹ *Masciandaro* (n 356) 354, 365.

³⁹⁰ *ibid*; see also Danato Masciandaro and Alessio Volpicella, 'Designing financial supervision: The puzzling case of the FIUs against money laundering' (2016) 2(1) *Journal of Financial Regulation* 79, 79.

³⁹¹ Egmont Group of Financial Intelligence units, *Annual Report 2016/2017* (Egmont Group 2018) 21.

³⁹² *Stessens* (n 29) 188, 189.

Since the hybrid FIU type contains various combinations of the powers of arrangement, the thesis noted that the independence of the FIU shall be appropriately prevented a number of powers of each agency from the political influence and interference.³⁹³

3.7 The Implementation of International Standards in the United Kingdom

London, one of the important financial centres in the world, becomes global money-laundering capital.³⁹⁴ In 2012 the Home Office approximated that domestic organised criminal gangs generated £20bn to £40bn a year from the sale of narcotics, people smuggling and trafficking, and other illicit activities.³⁹⁵ Furthermore, the NCA approximates that criminal organisations launder about £90bn of illegal money via the UK per year.³⁹⁶ The NCA estimated that the costs of money laundering to the UK financial system have ranged from £36bn to £90bn.³⁹⁷ In 2016, there were 1,435 offenders were convicted of money laundering in the UK.³⁹⁸ As mentioned above,

³⁹³ International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 17.

³⁹⁴ Guardian, 'London still world's top financial centre despite Brexit, say survey' (*Guardian*, 11 September 2017) <<https://www.theguardian.com/business/2017/sep/11/london-financial-centre-brexit-frankfurt-dublin-new-york-donald-trump>> accessed 31 August 2018; see Dominic Kavakeb, 'UK remains global money-laundering capital with more work to be done' (*Transparency International UK*, 26 October 2017) <<http://www.transparency.org.uk/press-releases/uk-remains-global-money-laundering-capital-with-more-work-to-be-done/#.W4mnnehKjct>> accessed 31 August 2018.

³⁹⁵ Financial Conduct Authority (FCA), 'Anti-money laundering annual report 2012/13' (July 2013) <<https://www.fca.org.uk/publication/corporate/anti-money-laundering-report.pdf>> accessed 4 June 2015.

³⁹⁶ Robert Barrington, 'London, the Money laundering capital' (*World Today*, April & May 2018) <<https://www.chathamhouse.org/publications/twt/london-money-laundering-capital>> accessed 31 August 2018.

³⁹⁷ Matt Hopkins and Nikki Shelton, 'Identifying money laundering risk in the United Kingdom: Observations from National risk assessments and a proposed alternative methodology' (2019) 25 *Eur J Crim Policy* 63, 64.

³⁹⁸ Home Office, 'Economic crime factsheet' (11 December 2017) <<https://homeoffice-media.blog.gov.uk/2017/12/11/economic-crime-factsheet/>> accessed 10 July 2019.

the city of London can be scrutinised as the choice for money laundering by the criminals.³⁹⁹

The UN Conventions presented the international AML standards for dealing with drug trafficking and money laundering offences towards attacking the monetary incentives of the criminal organisation and activities.⁴⁰⁰ The UK government deals with the threats⁴⁰¹ of money laundering by efficiently transposing international AML preventive measures into national AML legislation, i.e. the Proceeds of Crime Act 2002 and the Terrorism Act 2000.⁴⁰² The UK has implemented the international AML instruments, namely the Vienna, Palermo, and Merida Conventions, the FATF 40 Recommendations, the EU four AML Directives, including the AML best practices and industry guidelines, into its national AML legislation.⁴⁰³ The UK's AML legal framework, i.e. Proceeds of Crime Act 2002, goes one step beyond the requirements of the international standards, namely the United Nations and FATF's AML

³⁹⁹ Liz Campbell and Nicholas Lord (eds), *Corruption in Commercial Enterprise: Law, Theory and Practice* (Routledge 2018) 95; see also JC Sharman, 'Shopping for anonymous shell companies: An audit study of anonymity and crime in the international financial system' (2010) 24(4) *The Journal of Economic Perspectives* 127, 139; see also *Talani* (n 306).

⁴⁰⁰ *Ryder* (n 4) 12.

⁴⁰¹ Walker argues that a world money laundering amount of \$2.85bn yearly, strongly concentrated in North America and Europe. However, the United Nations Office on Drugs and Crime (UNODC) argues that the estimated amount of money laundered in the world yearly is 2-5 per cent of global GDP or \$2tn in current US\$; see United Nations Office on Drugs and Crime (UNODC), 'Money Laundering and Globalisation' <<https://www.unodc.org/unodc/en/money-laundering/globalization.html>> accessed 13 July 2017; see also John Robert Walker, 'How Big is Global Money Laundering?' (1999) 3(1) *Journal of Money Laundering Control* 25, 25.

⁴⁰² The preventive measures were discussed in Chapter 5 relation to the International, Regional and Domestic AML Standards. The international anti-money laundering preventive measures were set by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The 1988 Vienna Convention), the Forty Financial Action Task Force (FATF) Recommendations and European Communities Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering; see *Harrison and Ryder* (n 26) 223.

⁴⁰³ The UK also ratified the International Convention for the Suppression of the Financing of Terrorism 1999. This thesis focuses on the money laundering legislation; see Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures-United Kingdom Fourth Round Mutual Evaluation Report* (FATF 2018) 177.

frameworks.⁴⁰⁴ For example, the UK AML framework expands the scope of obliged entities by including art intermediaries for transactions exceeding EUR 10,000.⁴⁰⁵

Furthermore, the UK government would accept evidence on the benefits to LEAs of the information being accessible via the register, and of the additional costs to firms of providing such information, over and more than the minimum needs of the EU Fifth AML directive.⁴⁰⁶ In the UK, the HM Treasury has organised the UK's AML policy via the FCA and the CPS by the virtue of the POCA 2002.⁴⁰⁷ However, the NCA reports that such the phenomenon increases the number of unnecessary and low quality of SARs, i.e. defensive reporting, filed to the NCA and impacts the financial intelligence disseminate to the relevant competent authorities for investigations and prosecution of money laundering because the FIUs fear the sanctions if they fail to comply with the SARs regime.⁴⁰⁸

The FATF rated that the UK has fully complied with the international AML obligations, showing that the UK's AML measures go beyond its international AML standards.⁴⁰⁹ Furthermore, the UK has acted as the leader of the European and world to fight the money laundering regime.⁴¹⁰ Nevertheless, it also impacts the role of the NCA in respect to the management of the SARs regime, particularly the number of defensive reporting that can delay the dissemination of financial intelligence to the

⁴⁰⁴ HM Treasury, 'Transposition of the Fifth Money Laundering Directive: Consultation' (Crown April 2019) 21, 59 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795670/20190415_Consultation_on_the_Transposition_of_5MLD_web.pdf> accessed 11 July 2019.

⁴⁰⁵ *ibid.*

⁴⁰⁶ *ibid.*

⁴⁰⁷ Section 327, 328 and 329 of Part 7 of the Proceeds of Crime Act 2002; see also *R v Rollins* [2010] UKSC 39.

⁴⁰⁸ The NCA reported that between 2015 and 2016 there was an increase of 44 per cent in order to protect themselves from money laundering investigations or prosecutions; see Home Office and HM Treasury, *Action Plan for Anti-Money Laundering and Counter-Terrorist Finance* (Home Office 2016) 43; see also *Aperio Intelligence* (n 345) 1, 11.

⁴⁰⁹ *Ryder* (n 4) 252, 269.

⁴¹⁰ *ibid.*

competent authorities for investigating, restraining, confiscating, recovering the proceeds of crime, and prosecuting the financial crime and financing of terrorism.⁴¹¹

Due to the 2018 FATF MER rate the UK FIU as ‘partially compliant’, in particular some concerns regarding its operational independence, as well as relating to its ability to act its key functions because its lack of proper resources, which impacts on the capacity to exercise operational and strategic analysis in SARs regime.⁴¹²

As reasons mentioned above, the thesis wonders why the FATF rated the UK as best practice, but the UK gained less score for implementing the Recommendation 29. This thesis intends to address this issue in the chapter four.

3.8 The Implementation of International Standards in Singapore

In 2014, Singapore seized the proceeds of crime about SGD\$ 71m under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A) 1992 (CDSA), i.e. the main AML legislation.⁴¹³ Singapore responds to the money laundering by implementing the three main AML Conventions,⁴¹⁴ as well as the FATF Recommendations.⁴¹⁵ To achieve such international standards, Singapore requires to improve its AML legal framework and strengthen

⁴¹¹ Financial Action Task Force (FATF), *Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: United Kingdom of Great Britain and Northern Ireland* (FATF 2007) 1.

⁴¹² Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures-United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 224.

⁴¹³ Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures - Singapore* Fourth Round Mutual Evaluation Report (FATF and APG 2016) 68.

⁴¹⁴ This thesis focuses on the three main AML Conventions, namely the United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention), the UN Convention Against Transnational Organised Crime 2000 (the Palermo Convention) and the UN Convention Against Corruption 2003 (the Merida Convention). In consequence, this thesis does not study the UN International Convention for the Suppression of the Financing of Terrorism 1999 (the Terrorism Financing Convention).

⁴¹⁵ *Financial Action Task Force* (n 177) 136.

the FIU and competent authorities by designing the robust AML regulatory and supervisory framework to deal with the complicated investigation and confiscation of the proceeds of money laundering.⁴¹⁶ For example, the CDSA 1992 aims to criminalise the benefits of criminal conduct and targets any person, namely legal or natural person concerning proceeds of the drug trade and money laundering offences.⁴¹⁷

Pieth and Aiolfi stated that the architecture of Singapore AML legal framework is progressive equally to the UK's AML legal framework.⁴¹⁸ As the reason mentioned above, the Singapore government has attempted to protect the integrity of the financial system from financial crime through compliance with preventive measures, such as a risk-based approach and KYC in all businesses in Singapore.⁴¹⁹ The MAS produced the AML guidelines, such as the MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism (MAS Notices 626).⁴²⁰ If they fail to comply with the preventive measures, they can be imposed sanctions.⁴²¹ For example, the MAS could withdraw the license of the businesses because of the breach of such Notices.⁴²² The FATF stated that Singapore is a developed country and the hub of financial service, as well as international trade in Asia/Pacific region which is attractive to criminals.⁴²³ Then, the World Economic

⁴¹⁶ Cheong-Ann Png and Khoon-Jin Tan, 'Singapore' in Toby Graham (ed), *Butterworths International Guide to Money Laundering Law and Practice* (2nd edn, LexisNexis Butterworths 2003) 548.

⁴¹⁷ Sections 2, 43, 44 of the CDSA 1992 (2000 Rev Ed) determines 'benefits of criminal conduct' similar to the 'proceeds derived from criminal conduct'.

⁴¹⁸ *Pieth and Aiolfi* (n 42) 420.

⁴¹⁹ Alvin Yeo and Joy Tan, 'Singapore' in Arun Srivastava, Mark Simpson and Nina Moffatt (eds) *International Guide to Money Laundering Law and Practice* (4th edn, Bloomsbury 2013) 1148.

⁴²⁰ The Guidelines to Monetary Authority of Singapore (MAS) Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism and s 27(B) the Monetary Authority of Singapore Act in relation to the requirements for prevention of money laundering and terrorism financing; see Dennis Cox, *Handbook of Anti Money Laundering* (Wiley 2014) 615.

⁴²¹ Sections 27(B), 27(E) of the Monetary Authority of Singapore Act 1970.

⁴²² Section 28(5) of the Monetary Authority of Singapore Act 1970.

⁴²³ International Monetary Fund (IMF), 'Singapore' (February 2009) <https://asean.e-library.imf.org/abstract/IMF002/09958-9781451834291/09958-9781451834291/09958-9781451834291_A001.xml?redirect=true> accessed 27 December 2018.

Forum announced that Singapore is the best country in preventing the business from criminals.⁴²⁴

By the virtue of s 27B of the Monetary Authority of Singapore Act (Chapter 186) 1970 (MAS Act), the law provides the Monetary Authority of Singapore (MAS) as a single regulator in Singapore taking into account a central bank of Singapore to issue the Direction, Regulations or Guidelines to prevent FIUs from being used for money laundering and its associated crimes.⁴²⁵ By the virtue of s 3A of the CDSA, Singapore empowers the Suspicious Transaction Reporting Office (STRO) as a national FIU to develop AML/CFT supervisory frameworks for FIUs, as well as improving coordination between national and international financial regulatory authorities and LEAs like a buffer.⁴²⁶

The main roles of the STRO aim to the STRs regime and disseminate financial intelligence to competent authorities for investigating, criminalising, and prosecuting money laundering, drugs, and all serious crimes.⁴²⁷ For instance, the STRO received 34,129 STRs in 2016 that is 12 per cent higher than STRs figure in 2015.⁴²⁸ These figures may include unnecessary and low quality of the STRs submitted to the STRO, which could impact the performance of the STRO in fighting money laundering in Singapore.

⁴²⁴ Cox (n 420) 615.

⁴²⁵ MAS Act 1970 (Chapter 186), s 27B.

⁴²⁶ Swati R Ghosh, 'East Asian Finance: The road to robust markets' (World Bank 2006) 95 <<http://documents.worldbank.org/curated/en/504261468026935834/pdf/372640EAP0East101OFFICIAL0USE0ONLY1.pdf>> accessed 10 July 2019.

⁴²⁷ The CDSA 1992 (2000 Rev Ed).

⁴²⁸ There were 29,082 STRs in 2014, and 30,511 STRs in 2015; see Tan Tam Mei, '12% increase in suspicious transactions reported: Commercial Affairs Department' (*The Straitstimes*, 9 October 2017) <<https://www.straitstimes.com/singapore/12-increase-in-suspicious-transactions-reported-says-commercial-affairs-department>> accessed 11 July 2019.

According to the 2016 FATF MER of Singapore, the FATF rated Singapore. 'Compliant' for the implementation of the FATF Recommendation 29, which deserves as best international practice that Thailand should learn from Singapore.⁴²⁹ Regarding the independence of FIU, it is vital to acknowledge that Singapore FIU has the authority and ability to operate its core function freely that encourages the FIU to meet international AML standards effectively.⁴³⁰

3.9 The Implementation of International Standards in Thailand

The Anti-Money Laundering Office (AMLO), Thailand's FIU stated that it has confiscated and seized assets approximately US\$1.1bn over the period of four years from 2013 to 2016.⁴³¹ In order to fight money laundering, Thailand has implemented primary international AML standards into its national legislation.⁴³² However, several military coups in Thailand have impacted the effectiveness of the implementation of the international standards, particularly the FATF Recommendations.⁴³³ As a result of the military coups, the Thailand government could not enact

⁴²⁹ Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures - Singapore Fourth Round Mutual Evaluation Report* (FATF and APG 2016) 182.

⁴³⁰ Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures - Singapore Fourth Round Mutual Evaluation Report* (FATF and APG 2016) 183.

⁴³¹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures - Thailand Mutual Evaluation Report* (APG 2017) 63.

⁴³² The implementation of the international AML standards and guidelines are discussed in Chapter 3; see Seehanat Prayoonrat, *An Overview of the Legal Framework of Thailand's AML-CFT Activities* (Anti-Money Laundering Office 2006) 9.

⁴³³ Thailand had never been colonised, but instead had faced several military coups from 1932-1973, recently had on 22 May 2014; Akihiko Kawaura, 'Generals in defense of allocation: Coups and military budgets in Thailand' (2018) 58 *Journal of Asian Economics* 72, 73; see also Shalendra D Sharma, *The Asian Financial Crisis New International Financial Architecture: Crisis, Reform and Recovery* (Manchester University Press 2003) 100; see also *Asia/Pacific Group on Money Laundering* (n 388) 14.

the AML/CFT legislation to meet the FATF requirements because of the effectiveness of the democratic process in Thailand's Parliament in such a period.⁴³⁴

In consequence, the FATF announced the Public Statement for Thailand as the NCCT list in 2012.⁴³⁵ In 2013, the Thailand government amended the AMLA 1999 and enacted the Counter-Terrorist Financing Act 2013⁴³⁶ to criminalise terrorist financing and implement sufficient procedures to identify and freeze such terrorist assets, and this action was so satisfying that the FATF removed Thailand from its list.⁴³⁷ These legislations bridged the AML strategic deficiencies and enhanced Thailand's AML measures to meet international requirements.⁴³⁸ However, Thailand has closely worked with the APG and fully complied with the Standards in the full range of AML/CFT issues identified in the FATF 2017 Mutual Evaluation Report (MER).⁴³⁹

Unlike the UK and Singapore, the Thailand Government established the AMLO as an authorised agency to have the powers to manage the STRs regime,

⁴³⁴ *Financial Action Task Force* (n 167); see also Nophakhun Limsamarnphun, 'Thailand under new pressure on anti-money laundering laws' (*The Nation*, 18 February 2012) <<http://www.nationmultimedia.com/opinion/Thailand-under-new-pressure-on-anti-money-launderi-30176140.html>> accessed 11 September 2017, see Financial Action Task Force (FATF), 'FATF Public Statement – 19 October 2012' accessed 25 March 2018; see also Financial Action Task Force (FATF), 'About the Non-Cooperative Countries and Territories (NCCT) Initiative' accessed 10 April 2018.

⁴³⁵ Price Water House Coopers Consulting (PWC), *Economic Crime in Thailand* (PWC 2016) 32.

⁴³⁶ Anti-Money Laundering Act 1999 amended in accordance with the AMLA (No. 4) B.E. 2556 (2013) and the Counter-Terrorist Financing Act B.E. 2556 (2013).

⁴³⁷ Since 1999, Thai government has made five times of the amendments of the AMLA 1999 in order to update, strengthen, and improve such law to meet the international AML standards (namely, the amendments in 2003, 2008, 2009, 2013, and 2015); see *Ministry of Foreign Affairs of the Kingdom of Thailand* (n 341).

⁴³⁸ Financial Action Task Force (FATF), 'Improving global AML/CFT compliance: On-going process – 21 June 2013' <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/compliance-june-2013.html>> accessed 2 March 2018.

⁴³⁹ The 2007 MER relating to the implementation of the FATF Standards rated that Thailand was considered 'Compliant' for two and 'Largely Compliant' for four (i.e. it was partially compliant or non-compliant for all six of the Core FATF Recommendations); see International Monetary Fund (IMF), *Thailand: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism* (IMF 2007).

investigate, and operate in all areas of enforcement, supervision/regulation, and compliance.⁴⁴⁰ In other words, the AMLO exercises both supervisory/regulatory and enforcement agencies under the AMLA 1999 and its related Regulations, while the NCA and STRO only have the powers and responsibilities to involve the SARs/STRs regimes.⁴⁴¹ Moreover, s. 48 of the AMLA 1999 allows the AMLO to use the law-enforcement and prosecutorial powers to restrain or seize assets and proceeds of criminals to ensure that the property cannot be in the place where there is no immediate probable cause to believe that the property may be transferred, distributed, placed, layered, or concealed.⁴⁴²

As the above reasons, it is essential to study the experiences in implementing the international standards from best practices (namely, the UK and Singapore) to find out what the alternative FIU model may be appropriate to Thailand's FIU, as well as learning the lessons from them.

3.10 Conclusion

Money laundering continues to threaten the international financial system as criminals purposely conceal the true origin of funds to transform it into legitimate funds. The effected countries must respond to this problem with appropriate legislative and regulatory framework. This chapter has presented the information in three aspects. Firstly, this thesis aims to examine the evolution of the international AML legislative framework by focusing on the roles of the FIUs under the international AML standards.⁴⁴³ Both international and national laws must support the operation

⁴⁴⁰ AMLA 1999, s. 40.

⁴⁴¹ AMLA 1999, s. 40.

⁴⁴² AMLA 1999, s. 48.

⁴⁴³ The Vienna Convention, the Palermo Convention and the Merida Convention.

of the FIUs in dealing with money laundering regimes aligned with international standards. Secondly, this thesis determines that the international soft law norms, particularly the FATF Recommendations, have had a significant influence on the development of the regional legislation such as the EU Member States. Thirdly, the thesis analyses the implementation of the international AML standards of three countries (i.e. the UK, Singapore, and Thailand) by focusing on the role of the FIUs.

The three UN Conventions and the FATF Recommendations are important instruments for the countries to implement the international AML standards regarding the role of FIUs in domestic legislation in fighting money laundering. The EU was the first region transpose the international AML into their national laws. Consequently, the thesis explores the implementation of the international AML standards into national AML legislation in the field with a particular focus on the role played by the FIUs in line with the FATF Recommendations such as the Thailand AMLA 1999, the UK POCA 2002, and the Singapore CDSA 1992 that are the main legislation in each country to deal with money laundering regime. The AML laws in the three countries provide the criminalisation, confiscation to support the role of competent authorities, and the FIUs and control the oblige entities in order to meet the international standards. The thesis also shows the relation between these instruments and the adoption of international standards to the regional and national levels. However, the differences in laws on the definition of money laundering and sanctions in each member state have brought about difficulties for competent authorities and FIU for cross-border cooperation and investigations. Then, the EU has enacted the EU AML Directives on the prevention of money laundering and terrorist financing to

facilitate the implementation of the FATF soft law standards into the EU legislation.⁴⁴⁴

The three UN Conventions comprising the Vienna Convention, the Palermo Convention and the Merida Convention do not refer exactly to the independence of the FIU in their provisions similar to the EU Directives (1MLD, 2MLD and 3MLD) do not refer to the independence of the FIU in their provisions. However, the 4MLD and the 5MLD refer to the independence of the FIU in its provision in line with the FATF Recommendation 29 requirement.⁴⁴⁵

To address these weaknesses, the thesis therefore investigates further into the best international practices such as the FATF, Egmont Group and Basel to find out how they deal with the independence of the FIU. FATF Recommendation 29 refers to the independence of the FIU, in particular emphasising on the importance of the independent role and functions of FIU under the STRs/SARs regime. The FATF cover the independence of the FIU.

Egmont Group refers to the independence of the FIU by defining the definition of the FIU, supporting the FIU in operating freely its functions such as information exchange with other FIUs or competent authorities. Similar to the Basel, it refers to the independence of the FIU, especially the Core Basel Committee Principle 2, which emphasises on independence for supervisor.⁴⁴⁶

⁴⁴⁴ *Borlini and Montanaro* (n 119) 1009, 1060.

⁴⁴⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of May 2015 (4MLD), art. 32; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 of the European Parliament and of the Council of May 2015 (5MLD).

⁴⁴⁶ Principle 2: Independence, accountability, resourcing and legal protection for supervisors; see Bank for International Settlements (BIS), 'Guidance on the application of the Core Principles for Effective Banking Supervision to the regulations and supervision of institutions relevant to financial inclusion' (BIS, September 2016) <<https://www.bis.org/bcbs/publ/d383.pdf>> accessed 29 November 2020.

This chapter has applied the best international practices to address the various issues of FIU, such as the independence of the FIU in order to minimise the interference and influence from the politics, government and industry, including to acknowledge how to implement the appropriate FIU model for Thailand. The way to replace or restrict the AML legislation regarding the inappropriate powers of the board or government to ensure the independence of the FIU.

CHAPTER FOUR

Analysis of Competent Authorities and Financial Intelligence Unit in the United Kingdom

4.1 Introduction

London is regarded as the money laundering capital of the international drug trade.¹ It is difficult to illustrate the threat of money laundering and organised crime in the United Kingdom (UK), but it leads to a number of additional criminal benefits theoretically accessible to confiscation of criminal proceeds about £1.3bn and recovery of £1bn since 2014.² The Cabinet Office and the Home Office reported that economic and social costs of money laundering in the UK are between £20bn and £40bn a year.³ Additionally, Transparency International UK found £4.4bn worth of suspicious corrupt assets across the UK, which may be linked to a high money laundering risk.⁴

¹ The National Crime Agency (NCA) stated that there are several hundreds of US\$ m of criminal money continue to be laundered via the UK financial institutions; see James Hanning and David Connett, 'London is now the global money laundering centre for the drug trade, say crime expert' (*Independent*, 4 July 2015) <<http://www.independent.co.uk/news/uk/crime/london-is-now-the-global-money-laundering-centre-for-the-drug-trade-says-crime-expert-10366262.html>> accessed 13 July 2017.

² Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018); Estimated value of laundered money is 2-5 per cent of the world gross domestic product, or \$800bn-\$2tn per year; see Marijan Cingula, Douglas Rhein, and Mustapha Machrafi (eds), 'Economic and Social Development' (31st International Scientific Conference on Economic and Social Development – 'Legal Challenges of Modern World, 7-8 June 2018) 465; It is estimated that cryptocurrencies in early 2018 reached a total value of \$800bn at world level; see Ryan Browne and Arjun Kharpal, 'Cryptocurrency market will hit \$1 trillion valuation this year, CEO of top exchange says' (*CNBC*, 13 February 2018) <<https://www.cnb.com/2018/02/13/cryptocurrency-market-to-hit-1-trillion-valuation-in-2018-kra-ken-ceo.html>> accessed 10 July 2019; British financial institutions are estimated to spend £5bn fighting financial crime per year; see also Chris Stokel-Walker, 'Why the UK is losing its costly against money laundering' (*Wired*, 10 December 2018) <<https://www.wired.co.uk/article/money-laundering-in-the-uk-russian-banks>> accessed 10 July 2019.

³ Cabinet Office and Home Office, *Extending our Reach: A Comprehensive Approach to Tackling Serious Organised Crime* (The Stationery Office 2009) 8; see also Home Office, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (Home Office 2004) 100.

⁴ Dominic Kavakeb, 'New police powers to target suspected corrupt wealth come into force' (*Transparency International* 6 February 2018) <<http://www.transparency.org.uk/press-releases/new-police>>

The UK government deals with the threats⁵ of money laundering by efficiently transposing the international anti-money laundering (AML) preventive rules into domestic legislation, i.e. the Proceeds of Crime Act 2002 and the Terrorism Act 2000.⁶ As a consequence, the UK has adopted the international AML measures in order to work more effectively when compared to the United Nations AML provisions as discussed in chapter three.

The UK's AML legislation framework illustrates that it works beyond the particular requirements of international standards,⁷ including the UN AML Conventions, the Recommendations of the FATF, and the European Union AML Directives.⁸ Moreover, the UK Criminal Finance Act 2017 provides the powers for LEAs

[powers-to-target-suspected-corrupt-wealth-come-into-force/#.W4ARd-hKjcs](#)> accessed 24 August 2018; see also KYC360, 'UK urged to crackdown on oligarchs using London as money laundering playground' (24 August 2018) <https://kyc360.com/news/uk-urged-to-crackdown-on-oligarchs-using-london-as-money-laundering-playground/?utm_source=ActiveCampaign&utm_medium=email&utm_content=KYC360+News+Briefing&utm_campaign=KYC360_RSS_DailyNews> accessed 24 August 2018.

⁵ Walker argues that a world money laundering amount of \$2.85bn yearly, strongly concentrated in North America and Europe. However, the United Nations Office on Drugs and Crime (UNODC) argues that the estimated amount of money laundered in the world yearly is 2-5 per cent of global GDP or \$2tn in current US\$; see United Nations Office on Drugs and Crime (UNODC), 'Money Laundering and Globalisation' <<https://www.unodc.org/unodc/en/money-laundering/globalization.html>> accessed 13 July 2017; see also John Robert Walker, 'How Big is Global Money Laundering?' (1999) 3(1) *Journal of Money Laundering Control* 25, 25.

⁶ The preventive measures were discussed in chapter 3 relation to the International, Regional and Domestic AML Standards. The international anti-money laundering preventive measures were set by the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The 1988 Vienna Convention), the Forty Financial Action Task Force (FATF) Recommendations and European Communities Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering. The UK illustrates that the POCA 2002, a single codified AML law, criminalise money laundering with the wide scope of money laundering offence, which increases the number of prosecutions and convictions of such offences; see Karen Harrison and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (2nd edn, Routledge 2017) 223.

⁷ Financial Conduct Authority (FCA) 'Examining the future of anti-money laundering regulations' <<https://www.fca.org.uk/news/speeches/examining-future-anti-money-laundering-regulations>> accessed 28 October 2016; see also *Harrison and Ryder* (n 6) 223.

⁸ Nicholas Ryder, *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 258.

to identify and recover money laundering and corrupt funds while the Money Laundering Regulations 2020 (MLRs) strengthen the robust AML/CFT regime in line with the international standards.⁹

The 2007 FATF MER of the UK considered the UKFIU to be generally effective with a high degree of independence.¹⁰ The UK was found to be compliant or largely compliant with 36 of the 40+9 Recommendations of the FATF. However, the 2018 FATF MER noted that the UK's AML/CTF regime is the strongest of the over sixty jurisdictions.¹¹ The FATF stated that the UK has the vital structural elements needed for an efficient AML/CTF system, including institutional and political stability, governmental accountability, rule of law, and a professional and independent Bar and judiciary.¹² Regarding the independence of the UKFIU, the 2018 MER of the UK rated 'partially compliant' on Recommendation 29 because of the lack of resources, which effect on the independence of the UKFIU. In addition, the FATF recommended that the UK should ensure that it is fully independent operationally.¹³

⁹ Transparency International UK, 'Combating money laundering and recovering looted gains': Raising the UK's game' p. 27 <[https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Transparency Intl UK Recovering Looted Gains June 2009.pdf](https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Transparency%20Intl%20UK%20Recovering%20Looted%20Gains%20June%202009.pdf)> accessed 13 December 2020; see also Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) pp. 159, 224-225 <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 13 December 2020; see House of Commons, 'Government response: Economic crime I Anti-money laundering supervision and sanctions implementation' (*The UK Parliament*, 7 March 2019). <<https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/2187/218703.htm>> accessed 13 July 2019.

¹⁰ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 204.

¹¹ Lord Bates, 'The UK's Mutual Evaluation Report by the Financial Action Task Force on its Anti-Money Laundering and Counter-Terrorist Financing regime' Statement UIN HLWS1131 (10 December 2018) <<https://questions-statements.parliament.uk/written-statements/detail/2018-12-10/hlws1131>> accessed 24 December 2020; see also *United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) pp. 159, 224-225 <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 13 December 2020.

¹² Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 21.

¹³ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 41.

The Suspicious Activity Reports (SARs) Regime Committee also acts as an independent committee to increase the value of the SARs regime in order to contribute such SARs for reducing the harm of money laundering that encourages the UKFIU as an international leader in best practice.¹⁴

In 2012, the FATF announced that Thailand was placed on the NCCT for the weak levels of compliance with its Recommendations.¹⁵ Furthermore, the International Monetary Fund (IMF) noted that Thailand needed to improve its legislative framework.¹⁶ In 2013 the FATF removed Thailand from the NCCT list because Thailand enacted AML legislation that was in line with the FATF requirements.¹⁷ However, the IMF identified that Thailand needed to enhance AML legislative framework regarding financial supervisory and regulatory measures to meet international standards.¹⁸ As mentioned above, Thailand needs to study the practice from the UK AML legislation. Thus, the chapter focuses on legislation relating to the UK's AML policies and seeks to determine how effective the UK AML policies and the Financial Intelligence Unit (FIU) are.¹⁹ Furthermore, this chapter explores additional AML strategies that Thailand should learn to implement to improve the AML policies.

¹⁴ Serious Organised Crime Agency (SOCA), *Annual Report 2009: Suspicious Activity Reports Regime* (SOCA 2009) 5.

¹⁵ Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press release: FATF removes Thailand from Public Statement on Money Laundering/Financing of Terrorism' (1 May 2013) <<http://www.mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>> accessed 21 July 2019

¹⁶ International Monetary Fund (IMF), *Thailand: Financial System Stability Assessment* (IMF 2008) 1.

¹⁷ See discussion in chapter 3 and 6.

¹⁸ *International Monetary Fund* (n 16) 1.

¹⁹ This chapter includes considering the background of the anti-money laundering policy and legislation of regulating and prosecuting money laundering, plus examining the financial institutions and relevant competent regulatory bodies.

Therefore, it is necessary to study how the UKFIU meets the requirements of international standards, in particular the FATF Recommendation 29 regarding the independence of the UKFIU.²⁰ The Recommendation refers to the independence of the FIU without any unjustified interference and influence, whether it is governmental, political or industrial in order to prevent prejudicing its operational independence and developing the FIU's core functions in dealing with the SARs/STRs regime.²¹ As mentioned above, this thesis argues that the lack of independence of the FIU can cause the weakness of the FIU under the SARs regime. The study of the independence of the UKFIU could address the current issues that Thailand has faced and suggest the appropriate approach for Thailand to meet the international standards. The next section examines the AML legal legislation regarding the role of FIU in the UK.

4.2 The United Kingdom Anti-Money Laundering Legislative Framework

The UK's AML policy fully complied with the international standards, best practices, and industry guidelines in order to fight money laundering.²² The 2018 FATF MER of the UK reported that the UK's AML/CTF regime was the most robust of the over 60 jurisdictions to date and also received the highest rating possible in four out of the eleven areas of the MER, gained a rating of 'substantial' in a further four areas.²³ Such the report highlighted the UK's efforts on understanding and co-

²⁰ Financial Action Task Force (FATF) Recommendation 29.

²¹ Interpretative Note to the FATF Recommendation 29; see also Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom Fourth Round Mutual Evaluation Report* (FATF 2018) 224.

²² Nicholas Ryder, 'The fight against illicit finance: A critical review of the labour government's policy' (2011) 12(3) *Journal of Banking Regulation* 252, 268.

²³ John Glen, 'The UK's Mutual Evaluation Report by the Financial Action Task Force on its Anti-Money Laundering and Counter-Terrorist Financing regime' Statement UIN HCWS1162 (UK Parliament, 10 December 2018) <<https://questions-statements.parliament.uk/written-statements/detail/2018-12-10/HCWS1162>> accessed 23 December 2020.

ordinating the UK's response to the financial crime; working with international partners to tackle financial crime via a robust legal AML framework; aggressively investigating and prosecuting money laundering offences; applying effective AML measures to deal with terrorist finance; preventing the abuse of FIs from criminals; as well as supporting an efficient international implementation of financial sanctions against CTPF.²⁴ However, the FATF rated the UK's implementation of the Recommendation 29 'partially compliant' in particular the independence of the UKFIU.²⁵

The UK has attempted to enact the robust legal framework to fight money laundering and its associated crimes. Several statutes criminalised money laundering offences such as the Drug Trafficking Offences Act 1986, the Criminal Justice Act 1988, and Drug Trafficking Act 1994 and the Proceeds of Crime Act 2002 (POCA).²⁶ Furthermore, the UK enacted the Money Laundering Regulations 2020 as a significant AML system to impose obligations on reporting entities such as financial institutions (FIs) to detect and report suspicious transactions regarding money laundering via its money laundering reporting officer (MLRO) to the UKFIU (i.e. National Crime Agency or NCA) for further investigation.²⁷ Additionally, the Fifth EU AML Directive (5MLD) empowers the FIUs to trace cross-border flows of illicit money at

²⁴ John Glen, 'The UK's Mutual Evaluation Report by the Financial Action Task Force on its Anti-Money Laundering and Counter-Terrorist Financing regime' Statement UIN HCWS1162 (UK Parliament, 10 December 2018) <<https://questions-statements.parliament.uk/written-statements/detail/2018-12-10/HCWS1162>> accessed 23 December 2020.

²⁵ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 224.

²⁶ Drug Trafficking Offences Act 1986, s. 24(1) provided the criminalisation of money laundering, Part 7 of the POCA 2002.

²⁷ The MLRs 2017 also focuses on an internal controls in business; see *Harrison and Ryder* (n 6) 205; see also National Crime Agency (NCA), 'Who we are' <<https://nationalcrimeagency.gov.uk/>> accessed 14 July 2019.

an early stage via improving intelligence-sharing with foreign partners.²⁸ The Financial Conduct Authority (FCA) and the Joint Money Laundering Steering Group (JMLSG)²⁹ have issued specific AML guidance and rules as the secondary regulations for the obliged entities.³⁰

The UK's money laundering policy is organised by the HM Treasury through the FCA³¹ and the Crown Prosecution Service (CPS).³² The FCA deals with the EU standards in terms of pre-placement AML obligations (namely, the gold standard)³³ and the FCA can impose financial penalties on any firm and/or individual who violates its AML FCA regulations.³⁴ The UK's AML regulations go beyond the EU requirements. The Fourth Directive requires the Member States to set 'Company Beneficial Ownership registers parallel to own Persons with Significant Control Register' as well as securing exemptions for certain sectors of the gambling industry and e-money sector.³⁵ Consequently, the Directive could increase the number of SARs submitted to the UK FIU, which handles the dissemination of such information to the relevant law enforcement agencies.³⁶ The NCA reported that between 2015 and 2016 there was an increase of 44 per cent in the number of SARs submitted which is

²⁸ Mariola Marzouk, 'Time to give the UK financial intelligence unit a stronger role' (1 March 2019) <<https://www.baesystems.com/en/cybersecurity/blog/time-to-give-the-uk-financial-intelligence-unit-a-stronger-role>> accessed 14 July 2019.

²⁹ See discussion in chapter 3.

³⁰ *Harrison and Ryder* (n 6) 205.

³¹ *ibid* 46.

³² Section 327, 328 and 329 of Part 7 of the Proceeds of Crime Act 2002; see also *R v Rollins* [2010] UKSC 39.

³³ *Harrison and Ryder* (n 6) 47.

³⁴ The POCA 2002 provides power to the FCA for imposing financial sanctions and initiating the money laundering offence proceedings for the financial institutions which breach the FCA's rules.

³⁵ Home Treasury, 'Transition of the Directive on the prevention of the use of the financial system for money laundering or terrorist financing' (16 February 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564813/impact_assessment_transposition_of_4MLD.pdf> accessed 23 January 2017.

³⁶ Home Office and HM Treasury, *Action Plan for Anti-Money Laundering and Counter-Terrorist Finance* (Home Office 2016) 43.

associated with firms attempting to protect themselves from money laundering investigations and/or prosecutions.³⁷ In order to achieve its criminal intelligence function, the NCA works in cooperation with international and national counterparts (such as the private sector, competent authorities, and foreign FIUs) to manage necessary information regarding SARs under the POCA 2002.³⁸

Since its introduction in 2002, the POCA has had an impact on the UK's capacity in restraining, confiscating, recovering the proceeds of crime, and prosecuting the offences of money laundering.³⁹ Therefore, the comparison study between the UK, Thailand and Singapore will help the thesis answer the research questions and achieve its research objectives. The next section examines the functions of competent authorities and the national FIU in fighting money laundering.

4.3 The Competent Authorities and Financial Intelligence Unit in the United Kingdom

Each country should support its competent authorities and FIUs in fighting money laundering and terrorist financing with appropriate and sufficient monetary, technical and human support.⁴⁰ Although The FATF did not precisely define 'competent authorities,' it focused on the requirement for the FIU as identified by the

³⁷ Aperia Intelligence, 'UK publishes 2017 National Risk Assessment of money laundering and terrorist financing' (October 2017) Financial Crime Digest 1, 11 <https://www.aperiointelligence.com/wpcontent/uploads/2015/03/aperio_intelligence_fcd_october2017.pdf?utm_source=October+2017++Financial+Crime+Digest&utm_campaign=b552c9bf13Aperia+Intelligence+FCD+October+2017&utm_medium=email&utm_term=0_1bcf699e5b-b552c9bf13-198192249> accessed 3 November 2017.

³⁸ *Home Office and HM Treasury* (n 36) 35.

³⁹ Financial Action Task Force (FATF), *Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: United Kingdom of Great Britain and Northern Ireland* (FATF 2007) 1.

⁴⁰ The Financial Action Task Force Recommendation 30.

Egmont Group.⁴¹ The FIU of each country has been established under the Egmont Group adopted Article 7 (1)(b) of the 2000 UN Convention against Transnational Organised Crime (Palermo Convention 2000)⁴² and Article 14 (1)(b) of the UN Convention against Corruption 2003.⁴³ The FIUs refer to all administrative and law enforcement agencies, including the FIU and related supervisors, working towards the fighting against money laundering and terrorist financing.⁴⁴ The Egmont Group determines that financial entities must submit suspicious transactions or suspicious activities to competent authorities.⁴⁵

The FCA and NCA also identify themselves as the competent authorities for monitoring the reporting obligations under the MLRs 2020, including arrangements to provide appropriate feedback on the SARs that they have received from the reporting entities.⁴⁶ Ryder divided the competent authorities into three types, including

⁴¹ FATF Recommendations 26 - 34 concentrate upon competent authorities including transparency of legal persons; See also International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 17.

⁴² Article 7 (1)(b) is as follows: (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering; see also Waleed Alhosani, *Anti-Money Laundering: A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units* (Palgrave MacMillan 2016) 5.

⁴³ Article 14 (1)(b) is as follows: (b) Without prejudice to art 46 of this Convention that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that ends, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

⁴⁴ FATF Recommendation 40.

⁴⁵ *International Monetary Fund and World Bank* (n 41) 41; see also Musonda Simwayi and Muhammed Haseed, 'The role of Financial Intelligence Units in combating money laundering: A comparative analysis of Zambia, Zimbabwe and Malawi' (2012) 15(1) *Journal of Money Laundering Control* 112.

⁴⁶ *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulation 2017*; see *Harrison and Ryder* (n 6) 29.

primary authorities, secondary authorities and tertiary authorities.⁴⁷ The definition of the competent authorities was explained in chapter three.

4.3.1 The Role of Primary Authorities

The Egmont group aims to enhance the communication among FIUs⁴⁸ internationally to assist in combating money laundering problem.⁴⁹ Therefore, the UK's AML policy has been implemented in line with the international standards with international best practices and industry guidelines such as the FATF Recommendations.

4.3.1.1 HM Treasury

HM Treasury is responsible for the UK's AML policy and its implementation of international standards⁵⁰ and it acts as the UK's representative at the FATF.⁵¹

⁴⁷ *Ryder* (n 8) 25.

⁴⁸ The FIUs aim to enforce and regulate AML provisions that were designed by the Bank of International Settlements (BIS), the Organisation of Economic Cooperation and Development (OECD), the G8, G20, EU members' finance and justice ministers, several departments in the United Nations, the World Bank, the International Monetary Fund (IMF) and the Financial Stability Forum (FSF) in order to reduce and evaluate the money laundering regime; see also Brigitte Unger, *The Scale and Impacts of Money Laundering* (Edwards Elgar 2007) 6.

⁴⁹ Mark Simpson, 'International initiatives' in Mark Simpson, Nicole Smith, and Arun Srivastava (eds) *International Guide to Money Laundering Law and Practice* (3rd edn, Bloomsbury Professional 2010) 202.

⁵⁰ William C Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financial of Terrorism* (Council of Europe 2003) 258; see also Financial Action Task Force (FATF), 'About the Non-Cooperative Countries and Territories (NCCT) Initiative' <[<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/aboutthenon-cooperativecountriesandterritoriesnctinitiative.html?hf=10&b=0&s=desc\(fatf_releasedate\)>](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/aboutthenon-cooperativecountriesandterritoriesnctinitiative.html?hf=10&b=0&s=desc(fatf_releasedate))> accessed 4 February 2018.

⁵¹ Financial Action Task Force (FATF), *Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism – United Kingdom* (Financial Action Task Force 2007) 24.

HM Treasury facilitates the robust cooperation between the NCA and competent authorities in line with the proportionality, engagement and effectiveness.⁵² For instance, it co-chairs the Money Laundering Advisory Committee with Home Office⁵³ in order to review and improve any industry guidelines regarding AML/CTF.⁵⁴ HM Treasury assesses the programme to create an understanding of the size of total money laundering in the UK via the process of the SAR regime within the responsibility of the NCA.⁵⁵ The next section will explain the Home Office in respect of competent authority to cooperate with the UKFIU.

4.3.1.2 Home Office

The Home Office deals with the police force in the UK (England and Wales) and manages the NCA.⁵⁶ With regard to money laundering, the NCA acts as the UKFIU to monitor and enforce the regulated sector and individuals to comply with AML regulations proficiently,⁵⁷ as well as a significant role as an asset recovery scheme⁵⁸ and the mutual legal assistance regime.⁵⁹ The Home Office chairs the UK

⁵² HM Treasury, *The Financial Challenge to Crime and Terrorism* (HM Treasury 2007) 15.

⁵³ Oxford Analytical, 'Country report: Anti-money laundering in the United Kingdom' in Mark Pieth and Gemma Aiolfi, *A Comparative Guide to Anti-Money Laundering a Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 271.

⁵⁴ The UK government is working with the European Commission to ensure that cross-European legislation is strong enough to prevent the use of the financial system for money laundering; see Royal Institute for Chartered Surveyors, *Money Laundering Guidance* (Royal Institute for Chartered Surveyors 2011); see also HM Treasury, 'Policy paper: Preventing money laundering' (Office of Financial Sanctions Implementation 5 June 2013) <<https://www.gov.uk/government/publications/preventing-money-laundering/preventing-money-laundering>> accessed 10 September 2016.

⁵⁵ HM Treasury and Home Office, *The Financial Challenge to Crime and Terrorism* (HM Treasury 2007) 28.

⁵⁶ Home Office, 'What we do' <<https://www.gov.uk/government/organisations/home-office>> accessed 10 September 2016.

⁵⁷ *Ryder* (n 8) 156.

⁵⁸ 'There are four routes for recovery of criminal assets: criminal confiscation (post-conviction); civil recovery (a form of non-conviction confiscation); cash seizure and forfeiture; taxation'; see also HM Treasury and Home Office, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (HM Treasury 2015) 16.

⁵⁹ *Ryder* (n 8) 80.

Money Laundering Advisory Committee (MLAC), which is a supervisory forum for significant stakeholders to coordinate AML/CFT regime and review its fruitfulness.⁶⁰ The Home Office also launched guidance for the reporting entities to comply with the SARs and the identity of those who make them.⁶¹ The Home Office issued a Circular in order to provide AML guidance, which the UK FIU and law enforcement authorities must be taken into account when making a decision whether to grant or refuse consent to reporting entities and their clients pursuant to s 335 of POCA 2002.⁶² The Home Office expected that the ‘consent policy’ (making of an authorised disclosure and the obtaining of proper consent) is one of the defences to the money laundering offences of the ss. 327-329 of the POCA 2002.⁶³

The UKFIU published a practical guidance to advise the REs regarding how and what to report the SARs in order to improve the quality of the SARs and also enhancing a better understanding of the SARs among the reporting sector.⁶⁴ The Home Office asked the Law Commission to review limited perspectives of the AML

⁶⁰ The Committee comprises of group of accountancy, legal, and the public sector (i.e., HMRC, FCA, the Gambling Commission and the Insolvency Service); see also *HM Treasury and Home Office* (n 55) 18, 29; see also Joint Money Laundering Steering Group (JMLSG), *Prevention of Money Laundering/Combating Terrorist Financing: Guidance for the UK Financial Sector Part 1* (JMLSG 2007)153 <www.jmlsg.org.uk/download/7092> accessed 28 February 2017.

⁶¹ Home Office, ‘Home Office Circular 53/2005: Money laundering: the confidentiality and sensitivity of suspicious activity reports (SARs) and the identity of those who make them’ <<http://nationalcrimeagency.gov.uk/publications/suspicious-activity-reports-sars/17-home-office-circular-53-2005-confidentiality-and-sensitivity-of-sars/file>> accessed 28 February 2017.

⁶² Parliament, ‘Circular 029/2008, Proceeds of Crime Act 2002: Obligations to Report Money Laundering – the consent regime’ <<https://publications.parliament.uk/pa/ld200809/ldselect/ldEU-com/132/9031113.htm>> accessed 29 September 2017.

⁶³ House of Lords of European Union Committee, *Money Laundering and the Financing of Terrorism Volume II: Evidence* 19th Report of Session 2008-2009 (The Stationery Office Limited 2009) 72.

⁶⁴ Law Commission, ‘Anti-money laundering the SARs regime’ (18 June 2019) <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf> accessed 24 December 2020.

regime in Part 7 of the POCA 2002 in order to reform the system of voluntary disclosure, namely ‘consent regime’⁶⁵ The Review emphasised on the consent provisions,⁶⁶ the disclosure offences in order to enhance the prevention, detection, investigation, prosecution of money laundering and terrorist financing in the UK.⁶⁷ The reduces the defensive reporting of suspicious transaction under the consent and disclosure legislation, including the cost of AML compliance of the business under the responsibilities of the SARs and the effect of the suspension of transactions under the consent provision on the REs.⁶⁸ The UKFIU agreed that the recommendations of the Law Commission report on the SARs increase the independence of the UKFIU, improve effectiveness of the SAR regime, in particular enhancing the quality of the SARs, and reducing the burdens of AML compliance of the REs.⁶⁹

The UKFIU and relevant law enforcement authorities (LEAs) consider to grant or refuse consent, but in 2008 there were 54.5% of requests for consent, which the UK FIU (SOCA) handed over to LEAs. As a result, a decision to refuse consent causes the legal transaction to be delayed, which can lead to financial damage.⁷⁰ In 2014, the Home Office and the NCA also campaigned the ‘Prevent ’to enhance behavioural change in the reported sector by educating about SARs aiming to increase

⁶⁵ Law Commission, ‘Anti-Money Laundering’ <<https://www.lawcom.gov.uk/project/anti-money-laundering/>> accessed 24 December 2020.

⁶⁶ The Proceeds of Crime Act 2002, ss. 21 to 21ZC, 327 to 329 and 335, 336 and 338.

⁶⁷ The Proceeds of Crime Act 2002, ss. 19, 21A, 21D, 330 and 333A.

⁶⁸ Money Laundering costs the UK economy \$37bn annually; see HM Treasury and Home Office, ‘National risk assessment of money laundering and terrorist financing 2020’ (HM Treasury 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf> accessed 24 December 2020.

⁶⁹ The UKFIU sits within the NCA and is responsible for receiving, analyzing, and disseminating SARs; see Law Commission, ‘Anti-Money Laundering’ <<https://www.lawcom.gov.uk/project/anti-money-laundering/>> accessed 24 December 2020; see also Law Commission, ‘Anti-money laundering: the SARs regime’ Law Com No 384 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf> accessed 24 December 2020.

⁷⁰ *Parliament* (n 62).

awareness of those sectors and the quality of those submitted.⁷¹ Under the 5MLD, the 2017 MLRs extended the moratorium period for ensuring that the NCA and LEAs have sufficient time to collect more evidence.⁷²

Then, the Sixth Anti-Money laundering Directive (6MLD), replaced the 5MLD, addresses a lack of legal clarity in some individual cases and the lack of recognition of certain crimes and security violations by corporations.⁷³ The directive also hardens the definitions of offences and punishments greater than the 5MLD by focusing on sanctions for both business and potential criminals in order to solve the previous issues. For example, the minimum imprisonment punishment for ML crimes increases from one to four years similar to civil sanctions rise to €5m (including their equivalents in other currencies).⁷⁴ Then the UK Money Laundering Regulations 2020 (MLRs) provide that supervisors and REs have to comply their own risk assessments under the National Risk Assessment (NRA) in line with the 6MLD.⁷⁵ The next section focuses on the Foreign and Commonwealth Office, which play roles as a primary authority in fighting money laundering.

⁷¹ National Crime Agency (NCA), ‘Suspicious Activity Reports (SARs) Annual Report 2014’, at 22 <<http://www.nationalcrimeagency.gov.uk/publications/464-2014-sars-annual-report/file>> accessed 28 February 2017.

⁷² The UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulation 2017 was implemented Anti-Money Laundering (AMLD V) – Directive (EU) 2018/842.

⁷³ The 2018/1673 Directive of the European Union (6MLD) sets its own deadline on 3 December 2020, for its implementation.

⁷⁴ Electronic Identification, ‘AML6, an additional step against money laundering’ (22 November 2020) <<https://www.electronicid.eu/en/blog/post/aml6-sixth-anti-money-laundering-directive/en>> accessed 14 December 2020.

⁷⁵ HM Treasury and Home Office, ‘National risk assessment of money laundering and terrorist financing 2020’ Presented to Parliament pursuant to Regulation 16 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Home Treasury 2020) 6 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf> accessed 24 December 2020.

4.3.1.3 Foreign and Commonwealth Office

The Foreign and Commonwealth Office (FCO) supports the UK's interest overseas⁷⁶ and cooperates with HM Treasury to overcome any loopholes in the legislation and practices of several countries.⁷⁷ The UK Government and the FCO have attempted to deal with money laundering by cooperating with the UK FIU and other governmental and law enforcement bodies through enhanced cooperation and information-sharing. The UK is facing the cross-jurisdictional problems (e.g. tax evasion) as the loopholes in the laws and practices of several countries limited the implementation of International Treaties and Conventions.⁷⁸

With regard to money laundering, the FCO has a limited role under the international agreements, Treaties, and Conventions which restrict its power to implement the AML instruments directly.⁷⁹ However, international cooperation also requires a consistent law in each country. For example, the Serious Fraud Office (SFO), which conducts investigation and prosecution under the integrated 'Roskill Model,'⁸⁰ concentrates on complex or serious cases of corruption, bribery and fraud.

⁷⁶ The FCO is responsible for safeguarding the UK's national security by countering terrorism and weapons proliferation, and working to reduce conflict building the UK's property by increasing exports and investment, opening markets, ensuring access to resources, and promoting sustainable global growth supporting British nationals around the world through modern and efficient consular services; see also Foreign and Commonwealth Office (FCO), 'About us' <<https://www.gov.uk/government/organisations/foreign-commonwealth-office/about>> accessed 17 September 2016.

⁷⁷ Timon Molloy, 'Money Laundering – a view from the Foreign and Commonwealth Office' (*Money Laundering Bulletin*, 1 May 2001) <<https://www.moneylaunderingbulletin.com/risksandcontrols/briberyandcorruption/money-laundering--a-view-from-the-foreign-and-commonwealth-office--1.htm>> accessed 28 July 2019.

⁷⁸ *ibid.*

⁷⁹ For example, case of *R v Secretary of State for FCO* related to list of persons subject to sanction under the United Nations Security Council Resolution 1617; see *R (on the application of Youssef) v Secretary of State for Foreign and Commonwealth Affairs* [2013] EWCA Civ 1302; [2014] 2 W.L.R. 1082; see also *Ryder* (n 8) 80.

⁸⁰ Alison Geary and Lloyd Firth, 'Should we worry (yet again) about the future of the UK's Serious Fraud Office?' (2017) 36(8) *Of Counsel* 5, 5.

In the case of *Serious Fraud Office v Rolls-Royce Plc*⁸¹ and the international cooperation between Thailand and the UK government, the UK withheld the information from Thailand in relation to the corruption accusations because of the issues concerning the country's human rights record.⁸²

According to the international cooperation, the Thai Criminal Code provided different penalties, which include the death penalty,⁸³ for Thai government officials who are convicted of bribery. However, there was no one to be executed for such crime.⁸⁴ The military government enacted new anti-corruption legislation that extends the maximum punishment of capital penalty to non-Thais working for international bodies and foreign governments.⁸⁵ Another provision of the new anti-corruption legislation determining regulation of limitations of 20 years is no longer applied if the convicted person flees the country, but the previous law of limitations would have permitted him to return in 10 years.⁸⁶ The differences between the laws in Thailand and the UK may help answer the question regarding the effectiveness of the Thailand FIU. Therefore, this conflict needs to be resolved by international organisations and both governments for the purpose of better international cooperation among the FIUs. The differences in the current content of legislation between the UK and Thailand can reflect the impact of the information-sharing and international cooperation of Thailand's FIU.

⁸¹ [2017] Lloyd's Rep. F.C. 249.

⁸² This issue was discussed in chapter 3, see Jonathan Fisher, 'Jonathan Fisher QC quoted in Law Society Gazette on Thailand Corruption Probe' (*Bright Line Law*, 15 March 2017) <<https://www.brightlinelaw.co.uk/News/Jonathan-fisher-qc-quoted-in-law-society-gazette-on-thailand-corruption-probe.html>> accessed 25 August 2017.

⁸³ Section 19 of the Thai Criminal Code.

⁸⁴ Guardian, 'New anti-corruption law in Thailand extends death penalty to foreigners' (*Guardian*, 15 July 2015) <<https://www.theguardian.com/world/2015/jul/15/new-anti-corruption-law-in-thailand-extends-death-penalty-to-foreigners>> accessed 2 October 2017.

⁸⁵ Section 13 of Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015) as amended by the Thailand's Organic Act on Counter Corruption B.E. 2542 (1999).

⁸⁶ Section 11 of Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015) as amended by s. 83 Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015).

4.3.2 The Role of Secondary authorities

The definition of the secondary authorities was previously explained in Chapter 3. This part is going to present the role of secondary competent authorities in fighting money laundering regime as follows:

4.3.2.1 Financial Services Authority

As a result of financial crimes and scandals such as the breakdown of the Barings Bank⁸⁷ and failure of Bank of Credit and Commerce International (BCCI),⁸⁸ the Labour Government enacted the Financial Services and Market Act (FSMA) 2000 in order to decrease financial crime, eliminate the possible risk of regulated companies of being misused by criminal launderers, and protect the UK financial market. In 1997 the Government announced its plans to create a single super-regulator for the UK financial services sector, the FSA.⁸⁹ The FSA had the expertise to deal with the complexity of risks and monitor financial institutions' risks.⁹⁰ Financial institutions must deal with risk management in order to prevent their business from money laundering and related crimes.⁹¹

The FSA supported consumer protection, strengthens trust in the economic system, public awareness, financial stability, market confidence, and encourages

⁸⁷ Mohammed B Hemraj, 'The regulatory failure: the saga of BCCI' (2005) 8(4) *Journal of Money Laundering Control* 346, 350.

⁸⁸ *Harrison and Ryder* (n 6) 27.

⁸⁹ Ev Z Lomicka, 'Reforming U.K. financial services regulation: the creation of a single regulator' (1999) *Journal Business Law* 480, 482.

⁹⁰ Dalvinder Singh, *Banking Regulation of UK and US Financial Markets* (Ashgate 2007) 17; see Marianne Ojo, 'The growing importance of risk in financial regulation' (2010) 11(3) *The Journal of Risk Finance* 249, 257; see Marianne Ojo (ed), *Uncertainties and Risk Assessment in Trade Relations* (IGI 2018) 344; see also Grant Kirkpatrick, 'The corporate governance lessons from the financial crisis' (*Financial Market Trends* 2009) 1, 12 <<https://www.oecd.org/finance/financial-markets/42229620.pdf>> accessed 5 February 2018.

⁹¹ Joint Money Laundering Steering Group (JMLSG), *Prevention of Money Laundering/Combating Terrorist Financing: 2017 Consultation Version* Guidance for the UK Financial Sector Part 1 (JMLSG 2017) 22.

public understanding of the financial market.⁹² In relation to money laundering, the FSA is a prosecuting authority for the money laundering offences created under Part 7 of the Proceeds of Crime Act 2002,⁹³ and it imposes financial sanctions on the regulated sector for breaches of its AML regulations.⁹⁴ This is a ‘credible deterrence’ policy to deal with financial crime.⁹⁵ The FSA has always applied prosecution under the laws relating to its memorandum and articles of association. For example, they have the power to prosecute offences of money laundering subject to ss 327 and 328 of the POCA 2002.⁹⁶ The FSA can also publish Decision Notices for compliance matters that then they have been referred to the Tribunal.⁹⁷ Moreover, as part of the ‘credible deterrence policy’, the FSA had the power to prohibit authorised persons and firms from operating any regulated action. Especially, the Money Laundering Sourcebook contained the FSA’s regulations which provide its powers to control money laundering.⁹⁸ For example, there are a series of preventive measures through

⁹² Nicola Padfield, ‘Country Report: Anti-Money Laundering Rules in the United Kingdom’ in Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 268.

⁹³ Financial Services and Market Act 2000, s 402.

⁹⁴ Financial Services and Markets Act 2000, s 206(1).

⁹⁵ For a more detailed discussion on the credible deterrence strategy see Wilson Gary and Wilson Sarah, ‘The FSA, “credible deterrence”, and criminal enforcement – a “haphazard pursuit”?’ (2014) 21(1) *Journal of Financial Crime* 4, 10.

⁹⁶ The technique of statutory drafting is to be found in the provisions of POCA 2002 which are in play in the present case. Section 327(1) provides that a person commits an offence if he (a) conceals criminal property; (b) disguises criminal property... etc. Section 328 provides that “a person commits an offence if he enters into or becomes concerned in an arrangement which.... A person guilty of an offence under s 327 or s 328 is liable to the maximum penalties specified in s 334. It follows that before the enactment of FSMA 2000, the FSA could have prosecuted the criminals for offences contrary to ss 327 and 328 of POCA 2002, if POCA 2002 has been in force at that time; see also *R v Rollins* [2010] UKSC 39; Nicholas Ryder, ‘The Financial Services Authority, the reduction of financial crime and the money launderer: a game of cat and mouse’ (2008) 67(3) *Cambridge Law Journal* 635, 635.

⁹⁷ Travers Smith Regulatory Investigations Group, ‘FSA enforcement action: themes and trends’ (2011) 87 *Compliance Officer Bulletin* 1, 2.

⁹⁸ Relating to FSA’s mission on money laundering regime in the Money Laundering Sourcebook, it will be similar to the powers in the Money Laundering Regulations 1993 (MLR 1993); see also Financial Services Authority (FSA), *Money Laundering Handbook* (Financial Services Authority, 2006). The FSA adopted the MLR 1993 via the FSMA 2000 Regulations (Relating to Money Laundering Regulations) 2001, S.I. 2001/ 1819.

the Senior Management Arrangements, Systems and Controls (SYSC) part of its Handbook.⁹⁹ All firms must comply with Part 3 of the SYSC as the conduct of their businesses.¹⁰⁰ A firm must comply with the SYSC, as mentioned in the SYSC 3.2.6 R in relation to the compliance of the risk identification for countering the risk of financial crime as well as the SYSC 3.2.10 G in relation to the firm's function for improving a firm responsibility to take into account the detail of risk-assessment responsibility effectively.¹⁰¹

The FSA has focused on its preventive measure, including written warnings as well as demanding all financial institutions to normally report its measures used to solve such problem.¹⁰² Nevertheless, FSA used financial sanctions when the preventive measures were unsuccessful. From 30 November 2001 to 2007 FSA had dealt with 167 cases concerning a pattern of financial crime, but only 18 cases had been involved with AML compliance. Of these, FSA had three written warnings, two concerned with the firm's permissions, only one involved with skilled persons report under s 166 of FSMA 2000, and eight resulted in financial sanctions. But, the remaining cases did not find any guilty.¹⁰³ The FSA had fined several cases, but the largest financial sanction for the AML controls failings in respect of significant deficiencies of adequate oversight of the new customer relationships' formation and

⁹⁹ The Money Laundering Sourcebook was taken place by a principles-based approach in the SYSC which is the part of the FSA's Handbook.

¹⁰⁰ Financial Conduct Authority (FCA), *FCA Handbook Senior Management Arrangements, Systems and Controls* (FSA 2006) SYSC 3.1.1; see also Nicholas Ryder, 'The financial crisis and financial crime in the UK: A critical analysis of the response by financial regulatory agencies' (2017) 38(1) *Company Lawyer* 4, 11.

¹⁰¹ SYSC 3.2.6 R and 3.2.10 G of the Senior Management Arrangements, Systems and Controls (SYSC); see Law Teacher, 'The Financial Services Authority' <<https://www.lawteacher.net/free-law-essays/finance-law/the-financial-services-authority.php>> accessed 25 August 2017.

¹⁰² Financial Action Task Force (n 39) 175.

¹⁰³ FSMA 2000, Part XI, s 166; see also *Financial Action Task Force* (n 39) 173.

the international trade book in the UK ever imposed was the Deutsche Bank AG that was fined £163m.¹⁰⁴

Consequently, during the 2008 financial crisis, the UK faced several breaches of regulation. The FSA had not yet succeeded in investigating and prosecuting financial crime, but only emphasising the preventive measures and financial sanctions to deal with a form of financial crime, and it was able to reduce the financial crime as its objectives in FSMA 2000. The history of FSA showed that the UK government addressed the problem of money laundering by replacing with the new agency, Financial Conduct Authority (FCA), to ensure the achievement of the UK government's objective to reduce financial crime effectively. The next section explains the role of the FCA towards fighting the money laundering regime.

4.3.2.2 Financial Conduct Authority

Due to the 2007-08 financial crisis which resulted in the failure of Northern Rock,¹⁰⁵ the Halifax Bank of Scotland¹⁰⁶ and the collapse of the Bradford &

¹⁰⁴ Financial Conduct Authority (FCA), 'FCA fines Deutsche Bank 3163 m. for serious anti-money laundering controls failings' (31 January 2017) <<https://www.fca.org.uk/print/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure>> accessed 31 January 2018; between 2001 and 2007 FSA fined eight firms for breach of FSA regulations, i.e. Royal Bank of Scotland £750,000 in 2002, Northern Bank Limited £1,250,000 in 2003, Abbey National companies £2,320,000 in 2003, Bank of Scotland £1,250,000 in 2004, Raiffeisen Zentralbank Osterreich £150,000 in 2004, Bank of Ireland £375,000 in 2004, Investment Services UK Limited & Mr Ram Melwani £175,000 in 2005 and Langtons Limited £63,000 in 2006; see *Financial Action Task Force* (n 39) 175; In May 2010, the FSA imposed fine on Simon Eagle £2.8m for his action in an illegal share-ramping plan. Moreover, it imposed hefty fines to Henry Cameron, a former CEO of Sibir Energy Plc, and David Jones, a finance director of Northern Rock; see also *Travers Smith Regulatory Investigations Group* (n 97) 1, 2.

¹⁰⁵ The failure of Northern Rock was in mid-2007.

¹⁰⁶ The bankruptcy of HBOS plc (HBOS) was in October 2008.

Bingley,¹⁰⁷ the UK Coalition Government¹⁰⁸ attempted to improve the financial regulatory system by empowering the Bank of England with more control of macro-prudential and micro-prudential regulations.¹⁰⁹ The crisis illustrated that the FSA's failure in dealing with the 2008 financial crisis in the UK.¹¹⁰ The UK government provided the supervisory power to the Bank of England in order to take account of the supervision of the financial institutions for controlling the financial entities to comply with the AML policies.¹¹¹ Under the Financial Services Act 2012, the FCA replaced the FSA and became a competent agency for controlling most credit and financial institutions in compliance with the MLRs 2017.¹¹² Then the UK has implemented the EU 6MLD into the UK MLRs 2020, which stress on criminal offences and criminal activity, including the minimum term is determined for more than six months with serious cases calling for a penalty of a maximum term of imprisonment of at least four years.¹¹³ The Financial Services Act 2012 amended FSMA 2000 and provided the power to the FCA to issue a warning notice to all firms on their financial

¹⁰⁷ The collapse of Bradford & Bingley Bank was in September 2008.

¹⁰⁸ HM Treasury, 'Issue' (8 May 2015) <<https://www.gov.uk/government/publications/2010-to-2015-government-policy-financial-services-regulation/2010-to-2015-government-policy-financial-services-regulation>> accessed 12 September 2016.

¹⁰⁹ In the banking system, the Coalition government's agreement announced various reforms to "avoid a repeat of Labour's financial crisis" and stimulate the flow of credit, including the introduction of a banking levy, and controlling unacceptable bankers' bonuses and regulatory reform. This system was managed by the 'tripartite system of banking regulation (i.e. HM Treasury, the FSA and the Bank of England); see also HM Government, 'The Coalition: Our programme for government' (David Cameron, Nick Clegg and member of the Cabinet, 20 May 2010, p. 9). <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf> accessed 12 September 2016.

¹¹⁰ Chris Dyke, 'The FCA – a more aggressive enforcer of financial crime?' (2 April 2013) <<https://www.lexology.com/library/detail.aspx?g=1fb76460-7abc-4b03-89cf-84be5cbc93e4>> accessed 17 October 2017.

¹¹¹ HM Government, A New Approach to Financial Regulation: Consultation on Reforming the Consumer Credit Regime (HM Treasury 2010).

¹¹² Money Laundering Regulations 2007.

¹¹³ Planet Compliance, '6MLD – The EU's 6th Anti-Money Laundering Directive in a Nutshell' (10 February 2020) <<https://www.planetcompliance.com/2020/02/10/6mld-the-eus-6th-anti-money-laundering-directive-in-a-nutshell/>> accessed 24 December 2020.

conducts.¹¹⁴ The FCA is an important competent authority to fight money laundering, which monitors obliged entities to comply with AML regulations.

The FCA has continued to use the credible deterrence strategy,¹¹⁵ which involves imposing financial sanctions on any individuals and firms when failing to comply with regulations. The Financial Services Act 2012 increases the FCA's powers and authorities to police markets and regulates the approach by which companies handle their clients.¹¹⁶ This policy does not require to initiate criminal proceedings.¹¹⁷ The policy made the long-lasting results to the individuals because the FCA is able to grant a prohibition order to persons who breach the pre-placement rules from involving with the monetary services industry for a period of years that creates a larger deterrent impact.¹¹⁸

The FCA requires the regulated sector to comply with the Senior Management Arrangements, Systems and Controls (SYSC) regulations, but the POCA 2002 applies to all persons.¹¹⁹ However, the FCA's power and approach is very similar to that of the FSA¹²⁰ in order to mitigate the financial crime risks, protect the consumer and the integrity of the UK financial market.¹²¹ For example, the FCA has an AML website providing AML guidance,¹²² research reports, an AML self-assessment tool

¹¹⁴ The Financial Services Act 2012 came into force on 1 April 2013. The Act made some fundamental changes to the way that financial services firms like banks are regulated; see also the Financial Services Act 2012.

¹¹⁵ Arun Srivastava, Ian Mason, Mark Simpson and Marc Litt, 'Financial Crime' (2011) 86 Compliance Officer Bulletin 1, 8.

¹¹⁶ Brooke Masters, 'Financial watchdog's 'credible deterrence' (*Financial Times*, 24 January 2012) <<https://www.ft.com/content/86c8ad10-4679-11e1-85e2-00144feabdc0>> accessed 19 November 2017.

¹¹⁷ Harrison and Ryder (n 6) 41.

¹¹⁸ *ibid* 42.

¹¹⁹ The Part 7 of the Proceeds of Crime Act 2002.

¹²⁰ Srivastava, Mason, Simpson and Litt (n 115) 1, 9.

¹²¹ Financial Conduct Authority (FCA), 'Financial Crime' (31 July 2015) <<https://www.fca.org.uk/firms/financial-crime>> accessed 17 October 2017.

¹²² Financial Conduct Authority (FCA), 'Financial Crime: a guide for firms Part 1: A firm's guide to preventing financial crime' (April 2015) 5.

for financial consultants, and even the ability to ban products and details of misleading advertisements for commercial services or products.¹²³ It also produces an annual AML report. The FCA receives the financial intelligence from the NCA in order to instigate the criminal proceedings.¹²⁴ Therefore, it can impose the financial penalties on any firm or money laundering reporting officer (MLRO) who do not comply with the FCA regulations. Nevertheless, the FCA has applied such costly and complicated procedures for financial firms to implement, but it has tried to reduce the unnecessary procedures and adjust its standards such as the SYSC guidance regarding a pre-placement strategy.

The FCA is able to determine appropriate financial penalties or combination of sanctions on authorised companies, including their staff who breach its rules,¹²⁵ and the FCA prosecutes the money laundering offences under s. 402 of the FSMA 2000¹²⁶ and witnessed in *R v Rollins*.¹²⁷ The Supreme Court provided the FCA¹²⁸

<https://www.handbook.fca.org.uk/handbook/document/FC1_FCA_20150427.pdf> accessed 1 September 2016.

¹²³ HM Treasury, 'Financial Conduct Authority' (8 May 2015). <<https://www.gov.uk/government/publications/2010-to-2015-government-policy-financial-services-regulation/2010-to-2015-government-policy-financial-services-regulation>> accessed 12 September 2016.

¹²⁴ National Crime Agency (NCA), 'Suspicious activity reports (SARs) Annual Report 2018' (NCA 2018) 7 <<https://nationalcrimeagency.gov.uk/who-we-are/publications/256-2018-sars-annual-report/file>> accessed 14 July 2019.

¹²⁵ The fundamental objective of imposing monetary penalty is to support high standards of regulation by deterring persons who breached the FSMA 2000 and FCA's rules; see also Financial Conduct Authority (FCA) 'Decision Procedure and Penalties Manual: Chapter 6: Penalties' (November 2016) DEPP 6/2 <<https://www.handbook.fca.org.uk/handbook/DEPP.pdf>> accessed 29 November 2016.

¹²⁶ FSMA 2000 determines the definition of the financial crime as 'any offence (e.g. fraud or dishonesty, misconduct in, or misuse of information relating to a financial market, or handling the proceeds of crime)'; see also FSMA 2000, s 6 (3)(c); in addition, an extra-territorial perspective includes, when the criminal conduct was criminalised as an offence, if it had occurred in the UK; see also FSMA 2000, s 6 (4); Financial Services and Markets Act 2000, s 402 (concerning with 'Power of the Authority to institute proceedings for certain other offences').

¹²⁷ The FSA has the power to prosecute offences of money laundering contrary to ss 327 and 328 of the POCA 2002; see *R v Rollins* [2010] UKSC 39; see also *Harrison and Ryder* (n 6) 47.

¹²⁸ The FCA starts proceedings of crime by receiving financial intelligence from the UK FIU; see National Crime Agency (NCA) 'UK Financial Intelligence Unit' <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU> accessed 6 March 2017.

power to prosecute any criminal offence as a private prosecutor.¹²⁹ The UK government expects that FCA will achieve its goals by imposing forceful punishments and instigating more criminal cases.¹³⁰ The next section discusses the HM Revenue and Customs on its responsibility.

4.3.2.3 HM Revenue and Customs

The HM Revenue and Customs (HMRC) is the supervisory authority for money service business, high-value dealers, trust or company service providers, accountancy service providers, and estate agency business.¹³¹ In other words, the HMRC is the AML supervisor for money service businesses, including currency exchanges and money/value transmitters, whose actions are not operated by the FCA authorised company in order to protect the customer.¹³² HMRC aims to increase revenues due and bear down on evasion and avoidance, transform tax and payments for its clients, as well as designing and distributing a professional, effective, and engaged organisation.¹³³ It is responsible for monitoring firms, e.g. high-value dealers, money services businesses, auditors, bill payment service providers, and telecommunications firms in relation to taxes, wages, and other aspects of the financial institutions.

¹²⁹ *R v Cuthbertson* [1981] AC 470 responded to stop at drugs and at confiscation provision by criminalising and confiscating the proceeds of crime, especially the profits from drugs; see Peter Alldridge, *What Went Wrong with Money Laundering Law?* (Palgrave Macmillan 2016) 10; see also Paul Ozin, 'Financial Crime Update' (2010) *Butterworths Journal of International Banking and Financial Law* 127, 127 <http://www.23es.com/wp-content/uploads/2010/02/JIBFL_Feb-Fin-Crim.pdf> accessed 28 February 2017.

¹³⁰ *Ryder* (n 96) 4, 11.

¹³¹ HM Revenue and Customs (HMRC), 'Guidance: Money Laundering Regulations: who needs to register' (23 October 2014) <<https://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register>> accessed 29 November 2016.

¹³² Financial Conduct Authority (FCA), *Anti-Money Laundering Annual Report 2012/2013* (FCA 2013) 6, 9.

¹³³ HM Revenue & Customs (HMRC), *Annual Report and Accounts 2016-17* (Williams Lea Group 2017) 8.

HMRC has the power to gain access to all documents, records and relevant information in order to monitor compliance and investigation of tax matters, smuggling and money laundering proceeds, including enforcement in relation to the confiscation and seizure of money at ports and other frontiers.¹³⁴

HMRC can distribute a warning letter and then impose financial sanctions on all relevant persons, who fail to comply with its regulations.¹³⁵ The HMRC achieves a significant national role in the protection of money laundering on the basis that it is a designated supervisory authority under the MLRs 2017.¹³⁶ The 2020 MLRs replaced the 2017 MLRs, particularly, focusing on the clarification of the FCA in dealing with a cryptoasset business, as well as requirement the Treasury to carry out a review in order to meet the international standards, especially the 6MLD.¹³⁷ The 2020MLRs intends to solve failures of retained EU law to conduct efficiently and other deficiencies arising from the Brexit.¹³⁸

The HMRC has produced guidance notes and a training video to promote an awareness of the MLRs 2007.¹³⁹ Its guidance covers SARs reporting requirements with financial institutions as well as indicators of risk.¹⁴⁰ Furthermore, in 2016 the Committee of Public Accounts claimed that HMRC's policy dealing with tax fraud and its method of prosecutions was unclear.¹⁴¹ The National Audit Office (NAO)

¹³⁴ *Financial Action Task Force* (n 39) 26.

¹³⁵ *Financial Conduct Authority* (n 121) 9.

¹³⁶ MLRs 2017; see *HM Revenue and Customs* (n 131).

¹³⁷ The UK Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (MLRs2020) amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (X.I. 2017/692).

¹³⁸ The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (MLRs2020) amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (X.I. 2017/692).

¹³⁹ Royal Institute of Chartered Surveyors (RICS) 'HMRC training for estate agents' (2 September 2016) <<http://www.rics.org/uk/regulation1/firm-and-individual-guidance/money-laundering1/>> accessed 17 November 2016.

¹⁴⁰ *National Crime Agency* (n 71) 11.

¹⁴¹ National Audit Office (NAO), *HM Revenue & Customs 2015-16 Accounts* (NAO 2016) 13.

suggests that HMRC should develop the way to collect, assess, and analyse data effectively.¹⁴²

HMRC has its own FIU officials who obtain training in AML intelligence analysis in order to deal with its customers to comply with AML regulations.¹⁴³ HMRC has been working with the Royal Institute of Chartered Surveyors and other professional and law enforcement authorities to ensure the implementation of the AML regulations efficiently, especially business purposes that are concerned with the proceeds of drug dealing, prostitution and human trafficking.¹⁴⁴

The AML policies are managed by HM Treasury, and also enforced by the HMRC.¹⁴⁵ HMRC is one of the membership of the SARs Committee.¹⁴⁶ HMRC and the SARs Regime Committee assess and develop the SARs strategy such as increasing the appropriate SARs from the reporting entities, including improving the technical abilities and experience of all stakeholders.¹⁴⁷ Therefore, HMRC works collaboratively with NCA by receiving the SARs in order to identify unreported and undeclared income and assets concealed overseas and to recover unpaid taxes, along with any sanctions due.¹⁴⁸

The NCA has direct and indirect access to public record information and operational regulatory, which is held by HMRC databases, e.g. tax details, as well.¹⁴⁹

¹⁴² *ibid.*

¹⁴³ *Financial Action Task Force* (n 39) 100.

¹⁴⁴ National Federation of Property Professionals, 'Money Laundering Guidance for member of National Federation of Property Professionals, Royal Institution of Chartered Surveyors, Association of Relocation Professionals and Association of Residential Managing Agents' (2010) 26, 54 <<http://www.arp-relocation.com/storage/downloads/Money%20Laundering%20Guidance%20final.pdf>> accessed 7 March 2017.

¹⁴⁵ *Harrison and Ryder* (n 6) 209.

¹⁴⁶ National Crime Agency (NCA), *Suspicious Activity Reports (SARs) Annual Report 2017* (NCA 2017) 52.

¹⁴⁷ *ibid.* 42.

¹⁴⁸ *ibid.* 35.

¹⁴⁹ *Financial Action Task Force* (n 39) 83, see also *National Crime Agency* (n 71) 13.

However, NCA should be able to obtain such information in order to support its analysis of SARs and disseminate SARs timely. This is similar to the Thai FIU, which has this power to access to additional law enforcement and financial information from other law enforcement agencies and financial institutions database timely, as critically discussed in chapter six and in chapter seven.¹⁵⁰ SARs plays a crucial part in HMRC's operation to deal with the areas of recovery, financial investigation and money laundering offences, including AML supervisory duties.¹⁵¹ Consequently, HMRC should increase the use of SARs. It is important that HMRC should maintain more proactive communication to NCA and other relevant persons (i.e. individuals and businesses) for effective cooperation, which can reduce the compliance cost and defensive reporting.¹⁵² The next section looks at the Crown Prosecution Service and its role in prosecution of money laundering cases.

4.3.2.4 Crown Prosecution Service

Under the Prosecution of Offences Act 1985, the Crown Prosecution Service (CPS) is led by the Director of Public Prosecutions (DPP), who is supervised by the Attorney General (AG).¹⁵³ Under the Act, the CPS is the main independent criminal prosecutorial agency in England and Wales.¹⁵⁴ It also advises the police, law enforcement authorities and the NCA concerning the cases for potential prosecution. The CPS considers the criminal cases obtained, identifies charge for cases except minor cases, prepares the cases court, and applies for the restraint, receivership, including

¹⁵⁰ See discussion in chapter 6; see also International Monetary Fund (IMF), Thailand: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism (IMF 2007) 93.

¹⁵¹ *National Crime Agency* (n 71) 24.

¹⁵² Discussed in section 4.6 of evaluation of implementation of AML policy of the United Kingdom; *HM Treasury and Home Office* (n 55) 26; see also *Financial Action Task Force* (n 39) 25.

¹⁵⁴ *Financial Action Task Force* (n 39) 25.

the CPS confiscation orders in relation to the CPS prosecutions.¹⁵⁵ The CPS is responsible for prosecuting money laundering and other criminal cases investigated by the police force, HMRC, the NCA and relevant law enforcement authorities.¹⁵⁶ The CPS also prosecutes the cases investigated by the competent authorities, which receive SARs or financial intelligence from the NCA.¹⁵⁷ Like the FCA, the CPS commences criminal proceedings after obtaining financial intelligence from the NCA.¹⁵⁸

The UK has worked as a pro-active approach¹⁵⁹ to prosecute not only predicate offences but also the proceeds of crime and the financial perspectives of terrorist cases.¹⁶⁰ In this respect, the Proceeds of Crime Unit in the CPS cooperates with the NCA-led multi-agency implemented to oblige confiscation orders under the POCA 2002.¹⁶¹ Like Thailand and Singapore, the two countries have powers to deal with the criminal cases and still work collaboratively with the FIUs in order to prosecute money laundering cases. The next section will explore the role of the tertiary authorities and their responsibilities for supporting the government to counter money laundering.

4.3.3 The Role of Tertiary Authorities

The definition of the tertiary authorities was noted in Chapter 3. This part illustrates the role of tertiary authorities, including UK Finance and the Joint Money

¹⁵⁵ *Financial Action Task Force* (n 39) 25, 27; see also *HM Treasury* (n 52) 24.

¹⁵⁶ Section 327, 328 and 329 of Proceeds of Crime Act 2002.

¹⁵⁷ *Financial Action Task Force* (n 39) 25

¹⁵⁸ *Harrison and Ryder* (n 6) 32.

¹⁵⁹ The UK government has still designated several competent authorities, including investigation and prosecution agencies, e.g. NCA, HMRC, CPS and the Revenue and Customs Prosecution Office (RCPO); see *Financial Action Task Force* (n 39) 6.

¹⁶⁰ *Financial Action Task Force* (n 43) 6.

¹⁶¹ Under ss 327, 328 and 329 of the Proceeds of Crime Act 2002; see also *HM Treasury and Home Office* (n 55) 87.

Laundering Steering Group (JMLSG). The next section explains the role of UK Finance in dealing with money laundering.

4.3.3.1 UK Finance

The British Bankers' Association and five other organisations¹⁶² merged into UK Finance and became the new trade association for 300 providers of finance, credit, markets and payments-related services, as well as the banking sector in July 2017 in order to build and improve the financial services in line with the MLRs 2017.¹⁶³ Furthermore, the MLRs 2020 amend the 2017 MLRs in line with the EU 6MLD that the UK has to comply with the EU Directive regarding the prevention of the use of the financial system for the objectives of money laundering or terrorist financing, such as the duty to take effective measures to better understand a customer's ownership structure and to clarify the provision ensuring that identity can be verified electronically, as well as to refine the range of the responsibility to report discrepancies in beneficial ownership register.¹⁶⁴ UK Finance aims to tackle money laundering and support partnerships by working with competent agencies and the banking industry to enhance the mutual exchanges of information.¹⁶⁵ To illustrate, UK Finance focuses on the risk management policies and procedures such as cross-

¹⁶² BBA is the voice of banking and financial services; see also British Bankers' Association (BBA), 'About us' <<https://www.bba.org.uk/about-us/>> accessed 19 September 2016.

The new organisation operates most of the activities previously operated by the Asset Based Finance Association, the Council of Mortgage Lenders, the British Bankers' Association, Payments UK, Financial Fraud Action UK, including the UK Cards Association; see Jackie Bennett, 'Notes to editor' (*UK Finance*, 3 December 2018) <<https://www.ukfinance.org.uk/jackie-bennett-speech-uk-finance-annual-mortgage-dinner>> accessed 13 July 2019.

¹⁶³ *ibid.*

¹⁶⁴ Explanatory Note of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (MLRs) <<https://www.legislation.gov.uk/uksi/2020/991/note/made>> accessed 24 December 2020.

¹⁶⁵ UK Finance, 'UK Finance Limited (formerly NewTA Limited) Annual Report and Financial Statements 1 January to 31 December 2018' <<https://www.ukfinance.org.uk/system/files/Annual-Report-for-the-year-ended-31-December-2018.pdf>> accessed 14 July 2019.

border financial services. UK Finance monitors its member carrying out the risk-based approach regarding internal control, SARs, and the identity of their customers or anyone who needs to open an account or buy any financial service or product from banks or else they may risk heavy fines or even prison sentences for failing legal compliance under the MLRs 2017.¹⁶⁶

UK Finance coordinates with the FCA in producing AML guidelines to reduce the risk of money laundering and financial crime.¹⁶⁷ UK Finance is a member of the SARs Regime Committee with the NCA. The membership enhances communication between banks and NCA and reduces overlapping responsibilities in order to develop detection and enforcement, including exchanges the financial intelligence.¹⁶⁸ The UK Finance's guidelines assist banks in understanding the AML legislation and especially reduce the cost of the AML system to the banking sector. For example, the sector spent approximately £5bn per year on AML compliance as well as developing banking systems and recruiting experts.¹⁶⁹ The cost of AML compliance increased by 60 per cent from 2003¹⁷⁰ and increased by half in 2012.¹⁷¹ KPMG supports that the cost of AML compliance has risen since 2011.¹⁷² This is because AML compliance puts obligations on all firms to have more reports, more staff hired

¹⁶⁶ *UK Finance* (n 165).

¹⁶⁷ *ibid.*

¹⁶⁸ *Harrison and Ryder* (n 6) 30.

¹⁶⁹ HM Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2017* (HM Treasury 2017) 35; see also Law Commission, 'Anti-Money Laundering: the SARs Regime Consultation Paper' Consultation Paper No 236 (20 July 2018) at 9 <<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/07/Anti-Money-Laundering-the-SARs-Regime-Consultation-paper.pdf>> accessed 14 July 2019.

¹⁷⁰ Klynveld Peat Marwick Goerdeler (KPMG), "Anti-laundering Expenses 'Soar'" (*BBC News*, 9 July 2007) <<http://news.bbc.co.uk/1/hi/business/6284106.stm>> accessed 29 November 2016.

¹⁷¹ British Bankers' Association (BBA), *Future Financial Crime Risks: Considering the financial crime challenges faced by UK banks* (LexisNexis 2015) 6.

¹⁷² KPMG surveys globally that the costs of AML compliance could be increased approximately 74 per cent of AML investment within 2017; see Klynveld Peat Marwick Goerdeler (KPMG), 'Cost of compliance continues to be underestimated' (29 January 2014) <<https://home.kpmg.com/xx/en/home/insights/2014/01/cost-compliance-underestimated.html>> accessed 25 July 2017.

in the business (e.g. AML specialist),¹⁷³ more software,¹⁷⁴ and more suspicious reports.¹⁷⁵

The UK government states that a risk-based approach¹⁷⁶ can also reduce the AML compliance cost.¹⁷⁷ NCA focuses on the cooperation between banks and LEAs in SARs regime in order to reduce the poor quality of SARs, but increase the investigations and prosecutions of money laundering.¹⁷⁸ The next part explores the Joint Money Laundering Steering Group (JMLSG).

4.3.3.2 Joint Money Laundering Steering Group

The Joint Money Laundering Steering Group (JMLSG) aims to promote good practice in fighting against money laundering and to help interpret the UK money laundering laws.¹⁷⁹ It has created Money Laundering Guidance notes for the financial sector which aims to facilitate all firms to interpret, understand, and obtain the necessary information in relation to the MLRs without undue delay.¹⁸⁰ The FSA suggested all businesses to read the 2006 JMLSG guidance notes together with the

¹⁷³ HSBC had 24,300 experts in AML risk and compliance (i.e. ten per cent of its whole workforce) in 2014; see Caroline Binham, 'Banks step up hiring of anti-money laundering specialists' (*Financial Times*, 18 August 2014) <<https://www.ft.com/content/4f20179a-2600-11e4-9bca-00144feabdc0?mhq5j=e1>> accessed 15 July 2017.

¹⁷⁴ Some banks paid €2m for the AML monitoring system (i.e. software and technology); see Antoinette Verhage, *The Anti-Money Laundering Complex and the Compliance Industry* (Routledge 2011) 136.

¹⁷⁵ *ibid* 65; see *Alldrige* (n 129) 29.

¹⁷⁶ A risk-based approach on money laundering is a necessary section of AML policy to reduce the level of money laundering; see S Ross and M Hannan, 'Money Laundering Regulation and Risk-based Decision Making' (2007) 10 *Journal of Money Laundering Control* 106, 107.

¹⁷⁷ To decrease the AML compliance costs, certain UK banks have abolished wire transactions to Somalia to avoid the money laundering risk (i.e. de-risking) and compliance cost; see Financial Services Authority (FSA), *Consultation Paper 46 Money Laundering – The FSA's New Role* (FSA 2000) 10; see also Lanier Saperstein, Geoffrey Sant and Michelle Ng, 'The failure of anti-money laundering regulation: where is the Cost-Benefit analysis?' (2015) 91(1) *Notre Dame Law Review Online* 1, 6.

¹⁷⁸ *Law Commission* (n 169).

¹⁷⁹ Joint Money Laundering Steering Group (JMLSG), 'What is JMLSG' <<http://www.jmlsg.org.uk/what-is-jmlsg>> accessed 19 September 2016.

¹⁸⁰ JMLSG Guidance, para 8.25; see also Emmanuel Ebikake, 'Money laundering: An assessment of soft law as a technique for repressive and preventive anti-money laundering control' (2016) 19(4) *Journal Money Laundering Control* 346, 364.

FSA's regulations.¹⁸¹ The FSA applied this guidance when deciding whether the business violates the FSA's Handbook Regulations concerning money laundering. However, the JMLSG Guidance, approved by the HM Treasury,¹⁸² is 'soft law' without legal effects.¹⁸³ On the other hand, a court applies the JMLSG Guidance when deciding whether a person has conducted an offence under either of the ss 330 or 331 of POCA 2002.¹⁸⁴ Accordingly, compliance with such guidance is a matter that a court must take into account when making a decision.¹⁸⁵ Therefore, the JMLSG could be an alternative mechanism supporting the hard law to fight against the money laundering regime effectively as it creates the guidance for the financial services sector.¹⁸⁶ Additionally, the failure to follow the JMLSG Guidance leads the FCA to impose a financial penalty. The MLRs 2017 brought the JMLSG's risk-based anti-money laundering guidance in line with the new Regulations.¹⁸⁷ The 2020 MLRs introduce the provisions regarding the trust, which combines providing for additional

¹⁸¹ The HM Treasury approved this guidance for the objectives of ss 330 and 331 of the POCA 2002; see also *Ebikake* (n 180) 346, 363.

¹⁸² The HM Treasury approved the Guidance for the aim of Regulations 42 and 45 of the Money Laundering Regulations 2007.

¹⁸³ For example, the JMLSG Guidance, para 8.6 determines that the records kept should embrace any client information, transactions, all suspicious reports, MLRO reports, training, and compliance monitoring, as well as all information concerning the efficiency of training. The FSA fined the Bank of Ireland (BoI) £375,000 for failing to have in place systems to prevent and detect a series of money laundering high-risk, cash transaction worth about 2m, which were engaged in violation of their anti-money laundering procedures and policies. That showed that the bank did not attempted to present appropriate processes to make sure its staff had understood the money laundering training that the bank distributed to them, especially the knowledge, recognition, and reporting of SARs; see *Ryder* (n 96) 635, 647; see also Financial Services Authority (FSA) 'FSA fines Bank of Ireland £375,000 for breaches of anti-money laundering requirement' (2 September 2004) <<http://www.fsa.gov.uk/Pages/Library/Communication/PR/2004/077.shtml>> accessed 26 November 2016; see also *Ebikake* (n 180) 346, 363; see also Richard Brent and William Blair, 'Regulatory responsibilities' in William Blair and Richard Brent (eds), *Banks and Crime: The International Law of Tainted Money* (Oxford 2008) 267, 270, 275.

¹⁸⁴ POCA2002, ss 330, 331; As soft law definition, the JMLSG Guidance is an interesting example of soft law that is voluntary compliance, nonbinding nature, relying on the firms to implement; see also *Ebikake* (n 180) 346, 363; the JMLSG 2006 Guidance has also been advocated the objective of the similar offences under section 21A of the Terrorism Act 2000.

¹⁸⁵ SYSC 3.26EG; see also *Brent and Blair* (n 183) 267.

¹⁸⁶ Financial Action Task Force (FATF), Mutual Evaluation Fourth Follow-up Report: United Kingdom (FATF 2009) 5.

¹⁸⁷ The Money Laundering Regulations 2017.

trusts to be included on the trust register and expanding the responsibility to report discrepancies in the beneficial ownership to trusts. The MLRs include amending the duty to enhanced due diligence measures to correspondent relationship only if they involve the execution of the payments, as well as increase the ‘assurance to a level that is necessary for efficiently managing and reducing any risk of money laundering.’¹⁸⁸

The JMLSG, as a supervisory authority, responds to the requirements of the UK legislative regulations by working collaboratively with reporting entities, other competent authorities, law enforcement authorities and UK FIU (i.e. NCA), as well as producing guidance and rules in order to help report entities better understand the requirements of SARs, including the MLRs.¹⁸⁹ The collaboration between the NCA, FCA and JMLSG strengthens the UK SARs regime to reduce the risk of reporting entities being abused by money launderers and other criminals. The next section demonstrates the model of the UKFIU.

4.3.3.3. Joint Money Laundering Intelligence Taskforce (JMLIT)

Joint Money Laundering Intelligence Taskforce (JMLIT) plays a key role to encourage the UK FIU to counter money laundering in the UK.¹⁹⁰ The NECC includes the well-established JMLIT, which is a partnership between law enforcement

¹⁸⁸ Joint Money Laundering Steering Group (JMLSG), The Money Laundering and Terrorist Financing (Amendment) (Exit) Regulations 2020 <<https://jmlsg.org.uk/latest-news/the-money-laundering-and-terrorist-financing-amendment-eu-exit-regulations-2020/>> accessed 24 December 2020.

¹⁸⁹ *Harrison and Ryder* (n 6) 32.

¹⁹⁰ JMLIT was established under the Crime and Courts Act 2013, section 7; the Provision provides a wide legislative gateway for the UKFIU to share information for the purpose of developing its functions. As such, partnership tactical exchanging in the UK must be convened by the UKFIU, which contributed to the design of JMLIT as an in-person Taskforce meeting on the UKFIU premises. Since its establishment, JMLIT has encouraged and enhanced over 500 law enforcement investigations, which has directly contributed to over 130 arrests and the seizure or restraint of over £13m; see Nick J Maxwell, ‘Expanding the Capability of Financial Information-Sharing Partnerships’ (March 2019)

and the financial sector to exchange and analyse information relating to money laundering and wider economic threats.¹⁹¹ JMLIT is an innovative model for public/private information sharing that has generated very positive results since its inception in 2015, and is considered internationally to be an example of best practice vulnerabilities, and live tactical intelligence, is essential.

There has been a real willingness within in the banking sector to share information through the JMLIT to combat economic crime. The NCA is working with colleagues from overseas LEAs to help inform the development of similar partnerships in a number of key partner jurisdictions around the world. JMLIT allows all sectors to work together to construct a new wider, ‘whole system’ approach, which will enable the private sector to act as a more effective first line of defence against economic crime.

4.3.3.4 Joint Force Financial Analysis Centre

The JFAC is also hosted by the NCA, which works with four authorities, consisting of the NCA, Her Majesty’s Revenue and Customs, the Financial Conduct Authority and the Serious Fraud Office in order to develop the independence of the FIU when dealing with SARs regime without undue influence and interference.¹⁹²

https://www.future-fis.com/uploads/3/7/9/4/3794525/pr%C3%A9cis_of_ffis_paper_-_expanding_the_role_of_fisps_-_march_2019.pdf accessed 30 December 2020; see also National Crime Agency (NCA), ‘National Economic Crime Centre’ <https://nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre> accessed 30 December 2020.

¹⁹¹ National Economic Crime Centre (NECC) has been created to deliver a step change in the UK’s response to, and impact on, economic crime. For the first time, the NECC brings together law enforcement and justice agencies, government departments, regulatory bodies and the private sector with a shared objective of driving down serious organized crime, protecting the public and safeguard the prosperity and reputation of the UK as a financial centre; see National Crime Agency (NCA), ‘Money laundering and illicit finance’ <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance> accessed 23 December 2020.

¹⁹² National Crime Agency (NCA), ‘Money laundering and illicit finance’ <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance> accessed 23 December 2020.

4.4 The Model of the United Kingdom Financial Intelligence Unit

The role of the FIU is an independent agency,¹⁹³ which receives financial intelligence from reporting entities.¹⁹⁴ The FIU model relies on the regulatory culture of each country and illustrates its styles which can be classified by its nature.¹⁹⁵ According to the IMF and World Bank, the administrative-type FIU forms a separate and autonomous government agency or is not positioned under such administration considered ‘independent FIUs’.¹⁹⁶ The FIU (i.e. the NCA) should act as an independent role, which is to restore confidence for AML compliance agencies.¹⁹⁷ The administrative-style FIU is referred to as a filter or buffer between all reporting entities, who are concerned about their suspicion on customers’ activities and their relationship with their customers, and relevant competent agencies or law-enforcement authorities.¹⁹⁸ An administrative-style FIU, the NCA receives SARs, analyses, and dis-

¹⁹³ Stessens explains that the FIU, which is an independent office, will inspire more confidence with the financial institutions rather than law enforcement-style FIUs; see Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press 2000) 187.

¹⁹⁴ Stessens identifies that the Belgian and the Dutch FIUs are the FIUs which have a high degree of independence and are transparently established in an approach that encourages a high degree of trust in the financial institutions which do not have to report their suspicions directly to a police, law enforcement or judicial authority; unlike Thailand FIU (AMLO) is a hybrid-model FIU that is a combination between an administrative and law enforcement-model FIU that the financial institutions can file the suspicions (STRs) to the AMLO with the fear of sanctions or ‘defensive reporting’; see *Stessens* (n 194) 183, 190.

¹⁹⁵ Jean-Francois Thony, ‘Processing Financial Information in Money Laundering Matters: The Financial Intelligence Units’ (1996) 4(3) *European Journal of Crime, Criminal Law and Criminal Justice* 257, 258.

¹⁹⁶ World Bank Group, ‘Module 2: Role of the Financial Intelligence Unit (incorporating peer reviewers comments) (page 5) <<http://pubdocs.worldbank.org/en/834721427730119379/AML-Module-2.pdf>> accessed 27 February 2017.

¹⁹⁷ *Verhage* (n 174) 88.

¹⁹⁸ The FIU’s role also conduct analysis to disseminate to competent authorities or law-enforcement officers in order to investigate and prosecute the proceeds of crime; *Verhage* (n 174) 6.

seminates intelligence information to law enforcement authorities, leading to the investigation, prosecution and confiscation orders that are similar to the FIU type of Singapore's FIU (Suspicious Transaction Reporting Office or the STRO).¹⁹⁹

The NCA itself has a filtering and intermediary role,²⁰⁰ like a hindrance between the reporting financial sectors and the public prosecutor.²⁰¹ Regarding to the role, the financial sector is safer to file and disclose information to the NCA than directly submit it to the public prosecutor or the police force. The administrative-style FIU seeks to develop a good working relationship between the banks and the NCA in respect of money laundering matters because the financial services sector is willing to provide the information to the NCA rather than the law enforcement authorities.²⁰²

A good working relationship can promote the appropriate and qualitative information flow to the NCA. The objective of the FIU is to increase the degree of the flow of information from the intermediaries or the FIUs productive for fighting money laundering and reduce the obscurity of the reporting entities and financial system through the operation of each FIU.²⁰³ Stessens argues that the administrative-style FIUs experience a high degree of budgetary autonomy and obviously established an approach that enhances a high level of confidence and trust in reporting entities which are not required to submit their suspicions immediately to law enforcement, judicial or police authority.²⁰⁴

¹⁹⁹ The NCA received 404,735 SARs in 2015; see National Crime Agency (NCA) *National Crime Agency Annual Report and Accounts 2015-16* (Williams Lea Group 2016) 23; see also Donato Masciandaro, 'Financial supervisory unification and financial intelligence units' (2005) 8(4) *Journal of Money Laundering Control* 354, 364.

²⁰⁰ *Stessens* (n 119) 185.

²⁰¹ *Verhage* (n 174) 88.

²⁰² *ibid.*

²⁰³ *Masciandaro* (n 200) 354, 357.

²⁰⁴ *Stessens* (n 119) 188, 189.

The administrative-style FIU is not given the powers of criminal investigations and prosecution. The NCA is an administrative-type FIU, which only receives, analyses financial information, and then disseminates to the relevant law enforcement agencies.²⁰⁵ It also has its budget from the administration of confiscation orders,²⁰⁶ which are the principal source via the government. The NCA also maintains its policies to confiscate criminal proceeds.²⁰⁷ Consequently, the NCA, an autonomous body with its budget,²⁰⁸ positions within the Economic Crime Command and deals with a large number of the SARs regime.²⁰⁹ Typically, the administrative-type FIUs function and require trained staff to supervise and inspect the reporting entities to comply with the anti-money laundering regulations and SARs regime, then it disseminates the intelligence information to the competent authorities effectively.²¹⁰

Nevertheless, Thailand's model is a hybrid-style FIU that comprises administrative and law enforcement-style FIUs. In order to improve effectiveness in fighting money laundering, Thailand should consider to adopt the UK FIU's style to deal with the STRs regime in Thailand as the adaptation may lead to the same phenomenon as the UK, including generating good relations with the financial institutions in money laundering matters, promoting the events of defensive reporting, and reducing the cost of AML compliance. The next section explains the role of the UK

²⁰⁵ *Gilmore* (n 50) 82.

²⁰⁶ There are 6,392 confiscation orders done by courts in 2012-2012; see National Audit Office (NAO), 'Confiscation orders' (17 December 2013) <<https://www.nao.org.uk/wp-content/uploads/2013/12/10318-001-Confiscation-Book.pdf>> accessed 12 July 2017.

²⁰⁷ *ibid.*

²⁰⁸ The British government obtains about £150m yearly from the confiscation and forfeiture orders; see *National Audit Office* (n 141); see also 16; see also Tatsuo Ueda, 'The Suspicious Transaction Reporting System and its effective use' (2001) 411, 413 <http://www.unafei.or.jp/english/pdf/RS_No58/No58_34PA_Ueda.pdf> accessed 28 November 2016; see also He Ping, 'The Suspicious Transactions Reporting System' (2005) 8(3) *Journal of Money Laundering Control* 252.

²⁰⁹ Masciandaro and Balakina refer SAR is a piece of financial information that stimulates relevant law enforcement to possible money laundering or financing of terrorism; see also Donato Masciandaro and Olga Balakina, *Banking Secrecy and International Financial Markets: Economics and Politics* (Palgrave MacMillan 2015) 275.

²¹⁰ *World Bank Group* (n 197).

FIUs (i.e. the NCIS, SOCA and NCA) from the past and present to ensure their progress in fighting money laundering regime.²¹¹

Even though, the 2018 FATF MER of the UK rated ‘partially compliant’ on Recommendation 29 indicating the insufficient independence because of lack of its human resources.²¹² Regarding the independence of the UKFIU, the NCA designs to ensure that the UKFIU remain independent of political interference and influence in line with the UK government’s five year Anti-Corruption strategy with the objectives of preserving the UK’s status as ‘one of the safest and cleanest jurisdiction in the world to conduct business, and building a strong, confident international Britain’.²¹³ Furthermore, the government also established the National Economic Crime Centre (NECC) as the national competent authority, based at the Head Quarters of the NCA similar to the UKFIU, for the UK’s operation response to, and impact on the economic crime, as well as improving cooperation regarding investigation and prosecution between multi-agency collaboration, but also with the public and the private sector.²¹⁴

JMLSG issues the Guidance setting out what the firms and their staff should do to prevent money laundering and terrorist financing and how they implement the

²¹¹ See discussion in subsection 4.5.

²¹² Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 224.

²¹³ The UK government publishes the UK five year Anti-Corruption strategy on 11 December 2017; see Ed Smyth, ‘The UK’s new National Economic Crime Centre’ <<https://www.kingsley-napley.co.uk/insights/blogs/criminal-law-blog/the-uks-new-national-economic-crime-centre>> accessed 24 December 2020.

²¹⁴ National Crime Agency (NCA), ‘National Economic Crime Centre’ <<https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre?view=category&id=15>> accessed 24 December 2020; see also Ed Smyth, ‘The UK’s new National Economic Crime Centre’ <<https://www.kingsley-napley.co.uk/insights/blogs/criminal-law-blog/the-uks-new-national-economic-crime-centre>> accessed 24 December 2020.

requirements of the UK AML/CTF regime.²¹⁵ In contrast, the Joint Money Laundering Intelligence Task Force (JMLIT) is a partnership between the competent authorities, LEAs (e.g. the FCA, NCA, HMRC, SFO, City of London Police, and the Metropolitan Police Service) and the over 40 financial institutions to share and analyse financial information, in particular money laundering.²¹⁶ As reasons mentioned above, JMLIT supports the independence of the UKFIU in effectively operating its functions without the political or industrial interference and influence.²¹⁷

Moreover, the partnership of multi-agencies is cemented with establishment of transparent governance which are monitored by HMRC and the SARs Regime Committee in order to evaluate and improve the SARs strategy.²¹⁸ Therefore, the SARs Regime Committee and the HMRC also support and work collaboratively with the UKFIU in line with the international standards.²¹⁹ In conclusion, the Egmont Group aims to promote the establishment of the FIUs with the operational autonomy.²²⁰ The independent and transparent FIUs encourage a high degree of confidence in the financial institutions than police forces, law enforcement or judicial authority. The UK FIU (NCA) is an administrative-type FIU. It also has its budget to avoid the intervention from unduly politics. Unlike Thailand FIU (Anti-Money

²¹⁵ Joint Money laundering Steering Group (JMLSG), 'Current guidance' <<https://jmlsg.org.uk/guidance/current-guidance/>> accessed 24 December 2020.

²¹⁶ National Crime Agency (NCA), 'National Economic Crime Centre' <<https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre?highlight=WyJqbWxpdCIsI-idqbWxpdCJd>> accessed 24 December 2020.

²¹⁷ National Crime Agency (NCA), 'National Economic Crime Centre' <<https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre?highlight=WyJqbWxpdCIsI-idqbWxpdCJd>> accessed 24 December 2020.

²¹⁸ National Crime Agency (NCA), *Suspicious Activity Reports (SARs) Annual Report 2017* (NCA 2017) 42.

²¹⁹ National Crime Agency (NCA), *Suspicious Activity Reports (SARs) Annual Report 2017* (NCA 2017) 35.

²²⁰ Egmont Group of Financial Intelligence Units, *Egmont Group: Annual Report June 2009 - July 2010* (Egmont Group 2010) 21; see also *Gilmore* (n 50) 83.

Laundering Office or AMLO), it is a hybrid-style FIUs (i.e. a combination of administrative and law enforcement-style FIUs). In this case, the financial institutions may report the suspicions to the AMLO because of the fear of sanctions or ‘defensive reporting.’ Therefore, the FIUs should be an independent government body and should not be under a ministry or ministry’s equivalent (i.e. political powers).²²¹ Stessens identifies that judicial-style FIUs are fully independent FIUs that can deal with the dissemination of the information to the law enforcement for criminal investigation, but do not have access to the same international channels of information exchange as the same way the police forces do.²²² Regarding the independence of the UKFIU, the partnership between the JMLIT, the SARs Regime Committee would enhance the independence of the UKFIU to conduct its function without the political and industrial influence. The next section explains the role of the UKFIU in countering money laundering.

4.5 The United Kingdom Financial Intelligence Unit

Under POCA 2002, the UK FIU receives, analyses, and distributes financial information collected from SARs in order to investigate and fight organised crime, serious crime and any other kind of crime.²²³ Furthermore, it produces financial crime guidance to provide the standard approaches for risky persons.²²⁴ The FIU has a repository function. It holds information on money laundering, receives disclosed information on suspicious transactions or activities, independently analyses by add-

²²¹ Anti-Money Laundering Office (AMLO), *Annual Report 2012 of Anti-Money Laundering Office* (Chihua 2012) 25.

²²² *Stessens* (n 194) 188.

²²³ Section 1(5) of the POCA 2002.

²²⁴ *National Crime Agency* (n 109).

ing value to such information, and decides whether the information warrants a judicial investigation.²²⁵ The FIU exchanges financial intelligence with other law enforcement authorities or international FIUs. The AML policies (e.g. legislation, guidance and action plan) also enable the UKFIU to act swiftly for freezing assets that can relieve the burdens of the investigating police, law enforcement and judicial authorities.²²⁶

Recommendation 29 states that the FATF's members require to establish the FIUs, and the UK accordingly implemented the Recommendation into its national legislation.²²⁷ Therefore, this section concentrates on the creation of the UKFIU in fighting money laundering. The first UKFIU was the National Criminal Intelligence Service (NCIS), which was established by the Police Act 1997,²²⁸ aiming to provide leadership and excellence in criminal intelligence to combat serious and organised crime.²²⁹ The NCIS was also responsible for gathering and analysing intelligence data to provide and support insight and information to law enforcement agencies, such as the national police forces, for protection and prevention of serious crimes.²³⁰ Its duty includes providing advice to the governments and private sector, especially financial institutions concerning the measures of prevention of money laundering.²³¹ The NCIS's style is law enforcement-style FIUs that reserves an important role for

²²⁵ *Stessens* (n 194) 184.

²²⁶ *Stessens* (n 194) 185.

²²⁷ FATF Recommendation 29.

²²⁸ Then it was subjected to amendments and additions in the Criminal Justice and Police Act 2001 and the Police Reform Act 2002.

²²⁹ Relative law enforcement such as the police forces, intelligence agencies, HM Revenue and Customs (HMRC), and others. The NCIS returned to direct funding by the Home Office in 2002 and was a non-departmental public agency; see also National Criminal Intelligence Service (NCIS), *National Criminal Intelligence Service Annual Report and Accounts 2005-2006* (The Stationary Office 2006) 7.

²³⁰ Security Service Act 1996; see *Stessens* (n 194) 186.

²³¹ *Stessens* (n 194) 186.

the police force.²³² This style may not be comfortable to the financial institutions because they are likely to report directly to the police force, which has investigative powers and also extensive access to information. The law enforcement-style FIUs provides an advantage to the NCIS because it can access the huge information sources available to the police departments and international information exchange sources, such as Interpol and Europol.²³³ However, the disadvantage of this FIU style is a limited relationship²³⁴ between the financial institutions and the FIU that is administered by the police force because of the fear of customers' reputation, civil liability, criminal investigation, and charges when the reporting entities are filing a suspicion to them. Stessens assumes that financial institutions will be more reluctant or afraid of reporting their suspicions to the police forces, law enforcement and judicial authorities than to special administrative FIUs. But they will do merely when their suspicion is obviously strong.²³⁵

Between 2005 and 2006, NCIS supported the government's harm reduction strategy on money laundering and criminal finance and disseminated 3,501 intelligence reports to the relevant law enforcement agencies.²³⁶ NCIS received just only 154,000 SARs in 2004-2005²³⁷ and 196,000 SARs in 2005-2006.²³⁸ NCIS was merged into a part of the Serious Organised Crime Agency (SOCA) on 1 April 2006. According to Article 29 of the Third Money Laundering Directive, each national FIU should be responsible for gathering, analysing, and disseminating SARs. Thus, the

²³² *ibid*; however, Masciandaro argues that the NCIS is an administrative-style FIUs; see also *Masciandaro* (n 200) 354, 364.

²³³ *Stessens* (n 194) 186.

²³⁴ *ibid*.

²³⁵ *Stessens* (n 194) 187.

²³⁶ *National Criminal Intelligence Service* (n 230) 7.

²³⁷ *ibid* 6.

²³⁸ *ibid* 10.

Serious Organised Crime Agency (SOCA), the UKFIU between 2006 and 2013, also managed the assets recovering provision by the POCA 2002.²³⁹ The Serious Organised Crime and Police Act 2005 empowered the SOCA (i.e. the UK FIU) and replaced the National Criminal Intelligence Service (NCIS).²⁴⁰ SOCA had three objectives - tackling serious organised crime; gathering information relating to crime; and other general considerations. Its primary functions are preventing and detecting serious crime, including contributing to the reduction of such crime and mitigating its consequences.²⁴¹

Regarding money laundering and serious crime, s. 3 determines the function of SOCA that is to gather, store, analyse, and disseminate information relevant to the prevention, detection, investigation or prosecution of offences or the reduction of crime in other ways or the mitigation of its consequences.²⁴² It was a hybrid agency which contained the National Crime Squad, the NCIS, Her Majesty's Revenue and Customs (HMRC) concerning with drug trafficking, Her Majesty's Immigration Service (HMIS) involving in human trafficking.²⁴³ SOCA also published the UK Threat Assessment of Organised Crime, which highlighted the relationship between money laundering and organised crime.²⁴⁴ Like the NCIS, the SOCA illustrated the disclosure-receiving bodies as an FIU of the police model (i.e., law enforcement-model

²³⁹ However, the role of FIU, SOCA, transferred to the National Crime Agency (NCA) in 2013 following the Crime and Courts Act 2013.

²⁴⁰ Section 2 of the Serious Organised Crime and Police Act 2005 (SOCPA 2005) determined the SOCA's duties and responsibilities including the prevention and detection of serious organised crime and contribution to its reduction and the mitigation of its consequences.

²⁴¹ Serious Organised Crime and Police Act 2005, ss 2(1)(a) and (b).

²⁴² Serious Organised Crime and Police Act 2005, ss 3(1)(a) and (b).

²⁴³ Clive Hartfield, 'SOCA: A paradigm shift in British policing' (2006) 46(4) *British Journal of Criminology* 743, 743.

²⁴⁴ Then it was replaced by the National Strategic Assessment of Serious and Organised Crime, which has been produced by the National Crime Agency (NCA); see National Crime Agency (NCA) 'National Strategic Assessment of Serious and Organised Crime' (1 May 2014) <<http://www.nationalcrimeagency.gov.uk/publications/207-nca-strategic-assessment-of-serious-and-organised-crime/file>> accessed 11 October 2016; see also Mo Egan, 'The role of the regulated sector in the UK anti-money

FIUs). Therefore, the reporting entities must directly report to the SOCA for investigations that may impact the increase of defensive reporting.²⁴⁵ Although SOCA had a legislative power to initiate an investigation of proceedings in relation to asset recovery,²⁴⁶ in the case of *R (UMBS Online Ltd) v Serious Organised Crime Agency*²⁴⁷ the Court of Appeal in England determined that SOCA must withhold consent based on a good reason.²⁴⁸ In the case of *UMBS*, SOCA had erred in refusing to revisit its decision on refusing to grant consent to a bank to continue a client's banking mandate on the ground that the bank itself had not made the further request for the consent. Nothing in s. 335 of the POCA 2002 needed the request to revisit the matter to be made by the bank.²⁴⁹

However, the SOCA has still missed the government's objectives to reduce serious and organised crimes effectively.²⁵⁰ For instance, the SOCA was criticised for poor management information of SARs regime (such as ineffective SARs database), weak monitoring of enforcement outcome, insufficient training, the lack of government support for the strategy,²⁵¹ poor investigation skilled, and not seizing

laundrying framework: pushing the boundaries of the private police' (2010) 6(2) Journal of Contemporary European Research 272, 276.

²⁴⁵ Discussed in section 8.9.3 in this chapter; see *Gilmore* (n 50) 82.

²⁴⁶ Liz Campbell, *Organised Crime and the Law: A Comparative Analysis* (Hart 2013) 224.

²⁴⁷ *R (UMBS Online Ltd) v Serious Organised Crime Agency* [2007] EWCA Civ 406.

²⁴⁸ Konyin Ajayi and Hamid Abdulkareem, 'Insulating the vaults from the tide of dirty money: are the floodgates secure?' (2010) 13(1) Journal of Money Laundering Control 33, 40.

²⁴⁹ *R (UMBS Online Ltd) v Serious Organised Crime Agency* [2007] EWCA Civ 406.

²⁵⁰ Tom Warren, 'National Crime Agency warned over serious flaws in money-laundering system' (*BuzzFeedNews*, 8 December 2015) <<https://www.buzzfeed.com/tomwarren/national-crime-agency-warned-over-serious-flaws-in-money-lau>> accessed 18 July 2019.

²⁵¹ *Ryder* (n 8) 93.

enough assets.²⁵² By the virtue of the Crime and Courts Act 2013 it was replaced by the NCA in 2013 in order to prevent and detect serious and organised crime.²⁵³

The European Union launched the Third Money Laundering Directive (3MLD),²⁵⁴ its objective was to criminalise a person's relation with criminals and their criminal proceeds, and criminalising performance, which may help launders or criminals to retain, utilise or otherwise advantage from such criminal proceeds to prevent the use of the financial system from the purpose of money laundering and terrorist financing. The UK transposed this Directive to the Money Laundering Regulations 2007 (MLRs).²⁵⁵ Therefore, the UK legislation concerning the anti-money laundering scheme comprises the POCA 2002 and the MLRs 2007.²⁵⁶ Part 7 of POCA 2002 deals with the offences of money laundering.²⁵⁷ The MLRs 2007 acted as a significant role because it requires reporting entities (e.g. bank sector and other

²⁵² SOCA had seized £14.9m assets in 2013 (the last year of operation), but NCA had seized £22.5m with 3,329 arrests and 400 convictions in its first year; see Serious Organised Crime Agency (SOCA), *Annual Report and Accounts 2013/14* (1 April 2013 to 6 October 2013) (Williams Lea Group 2014) 31; see also Alan Travis, 'National Crime Agency must claw back more criminal assets, MPs say' (*Guardian*, 17 February 2015) <<https://www.theguardian.com/uk-news/2015/feb/17/national-crime-agency-criminal-assets-commons-home-affairs-select-committee-nca>> accessed 17 July 2019; see also Ozlem Ulgen, 'The UK's new Serious Organised Crime Agency (SOCA): combining intelligence and law enforcement' (2007) 77 *International Review of Penal Law* 153, 179.

²⁵³ The Crime and Courts Act 2013, Sch.8(2) para 158; the 2013 Act provides that the NCA is to have the functions conferred by the POCA 2002, ss 1(3)(b), 1(5); see Government Digital Service, 'Serious Organised Crime Agency has closed' <<https://www.gov.uk/government/organisations/serious-organised-crime-agency>> accessed 18 July 2019.

²⁵⁴ The Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005].

OJ L309/15.

²⁵⁵ The Money Laundering Regulations 2007 SI 1992/1771 came into force on 15 December 2007; see also Statutory Instruments, 'The Money Laundering Regulations 2007' <http://www.legislation.gov.uk/uksi/2007/2157/pdfs/uksi_20072157_en.pdf> accessed 23 February 2017; see also Peter Snowden and Simon Lovegrove, 'Money Laundering Regulations 2007' (March 2008) 54 *Compliance Officer Bulletin*, 1.

²⁵⁶ The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007.

²⁵⁷ Part 7 of the Proceeds of Crime Act 2002.

financial institutions) to implement preventive measures, especially internal procedures to detect and report suspicious activities of their customers in fighting the money laundering regime.²⁵⁸

The laws that include several secondary regulations such as certain guidelines and standards provided by the FCA and the Joint Money Laundering Steering Group (JMLSG) are significant tools for fighting money laundering in the UK.²⁵⁹ The MLRs 2007 are secondary to the POCA,²⁶⁰ providing the ‘risk-based approach (RBA)’²⁶¹ and the use of ‘customer due diligence’²⁶² approach (i.e. Know Your Customer) to ensure that funds are derived and transacted from legal sources to prevent money laundering and terrorist financing risks.²⁶³ The Regulations aim to impose

²⁵⁸ Money Laundering Regulations 2007.

²⁵⁹ The criminalisation of money laundering can be studied from the Drug Trafficking Offences Act 1986, then it was replaced by the POCA 2002 (Punitive measures). In addition, the Money Laundering Regulations 2007 (MLRs 2007) (or Preventive measures) and the Systems and Controls or SYSC Handbook of the FCA oblige all reporting entities to comply; see *Harrison and Ryder* (n 6) 224; see also *Alhosani* (n 42) 205.

²⁶⁰ Part 7 of the Proceeds of Crime Act 2002 rules the money laundering offences and needs the creating SARs to the NCA; see Sabrina Fiona Preller, ‘Comparing AML Legislation of the UK, Switzerland and Germany’ (2008) 11(3) *Journal of Money Laundering Control* 245; see also Stephen Lander, ‘Review of the suspicious activity reports regime (The SARs Review)’ (March 2006) 11 <http://hb.betterregulation.com/external/SOCAtheSARsReview_FINAL_Web.pdf> accessed 30 July 2016.

²⁶¹ A Risk-Based Approach (RBA) to anti-money laundering and countering financing terrorism requires all jurisdictions, financial institutions and competent authorities identify, assess and understand the risk of money laundering and terrorist financing by exposing and taking anti-money laundering and countering financing terrorism measures respond to such risks to reduce them efficiently such as applying Customer due diligence (CDD) i.e., identifying the customer, the customer’s beneficial owner; see also Financial Action Task Force (FATF), *Guidance for a Risk-Based Approach: the Banking Sector* (FATF 2014) 6.

²⁶² Part 2: Customer due diligence of the Money Laundering Regulations 2007.

²⁶³ Law Society, ‘Money laundering warnings signs’ (22 October 2014) <<http://www.lawsociety.org.uk/support-services/advice/practice-notes/aml/money-laundering-warning-signs/>> accessed 10 August 2016.

compliance with firms,²⁶⁴ which distribute access to financial services and other similar services that possibly attract money launderers.²⁶⁵

The 2007 Regulations determine the institutions and professionals²⁶⁶ to appoint a nominated officer who will report the SARs to the NCA²⁶⁷ unless an officer would be in violation of this rule.²⁶⁸ Furthermore, the FCA can impose high fines on both financial institutions and such officers who breach the money laundering provision in order to enhance better conduct across the obliged entities.²⁶⁹ All designated authorities²⁷⁰ have the power to impose civil penalties on any person who violates the rules.²⁷¹ All breaches must be liable to civil penalties under Regulation 42 and also criminal offences under Regulation 45, with the minor exception of Regulation 11(1d), which requires “a relevant person to consider whether he is bound to disclose under Part 7 of the POCA 2002 or Part 3 of the Terrorism Act 2000 to keep appropriate procedures.”²⁷² However, the FCA’s pre-placement policy and the

²⁶⁴ The MLRs 2007 force only to firms in the regulated sector and financial institutions which are obliged by rule by the FSA must be subject to the FSA’s foundations on money laundering Paragraphs 3.2.6A-3.2.6J of the FSA’s Senior Management Arrangements, Systems and Controls Sourcebook (SYSC).

²⁶⁵ Slaughter and May, ‘An introduction to the UK Anti-Money Laundering regime’ (March 2008) 3 <<https://www.slaughterandmay.com/media/559043/an-introduction-to-the-uk-anti-money-laundering-regime.pdf>> accessed 5 October 2016.

²⁶⁶ The Act intends to prevent the professionals, who involve in financial transaction (e.g. accountants or lawyers), from failing to report SARs of their clients; Janet Ulph and Ian Smith, *The Illicit Trade in Art and Antiquities: International Recovery and Criminal and Civil Liability* (Hart 2012) 113.

²⁶⁷ Under the POCA 2002, nominated officers are persons who the financial institutions have positioned to receive internal disclosure or report from other members of staff of suspected money laundering now was referred to as Money Laundering Reporting Officers (MLROs). Some staff of financial institutions e.g. the individual trader or cashier at banking counter were required to report to the MLROs when they suspect their customer in relation to money laundering; see also R C H Alexander, *Insider Dealing and Money Laundering in the EU: Law and Regulation* (Ashgate 2007) 167; Failure to disclose to the NCA by nominated officer in the regulated sector; s 332 of the Proceeds of Crime Act 2002.

²⁶⁸ Alexander (n 268) 167; POCA 2001 s 330 (4); see also HM Treasury, ‘Bills and Legislation’ (5 June 2013) <<https://www.gov.uk/government/publications/preventing-money-laundering/preventing-money-laundering>> accessed 25 February 2017.

²⁶⁹ HM Treasury, *A New Approach to Financial Regulation: Building a Stronger System* (HM Treasury 2011) 72.

²⁷⁰ The Regulation 36 of Money Laundering Regulations 2007.

²⁷¹ The Regulation 42 of Money Laundering Regulations 2007.

²⁷² Part 7 of the Proceeds of Crime Act 2002: Money Laundering Offences; Part 3 of the Terrorism Act 2000: Terrorist Property.

MLRs 2007's requirements were claimed by the obliged entities that they are costly, unnecessary, and complicated processes.²⁷³ Consequently, the British Bankers' Association paid £5bn annually to comply with such anti-money laundering legislation.²⁷⁴

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017)²⁷⁵ replaced the Money Laundering Regulations 2007, including the Transfer of Funds (Information on the Payer) Regulations 2007 and force on 26 June 2017. Kirby states that the UK Government require to enhance data sharing between FIUs effectively.²⁷⁶ Therefore, the UK Government transposed the European Union's fourth Directive on Money Laundering into its domestic regulations to enhance and bridge the 2007 MLRs' gaps. The transposition increased more prescriptive policy of AML risk assessment, strengthened risk mitigation policies (e.g. positioning an official board member into account of MLRs 2017, and enhanced customer due diligence (CDD) procedures and recording keeping system, and screening agents and training staff more effectively).²⁷⁷ In addition, the level of due diligence would be required to be more restrictive rather than MLRs 2007. The relevant persons²⁷⁸ must consider their customer and geographical

²⁷³ *Harrison and Ryder* (n 6) 224.

²⁷⁴ Based on consultation with major banks; see also British Bankers' Association (BBA), 'Response to cutting red tape review the effectiveness of the UK's AML regime' (10 November 2015, page 2) <<https://www.bba.org.uk/policy/bba-consultation-responses/bba-response-to-cutting-red-tape-review-effectiveness-of-the-uks-aml-regime/>> accessed 4 March 2017; see also *Home Office and HM Treasury* (n 36) 12.

²⁷⁵ The Money Laundering, Terrorist financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017 No. 692).

²⁷⁶ Simon Kirby, the Economic Secretary to the Treasury, commented in the House of Common on 28 March 2017; see HC Deb 28 March 2017, vol 624, col 567W.

²⁷⁷ Thomas Webb, 'Money Laundering Regulations 2017 now in force: what you need to know' (*Burges Salmon*, 29 June 2017) <https://www.burges-salmon.com/news-and-insight/legal-updates/money-laundering-regulations-2017/?utm_source=mailout&utm_medium=email&utm_content=BS_logo&utm_campaign=New_MLR_2017> accessed 30 June 2017.

²⁷⁸ 'Relevant persons' remain the same as under the MLRs 2007, but the MLRs 2017 includes 'all gambling providers' rather than simply holders of a casino operating licence, as under the previous

risk issues when making a decision of providing simplified due diligence because the MLRs 2017 will create of a 'blacklist'²⁷⁹ of high-risk countries, which related to transaction activities. The 2017 Regulations also add the local PEPs who have worked for the public both in the UK and overseas, but the MLRs 2007 merely identified the foreign PEPs.²⁸⁰ It illustrates quite a wider scope than the previous Regulations. The CDD plays a significant role in these Regulations; therefore, the third party must provide such received CDD information, which includes the customer and/or its beneficial owner in two working days. Finally, the Regulations create a new criminal offence for any person who makes a statement in respect of money laundering, which can be a fine or up to two years 'imprisonment or both.

The businesses in control of the Financial Services and Markets Act 2000, POCA 2002, MLRs 2017, and the new JMLSG and FCA guidance²⁸¹ were impacted and pressured by such regulations to deal with risk-assessments of money laundering. For example, the businesses must adapt their business procedures, functions, roles and control to comply with the requirements. The UK Government believes that the ability of all supervisors to impose civil, administrative and criminal sanctions is a significant hindrance and encourages regulated sectors to comply with the regulations.²⁸²

regulations. The new Regulations also provide the greater rules in relation to the transparency of beneficiaries in their trusts.

²⁷⁹ 'Blacklist' under the Money Laundering Regulations 2017 is created for high risk jurisdictions which, if involved in an activity or transaction, conducts improved the level of due diligence and further risk assessment compliance. The Regulations cover for both foreign and UK Politically exposed persons (PEPs) i.e. those with well-known or famous public functions.

²⁸⁰ Money Laundering Regulation 2007.

²⁸¹ The Financial Conduct Authority (FCA) and JMLSG aim to improve the understanding of the SARs; the FCA also has a power to impose financial sanctions on all reporting entities which fail to comply with the SARs requirements.

²⁸² HM Treasury, 'Consultation outcome: Money Laundering Regulations 2017: consultation' (26 June 2017) <<https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>> accessed 2 July 2017.

The legislation affects the relevant person, not only just business firms in relation to their due diligence and suspicious activity reports (SARs) because the firms have to create an autonomous audit function and a board member to take into account in compliance with the MLRs 2017. There are a lot of burdens and liabilities for all firms that can cause the defensive reporting, level of compliance cost in the SAR regime, including the improvement of the sufficient knowledge of the firm's money laundering and terrorism financing risk exposure. However, the UK has transpose the 6MLD into the MLRs 2020, which focus on criminal offences and criminal activity, including the minimum term is determined for more than six months with graver cases calling for a punishment of a maximum term of imprisonment of at least four years.²⁸³

Sections 330 to 332 of the POCA 2002 constitute the regulated sector of offences²⁸⁴ that are enabled to punish any person or organisation falling within such regulated sector on conviction by a maximum of five years' imprisonment and/or a fine if they fail to disclose to the NCA.²⁸⁵ Such legislation determines that if anyone in the regulated sector knows (subjective or constructive knowledge)²⁸⁶ or suspects, or there are reasonable grounds for knowing or suspecting from any information gained in their business, identifying another person involved in any money laundering (including attempted actions), they must as soon as possible make a disclosure or report to the NCA.

²⁸³ Planet Compliance, '6MLD – The EU's 6th Anti-Money Laundering Directive in a Nutshell' (10 February 2020) <<https://www.planetcompliance.com/2020/02/10/6mld-the-eus-6th-anti-money-laundering-directive-in-a-nutshell/>> accessed 24 December 2020.

²⁸⁴ The regulated sector includes banks, insurance companies and other financial institutions (FIs).

²⁸⁵ Sections 327 to 329 of the Proceeds of Crime Act 2002.

²⁸⁶ Doug Hopton, Money Laundering: A Concise Guide for All Business (Gower 2006) 55, 56.

In consequence, the FIUs tend to adopt a defensive method of reporting the suspicion rather than the real suspicions.²⁸⁷ Nevertheless, the suspicion is a significant factor for money laundering offence, and the reporters of SARs must understand its meaning to make a quality of SARs submitting to the NCA.²⁸⁸ Therefore, the reporters should submit the SARs with the independent decision and understand the meaning of suspicion. Levi and Reuter comment that it is difficult to evaluate the reason for the suspicion without inquiring or interviewing and sometimes the interviewer (i.e. bank staff) may be charged with tipping off offence. Therefore, the expectations of high prosecution, conviction and/or criminal asset output from SARs can be unavailable, even without defensive reporting.²⁸⁹

The relevant person should realise the terms suspect, suspicion, reasonable grounds to suspect, and reasonable cause to suspect.²⁹⁰ The Joint Money Laundering Steering Group (JMLSG) explains that suspicion becomes more subjective and inadequate proof relied on substantial evidence.²⁹¹ Furthermore, the JMLSG also

²⁸⁷ Michael Levi and Peter Reuter 'Money Laundering' (2006) 34(1) Crime and Justice 289, 301.

²⁸⁸ According to the 1995 Walker report determined the suspicious transactions in Australia with a face worth of Australian \$51m, but it was considerably lower than the amount of money laundering which was Australian \$3.5bn; see John Robert Walker, 'The Extent of Money Laundering in and through Australia in 2004' John Robert Walker Crime Trends Analysis, Report for AUSTRAC, at 78 <www.criminologyresearchcouncil.gov.au/reports/200304-33.pdf> accessed 13 July 2017; see also Jonathan Fisher, 'The anti-money laundering disclosure regime and the collection of revenue in the United Kingdom' (2010) 3 British Tax Review 235, 237.

²⁸⁹ Levi and Reuter (n 28) 289, 335.

²⁹⁰ Section 340(3) defines term 'criminal property' as the property, which represents an advantage from criminal conduct. The money launderer committed the illegal activity (such as transferring, concealing) knowing or suspecting that such a property obtained from illegal conduct. For example, in *R v IK* [2007] EWCA Crim 491 the Court considered the proceeds of cheating the revenue could be the 'criminal property'. In *R v Anwoir* [2008] 2 Cr. App. R 36, the Court identified that criminal property could be obtain from criminal conduct, such as fraud, drug-trafficking; see Rudi Fortson, 'Money laundering offences under POCA 2002' in William Blair and Richard Brent (eds), *Banks and Financial Crime: The International Law of Tainted Money* (Oxford 2008) 167.

²⁹¹ Chapter 6 of the Joint Money Laundering Steering Group (JMLSG), *Guidance for the UK Financial Sector: Part 1* (JMLSG 2017) 160.

cited that the term suspicion was determined by the court in the context of the Criminal Justice Act 1988²⁹² because there is no definition for this term ‘suspicion’ in the POCA 2002 or MLRs 2017.²⁹³ In *R v Da Silva*, Longmore LJ, the Judge of the Court of Appeal described that it is a possibility²⁹⁴ which is more than imaginative or fanciful with concerning facts exist while an unclear feeling of anxiety or discontent would not be enough.²⁹⁵ Then the Court of Appeal (Civil Division) also implemented the interpretation of such ‘suspicion’ in the case of *Da Silva* to POCA 2002 in the case of *K Ltd v National Westminster Bank, HMRC, SOCA*.²⁹⁶ The financial institutions are able to apply to the Court of Appeal’s decision in *K Ltd* to defend themselves from a breach of their contractual obligations to their clients.²⁹⁷

In addition, this concept was confirmed by the Court of Appeal decision in the case of the *Shah and another v HSBC Private Bank (UK) Ltd*.²⁹⁸ Therefore, the relevant persons must realise that it is not crucial for the term ‘suspicion’ to be clear or definitely grounded on particular truths or facts. The term ‘suspicion’ should be consistent with a degree of content, not essentially whole belief, but it should be beyond a guess.²⁹⁹ The members of staff of the reporting entities should report to the

²⁹² In *R v Da Silva* [2007] 1 WLR 303, the Court of Appeal had a decision to convict under section 93A(1)(a) of the Criminal Justice Act 1988 (CJA) that there was a possibility, which was more than imaginary or fanciful, when the other person was engaged or had been involved in or had advantaged from proceeds of criminal conduct.

²⁹³ There is no statutory definition of the term suspicion, only guidance from the case law (i.e. *R v Da Silva* [2006] EWCA Crim 1654); Chambers Dictionary defines suspicion as the ‘act of suspecting; the state of being suspected; the imagining of something without evidence or on slender evidence; an inkling; mistrust; see also CM Schwarz, ‘The Chambers Dictionary’ (Chambers 2015) <<http://search.credoreference.com/content/title/chambdict?alpha=S&page=384>> accessed 21 August 2017.

²⁹⁴ [2006] EWCA Crim 1654; see also *R v Gillard* (1988) 87 Cr App R 189; *R v Hall* (1985) 81 Cr App R 260.

²⁹⁵ [2006] EWCA Crim 1654.

²⁹⁶ [2006] EWCA Civ 1039, para 16; see also *Fortson* (n 291) 171.

²⁹⁷ *ibid* 183.

²⁹⁸ [2010] EWCA Civ 31.

²⁹⁹ Jon Gale, ‘Reporting obligations under the Proceeds of Crime Act 2002: guide for financial institutions’ (Practical Law) <<https://uk.practicallaw.thomsonreuters.com/Docu->

nominated officer if they have a suspicion of whether a customer's conduct is reasonable. Consequently, there are a great number of inappropriate SARs on the NCA because of the fear of the financial sanctions.³⁰⁰

Similar to Thailand Anti-Money Laundering Act B.E. 2542 (AMLA 1999), the term suspicious transaction refers to a transaction with reasonable grounds to believe that it is committed to refrain from compliance with the AMLA 1999 or even committed by only single transaction or series of transactions, including attempts to transfer.³⁰¹ Under the AMLA 1999, the commission of any actions that concern or may concern with the action of predicate offences of money laundering or financing terrorism.³⁰² The next section represents discussion on the UK FIU model.

4.5.1 National Crime Agency

The NCA has the power to lead UK police forces and law enforcement agencies to undertake specific operational tasks to combat and eliminate organised crime.³⁰³ NCA officers may be entitled to 'one or more of the powers and privileges of a constable, powers of a customs officer, and powers of an immigration officer

[ment/If374c7dce81911e398db8b09b4f043e0/View/FullText.html?navigation-Path=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad740140000015d09826cafdee3f398%3FNav%3DKNOWHOW_UK%26fragmentIdentifier%3DIf374c7dce81911e398db8b09b4f043e0%26startIndex%3D1%26context-Data%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=5e26c3cca148c4e1d980d0bdd4c6f460&list=KNOWHOW_UK&rank=7&sessionScopeId=57c3da9fcd04fc2eee72bed69765960633771f2de9fd9dba159043be3869a303&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29](http://www.nationalcrimeagency.gov.uk/View/FullText.html?navigation-Path=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad740140000015d09826cafdee3f398%3FNav%3DKNOWHOW_UK%26fragmentIdentifier%3DIf374c7dce81911e398db8b09b4f043e0%26startIndex%3D1%26context-Data%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=5e26c3cca148c4e1d980d0bdd4c6f460&list=KNOWHOW_UK&rank=7&sessionScopeId=57c3da9fcd04fc2eee72bed69765960633771f2de9fd9dba159043be3869a303&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29) accessed 3 July 2017.

³⁰⁰ *Ryder* (n 96) 635, 649.

³⁰¹ Section 3 (21) para 4 of the Anti-Money Laundering Act B.E. 2542 (1999).

³⁰² Section 3 (21) para 4 of the Anti-Money Laundering Act B.E. 2542 (1999).

³⁰³ National Crime Agency (NCA) 'About the NCA' <<http://www.nationalcrimeagency.gov.uk/>> accessed 19 August 2016.

(triple warranted).³⁰⁴ The NCA is not related to the role of a government (a non-ministerial government department).³⁰⁵

The NCA's roles and responsibilities relate to the submission of SARs. The NCA disseminates intelligence to relevant LEAs for money laundering investigations, monetary fines, conviction, custodial sentence, and confiscation order.³⁰⁶ The NCA deals with monitoring compliance with anti-money laundering regulations and the SARs regime. The NCA receives, analyses, changes the SARs into intelligence information, and then delivers to the involved law enforcement agencies, excluding criminal investigation and prosecutorial powers.³⁰⁷ The NCA plays an important independent role with its budget, and acts as a bridge and mediator between the SARs entities and relevant law enforcement authorities.³⁰⁸

The NCA receives, analyses and evaluates suspicious activity reports (SARs),³⁰⁹ including other information relating to money laundering, associated

³⁰⁴ National Crime Agency (NCA) 'how we are run' <http://www.nationalcrimeagency.gov.uk/about-us/how-we-are-run> accessed 19 August 2016.

³⁰⁵ *ibid.*

³⁰⁶ The NCA receives 404,735 SARs in 2015; National Crime Agency (NCA), *National Crime Agency Annual Report and Accounts 2015-16* (Williams Lea Group 2016) 23.

³⁰⁷ International Monetary Fund and World Bank (n 41) 10.

³⁰⁸ *Ueda* (n 209); see also *Ping* (n 209) 252, 252.

³⁰⁹ The SARs information presents the awareness of law enforcement internally and globally to possible money laundering (or terrorist financing) as well as construct a better apprehending of criminal risks to the country; see National Crime Agency (NCA) 'Suspicious Activity Reports (SARs) Annual Report 2015' (page 5) <<http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file>> accessed 21 November 2016; The UK Drug Trafficking Offences Act of 1986, which initially set the laundering of proceeds of drug trafficking as a criminal offence SARs regime, has been obliged to present the SARs as soon as is practical; Persons and all firms in the regulated sector are obliged under Part 7 of the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT) regarding to SARs regulation; see also Serious Organised Crime Agency (SOCA) 'Submitting a Suspicious Activity Report (SAR) within the Regulated Sector' (November 2012) page 2 <[http://www.aat-interactive.org.uk/cpdmp3/The%20Professional/Submitting a SAR Within the Regulated Sector November 2012_1_1.pdf](http://www.aat-interactive.org.uk/cpdmp3/The%20Professional/Submitting%20a%20SAR%20Within%20the%20Regulated%20Sector%20November%202012%201%201.pdf)> accessed 20 November 2016; the Criminal Justice Act 1993 (CJA) implemented the 1991 EC Directive on the Prevention of the use of the Financial System for Purpose of Money Laundering (the First Money Laundering Directive 1991). Under s 18 of this 1993 Act, also determines the individual and entity to report the SARs perspective of drug money laundering to UK FIU; see the Criminal Justice Act 1993, s 18; see also Money Laundering Regulations 2007, Regulation 14 and the Proceeds of Crime Act 2002, s 7.

predicate offences and financing of terrorism that were submitted by reporting entities, i.e., firms, individuals, designated professionals across the financial sector,³¹⁰ then disseminating valuable intelligence information to the anti-money laundering competent authorities.³¹¹ The NCA works as the intermediary or administrative-model FIUs similar to the USA FIU (FinCEN) and Australia FIU (AUSTRAC) that demonstrate itself as a buffer between the reporting entities (i.e. private sector) and relevant law authorities (e.g. police forces and public prosecutor).³¹² SARs also detect and disrupt money laundering and predicate offences as well.³¹³ The fourth European Union Anti-Money Laundering Directive (EU Directive), the Financial Action Task Force (FATF), the 2012 Recommendations, as well as the new FATF evaluation methodology require a re-examination of the model and the effectiveness of the UK SAR Regime through the operation of the NCA under its Economic Crime Command for increasing the enhancement for the Home Office efficiently.³¹⁴

The regulated sector is subjected to the AML regulations to report any suspicious activities to the UK FIU, the NCA, but such reports may often not be acted upon because the NCA receives an excessive amount of inappropriate information.³¹⁵ Also, the legislation does not identify the minimum worth of suspicious transactions to report to the NCA.³¹⁶ This may cause banks to apply improper criteria

³¹⁰ *HM Treasury and Home Office* (n 55) 6.

³¹¹ Egmont Group of Financial Intelligence Units, 'Financial Intelligence Units (FIUs)' <<http://www.egmontgroup.org/about/financial-intelligence-units-fius> > accessed 19 November 2016.

³¹² The US's FIU is Financial Crimes Enforcement Network (FinCEN); see *Gilmore* (n 50) 82.

³¹³ National Crime Agency (NCA), 'UK Financial Intelligence Unit: How SARs are used to detect crime' <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU> accessed 20 November 2016.

³¹⁴ *National Crime Agency* (n 245).

³¹⁵ *Unger* (n 48) 35.

³¹⁶ Mary Munford, 'Reporting suspicions of money laundering and terrorist financing: spotlight on France' International Compliance Association (ICA) (9 March 2016) <<https://www.int-comp.org/in-sight/2016/march/09/reporting-suspicions-of-money-laundering-and-terrorist-financing-spotlight-on-france/>> accessed 6 January 2017.

for reporting the SARs (i.e. defensive reporting).³¹⁷ In addition, the regulated sector deals with the customers and the AML compliance,³¹⁸ which can cause a high cost of the reporting entities.³¹⁹ In consequence, all firms submit the SARs with defensive reporting because of the fear of unlimited financial sanctions if they fail to comply with the POCA 2002.³²⁰ They have submitted inappropriate transaction reports to the NCA³²¹ which may make the NCA's competence in fighting money laundering unsuccessful.³²²

This thesis illustrates that the 2017 MLRs, POCA 2002 and Terrorism Act 2000 goes beyond the FATF requirements.³²³ The FCA Handbook and JMLSG Guidance are the main instruments to help the relevant persons (e.g. reporting entities) understand implementing such legislation effectively. Furthermore, Regulation 104 of the MLRs 2017 determines that the NCA must also provide proper feedback on the disclosure of suspicious activity at least once a year. Similarly, Thailand implements the FATF standards, but still lacks the effective AML legislation and led to the FATF punishment in 2012.

³¹⁷ *ibid* 97.

³¹⁸ John Broome, *Anti-Money Laundering, International Practice and Policies* (Sweet and Maxwell 2005).

³¹⁹ Kathleen A Lacey and Barbara Crutchfield George, 'Crackdown on money laundering: a comparative analysis of the feasibility and effectiveness of domestic and multilateral policy reforms', (2003) 23(2) (Winter) *Northwestern Journal of Law and Business* 263, 304; see *Lloyds Bank v The Chartered Bank of India, Australia and China* [1992] 1 KB 40, 73 per Sankey LJ; see also Fred Hobson, 'Introduction: Banks and Money Laundering' in William Blair and Richard Brent (eds) *Banks and Financial Crime: The International Law Tainted Money* (Oxford University Press 2008) 8.

³²⁰ *Ryder* (n 8) 63.

³²¹ Jun Tang Lishan Ai, 'Combating money laundering in transition countries: the inherent limitations and practical issues' (2010) 13(3) *Journal of Money Laundering Control* 215, 222.

³²² Mohammed Ahmad Naheem, 'HSBC Swiss bank accounts-AML compliance and money laundering implications' (2015) 23(3) *Journal of Money Laundering Control* 285, 294.

³²³ *Ryder* (n 8) 258; see also *Financial Conduct Authority* (n 7).

The SARs is a regulated sector's disclosure, which is submitted by their money laundering reporting officer (MLRO)³²⁴ after collecting and deeming an internal disclosure, then applying to the NCA.³²⁵ The POCA 2002 does not indicate the term of SAR, but it instead indicates the term of the disclosure.³²⁶ The MLRO has a right with an independent decision under s 331 or s 332 of POCA 2002 to consider and submit their internal disclosure to the NCA.³²⁷ The POCA 2002 does not impose the penalty to the regulated sector who submits poor reporting quality or too many suspicious transaction reports (SARs) to the NCA.

The SARs can assist in detecting and preventing a money laundering regime, but it can cause problems to all involved. For example, all reporting entities impact the unnecessary financial burden of SARs reporting and AML compliance costs. They may submit poor reporting quality to the NCA because of the fear of financial sanctions,³²⁸ which also causes the delayed feedback on the SARs from the NCA (more than eight working days from the day after submission of the SAR).³²⁹ Furthermore, where the NCA gives consent but there is not any response for 31 calendar

³²⁴ Regulated Sector appoints an MLRO under s 331 (failure to disclose: nominated officers in the regulated sector) or 332 (failure to disclose: other nominated officers) of Part 7 of the POCA 2002.

³²⁵ Robin Booth, Simon Farrell, Guy Bastable and Nicholas Yeo, *Money Laundering Law and Regulation: A Practical Guide* (Oxford University Press 2011) 104.

³²⁶ Part 7 of POCA 2002; see also *Alhosani* (n 42) 264.

³²⁷ *Booth, Farrell, Bastable and Yeo* (n 288) 104.

³²⁸ The poor quality of SARs illustrates a lack of understanding or obligation with the rules and POCA 2002 by the submitter. For example, the SARs from the estate agency sector, the NCA indicate that SARs lacked clarity in their reason for reporting and a lack of general understanding of the need and objective of SARs reporting; see also *HM Treasury and Home Office* (n 55) 45, 55; From October 2014-September 2015, the NCA received the 381,882 SARs (increasing by 7.82% on the previous year from 354,186 in 2013/14; by 83.39% SARs submitted from the banking sector); see *National Crime Agency* (n 245); see National Crime Agency (NCA), 'Suspicious Activity Reports (SARs) Annual Report 2014' (December 2014) <<http://www.nationalcrimeagency.gov.uk/publications/464-2014-sars-annual-report/file>> accessed 21 November 2016.

³²⁹ The NCA identified that the average returned time for response to reporters for all consent requests was 4.7 day (increasing o the last year's reported turnaround of 4.3 days; see *National Crime Agency* (n 245); The SOCA produced its bulletin to communicate its commitment to sharing perspectives on the SARs Regime; see also Serious Organised Crime Agency (SOCA) 'Suspicious Activity Reports (SARs) – Top Ten Tips for the Accountancy Sector' (*Financial Intelligence Unit (UK FIU) Bulletin*, 2011) 6 <<https://www.icaew.com/-/media/corporate/files/technical/legal-and-regulatory/money->

days from the NCA's refusal (i.e. the 'moratorium period') in order to permit relevant law authorities time to analyse and collect related evidence to resolve whether additional action, e.g. restraint of the funds, is suitable.³³⁰

Stessens argues that the NCA's feedback is highly advantageous to the mutual collaboration among the reporting entities, relevant authorities, including the NCA itself in that they grant the reporting entities information on the consequence of their action.³³¹ Furthermore, the feedback can be useful for allowing reporting entities to better train their staff as to which activities and transactions are suspicious, especially producing compliance officers of reporting entities with information and results that create the potential for them to clarify reports compiled by staff that are not meaningful and significant.³³² The feedback brings about more efficiency and effectiveness of the FIUs and the reporting entities.

The NCA received over 380,000 SARs in 2016, and 463,938 SARs between 2017 and 2018,³³³ but the NCA does not have the essential resources to make sufficient intelligence information to investigate all the suspicions appropriately.³³⁴ For example, now the NCA cannot withhold consent to proceed with a transaction beyond 31 days after the initial day of the refusal of the consent.³³⁵ To fulfil the principal role of the NCA in the operation of the consent regime and the quality of SARs, the lack of feedback from the NCA and the law enforcement agencies should be

[laundrying/20110419-f1a420n-top-10-tips-for-accountancy-sector-v10.ashx?la=en](#) accessed 20 November 2016.

³³⁰ National Crime Agency (n 245).

³³¹ Stessens (n 194) 192.

³³² *ibid.*

³³³ National Crime Agency (NCA), Suspicious Activity Reports (SARs) Annual Report 2018 (NCA 2018) 3.

³³⁴ Jonathan Fisher, 'Criminal finances' (*Counsel*, 2017) <<https://www.counselmagazine.co.uk/articles/criminal-finances>> accessed 19 August 2017.

³³⁵ Section 335(6) of Proceeds of Crime Act 2002.

resolved and improved.³³⁶ The NCA, which is responsible for SARs, provides ‘very limited feedback’ to all reporting sectors in respect of particular SARs that are filed. They are required to submit a disclosure to the NCA when the information arrives, or when sometimes the workload of the NCA to analyse the SARs can delay their feedback to the reporters.³³⁷

The UK government determined several competent authorities to deal with financial crime, in particular in relation to money laundering. Then in 2013, due to the less criminal conviction of serious organised crime,³³⁸ the NCA replaced the SOCA to control the money laundering regime.³³⁹ The NCA’s analysis and evaluation of the SARs can identify the money laundering of typologies, techniques and trends, which can assist the entities to prevent them from being fine and improve their reputation from the money laundering regime.³⁴⁰ The NCA received a total of

³³⁶ Booth, Farrell, Bastable and Yeo (n 326) 22.

³³⁷ POCA 2002, s 331(4); see Hobson (n 320) 12.

³³⁸ The SOCA seized £8m in 2011, but in 2012 it seized only £4.2m; and then in 2013, it confiscated only £1.5m of cash seizures; see also Serious Organised Crime Agency (SOCA), *Annual Report and Accounts 2011/12* (HM’s stationary Office 2012); Serious Organised Crime Agency (SOCA), *Annual Report and Accounts 2012/13* (HM’s Stationary Office 2013); see also *Serious Organised Crime Agency* (n 253) 9; The SOCA was also accused of delaying its feedback to the regulated institutions that may cause a barrier to all firms; see also Christopher Recker, ‘The National Crime Agency: A critical analysis of its potential impact on the UK’s financial crime policy’ in Nicholas Ryder, Jon Tucker and Umut Turksen (eds), *The Financial Crisis and White Collar Crime – Legislative and Policy Response: A Critical Assessment* (Routledge 2017) 309; SOCA paid £15 for every £1 confiscated, an extraordinarily less response, but indicative of the ease with which gangs can hide the criminal proceeds; see also Philip Johnston, ‘The National Crime Agency: does Britain need an FBI?’ (*Telegraph*, 7 October 2013) <<http://www.telegraph.co.uk/news/uknews/law-and-order/10361009/The-National-Crime-Agency-Does-Britain-need-an-FBI.html>> accessed 6 March 2017.

³³⁹ On 7 October 2013 the NCA, as non-ministerial government department, replaced the SOCA to lead the UKs fight to cut serious and organised crime. Because the failures of SOCA included the poor management and its staff had low investigation skills; see also Serious Organised Crime Agency (SOCA) ‘United Kingdom Financial Intelligence Unit (UK FIU)’ <https://www.lawscof.org.uk/media/228174/Overview_of_UK_Financial_Intelligence_Unit.pdf> accessed 20 November 2016; see National Crime Agency (NCA) ‘How are we run’ (November 2016) <<http://nationalcrimeagency.gov.uk/about-us/how-we-are-run>> accessed 21 November 2016.

³⁴⁰ Valsamis Mitsilegas, ‘Book Review: A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA’ (2007) 17(3) *International Criminal Justice Review* 253, 254.

381,882 SARs between October 2014 and September 2015.³⁴¹ The ELMER, the database for SARs, becomes a weak calibre to fight against money laundering, which may cause high risks to the efficiency of the NCA.³⁴²

Furthermore, a large number of SARs submitting to the NCA does not indicate a higher quality of the SARs or the proportions of prosecutions or convictions of money laundering. For example, in the UK in 2015, there were 381,882 increasing from 354,186 in 2014. There were convictions per SAR presented at 0.13 per cent in 2004.³⁴³ Similar to Thailand, there were 13,963 suspicious transaction reports (STRs), but there were only 139 prosecutions and 90 convictions in 2013-2014.³⁴⁴

The NCA grants consent in 90% of the cases. However, it is significant to note that more than 50 per cent of the requests of case consents were averted and referred to other authorities or law enforcement authorities such as the HMRC, which often cause delays in the SAR consent procedure of about 42 days.³⁴⁵ The SARs regime would work more effectively and productively if the public and private sector bodies were to work and communicate together constructively.³⁴⁶ For example, the establishment of the Money Laundering Advisory Committee (MLAC), a high-level advisory group consisting of the representative of the various public and private sector organisations (e.g. the Home Office, HM Treasury, UK FIU, police, HMRC,

³⁴¹ Financial Action Task Force (FATF), *Annual Report 2015-2016* (FATF/OECD) 2017.

³⁴² *HM Treasury and Home Office* (n 55) 6.

³⁴³ *Verhage* (n 174) 150; see also Jackie Harvey, 'Just how effective is money laundering legislation?' (2008) 21(3) *Security Journal* 189, 198.

³⁴⁴ Anti-Money Laundering Office (AMLO), *Annual Report 2014 of Anti-Money Laundering Office* (AMLO 2015) 36.

³⁴⁵ In respect of the disclosure under the Terrorism Act 2000, the Act does not determine the deadlines for the FIU to respond to a request for consent; see *Brent and Blair* (n 183) 274; see also Andrew Campbell and Elise Campbell, 'Money laundering and consent regime in the United Kingdom – time for change?' in Barry Rider (ed) *Research Handbook on International Financial Crime* (Edward Elgar 2015) 492.

³⁴⁶ *Booth, Farrell, Bastable and Yeo* (n 326) 24.

NCA, CPS, the Law Society, BBA, JMLSG and RICS), could improve the UK's AML policy by publishing a money laundering strategy document named the 'Financial Challenge to Crime and Terrorism'.³⁴⁷ Furthermore, the HMRC launched its guidance on its website in 2010 to assist money service businesses, high-value dealers and the trusts or firms service providers. The JMLSG also published money laundering guidance to help the financial sector to interpret the UK money laundering regulations since 1990.

The NCA revised the SAR glossary codes,³⁴⁸ guidance booklet details for enhancement of the quality of SAR.³⁴⁹ In September and October 2015, the Home Office and the NCA set the principle for consultation with relevant stakeholders³⁵⁰ in order to enhance SARs regime that could promote the protection of money laundering.³⁵¹ Moreover, the UK government established the Joint Financial Analysis Centre (JFAC) consisting of the NCA, HMRC, SFO, and FCA purposely to respond to the leaked Panama Papers data via criminal intelligence for investigations.³⁵² In consequence, the Criminal Finances Act 2017 (CFA) extends the moratorium period

³⁴⁷ The MLAC's objectives are to oversee the implementation of the 2007 Financial Crime Strategy, reconsider the UK's AML policies and enable better cooperation of the UK's AML regime; see *Booth, Farrell, Bastable and Yeo* (n 326) 25.

³⁴⁸ National Crime Agency (NCA) 'Suspicious Activity Report (SAR) Glossary Codes and Reporting Routes (1 October 2016) <<http://www.nationalcrimeagency.gov.uk/publications/725-sar-glossary-code-and-reporting-routes/file>> accessed 21 November 2016.

³⁴⁹ National Crime Agency (NCA), 'UK Financial Intelligence Unit: Revised SAR Glossary Codes' <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU> accessed 20 November 2016.

³⁵⁰ Now the stakeholders who use the SARs are a law enforcement authority and relevant government agency (e.g. Her Majesty's Revenue & Customs (HMRC) or local police; see also National Crime Agency (NCA) 'The SARs regime' <www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU/the-sars-regime> accessed 21 November 2016.

³⁵¹ The Royal United Services Institute Centre for Financial Crime and Security Studies, which is the world's oldest independent think tank on the international defence and security (i.e., founded in 1831), organised this event; see also *National Crime Agency* (n 245); see also Royal United Services Institute (RUSI), 'About RUSI' <<https://rusi.org/about-rusi>> accessed 26 September 2017.

³⁵² *Financial Action Task Force* (n 2) 57.

from 31 days up to a total of 186 days (i.e. from the end of the initial 31 day moratorium period) to allow relevant authorities more time for investigative procedures.³⁵³ The UK Court has to take into account its decision to this Act. The extension of the SAR moratorium period for further than 31 days can increase a more effective law enforcement response as fundamental to handling money laundering. According to the Criminal Finances Act 2017, the reporting entities face the regulated burdens in dealing with customer expectations and the risk of tipping off offences.

To assure the operational independence of the UKFIU, the UK has the 'NCA Remuneration Review Body' (NCARRB), which was founded to review and suggest the UK government regarding the pay, salary, and allowances of NCA officers designated with autonomous operational powers.³⁵⁴ Consequently, this department illustrates that the UK firmly supports the operational independence of the NCA in fighting money laundering efficiently.

4.6 Evaluation of NCA's Implementation of AML policy of the United Kingdom

The NCA plays an effective role as the FIU role aiming to lead and coordinate the response to ML/TF through the SARs regime (i.e. receiving, analysing and disseminating information) in line with national statutory mandate.³⁵⁵ As mentioned

³⁵³ However the moratorium period cannot total more than 186 days beginning after the end of the starting 31 day period; see Neil Gerrard, Caroline Black, Sam Aldous and Timothy Bowden, 'The UK's New Suspicious Activity Reporting Regime: Part 1' (*Law360*, 22 June 2017) <<https://www.law360.com/articles/937558/the-uk-s-new-suspicious-activity-reporting-regime-part-1>> accessed 19 August 2017.

³⁵⁴ National Crime Agency (NCA), *Annual Report and Account 2014-15* (Williams Lea Group 2015) 34 <<http://www.nationalcrimeagency.gov.uk/about-us>> accessed 18 February 2016.

³⁵⁵ Furthermore, the REs also report SARs under the TA 2000, ss.19(2), 19(7B), 21A(4); see *Financial Action Task Force* (n 2) 23, 222.

above, the NCA adopts an administrative-FIU model to operate its powers and responsibilities in dealing with SARs regime.³⁵⁶ The NCA is a non-ministerial government body with operational independence, free from undue influence or interference.³⁵⁷ Nevertheless, the FATF Recommendation 29 was rated ‘partially compliant’. The NCA has a limited capacity to conduct operational analysis because of the large number of SARs, limited human and IT resources, as well as a lack of effective management of information from REs in order to obtain further information to analyse into intelligence.³⁵⁸ Furthermore, the UK also enacted Criminal Finances Act 2017 imposing a new offence of failure to deal with the facilitation of tax evasion and empowers NCA to receive a further information order to oblige information regarding SARs from REs in order to alert reporting entities to take a proactive role in the protection of possible money laundering.³⁵⁹

The FATF does not determine the minimum amount of transactions to report to the FIUs.³⁶⁰ However, the SARs regime has caused the conflicts of interest between the regulators, clients, and financial firms in the SAR regime such as the various regulatory typologies, the standard level of financial firms’ compliance, and implementation of concerns.³⁶¹ For example, the financial institutions are stuck in the conflicts of interest between their legal regulations towards the AML agencies and responsibilities towards their customers.³⁶² The anti-money laundering legislation requires financial institutions such as banks to investigate their customers, and this

³⁵⁶ *Financial Action Task Force* (n 2) 23.

³⁵⁷ *ibid* 224.

³⁵⁸ *Financial Action Task Force* (n 2) 225.

³⁵⁹ *ibid* 52.

³⁶⁰ *Munford* (n 317).

³⁶¹ *Broome* (n 319).

³⁶² *Verhage* (n 174) 5.

requirement causes an expensive managerial burden on the entities.³⁶³ In consequence, the SARs regime has generated a cost of AML compliance and a rise in the number of unnecessary reports submitted to the NCA (i.e. ‘defensive reporting’),³⁶⁴ while FIUs have attempted to reduce internal review staff expenses.³⁶⁵ Therefore, the AML laws can cause an impact assessment of the effect that such legislation could have on the costs of any obliged entities or business.³⁶⁶ The financial institutions increase the defensive reporting and flaws in the interpretation of the term suspicion and the level of compliance cost to avoid punishment (e.g. financial sanction) from the NCA.³⁶⁷

The defensive reporting is a significant failure, which impacts the achievement of implementation of POCA 2002.³⁶⁸ In 2014, banks submitted 82.18 per cent of the total number of SARs filed,³⁶⁹ largely because they feared potential financial sanctions from the FCA for non-compliance.³⁷⁰ Therefore, some financial institu-

³⁶³ *Lacey and Crutchfield George* (n 320) 263, 304; see also *Lloyds Bank v The Chartered Bank of India, Australia and China* [1992] 1 KB 40, 73 per Sankey LJ; see also *Hobson* (282) 8.

³⁶⁴ *Ryder* (n 8) 164.

³⁶⁵ *Levi and Reuter* (n 288) 289, 301.

³⁶⁶ Explanatory Note of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 <<https://www.legislation.gov.uk/uksi/2019/1511/made/data.pdf>> accessed 3 December 2020.

³⁶⁷ Criminal property means the alleged offender knows or suspects that the asset or property composes or forms the benefits of a person’s illicit conduct. The knowledge must be a higher stage of certainty in the position of mental condition than belief and suspicion. Therefore, the knowledge is different from belief and suspicion; see *Booth, Farrell, Bastable and Yeo* (n 326) 45; see also *Ryder* (n 8) 63.

³⁶⁸ *Home Office and HM Treasury* (n 36) 39.

³⁶⁹ In 2014, the suspicious reporting in the UK increased by 7.8% to 381,882; see *Munford* (n 317); see also *National Crime Agency* (n 304).

³⁷⁰ The firms’ attitudes towards AML legislation identified that the large majority of them complied with the AML regulations not because they accept or obtain it from the best practice, but only because of the fear of financial penalties; see also *Ryder* (n 96) 635, 647. See for example Financial Conduct Authority ‘FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings’, January 31 2017, available from <https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure>, accessed November 11 2020.

tions submit an invaluable report to the NCA by impunity motivation (i.e., the penalties for failure to submit the suspicious report).³⁷¹ Some entities are tending to implement the defensive reporting policy.³⁷² Thus, focusing on AML regulations can bring about to maximise the defensive reporting, which may overwhelm the NCA and finally diminish their competence.³⁷³ For addressing defensive reporting, the government agencies and financial institutions must acknowledge their stakeholders concerning with AML risk and the compliance of the AML regulations to report the genuine suspicion rather than concerns regarding a failure to comply with POCA 2002.³⁷⁴ As the reason mentioned above, this Act also encourages the regulated sector to raise a more acknowledged way to analyse only a genuine SAR rather than defensive reporting as ‘a belt and braces’ measure.³⁷⁵

Therefore, all firms are required to prove that their customers have the knowledge and understand the risks concerned when making transaction in the financial system.³⁷⁶ Finally, the AML compliance costs should be reduced.³⁷⁷ The NCA had better realise and address these issues. Accordingly, the government should solve such issues, including the unnecessary financial burden problems to the relevant private sectors by managing and reducing unnecessary bureaucracy under Part 7 of the POCA 2002,³⁷⁸ increasing in cooperating and sharing international FIUs

³⁷¹ *Tang Lishan Ai* (n 322) 215, 222.

³⁷² Barry Rider, ‘Don’t panic’ (2016) *Company Lawyer* 1, 2.

³⁷³ *Ahmad Naheem* (n323) 285, 294.

³⁷⁴ Jonathan R Macey, ‘Agency theory and the criminal liability of corporations’ Yale Law School, Faculty Scholarship Series Paper 1716 (1991) 315, 339 <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2726&context=fss_papers> accessed 9 January 2017.

³⁷⁵ *Gerrard, Black, Aldous and Bowden* (n 354).

³⁷⁶ Financial Conduct Authority (FCA), *FCA Risk Outlook 2014* (FCA 2014) 46.

³⁷⁷ *Ryder* (n 96) 635, 645.

³⁷⁸ Consent regime means the process that the POCA 2002 permits individuals and private sector to use themselves of a defence against money laundering charges by finding the consent of the competent authorities (e.g., the FIU or the NCA) to commit a transaction or conduct other action about which they have concerns. The NCA make its decision to deny or allow consent in consultation with the relevant law enforcement authority; see also *National Crime Agency* (n 245) 42.

network intelligence (e.g. the European FIU system),³⁷⁹ developing fast-tracking approach to disseminate intelligence information to relevant law enforcement bodies to protect and prosecute potential launderer, as well as reviewing the SARs database (ELMER)³⁸⁰ and statistic system for identifying the typologies of money laundering accurately to assist the private sector when analysing their transactions.³⁸¹ The improvement of an Anti-Money Laundering Action Plan is vital to enhance the SARs regime and the ability of the NCA.³⁸² The UK Serious Crime Act 2015 now provides all reporters with legal immunity from civil liability when filing SARs in good faith in order to protect the regulated sector.³⁸³

In relation to operational independence, the UK's MER stated that the UKFIU, structured in the NCA, is a non-ministerial government department and is operationally independent.³⁸⁴ The designation by the Director General of the NCA grants the authority for the UKFIU to operate its functions independent from any undue influence.³⁸⁵ However, the Head of the UKFIU is still appointed by the NCA Director Prosperity.³⁸⁶ The Head of the UKFIU is a senior manager within the NCA

³⁷⁹ *National Crime Agency* (n 245) 5.

³⁸⁰ The UK FIU internal SARs database has been known as ELMER that there are approximately two million SARs on ELMER. The NCA will kept on ELMER for six years or until proven not to be connected with any crime; see National Crime Agency (NCA), 'the SARs regime ' <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU/the-sars-regime> accessed 21 November 2016.

³⁸¹ National Crime Agency (NCA) 'The value of SARs ' <www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/UK_FIU/the-sars-regime> accessed 21 November 2016.

³⁸² National Crime Agency (NCA) 'NCA Annual Plan 2016-2017 ' <<http://www.nationalcrimeagency.gov.uk/publications/683-nca-annual-plan-2016-17>> accessed 21 November 2016.

³⁸³ The Serious Crime Act 2015 received Royal Assent on the 3rd of March 2015, which modified the POCA 2002 in several ways as well as protection from civil liability for reporting entities conducting authorised internal disclosures in relation to money laundering; see also *HM Treasury and Home Office* (n 55) 6.

³⁸⁴ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

³⁸⁵ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

³⁸⁶ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

and makes decisions to analyse, request and/or disseminate information.³⁸⁷ When dealing with case that involves political sensitivities, high values, impact on the NCA's reputation or carry a risk of legal challenge, the Head of the UKFIU can, but is not obliged to, refer the case NCA senior management. The FATF MER noted that the UKFIU has not sufficient independence from the NCA in determining its role or its priorities.³⁸⁸ Head of the UKFIU is able to sign, on his authority, non-binding MOUs with domestic competent authorities and its foreign counterparts.³⁸⁹

According to the 2018 FATF MER of the UK, it showed the assessment of the UK regarding the Recommendation 29 that was rated 'partially compliant' as the lack of appropriate independence of the UKFIU's functions.³⁹⁰ As reasons mentioned above, the thesis noted that the insufficient resources may impact on the UKFIU's independence, but it was not the big problem because the UKFIU has several best practice to support the independence of the UKFIU such as the JMLIT,³⁹¹ and the SARs Regime Committee³⁹² in line with the robust legal AML framework. Beside the responsibility of development of the SARs regime, the SAR Regime Committee brings together representatives from government agencies, law enforcement, AML supervisors, the Gambling AML Group, and the regulated sector in order to ensure that all decisions about the UKFIU (i.e. NCA), which could enhance the independence of the UKFIU.³⁹³ Unlike the Thailand AMLB, the JMLIT set as a taskforce located at the NECC, not similar to the Anti-Money Laundering Board (AMLB) in Thailand. The JMLIT has the powers to support the UKFIU in line with

³⁸⁷ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

³⁸⁸ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

³⁸⁹ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report 224.

³⁹⁰ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 224.

³⁹¹ National Crime Agency (NCA), 'National Economic Crime Centre' <<https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre?highlight=WyJqbWxpdcIsI-idqbWxpdcJd>> accessed 24 December 2020.

³⁹² National Crime Agency (NCA), *Suspicious Activity Reports (SARs) Annual Report 2017* (NCA 2017) 42.

the UK POCA 2002, but the AMLB becomes the obstacle of the independence of the Thailand FIU under the s25(3) of the AMLA 1999.³⁹⁴

4.7 Conclusion

This chapter has examined the AML policy, the AML competent authorities and the FIU in the UK in the implementation of the international requirements, such as the 1988 Vienna, 2000 Palermo Conventions, FATF Recommendations and EU AML Directive. Since money launderers and its associated criminals continue to benefit from their illicit proceeds, their requirements to launder illegal money will continue especially in the world financial centre countries like the UK. Such a threat pushes the UK government to respond to safeguard its reputation and credibility of the financial function by mainly focusing on the efficiency of the AML policy and competent authorities as the crucial instruments to fight against money laundering regime. The AML policy in the UK, which is managed by HM Treasury and assisted by the FCA. Although the UK AML policies exceed the global AML standards by imposing stricter obligations requiring the private sector to report a number of transactions in the SARs regime. The UK government and relevant agencies have faced several difficult issues to manage such as the delayed feedback from the NCA and the relevant law enforcement authorities to the reporters, defensive reporting and high AML compliance cost, which have impacted the effectiveness of financial information flow. The UK government must act to reduce the burdens under the POCA 2002 for the reported sector by improving the fast-tracking channel to transport the SARs to the law enforcement agencies including the feedback to the reporters in order to reduce the compliance cost. Also, it is important to enhance the guidance to

³⁹⁴ Section 25(3) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

promote a better understanding of the interpretation of the term suspicion to the private sector to reduce defensive reporting.

The UK Parliament enacted the UK Serious Crime Act 2015 to provide legal immunity to all reporters who submit the SARs from civil liability. In June 2017, the UK government has transposed the Fourth Money Laundering Directive into the MLRs 2017, which strengthen the ability of the NCA and competent authorities effectively. The 2017 Regulations extend the moratorium to 186 days to provide further time for the relevant law enforcement agencies to collect essential evidence. However, the NCA's power is similar to the SOCA's in that they cannot expect its consequences. Thus, the UK's government, HM Treasury and the NCA should support the co-operation between the NCA and the FCA in order to use its credible deterrence policy and its power to impose financial sanctions on relevant persons or firms that have violated their gold standards (i.e. pre-placement rules). Moreover, the HM Treasury should hold up the FCA to prosecute the money laundering pursuant to the decision of the Supreme Court in *R v Rollins*. The collaboration between the competent authorities, such as the FCA and the UK FIU (i.e. the NCA), assists in overcoming the money laundering regime effectively.

The FATF rated the UK's AML legal framework applied in conducting the CDD very comprehensively. The UK regulatory and supervisory bodies apply such regulations to all regulated entities in line with the FATF standards. Furthermore, the UK achieves several investigations (7,900 cases), prosecutions (2,000 cases), and convictions (1,400 cases) for money laundering offences, or where money laundering is the principal offence.³⁹⁵ Therefore, more technological and human resources

³⁹⁵ Law Society, 'UK performs well in its 2018 FATF assessment' (16 January 2019) <<https://www.lawsociety.org.uk/support-services/risk-compliance/anti-money-laundering/uk-performs-well-2018-fatf-assessment/>> accessed 25 January 2019.

are needed for the NCA to deal with the growing number of SARs around 463,938 SARs from all reporting entities between 2017-2018.³⁹⁶ Additionally, to deal with the money laundering risk, the UKFIU requires more power to acquire further information regarding the SARs and financial information from obliged entities.³⁹⁷ Therefore, the reporting entities need to develop their risk management and risk analysis in order to obtain a good quality of SARs.

Regarding the independence of the UKFIU, the UKFIU was rated ‘partially compliant’ by the FATF for the implementation of the Recommendation 29, however the FATF raised the UK as best practice.³⁹⁸ Beside the JFAC, the JMLIT and the SARs Regime Committee are deemed globally to act as best practice, in particular the independence of the UKFIU.³⁹⁹ As mentioned above, the JFAC and FMLIT, the jointing Committee between the LEAs and private sector, would be the important elements of the UK to improve the independence of the UKFIU by developing transparent processes under the SARs regime in fighting money laundering and its associated crime. Therefore, Thailand government should learn to adapt the Thailand FIU from the UK in dealing with the issue of insufficient independence of the Thailand from the military coup regime. The next chapter relates to the AML policy, competent authorities and FIU in Singapore, which demonstrate the implementation of international standards to fight money laundering issues effectively.

³⁹⁶ National Crime Agency (n 296) 3.

³⁹⁷ Home Office and HM Treasury (n 26) 35.

³⁹⁸ FATF Recommendation 29; see Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist financing measures – United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 224.

³⁹⁹ National Crime Agency (NCA), ‘Money laundering and illicit finance’ <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance>> accessed 23 December 2020.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

CHAPTER FIVE

Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.1 Introduction

Singapore has succeeded not only as a significant international financial hub¹ and as a major offshore financial centre² but also as a worldwide transportation hub.³ However, these successes contribute towards the increasing money laundering risk⁴ of becoming a transfer location for illegal funds from abroad.⁵ Singapore has developed accessible financial services that may be abused by organised crime to launder illegal funds across the region.⁶ The Financial Action Task Force (FATF) estimated

¹ Singapore is a developed nation. In 2011, Singapore ranked the 8th of the Transparency International Bribe Payers' Index; Lu Wang, 'Study on the cooperation mechanism of Nansha area and national free trade areas along - The Belt and Road' (2018) 6 Open Journal of Social Sciences 98, 103; The UK ranked the ninth, but the same score (8.3 of 10). There is no Thai information in this Index; see Jack Kerr, 'How can legislators protect sport from the integrity threat posed by cryptocurrencies?' (2018) 18 the International Sports Law Journal 79, 81.

² Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Singapore Fourth Round Mutual Evaluation Report* (FATF and APG 2016) 123.

³ The enormous financial resources and new information technology cause transfer of money laundering across border easily; see Sinisa Franjic, 'Money laundering phenomenology' 31st International Scientific Conference on Economic and Social Development – "Legal Challenges of Modern World" – Split, 7-8 June 2018, at 422 <https://air.uniud.it/retrieve/handle/11390/1134725/251756/Book_of_Proceedings_esdSplit2018_Online.pdf#page=76> accessed 4 December 2018.

⁴ In consequence, Singapore attracts enormous funds flow from abroad that make the country vulnerable to changing into a transit point for illegal funds; see Ministry of Home Affairs (MHA), 'Singapore's anti-money laundering and counter financing of terrorism regime assessed to be robust; controls to be strengthened in certain sectors' (10 January 2014) <<https://www.mha.gov.sg/Newsroom/press-releases/Pages/Singapores-AntiMoney-Laundering-and-Counter-Financing-of-Terrorism-Regime-Assessed-to-be-Robust-Controls-to-be-Strength.aspx>> accessed 27 January 2018.

⁵ *Financial Action Task Force* (n 2) 5; see also Banker's Academy, 'Anti-money laundering (AML) in Singapore' <<http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/611-aml-singapore-sp-450>> accessed 4 September 2017.

⁶ Chat Le Nguyen, 'Towards the Effective ASEAN Mutual Legal Assistance in Combating Money Laundering' (2012) 15(4) *Journal of Money Laundering Control* 383, 385.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

that 77 per cent of the funds that flow into Singapore are from foreign sources with the main assets under the management flowing from the Asia-Pacific region.⁷

The anti-money laundering/countering financing terrorism (AML/CFT) risks in Singapore have increased because of Singapore's position as international trade and the transportation hub in the Asia-Pacific.⁸ Furthermore, the banking sub-sector usually offered a complex and large volume of financing services trade, which caused a higher level of money laundering and terrorist financing risk in Singapore.⁹ Consequently, the Singapore government has attempted to respond to the money laundering threat with an efficient system.¹⁰ While most of the Association of South-east Asian Nations (ASEAN) member states and Singapore have been members of the Asia/Pacific Group of Financial Intelligence Units (APG),¹¹ of the ASEAN countries, Singapore is the only member of the FATF since 1992.¹²

Since then Singapore has implemented international AML standards, including the UN AML conventions, FATF Recommendations, as well as best practices and industry guidelines into its national legal framework.¹³ Singapore enacted the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits)

⁷ *Financial Action Task Force* (n 2) 5.

⁸ *Financial Action Task Force* (n 2) 5.

⁹ *ibid.*

¹⁰ Dennis Cox, *Handbook of Anti Money Laundering* (Wiley 2014) 396.

¹¹ The Association of Southeast Asian Nations (ASEAN), established on 8 August 1967, consists of ten-member states as follows: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, see also Association of Southeast Asian Nations (ASEAN), 'ASEAN Member States' <<http://asean.org/asean/asean-member-states/>> accessed 4 September 2017.

¹² *Le Nguyen* (n 6) 383, 387; see also Financial Action Task Force (FATF), 'Singapore' <<http://www.fatf-gafi.org/countries/#Singapore>> accessed 10 July 2019; Francisco Ed Lim, 'Anti-money laundering initiatives: Ramifications on the legal profession' <https://www.aseanlawassociation.org/Francis_Lim.pdf> accessed 16 July 2019.

¹³ The last MER regarding the implementation of AML/CTF standards in Singapore, Singapore was considered Compliant for 18, Largely for 16 and Partially for 6 of the FATF 40 Recommendations; see Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Singapore Fourth Round Mutual Evaluation Report* (FATF and APG 2016) 12.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

Act (Cap. 65A) 1992 (CDSA) in line with the Standards to criminalise the laundering of proceeds involving drug dealing and criminal conduct.¹⁴ The 1992 Act is the key legislation to require all persons to report suspicious transactions to Singapore's FIU, Suspicious Transaction Reporting Office (STRO).¹⁵

In Singapore, there are several government agencies, competent authorities, and FIU taking responsibility for examination for AML compliance and enforcement of AML requirement. Particularly, the role of Singapore's FIU under the AML framework is able to meet international AML regulations.¹⁶ Financial institutions (FIs), other businesses and individuals are subject to AML requirements,¹⁷ such as risk policy, a risk-based approach, customer identification,¹⁸ customer due diligence (CDD), enhanced CDD, recordkeeping, STRs, and internal controls pursuant to Singapore's international obligations.

The FATF and APG assessed that Singapore has a moderate or substantial rating for the effectiveness of STRO with a well-functioning system in disseminating intelligence to LEAs.¹⁹ The efficient management of STRs regime makes a signifi-

¹⁴ Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) 1992, ss 43(1), 44(1), 46(1), 46(2), 46(3), 47(1), 47(2), 47(3) and 47AA(1).

¹⁵ CDSA 1992, ss 3A, 39(1).

¹⁶ See definition of the Competent authorities, FIUs in chapter 3.

¹⁷ FIs include banks, merchant banks, finance companies, money changers, remittance agents, insurers, insurance brokers, capital markets intermediaries, trust companies, financial advisers, stored value facility holders; designated businesses include casino operators, corporate service providers, dealers in precious stones and/or precious metals, estate agents and salespersons, legal practitioners and law practices, moneylenders, pawnbrokers, and professional accountants and professional accounting firms under s 39 of the CDSA 1992.

¹⁸ The AML requirements include a risk-based approach, identifying and verifying the identity of the client or any beneficial owner regarding the client, understanding the purpose and intended nature of the business relationship with the client, as well as ongoing monitoring of the business relationship with the client.

¹⁹ *Financial Action Task Force* (n 2) 3.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

cant use of financial information from the reporting entities (REs) to support investigations and prosecutions.²⁰ Therefore, this chapter aims to examine the AML legislation relating to the role of FIU in Singapore and evaluate its implementation of the international standards, especially the FATF Recommendations.

It is essential to study how the Singapore FIU comply with the international standards, particularly the independence of the FIU in line with FATF Recommendation 29. Such Recommendation focuses on the independence of each of the FIUs without any undue influence and interference in order to protect such prejudicing its independence and enhancing the FIU's core functions in dealing with the SARs/STRs regime. The next section explains the Singapore's AML framework.

5.2 Singapore's Anti-Money Laundering Framework

In order to fight money laundering effectively, Singapore has signed for members of the United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention), the UN Convention Against Transnational Organised Crime 2000 (the Palermo Convention) and the UN International Convention for the Suppression of the Financing of Terrorism 1999 (the Terrorism Financing Convention), the UN Convention Against Corruption 2003, and the FATF Recommendations.²¹ As a result of these international Conventions and membership of the FATF, the Singapore government strengthens its AML

²⁰ CDSA 1992, ss 2, 45(4)(a).

²¹ *Financial Action Task Force* (n 2) 136.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

legislation framework to combat illegal fund flows, including designing the proactive legal and supervisory framework²² in order to investigate complex money laundering cases to produce confiscation orders of criminal proceeds and the prosecutions. Singapore has also enacted a strong domestic legislation to meet FATF requirements, which Singapore joined in 1991.²³ Consequently, the World Economic Forum rated Singapore as the best country for protecting the business from criminals and the FATF also raised that Singapore meets the requirement of FATF Recommendations effectively.²⁴ Similar to the UK, Singapore has the essentially key elements for an economic centre, including a fully open capital account, a common-law based legislative system, an independent and efficient judiciary in commercial affairs.²⁵

Money launderers have kept using private banking and asset management in Singapore to fund disguise their proceeds of crime.²⁶ Therefore, the risk management of FIs is significant to prevent the economic stability, integrity²⁷ and competitiveness

²² Cheong-Ann Png and Khoon-Jin Tan, 'Singapore' in Toby Graham (ed), *Butterworths International Guide to Money Laundering Law and Practice* (2nd edn, LexisNexis Butterworths 2003) 548.

²³ *Hansard*, Parliamentary Debates, Vol 70, Col 1733, 6 July 1999.

²⁴ *Cox* (n 10) 615; see Financial Action Task Force (FATF), 'Singapore's progress in strengthening measures to tackle money laundering and terrorist financing' (2019) <<https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-singapore-2019.html>>.

²⁵ *The Economist*, 'Advantage Singapore?' (22 July 2020) <<https://www.eiu.com/n/advantage-singapore/>> accessed 25 December 2020.

²⁶ Sir James Sassoon, Keynote Address at the Countering the Financing of Terrorism Seminar, 12 February 2008, Singapore (as cited in *Public Prosecutor v Ong Tian Soon* [2008] SGDC 35 at [28]).

²⁷ Paramjit Singh, 'Confronting economic crime – Singapore's experience', Paper presented at the 24th Cambridge International Symposium on Economic Crime, Jesus College, Cambridge, September 2006.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

of Singapore.²⁸ Consequently, the Singapore government has designed a robust legislation, policy and supervisory framework²⁹ in order to prevent Singapore's integrity of the economic system from illicit fund flows and activities.³⁰ Singapore's AML policy aims to deter and prevent money laundering and its associated predicate offences.³¹ To protect the integrity of the financial system, Singapore has used proactive prevention such as a risk-based approach across multi sectors through a strong regulatory regime and effective enforcement action with severe punitive measures for deterrence.³²

Singapore's AML regime is posited the FATF Recommendations and ratified Convention and UN Security Council Resolutions.³³ In Singapore, the main AML legislation is the CDSA 1992,³⁴ which targets the 'benefits of criminal conduct' and applies to any person such as an individual or corporation.³⁵ Pieth and Aiolfi asserted

²⁸ Lee Sei Kin, SC, Cross-Border Status and other Measures to Curb Money Laundering in Singapore (25th Anniversary, 2005) Asian Law Association; see also Alvin Yeo and Joy Tan, 'Singapore' in Arun Srivastava, Mark Simpson and Nina Moffat (eds), *International Guide to Money Laundering Law and Practice* (4th edn, Bloomsbury 2013) 1147.

²⁹ Ministry of Finance (MOF), 'Singapore's AML/CFT Policy Statement' (4 December 2017) <<http://www.mof.gov.sg/Policies/Anti-Money-Laundering-Countering-the-Financing-of-Terrorism-AML-CFT/Singapores-AML-CFT-Policy-Statement>> accessed 6 December 2017.

³⁰ Yeo and Tan (n 28) 1148.

³¹ Predicate offences are listed in the First Schedule (i.e. drug dealing offence) and Second Schedules (i.e. serious offence) of the CDSA 1992, as well as include the conspiracy, attempt, abetment, or incitement of another to conduct such offences. Tax evasion is a predicate offence listed in Second Schedule.

³² Monetary Authority of Singapore (MAS), 'Speech by Kasiviswanathan Shanmugam SC, Minister of Law' at the Opening Ceremony of the 13th Annual Meeting of Asia-Pacific Group on Money Laundering, 13 July 2010 <<http://www.mas.gov.sg/news-and-publications/speeches-and-monetary-policy-statements/speeches/2010/speech-by-mr-k-shanmugam-at-the-13th-annual-meeting-of-asia-pacific-group-on-money-laundering.aspx>> accessed 5 September 2017.

³³ The detail of the FATF Recommendations, the three conventions, and the UN Security Council Resolutions was discussed in chapter 3.

³⁴ The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A) 1992 (2000 Rev Ed).

³⁵ Sections 2, 43, 44 of the CDSA 1992 (2000 Rev Ed) determines 'benefits of criminal conduct' similar to the 'proceeds derived from criminal conduct'.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

that the structure of the Singapore AML regime regarding the financial sector is progressive, which is similar to the UK's model.³⁶ Furthermore, it is similar to Thailand's because all of them divided the AML regime into two main measures, i.e. the deterrent anti-money laundering measure and the preventive anti-money laundering measure.³⁷

Under the Singapore's AML legislation on the part of individuals and corporation constitute breaches of the criminal law, which competent authorities criminalise the criminal proceeds. For example, the deterrent AML legislation includes the CDSA 1992 and the Monetary Authority of Singapore Act (Chapter 186) 1970 (MAS Act), which are applied to relevant persons and private sectors to criminalise the laundering of criminal proceeds.³⁸ In terms of deterrent AML measure, the Singapore primary legislation enacted to fight money laundering is the CDSA 1992.³⁹ It has been developed from the Corruption (Confiscation of Benefits) Act 1989.⁴⁰ Consequently, in Singapore, the CDSA 1992 criminalises money laundering, which are also consistent with the Palermo Convention 2000 and the terrorism (Suppression of Financing) Act, Chapter 325 in order to confiscate and seize any property involving in the money laundering and the financing of terrorism.⁴¹

³⁶ Mark Pieth and Gemma Aiolfi, 'Synthesis: Comparing international standards and their implementation' in Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Anti-Money Laundering - A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 420.

³⁷ Guy Stessens, *Money Laundering – A New International Law Enforcement Model* (Cambridge University Press 2000) 133.

³⁸ Sections 43(1), 44(1), 46(1), (2), (3), 47(1), (2), (3) of the CDSA 1992 (2000 Rev Ed) and the Monetary Authority of Singapore Act, including the Terrorism (Suppression of Financing) Act (Cap 325).

³⁹ The CDSA 1992 (2000 Rev Ed).

⁴⁰ The CDSA 1992 was taken over it with the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1999; see Nigel Morris-Cotterill, 'International money laundering update' (2007) *Compliance Officer Bulletin* 1, 3.

⁴¹ *Cox* (n 10) 615; see Kim-Kwang Raymond Choo, 'Money laundering and terrorism financing risks of prepaid cards instruments?' (2009) 4(1) *Asian Criminology* 11, 22; see also AML-CFT, 'List of ML Offences in Singapore' (2 May 2017) <<https://aml-cft.net/library/list-money-laundering-predicate-offences-singapore/>> accessed 5 September 2017.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

To deal with the money laundering regime effectively, Singapore has introduced the CDSA 1992, which forces all non-financial and FIs, especially in relation to the suspicious transaction reporting (SAR) regulatory requirements under the CDSA 1992, including the identification and record keeping regulations.⁴² The Singapore government strongly implements the FATF Recommendations to improve the availabilities and transparency of information on beneficial ownership of legal persons, limited liability partnerships and trusts, the risk assessment for all types of legal persons and non-profit sector.⁴³

As mentioned above, Singapore creates an efficient anti-money laundering policy to maintain a competitive financial hub in Asia by assessing and deepening the understanding of money laundering risks led by the Ministry of Finance (MOF), the Ministry of Home Affairs (MHA) and the Monetary Authority of Singapore (MAS).⁴⁴ The whole financial sector in Singapore provides 11.9 per cent of its GDP in 2014.⁴⁵ The Singapore government has emphasised the response to its role as a financial market centre in Asia/Pacific region that there is extensive scope not only for cross-border crimes but also global money laundering, which currently is no longer limited to drug trafficking crimes.⁴⁶ For example, the CDSA 1992 was amended to extend the asset confiscation and AML provisions of the former Drug

⁴² The CDSA 1992 (2000 Rev Ed).

⁴³ Chanyaporn Chanjarorn, 'Singapore has gaps to fill in money-laundering fight' (*Bloomberg*, 27 September 2016) <<https://www.bloomberg.com/news/articles/2016-09-27/singapore-has-gaps-to-fill-in-money-laundering-fight-fatf-says>> accessed 4 September 2017.

⁴⁴ Madeline Lee, 'Country report: Anti-money laundering laws and regulations in Singapore' in Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 64.

⁴⁵ Financial Stability Board (FSB), *Global Shadow Banking Monitoring Report 2015* (FSB 2015); see Christian Hofmann, 'Shadow Banking in Singapore' (2017) *Singapore Journal of Legal Studies* 18, 26.

⁴⁶ Lee (n 44) 64, 99; see also International Monetary Fund (IMF), 'Singapore' (February 2009) <https://asean.elibrary.imf.org/abstract/IMF002/09958-9781451834291/09958-9781451834291/09958-9781451834291_A001.xml?redirect=true> accessed 27 December 2018.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

Trafficking (Confiscation of Benefits) Act beyond drug laundering provisions to cover all serious crimes that are illustrated under the First and Second Schedules to the CDSA 1992 as predicate offences.⁴⁷ Consequently, Singapore's main legislation for countering money laundering, the CDSA 1992, criminalise the laundering of criminal conducts obtained from drug trafficking and other serious offences, which provide the power to confiscate the laundering and corruption.⁴⁸

To deal with the offences of helping another to hold possession of the illegal benefits of drug trading or from criminal activity, the CDSA 1992 imposes to fine and imprison a person that knowingly assists in keeping such criminal proceeds of drug dealing and the benefits of other criminal conduct might be sentenced to a financial sanction not exceeding SG\$500, 000 or to imprisonment for a term not exceeding seven years, or to both for the individual offender or a fine not exceeding SG\$1m for the non-individual offender.⁴⁹ To criminalise the offences of receiving, possessing, using, hiding or conveying the benefits of drug trafficking, or criminal activity, the CDSA 1992 determines that any person that knowingly helps hide or transact the advantages of drug dealing and criminal conduct might be punished with a fine not exceeding SG\$500, 000 or with imprisonment for a term not exceeding seven years or to both for the individual offender or a fine not exceeding SG\$1m for

⁴⁷ The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was amended in 2006 to expand the list of money laundering predicate offences from 189 to 297 offences, but now there are more than 400 money laundering predicate offences; see Second Schedule (Serious Offences) of the CDSA 1992; the First and Second Schedules of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) were amended with effect from June 3, 2015 to include different new predicate offences as 'serious offences'; Conventus Law, 'Singapore – Recent developments in AML/CFT Regulation' (6 July 2015) <<https://www.conventuslaw.com/report/singapore-recent-developments-in-aml-cft/>> accessed 25 December 2020.

⁴⁸ *Raymond Choo* (n 41) 11, 22.

⁴⁹ The Singapore dollar is the official currency of Singapore. In this thesis, Singapore dollar herein after 'SG\$'; ss 43 and 44 of the CDSA 1992 (2000 Rev Ed), involving with entering into, or otherwise being concerned in an arrangement.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

non-individual offender.⁵⁰ The CDSA 1992 criminalises the processes of laundering of drugs and other types of serious offences, including any offences committed outside the jurisdiction that can be imposed and prosecuted as if the offences had been engaged in Singapore.⁵¹ Under the standard for criminalization, the 1988 Vienna Convention includes drug-related offences as predicate offence.⁵² Furthermore, the 2000 Palermo Convention determines that its predicate offences should include all serious crimes (i.e. act constituting an offences punishable by imprisonment for a period of at least four years).⁵³

Despite Singapore has the robust AML regulations, it has also suffered from several money laundering cases and delisting that has weakened its reputation as an international financial centre. The CDSA requirements apply to all business, even a small to big ones, such as in the case of *Ang Jeannette v Public Prosecutor*, a small individual business owner was convicted of money laundering offences for obtaining over SG\$2m and remitting it overseas from a third-party on the instructions of her brother, who had claimed to be in criminal problem.⁵⁴ Furthermore, in 2000, the case

⁵⁰ The CDSA 1992 (2000 Rev Ed), ss 46(1) and 47(1) determine that concealing, disguising, concerting, transferring, removing from the jurisdiction, acquiring possessing, or using any property which is, or in whole or in part, directly or indirectly, representing, his benefits of drug dealing/from criminal conduct. Sections 46(2) and 47(2) involving with concealing, disguising, converting, transferring, or removing from the jurisdiction any such property described in the right column.

⁵¹ Sections 43(a), 60 of the CDSA 1992 (2000 Rev Ed); see also Koh Teck Hin, 'Corruption control in Singapore' 122, 125 <http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf> accessed 23 January 2018.

⁵² International Monetary Fund (IMF), *Financial Intelligence Units: An Overview* (IMF 2004) p. 47 <<https://www.imf.org/external/pubs/ft/FIU/fiu.pdf>> accessed 12 December 2020.

⁵³ International Monetary Fund (IMF), *Financial Intelligence Units: An Overview* (IMF 2004) p. 47 <<https://www.imf.org/external/pubs/ft/FIU/fiu.pdf>> accessed 12 December 2020.

⁵⁴ The accused was convicted for assisting retain criminal monies and sentenced to 9-month imprisonment; *Ang Jeanette v Public Prosecutors* [2011] SGHC 100; see Singapore Legal Advice, 'Anti-Money Laundering Regulations and your business: What you need to know' (11 December 2020) <<https://singaporelegaladvice.com/law-articles/anti-money-laundering-regulations-business/>> accessed 25 December 2020. .

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

of *Public Prosecutor v Teo Cheng Kiat* was the first money laundering case in Singapore was investigated and prosecuted.⁵⁵ Teo Cheng Kiat, a former crew of the Singapore Airlines (SIA), was convicted of money laundering and fraud offences of \$35 million from the SIA.⁵⁶ Kiat was jailed for 24 years for his crime.⁵⁷ This case was the worst money laundering was committed in Singapore. According to money laundering offence, these cases were also illustrated that Singapore's effort in implementing the AML international standards effectively.⁵⁸ In addition, the MER noted that Singapore has a strong institutional and legal framework and effective AML/CFT coordination of the competent authorities. The thesis found that the corporations in Singapore cite transparency and lack of corruption as leading attractive features of Singapore's investment atmosphere.⁵⁹

The STRO received 30,511 STRs in 2015.⁶⁰ In 2017, the number of STRs has increased to 35,471 STRs, which was risen 4 per cent from 2016.⁶¹ However, the STRO disseminated 25 per cent less intelligence to relevant competent authorities as compared to 2016.⁶² Singapore convicted 56 money laundering cases in 2016 and 73

⁵⁵ *Public Prosecutor v Teo Cheng Kiat* [2000] SGHC 129; term 'public prosecutor' hereinafter 'PP'.

⁵⁶ *Public Prosecutor v Teo Cheng Kiat* [2000] SGHC 129.

⁵⁷ *Public Prosecutor v Teo Cheng Kiat* [2000] SGHC 129; see Nureza Ahmad, 'Longest jail term for the worst case of commercial fraud' (*Singapore Infopedia* 2016) <https://eresources.nlb.gov.sg/infopedia/articles/SIP_422_2005-01-25.html> accessed 11 December 2020.

⁵⁸ Singapore ranked among the least corrupt jurisdictions in the world in 2016. Furthermore, it scored at 85 out of 100 of the Transparency International Corruption Index KnowYourCountry Limited, 'Singapore' <<https://www.knowyourcountry.com/singapore1111>> accessed 11 December 2020; see also Financial Action Task Force (FATF), 'Singapore's measures to combat money laundering and terrorist financing' (2019) <<https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-singapore-2016.html>> .

⁵⁹ KnowYourCountry Limited, 'Singapore' <<https://www.knowyourcountry.com/singapore1111>> accessed 11 December 2020.

⁶⁰ Commercial Affairs Department (CAD), *Annual Report 2017* (CAD 2017) 29.

⁶¹ *Commercial Affairs Department* (n 60) 29.

⁶² *ibid* 30.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

cases in 2017.⁶³ Furthermore, it seized SG\$ 32m of suspected tainted money in the money laundering investigations in 2017.⁶⁴

The preventive measures involve the compliance with the regulatory and legal requirements, and Singapore was rated by the FATF as the country that has an effective AML regime.⁶⁵ For example, Singapore issued the Mutual Assistance in Criminal Matters Act (Chapter 190A) 1992 in order to permit the Singapore government agencies to deliver and obtain international mutual assistance regarding money laundering and the financing of terrorism.⁶⁶

Additionally, MAS Act 1970, which was issued in 1970 and revised in 1999, aimed to provide the exercise of control over financial sectors and their related entities by the MAS.⁶⁷ This MAS Act 1970 empowers the MAS supervisory powers regarding Singapore AML regime to regulate the financial services sector in Singapore to promote financial stability conducive to the economic growth.⁶⁸

In order to complete the AML provisions in the CDSA 1992,⁶⁹ the MAS issued the Guidelines, namely MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism (MAS Notice 626), which are pursuant to s. 27(B) the MAS Act 1970.⁷⁰ The MAS Act contains the main requirements for

⁶³ *ibid* 45.

⁶⁴ *ibid* 45.

⁶⁵ *Pieth and Aiolfi* (n 36) 416; see also *Cox* (n 10) 615.

⁶⁶ *Cox* (n 10) 615.

⁶⁷ Monetary Authority of Singapore Act (Chapter 186) 1970.

⁶⁸ MAS Act 1970; see Monetary Authority of Singapore (MAS), 'MAS Act and Regulations' (26 November 2016) <<http://www.mas.gov.sg/regulations-and-financial-stability/regulatory-and-supervisory-framework/mas-act.aspx>> accessed 18 January 2018.

⁶⁹ *Cox* (n 10) 615.

⁷⁰ The Guidelines to Monetary Authority of Singapore (MAS) Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism and s 27(B) the Monetary Authority of Singapore Act in relation to the requirements for prevention of money laundering and terrorism financing.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

the FIs such as the KYC, CDD, and record procedures, while the MAS Notice presents itself as a ‘soft law’ directive from the MAS to ensure the relevant private sector to comply with the applicable regulations such as the detailed requirement.⁷¹ MAS Notice 626 has supplemented the encouragement of the FIs to implement the MAS Act’s requirements.⁷² Furthermore, the MAS Notice 626 also clearly demonstrates the list of useful examples of transactions that could induce suspicious about a customer’s connection with money laundering activities.⁷³ For example, the Guidelines to MAS Notice 626 defines ‘money laundering’ as a derivative offence relating to the processing of proceeds gained from illegal conduct, with the final consequence of concealing its origins by presenting it originated from a legal source.⁷⁴

The MAS Notice 626 involves a bank licensed under the Banking Act (Cap. 19), which the MAS uses for the preventive AML measures for the FIs.⁷⁵ Therefore, all financial sectors must comply with the MAS Guidelines because the MAS Act 1970 provides the power to the MAS to issue such direction, requirements or regulations concerning all FIs. The MAS considers that the guideline is essential to prevent money laundering because if FIs fail to comply with such measures, they can be imposed of financial sanction or imprisonment.⁷⁶ Moreover, the MAS may also withdraw the license of the FIs if they fail to comply with such Notice.⁷⁷

Thus, the FIs are required to identify the Notice and Guideline appropriately to their business and affirm that their AML policies, including the procedures, are

⁷¹ MAS Act 1970.

⁷² MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism.

⁷³ See the list of examples of Suspicious Transactions of the Notices and Guidelines on Prevention of Money Laundering and Countering the Financing of Terrorism.

⁷⁴ Guidelines to Monetary Authority of Singapore (MAS) Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism, para 10.

⁷⁵ Section 2 of the Monetary Authority of Singapore Act 1970 and the Banking Act (Cap. 19), 2008 Rev. Ed.

⁷⁶ Sections 27(B), 27(E) of the Monetary Authority of Singapore Act 1970.

⁷⁷ Section 28(5) of the Monetary Authority of Singapore Act 1970.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

consistent with the AML requirements to identify STRs regarding money mules.⁷⁸ Therefore, the MAS has issued its guidance of the replacement of individual accountability system, like the UK's Senior Managers and Certification Regime (SM&CR),⁷⁹ in order to ensure to identify and define who in senior management with true decision-making authority within the relevant body is accountable for the FI's core management duties.⁸⁰ Additionally, the MAS also issued the Guidelines to MAS Notice 1014 on Prevent of Money Laundering and Countering the Financing of Terrorism in 2007.⁸¹

Furthermore, the Association of Banks in Singapore (ABS) issued the Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism.⁸² For example, the first ABS Guidelines, which is the Prevention of the Misuse of the Singapore Banking System for Drug Trafficking and Money Laundering Purpose, were issued in 1990 and lately revised in 2009.⁸³ The ABS Guidelines are actually preventive AML measures and best practice for the financial sector (e.g. the investment and commercial banking, private banking, retail banking, and trade finance),⁸⁴ but the ABS Guidelines do not have the force of law per se. The ABS Guidelines support

⁷⁸ *Financial Action Task Force* (n 2) 40.

⁷⁹ Financial Conduct Authority (FCA), 'Senior Managers and Certification Regime' (7 February 2019) <<https://www.fca.org.uk/firms/senior-managers-certification-regime>> accessed 3 April 2019.

⁸⁰ The Senior Managers and Certification Regime (SM&CR) came to affect for banking sector in March 2016; see Allen & Overy, *A Comparative Look at Singapore's Proposed Accountability Regime for Senior Managers and Employees in Material Risk Functions* (June 2018) 3 <<http://www.allenoverly.com/publications/en-gb/Pages/A-Comparative-Look-at-Singapores-Proposed-Accountability-Regime-for-Senior-Managers-and-Employees-in-Material-Risk-Function.aspx>> accessed 5 January 2019.

⁸¹ Notice to Merchant Bank: Guidelines to MAS Notice 1014 on Prevent of Money Laundering and Countering the Financing of Terrorism - Merchant Banks (24 April 2015).

⁸² ABS Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism (13 November 2015).

⁸³ Association of Banks in Singapore (ABS), Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism (13 November 2015) 1.

⁸⁴ *Association of Banks in Singapore* (n 83) 1.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

the MAS Notice to prevent FIs from abusing by the money launderers.⁸⁵ Consequently, the preventive anti-money laundering measures empower all financial entities to act as the civil police role to monitor the suspicious transactions and report them to the financial intelligence unit (FIU).⁸⁶

The key role of the STRO under the CDSA 1992 is to ensure that useful intelligence is effectively and properly disseminated and provided to relevant LEAs in order to increase the number of investigations and prosecution of money laundering via the well-functioning systems and coordination mechanism.⁸⁷ MAS and STRO have reminded FIs of their responsibility to comply with STR requirements, AML guidelines and a risk-based approach in particular. The next section examines the Singapore competent authorities and the FIU in implementing international standards, including the domestic legislation (i.e. Deterrent and preventive AML measures) in combating money laundering.

5.3 The Competent Authorities and Financial Intelligence Unit in Singapore

There are three kinds of competent authorities in Singapore,⁸⁸ including primary, secondary, and tertiary authority. Each contains different divisions that will be described below.

5.3.1 The Role of Primary Authorities

Singapore Government has played a proactive role in supporting the country to be an international financial hub by creating MAS, which chaired by the Ministry

⁸⁵ *ibid.*

⁸⁶ *Stessens* (n 37) 134.

⁸⁷ *Financial Action Task Force* (n 2) 45.

⁸⁸ See discussion of competent authorities in chapter 3.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

of Finance and the Central Bank, to be the primary regulatory agency⁸⁹ for handling the financial services industry and governing the financial sector.⁹⁰ The next section displays the Ministry of Finance.

5.3.1.1 Ministry of Finance

The Ministry of Finance (MOF) is the main ministry, which is responsible for formulating and implementing the AML/CFT policies in Singapore, which led by the Anti-Money Laundering and Countering the Financing of Terrorism Steering Committee (AML/CFT Steering Committee).⁹¹ The MOF is also one of the members of the Singapore AML/CFT Steering Committee that works together with the Inter-Agency Committee in order to implement the national AML/CFT policy.⁹² MOF has formulated and implemented the government's AML policy relating to the currency and foreign exchange businesses in accordance with STRO's commitments to international standards by reminding FIs to report any suspicious transactions they come across to the STRO. The next section examines MAS in fighting money laundering.

5.3.1.2 Monetary Authority of Singapore (MAS)

By the virtue of the Monetary Authority of Singapore Act (CHAPTER 186) 1970 (MAS Act), the MAS roles as the central bank of Singapore and a financial regulator who regulates, monitors, and supervises the financial services sector, in-

⁸⁹ See the definition of primary authorities in chapter 3.

⁹⁰ *Pieth and Aiolfi* (n 36) 418.

⁹¹ *Ministry of Finance* (n 29).

⁹² *Financial Action Task Force* (n 2) 37.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

insurance sector, and individuals in order to deal with a risk of financial crime, especially money laundering.⁹³ The MAS is responsible for the anti-money laundering and countering financing terrorism supervision.⁹⁴ The duty of AML/CFT supervision is a broad scope of sanctioning instruments accessible to the FIs, extending from warnings/reprimands to criminal prosecution/removal of licenses.⁹⁵

The FATF commented that all of the tools have been used, except direct sanction regarding the senior management of FIs.⁹⁶ However, in the case of *Abdul Ghani bin Tahir v Public Prosecutor*⁹⁷ the Singapore High Court jailed the director for charges regarding money laundering activities conducted by the company pursuant to the CDSA 1992.⁹⁸ This case illustrates that Singapore government realises that the officers, directors, and non-executive directors are the gatekeepers of organisations that must be alert for deterring and preventing the money laundering risk and illegal activities within their administrative firms regardless of whether they actually conducted the crime.⁹⁹ Therefore, the AML compliance policies, internal controls, measures, and procedures should be properly approved by the senior management.¹⁰⁰

⁹³ Jason Chan, Vincent Leow and Daren Shiao, 'Singapore' in Nicolas Bourtin (ed), *The International Investigations Review* (7th edn, Law Business Research 2017) 228; see also KYC360, 'Singapore regulator directs banks to tighten customer verification process' (25 July 2018) <<https://kyc360.com/news/singapore-regulator-directs-banks-to-tighten-customer-verification-process/>> accessed 29 July 2018.

⁹⁴ *Financial Action Task Force* (n 2) 8.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ [2017] SGHC 125.

⁹⁸ The CDSA 1992, ss 47(1)(b), 59(1).

⁹⁹ Wendy Wysong, 'First prosecution in Singapore of a director for company money laundering' <https://www.cliffordchance.com/briefings/2017/07/first_prosecutioninsingaporeofadirectorfo.html> accessed 1 May 2018.

¹⁰⁰ Monetary Authority of Singapore (MAS), Consultation Paper on Designation of Tax Crimes as Money Laundering Predicate Offences in Singapore (October 2012) 4.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

According to the MAS's responsibilities, it attempts to prevent reputation damage, which is caused by AML lapse at banks in the nation linked to money laundering.¹⁰¹ Under s 27B of the Monetary of Singapore Act 1970 (Cap. 186), the MAS has the power to launch the regulations, guidelines and codes, as well as imposing conditions of operation on FIs and the DNFBPs to prevent the money laundering.¹⁰² Furthermore, it also ensures them to maximise the compliance with the FATF Recommendations and the AML preventive measures. The MAS can instigate investigations, overrule the operating licence of regulated proceedings, and impose civil penalties. All the actions of Singapore's MAS are similar to the UK Financial Conduct Authority (FCA) and the Anti-Money Laundering Office (AMLO) adopt – the imposition of financial sections.¹⁰³ Consequently, such regulatory notices and guidelines are applied to all obliged entities.¹⁰⁴

In April 2015, the MAS issued the notice to the holders of stored facilities to guide the crucial principles for all relevant holders¹⁰⁵ when operating their business activities.¹⁰⁶ For example, they are required to comply with the highest standard of due diligence, customer identification, including the identity of each beneficial

¹⁰¹ *Chanjarorn* (n 43).

¹⁰² The Guidelines on MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism; see also Dora Neo, 'Inside the Singapore Financial Centre' in Jiaxiang Hu, Matthias Vanhullebusch and Andrew Harding, *Finance, Rule of Law and Development in Asia: Perspectives from Singapore* (Koninklijke Brill NV 2016) 18, 33.

¹⁰³ Lev Bromberg, George Gilligan and Ian Ramsay, 'Financial market manipulation and insider trading: an international study of enforcement approaches' (2017) 8 *Journal of Business Law* 652, 668.

¹⁰⁴ *Neo* (n 102) 18, 33.

¹⁰⁵ The Payment Systems (Oversight) Act (Cap. 222A) (PSOA) defines 'Relevant holder' as a holder of a relevant stored value facility.

¹⁰⁶ The MAS' Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism (AML/CFT Notices) are launched pursuant to the s 27B of the Monetary Authority of Singapore Act (Cap. 186) (MAS Act 1970); see Monetary Authority of Singapore (MAS), *Prevention of Money Laundering and Countering the Financing of Terrorism – Holders of Stored Value Facilities*. MAS Notice PSOA-NO2 Notices and Guidelines (24 April 2015) 5.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

owner when dealing with all clients to cooperate with the relevant authorities to prevent, detect and deter money laundering.¹⁰⁷ Additionally, the MAS Notice 626 emphasises the suspicious transaction reports (STRs) towards relevant obliged entities, especially s 48 of the CDSA 1992 on tipping-off offence.¹⁰⁸ Such entities must report suspicious transactions or attempted transactions to the STRO, as well as expanding a copy to the Authority for Information.¹⁰⁹

In the 2016 Mutual Evaluation Report (MER), the FATF determined that the FIs and the DNFBPs illustrated a good understanding of the money laundering risks affecting Singapore and concluded that they were largely compliant with the FATF recommendations. However, they were criticised that they had a less improved understanding of the risk of illegal fund flows into and out of the jurisdiction.¹¹⁰ Consequently, in December 2016 the MAS fined the Singapore branches of the Standard Chartered Bank, Singapore Branch (SCB) around SG\$ 5.2m and the Coutts & Co Ltd, Singapore Branch (Coutts) about SG\$ 2.4m for violations of the MAS's anti-money laundering regulations with an account of fund flows connecting with the Malaysian governmental development fund, i.e. One Malaysia Development Berhad (1MDB) via these banks.¹¹¹

¹⁰⁷ *Monetary Authority of Singapore* (n 100) 5; see also Kim-Kwang Raymond Choo, 'Cryptocurrency and virtual currency: Corruption and money laundering/terrorism financing risks?' in David Lee Kuo Chuen (ed), *Handbook of Digital Currency: Bitcoin, Innovation, Financial Instruments, and Big Data* (Academic Press 2015) 303.

¹⁰⁸ Section 48 of the CDSA 1992 (2000 Rev Ed).

¹⁰⁹ Paragraph 13.2 of the Notice to Holders of Stored Value Facilities, MAS Act 1970, CAP. 186; see also *Monetary Authority of Singapore* (n 100) 26.

¹¹⁰ *Financial Action Task Force* (n 2) 91.

¹¹¹ Berhad, Malaysian word, means 'private'; see Monetary Authority of Singapore (MAS), 'MAS imposes penalties on Standard Chartered Bank and Coutts for 1MDB-related AML breaches' (2 December 2016) <<http://www.mas.gov.sg/news-and-publications/media-releases/2016/mas-imposes-penalties-on-standard-chartered-bank-and-coutts-for-1mdb-related-aml-breaches.aspx>> accessed 5 December 2017; see also Stanley Lai, Francis Mok and Tham Kokleong, 'Singapore: payment systems – proposed payments framework' (2017) 32(1) *Journal of International Banking Law and Regulation* 1, 1.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The MAS and the Commercial Affairs Department of Singapore (CAD), the branch in the Singapore Police Force (SPF), cooperate a government-industry partnership, the Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership (ACIP).¹¹² The ACIP leads to the partnership between the industry and the government agencies, including regulators and law enforcement authorities, to deal with the international risks of money laundering and terrorist financing, which Singapore has been dealing with by identifying, assessing, deterring, detecting and mitigating such risks.¹¹³

In January 2018 the MAS launched its guidance on the use of innovative technology solutions to facilitate non-face-to-face client onboarding. The guidance includes the measures on biometric identification and digital signatures in order to improve the security of customer verification and banking transactions effectively.¹¹⁴ Apparently, Singapore, the UK and Thailand have issued substantial updates to their internal guidelines for their financial sector, including foreign FIUs.¹¹⁵ The MAS has issued industry-specific guidance, which is standardised with minor amendments for each relevant sector.¹¹⁶

Interestingly, Singapore's guidelines are not so authoritarian but are more flexible to the regulated agencies in the way that the legislation and regulative regime

¹¹² Monetary Authority of Singapore (MAS), 'CAD and MAS Partner Industry Stakeholders to Fight Financial Crimes' (24 April 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/CAD-and-MAS-Partner-Industry-Stakeholders-to-Fight-Financial-Crimes.aspx>> accessed 6 September 2017.

¹¹³ *Monetary Authority of Singapore* (n 106).

¹¹⁴ Karry Lai, 'Biometrics could be the answer to AML' (2018) *International Financial Law Review* <<http://web.b.ebscohost.com.ezproxy.uwe.ac.uk/ehost/detail/detail?vid=1&sid=520aef16-0cea-4f97-a96b-865db0685f97%40ses-sionmgr120&bdata=JnNpdGU9ZWlhvc3QtbGl2ZQ%3d%3d#AN=129804339&db=bth>> accessed 10 December 2018.

¹¹⁵ *Morris-Cotterill* (n 40) 1, 2.

¹¹⁶ *ibid.*

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

are used, and this practice is similar to the UK's guidance.¹¹⁷ On the contrary, Thailand's guidelines adopt the authoritarian approach and put certain views of primary law, which allows interpretation, beyond uncertainty.¹¹⁸ On the whole, the Singapore's MAS has implemented a similar method to its counterparts in the UK and Thailand by cooperating with other authorities such as the Singapore Exchange Limited (SGX), and the CAD of the SPF, which were categorised in the secondary competent authorities as to the UK's and Thailand's.¹¹⁹

For the purpose of an investigation, the CDSA 1992 empowers the MAS as an authorised officer to apply to a court for an order to search, restrain, confiscate material and information in order to find any evidence relating to drug dealing or criminal conduct.¹²⁰ Similar to Thailand, the Anti-Money Laundering Act 1999 (AMLA) provides these powers to the Anti-Money Laundering Office (AMLO), Thailand's FIU, to issue an order or file a petition to the Civil Court in line with the AMLA 1999.¹²¹ Although the role of Singapore's MAS is similar to the AMLO of Thailand, the STRO applying the administrative-FIU model does not have the judicial and law-enforcement power like the Thai AMLO, which uses the hybrid-FIU model.

In summary, Singapore's MAS roles as the primary regulator is a crucial role in monitoring the variety of FIs to comply with the AML/CFT regime by providing the necessary guidance and creating the trust of the financial entities. The MAS also

¹¹⁷ *ibid.*

¹¹⁸ *ibid* 1, 3.

¹¹⁹ Monetary Authority of Singapore (MAS), 'MAS and CAD to jointly investigate market misconduct offences' (17 March 2015) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/MAS-and-CAD-to-Jointly-Investigate-Market-Misconduct-Offences.aspx>> accessed 21 May 2019.

¹²⁰ The CDSA 1992, s 30(1); see Veltrice Tan, 'The art of deterrence: Singapore's anti-money laundering regimes' (2018) 25(2) *Journal of Financial Crime* 467, 474.

¹²¹ The AMLA 1999, ss 34, 35, 36, 38, 40, 46, 48, 49, 55.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

develops its AML/CFT policy of active enforcement to ensure that all obliged entities build a strong culture of compliance and then comply with the AML/CFT regulations and guidelines strictly.

MAS has issued AML directions, guidelines and regulations that have the obligation of law, particularly the STRs requirements that FIs comply with its rules.¹²² The MAS and STRO have encouraged FIs and other REs of their duty to periodically review their client relationships, especially the STRs procedures, a risk-based policy, KYC/CDD, internal control in their businesses.¹²³ The STRO works in partnership with the MAS to review and check for ensuring that any professional intermediaries under their supervision have complied with their AML legislation to prevent money laundering and its associated crimes.¹²⁴

In summary, the MAS is not a part of the Singapore Government (comprising the President and Cabinet Members), while the MAS is a statutory board that acts as the national central bank, and serves as banker to and monetary agent of the Government.¹²⁵ Therefore, it has been suggested that since the MAS is not the part of the Singapore Government, it has greater operational independence and flexibility in its functions and operations.¹²⁶

The next section focuses on the AML/CFT Steering Committee in Singapore that has been established by various agencies in fighting the money laundering regime.

¹²² The MAS Act 1972 (Cap 186, 1999 Rev Ed), s 27B and the Banking Act (Cap 19, 2008 Rev Ed), s 55 empowers MAS to issue AML notices (containing binding directions).

¹²³ *Financial Action Task Force* (n 2) 178.

¹²⁴ *ibid* 191.

¹²⁵ Veltrice Tan, 'the art of deterrence: Singapore's anti-money laundering regimes' (2018) 25(2) *Journal of Financial Crime* 1, 7; see Monetary Authority of Singapore (MAS), 'about us' <[About Us \(mas.gov.sg\)](https://www.mas.gov.sg)> accessed 13 December 2020.

¹²⁶ Veltrice Tan, 'the art of deterrence: Singapore's anti-money laundering regimes' (2018) 25(2) *Journal of Financial Crime* 1, 7; see Monetary Authority of Singapore (MAS), 'about us' <[About Us \(mas.gov.sg\)](https://www.mas.gov.sg)> accessed 13 December 2020.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.3.1.3 The Anti-Money Laundering and Countering the Financing of Terrorism Steering Committee

The Singapore's Anti-Money Laundering and Countering Financing Terrorism Steering Committee (AML/CFT Steering Committee) comprises the Permanent Secretary of the Ministry of Home Affairs, Permanent Secretary of the Ministry of Finance, and Managing Director of the MAS.¹²⁷ In June 2015, the Singapore AML/CFT Steering Committee published a national AML/CFT Policy Statement¹²⁸ that aims to detect, deter, including prevent money laundering, associated predicate offences and terrorism financing, and to protect the integrity of the Singapore financial system from money laundering and other criminal activities.¹²⁹

Additionally, in 2013 the AML/CFT Steering Committee produced a National Risk Assessment (NRA), which identified the risks of money laundering and terrorist financing regarding the Financial Sector.¹³⁰ The Singapore NRA process has promoted background knowledge for the private sector and government authorities to deeply understand money laundering and terrorist financing risks in Singapore.¹³¹ Such assessment assists relevant authorities in keeping an effective risk-based regime to fight money laundering, as well as allocating financial sector and individuals to better understand the money laundering risk in their own business and a customer's risk profile.¹³² If the assessment report is publicised, it will increase greater

¹²⁷ *Ministry of Finance* (n 29).

¹²⁸ *ibid.*

¹²⁹ *Financial Action Task Force* (n 2) 65.

¹³⁰ Ministry of Home Office, Ministry of Finance (MOF) and Monetary Authority of Singapore (MAS), *Singapore National Money Laundering and Terrorist Financing Risk Assessment Report 2013* (Ministry of Home Office, MOF and MAS 2014).

¹³¹ *Financial Action Task Force* (n 2) 6.

¹³² *Monetary Authority of Singapore* (n 100) 1.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

awareness of the money laundering and other serious crime risks in Singapore, as well as the approaches to detect, deter, reduce and prevent the crimes.¹³³ Additionally, the money laundering risk that was identified in the NRA will establish a robust culture of STR to detect and follow all cases of money laundering and other crimes in Singapore and overseas.¹³⁴

The Singapore government requires FIs to take the NRA Report findings into account when they create their risk assessments, and this practice is similar to the UK.¹³⁵ However, Thailand briefly demonstrates its NRA on the Anti-Money Laundering Office (AMLO) website only because the full version is confidential. Thus, when lacking sufficient background knowledge, it is of course not efficient enough to support the financial sector and individuals to recognise and understand Thailand's current AML/CFT risks and trends.¹³⁶

According to national AML/CFT Policy Statement, the Committee, as a primary national government AML/CFT policy, has coordinated with STRO and all relevant competent authorities, which act as a valuable tool in AML policy development, in order to mitigate money laundering and terrorist financing risks.¹³⁷ To illus-

¹³³ *Ministry of Home Affairs* (n 4).

¹³⁴ *Ministry of Home Office, Ministry of Finance and Monetary Authority of Singapore* (n 130) 23.

¹³⁵ Kyle Wombolt, William Hallatt, Siddhartha Sivaramakrishnan and Pamela Kiesselbach, 'Enhanced anti-money laundering regime in Singapore: an update' (*Lexology*, July 31 July 2015) <<https://www.lexology.com/library/detail.aspx?g=b5294fb8-c631-4c48-b015-64f27decb3ce>> accessed 17 January 2018.

¹³⁶ Anti-Money Laundering Office (AMLO), 'National Risk Assessment Report 2016' (2 October 2017) <<http://www.amlo.go.th/index.php/en/national-risk-assessment/2016-national-assessment-report>> accessed 1 February 2018; see Monetary Authority of Singapore (MAS), 'National Risk Assessment' (26 November 2016) <<http://www.mas.gov.sg/regulations-and-financial-stability/anti-money-laundering-countering-the-financing-of-terrorism-and-targeted-financial-sanctions/anti-money-laundering-and-countering-the-financing-of-terrorism/national-risk-assessment.aspx>> accessed 1 February 2018; see also HM Treasury and Home Office, 'UK national risk assessment of money laundering and terrorist financing' (15 October 2015) <<https://www.gov.uk/government/publications/uk-national-risk-assessment-of-money-laundering-and-terrorist-financing>> accessed 1 February 2018.

¹³⁷ *Financial Action Task Force* (n 2) 3.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

trate, they are able to disseminate AML/CFT policies, guidance, and recommendations across the competent authorities. The next section examines the role of secondary authorities.

5.3.2 The Role of Secondary Authorities

The risks of money laundering through a financial sector and individual can impact the reputation of Singapore's financial centre.¹³⁸ Therefore, secondary authorities¹³⁹ such as regulatory and supervisory agencies have played an important role to combat this threat. The next section discusses the role of the Commercial Affairs Department.

5.3.2.1 The Commercial Affairs Department

To achieve the international requirements, in particular, the FATF Recommendations Singapore government established the Commercial Affairs Department (CAD) in 1984 under the control of the Revenue Division of the Ministry of Finance to fight financial crime, including money laundering in Singapore.¹⁴⁰ Due to the lack of an enforcement agency with the essential specialist and professional knowledge in fighting against the complex economic crimes, the CAD was transferred to be controlled by the Singapore Police Force (SPF).¹⁴¹

The CAD is the main investigation department, which has the responsibility for investigating in respect of money laundering, and other white-collar offences,

¹³⁸ *Ministry of Home Office, Ministry of Finance and Monetary Authority of Singapore* (n 130) 34.

¹³⁹ See definition of secondary authorities in chapter 3.

¹⁴⁰ FATF Recommendations 27, 28; see *Lee* (n 44) 91.

¹⁴¹ On 10th January 2000; see *Lee* (n 44) 91.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

and has its intelligence and investigative resource in the SPF.¹⁴² Thus, the CAD works together with other SPF units and relevant law enforcement authorities such as the Corruption Practices Investigation Bureau (CPIB) and the Central Narcotics Bureau (CNB) concerning money laundering. Furthermore, the CAD also issues the AML Compliance Handbook, which contributes the additional AML information to relevant sectors.¹⁴³

The CAD significantly uses the STRs at the processes of money laundering and predicates investigations in order to seize the criminal assets.¹⁴⁴ The CAD can enter into a Memorandum of Understanding (MoU) with the foreign jurisdiction in agreeing to the sharing of any information under the CDSA.¹⁴⁵ Therefore, CAD would analyse requests from foreign authorities and help them gain information via formal and informal ways to confirm if there is adequate evidence to commence a domestic money-laundering investigation effectively.¹⁴⁶ Unlike the UK and Thailand, the CAD in Singapore sets a single law enforcement agency for all types of financial crime.¹⁴⁷ It is a focal point in collecting and exchanging financial intelligence to disseminate to the relevant enforcement agencies to further investigate and prosecute against money laundering. The next section examines the Singapore Police Force.

5.3.2.2 The Singapore Police Force

¹⁴² The Financial Investigation Group of the CAD is accountable for investigating criminal activities, such as money laundering, terrorist financing and other financial crimes; see also *Cox* (n 10) 616; see Samuel Sharpe, Duane Morris and Selvam, 'Financial crime in Singapore : overview' Practical Law Country Q&A 3-618-7957 (1 March 2017) 19, 19.

¹⁴³ *Cox* (n 10) 616.

¹⁴⁴ *Financial Action Task Force* (n 2) 7.

¹⁴⁵ Sections 39(1), 41 of the CDSA 1992.

¹⁴⁶ *Financial Action Task Force* (n 2) 56.

¹⁴⁷ *Lee* (n 44) 91.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

Singapore Police Force (SPF), a member of International Criminal Police Organisation (INTERPOL), is an investigative agency pursuant to Part IV of the Criminal Procedure Code (CPC).¹⁴⁸ It has the power to summon any person within a jurisdiction to attend and help its ML/TF investigations,¹⁴⁹ as well as ordering the access, or the production of documents and relevant evidence essential in its investigations. Furthermore, it might search or apply for searching relevant evidence that is essential to such investigations. Under the CDSA 1992, the SPF has closely coordinated with STRO and Commercial Affairs Department (CAD)¹⁵⁰ and other competent authorities, particularly information-sharing between national and international counterpart authorities for further comprehensive statistics database, investigations and prosecutions.¹⁵¹ The next section examines the Financial Investigation Division.

5.3.2.3 The Financial Investigation Division

The Financial Investigation Division (FID), a section within the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF), is the main agency for fighting white-collar crime by prosecuting the financial crime, authorising to search and seizure, and ordering FIs to monitor customer accounts carefully.¹⁵² The FID is divided into three branches to combat money laundering, including the Financial Investigation Branch (FIB), the Proceeds of Crime Unit (PCU) and STRO.¹⁵³

¹⁴⁸ Part IV of the Criminal Procedure Code (CPC).

¹⁴⁹ Money laundering and terrorist financing investigations.

¹⁵⁰ The CAD is a department within the SPF that has the principal responsibility for investigating and taking enforcement operation regarding money laundering and other financial crimes; see Eric Chan and Agnes Lim, 'Singapore' in Lamia R Matta and Ann Sultan (eds), *Anti-Money Laundering* (Law Business Research 2017) 3 <<http://shooklin.com/~slbadm/images/publications/2017/July/Anti-Money-Laundering-2017-Singapore.pdf>> accessed 18 July 2019.

¹⁵¹ *Financial Action Task Force* (n 2) 189, 200.

¹⁵² Under the s 21 of Part IV of the Criminal Procedure Code (CPC) and the CDSA 1992 (2000 Rev Ed); see *Chan, Leow and Shiao* (n 93).

¹⁵³ The STRO is the Singapore Financial Intelligence Unit (FIU); see Anti-Money Laundering Forum, 'Singapore' (27 January 2012) <<https://www.anti-moneylaundering.org/asiapacific/Singapore.aspx>> accessed 4 September 2017.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The FID receives intelligence from STRO to prosecute and convict various offences arising from these investigations. For example, the FID worked closely with the STRO, MAS and the Attorney-General's Chambers (AGC) in the 1Malaysian Development Berhad (1MDB) in 2015 and withdrew the merchant bank status of BSI Bank and Falcon Bank resulting in the investigations prosecutions, and convictions of money laundering and its associated crimes.¹⁵⁴ The next section examines the Financial Investigation Branch.

5.3.2.4 The Financial Investigation Branch

The Financial Investigation Branch (FIB), the branch of the CAD, is accountable for investigating various money laundering attendants from bribery offences and/or other predicate offences pursuant to the CDSA 1992, including alleged crimes under the Terrorism (Suppression of Financing) Act 2002 (Cap. 325) (TSOFA).¹⁵⁵ The FIB manages requests for mutual legal assistance (MLA) from other foreign authorities with regard to bribery and money laundering offences.¹⁵⁶ Furthermore, the FIB has worked with STRO REs to identify financial crime by using big data analysis from REs.¹⁵⁷ The FIB receives intelligence from STRO for investigating money laundering and bribery-related predicate offences under the CDSA 1992.¹⁵⁸ The next section examines the Proceeds of Crime Unit.

¹⁵⁴ *Commercial Affairs Department* (n 60) 47.

¹⁵⁵ *Lee* (n 44) 92; see *Anti-Money Laundering Forum* (n 153); see *Cox* (n 10) 616.

¹⁵⁶ Loh Yoon Min, 'Contemporary measures for effective international cooperation' <https://www.unafei.or.jp/publications/pdf/GG10/23_CP_Singapore.pdf> accessed 13 December 2018.

¹⁵⁷ Commercial Crime Services, 'Financial institutions embrace AI to tackle money laundering' <<https://icc-ccs.org/index.php/1245-financial-institutions-embrace-ai-to-tackle-money-laundering>> accessed 18 July 2019.

¹⁵⁸ *Financial Action Task Force* (n 2) 184.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.3.2.5 The Proceeds of Crime Unit

The Proceeds of Crime Unit (PCU), which is the branch of the CAD, is mainly responsible for investigating the criminal proceeds and services asset recovering in an illegal investigation.¹⁵⁹ This Unit also identifies, assesses, restraints, seizes and forfeits criminal assets or the proceeds of crime derived property from the illicit activities, and then operates them until there are further managements, such as the relevant confiscation or restitution orders under the CDSA 1992.¹⁶⁰ Singapore enforcement authorities can refer the criminal case to the PCU for a joint operation, investigation and subsequent prosecution, when they come across a potential incidence of money laundering while investigating any money laundering offence.¹⁶¹ STRO delivers intelligence to PCU for further investigations and prosecutions of money laundering and associated predicate offences. The next section examines the Corrupt Practices Investigation Bureau.

5.3.2.6 The Corrupt Practices Investigation Bureau

Corrupt Practices Investigation Bureau (CPIB) is an independent law enforcement agency and as a primary investigative agency in Singapore that aims to investigate the corruption offences and other involving offences such as money laundering pursuant to the Prevention of Corruption Act (Chapter 241) 1960 (PCA), including the Criminal Code.¹⁶² Like the CAD and the CPIB, they use the STRs at the

¹⁵⁹ *Anti-Money Laundering Forum* (n 153).

¹⁶⁰ *Anti-Money Laundering Forum* (n 153).

¹⁶¹ *Cox* (n 10) 616.

¹⁶² The Prevention of Corruption Act (Chapter 241) 1960 (PCA) and the Criminal Code; see *Financial Action Task Force* (n 2) 7.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

earlier stages of money laundering and predicate investigations to criminalise the benefits of the proceeds of crime.¹⁶³

The PCA 1960 and the CDSA 1992 empower the CPIB to deal with the investigation of the corruption in Singapore, including in relation to the money laundering offence.¹⁶⁴ Section 37(1) of the PCA provides the extra-territorial powers over a Singapore citizen to deal with proceeds of corruption committed any place outside Singapore jurisdiction; for example, a person may be dealt with money laundering offence as if it had been conducted within Singapore.¹⁶⁵ Consequently, non-citizens could be investigated, prosecuted, and convicted in Singapore in case that they involve or support the procedure of corruption concerned Singapore pursuant to the CDSA 1992,¹⁶⁶ which covers and applies to any predicate offences and any property whether it is located in Singapore or elsewhere, including any criminal conduct and drug trafficking whether committing of such activities in Singapore or elsewhere.¹⁶⁷

Under the CDSA 1992, the CPIB has continued to monitor Singapore's reputation with non-tolerance for corruption such as the punishment for corruption up to five years' imprisonment and/ or a fine of SG\$10,000.¹⁶⁸ The CDSA 1992 applies to all persons that commit the predicate offence and for drug dealing and criminal conduct respectively.¹⁶⁹ There are several jail sentences being distributed to some

¹⁶³ *ibid* 7.

¹⁶⁴ Corrupt Practices Investigation Bureau (CPIB), 'Prevention of Corruption Act' (29 May 2017) <<https://www.cpiib.gov.sg/about-corruption/prevention-of-corruption-act>> accessed 8 September 2017; see also *Chan, Leow and Shiao* (n 93) 237.

¹⁶⁵ Section 37(1) of the PCA.

¹⁶⁶ Sections 3(3) and (5) of the CDSA 1992 (2000 Rev Ed), including s 34 of the Terrorism (Suppression of Financing) Act (Chapter 325) 2002 (2003 Rev Ed).

¹⁶⁷ Section 2(1) of the CDSA 1992 (2000 Rev Ed).

¹⁶⁸ Section 5 of the PCA 1960.

¹⁶⁹ Sections 46(1) and 47(1) of the CDSA 1992 (2000 Rev Ed).

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

private sector employees, who were convicted of corruption offences.¹⁷⁰ For example, Koh Seah Wee was accused in 2010 of money laundering and cheating offences amounting to S\$12.5m and pleaded guilty with 22 years' imprisonment in 2011.¹⁷¹ The case showed that the accused persons, Koh Seah Wee, was former deputy director of the in the Singapore Land Authority (SLA)'s Technology and Infrastructure (TI) department. The strong commitment of the CPIB illustrates good practice, which supports the STRO to fight money laundering regime effectively.¹⁷² In 2016, Singapore ranked the third least corrupt nation while Thailand ranked the 99th least corrupt nation out of 175 jurisdictions.¹⁷³ Still, Singapore ranked the third out of 180 countries in 2018, and Thailand remained in rank of the 99th out of 180 countries.¹⁷⁴ The CPIB strongly cooperate with the Attorney-General's Chambers to deal with corrupt offenders, and such corporation produces the highest conviction rate at 100 per cent in 2016.¹⁷⁵ The next section explains the role of Attorney-General's Chambers. STRO supports CPIB through intelligence regarding money laundering and bribery offences.¹⁷⁶ Furthermore, the STRO monitors the quality of STRs from the REs.¹⁷⁷ The next section examines the Attorney-General's Chambers.

¹⁷⁰ Koh Seah Wee, Deputy Director of Technology and Infrastructure Department, Singapore Land Authority; see Corruption Practices Investigation Bureau (CPIB), *The Corruption Practices Investigation Bureau Annual Report 2016* (CPIB 2016) 81.

¹⁷¹ Koh Seah Wee, Deputy Director of Technology and Infrastructure Department, Singapore Land Authority; see *Corruption Practices Investigation Bureau* (n 164) 81.

¹⁷² *ibid* 7.

¹⁷³ Trading Economics, 'Singapore Corruption Rank' <<https://tradingeconomics.com/singapore/corruption-rank>> accessed 2 February 2019; see also Trading Economics, 'Thailand Corruption Rank' <<https://tradingeconomics.com/thailand/corruption-rank>> accessed 2 February 2019.

¹⁷⁴ Transparency International, 'Singapore' <<https://www.transparency.org/country/SGP>> accessed 2 February 2019; see also Transparency International, 'Thailand' <<https://www.transparency.org/country/THA>> accessed 2 February 2019.

¹⁷⁵ Corruption Practices Investigation Bureau (CPIB), 'Corruption in Singapore at low levels' Press release by CPIB (20 November 2017) <<https://www.cpiib.gov.sg/press-room/press-releases/corruption-singapore-low-levels>> accessed 2 February 2019.

¹⁷⁶ *Financial Action Task Force* (n 2) 30.

¹⁷⁷ *ibid* 173.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.3.2.7 Attorney-General's Chambers

The Singapore Attorney-General's Chambers (AGC) is an independent state body accountable for the prosecution of offenders, including money laundering that is investigated by the law enforcement authorities such as CPIB and CAD.¹⁷⁸ It advises the Singapore Government in relation to domestic and international legislative matters, as well as supporting mutual legal assistance in criminal matters.¹⁷⁹ Additionally, the AGC is a member of the Inter-Agency Committee (IAC), which supports the AML/CFT Steering Committee to develop and adapt the application of the national AML/CFT strategy.¹⁸⁰ For example, the Attorney General (AG) is able to request the evidence from foreign authority regarding criminal proceeding in Singapore.¹⁸¹

Furthermore, the AGC also issued the Practitioner's Guide for Asset Recovery for relevant competent authorities.¹⁸² Similar to Thailand's Office of Attorney General (OAG), it coordinates between the LEAs' investigation in money laundering investigations, particularly the asset recovery and restraint, which requests from Thailand's FIU.¹⁸³ The STRO acts as a buffer between FIs and LEAs, in particular,

¹⁷⁸ Furthermore, the FTCD also provides legal advice to the relevant agencies; see Attorney-General's Chambers, 'Financial and Technology Crimes Prosecutions' (31 July 2017) <<https://www.agc.gov.sg/our-roles/public-prosecutor/financial-and-technological-crime-prosecutions>> accessed 3 January 2019; see also Chan, Leow and Shiau (n 93) 229.

¹⁷⁹ *Financial Action Task Force* (n 2) 22.

¹⁸⁰ *ibid* 21.

¹⁸¹ Section 8 of the Mutual Assistance in Criminal Matters Act (MACMA), Chapter 190A.

¹⁸² Dennis Tan Chuin Wei, 'The Practitioner's Guide for Asset Recovery in Singapore' (Attorney-General's Chambers 2016) <<https://www.agc.gov.sg/docs/default-source/our-roles-documents/international-law-adviser/practitioner's-guide-for-asset-recovery-in-singapore---13-september-2016.pdf>> accessed 3 January 2019.

¹⁸³ The Anti-Money Laundering Office (AMLO) is a Thailand's FIU; see Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Thailand Fourth Mutual Evaluation Report* (APG September 2017) 7.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

the AGC by disseminating intelligence to the AGC, which leads to the AGC prosecution of money laundering and associated predicate offences. The next section examines the Casino Regulatory Authority.

5.3.2.8 The Casino Regulatory Authority of Singapore

The Casino Regulatory Authority of Singapore (CRA) supervises the policies, procedures, and measures of the casinos for the detection of the risk of money laundering, the submitting of STRs and the conducting of disclosures to the STRO in order to prevent the casinos from the purpose of misuse by the criminals, and to assure that gaming in a casino is operated honestly.¹⁸⁴ For example, s 139(1) of the Casino Control Act 2006 determines that the casino shall conduct the CDD measure by filing the cash transactions regarding a total amount of SG\$10,000 or more in such transaction.¹⁸⁵ The CRA has engaged with the CAD and MAS to understand the emerging money laundering typologies and trends, then developed proper AML measures by learning and sharing best practices to all casinos.¹⁸⁶ The STRO assists the CRA in examining a casino licence through the useful intelligence or STRs to protect the criminal organization or their associates from being the casino operator.¹⁸⁷ The next section examines the Central Narcotics Bureau.

5.3.2.9 The Central Narcotics Bureau

¹⁸⁴ Under s 39 of the CDSA 1992 (2000 Rev Ed); the Terrorism (Suppression of Financing) Act (Cap. 325) 2002 (2003 Rev Ed); the Casino Control Act (Chapter 33A) 2006 (2007 Rev Ed); and the Prevention of Money Laundering and Terrorism Financing Regulation 2009.

¹⁸⁵ Section 139 of the Casino Control Act (Chapter 33A) 2006 (2007 Rev Ed) identifies the CDD measures for all casinos to conduct to combat money laundering and terrorist financing.

¹⁸⁶ Casino Regulatory Authority (CRA), *Annual Report 2017/2018* <https://www.cra.gov.sg/docs/default-source/default-document-library/cra_annual_report_2017_2018.pdf> accessed 28 January 2019.

¹⁸⁷ *Financial Action Task Force* (n 2) 180.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The Central Narcotics Bureau (CNB) works closely with the CAD, other SPF units, and relevant law enforcement authorities such as the Corrupt Practices Investigation Bureau (CPIB) in order to investigate money laundering offences that are involved with drug trade under the CDSA 1992, including, the Criminal Procedure Code 2010 (CPC) and the Terrorism (Suppression of Financing) Act 2002 (TSOFA).¹⁸⁸ STRO has closely worked with the CNB via disseminating intelligence regarding money laundering, terrorist financing, corruption and bribery-related predicate offences to the CNB for further investigations.¹⁸⁹ The next section examines the Inter-Agency Committee.

5.3.2.10 Inter-Agency Committee

The Inter-Agency Committee (IAC), a key operational body that supports the implementation of the Singapore AML/CFT policy launched by the Singapore's AML/CFT Steering Committee, comprises the Singapore's principal AML/CFT authorities such as the STRO, policymakers, law enforcement agencies, customs and tax authorities, supervisors, the Attorney General's Chambers, and the intelligence services.¹⁹⁰ STRO coordinates with the IAC to develop the Singapore's NRA for the relevant persons to understand the national and international ML/TF risks threatening Singapore financial system.¹⁹¹ Finally, the STRO has participated with the IAC

¹⁸⁸ Sections 34, 55 of the CDSA 1992, Part IV of the CPC; s 20 of the TSOFA. The CNB established its own specialist investigative unit to investigate, search, seizure of evidence regarding money laundering, terrorist financing, or relevant predicate offences; see International Monetary Fund (IMF), *Singapore: Report on the Observance of Standards and Codes-FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* Staff Country Reports No. 09/66 (IMF February 2009) 5.

¹⁸⁹ *Financial Action Task Force* (n 2) 184.

¹⁹⁰ *ibid* 21.

¹⁹¹ *ibid* 6.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

to improve the process of the implementation of international standards in Singapore successfully.¹⁹² The next section examines the role of tertiary authorities.

5.3.3 The Role of Tertiary Authorities

Industry association and other key stakeholders can involve in the AML regime in Singapore in order to protect themselves from being abused from the purpose of money laundering.¹⁹³ The tertiary AML authorities have supported and worked with the STRO in regards to the management of the STRs regime and risk of money laundering. The STRO associates with the MAS to issue the NRA report for the REs and public in order to raise awareness of such risks and develop international and national networks to fight money laundering and its associated crimes.¹⁹⁴ The next explains the role of an Association of Banks in Singapore.

5.3.3.1 The Association of Banks in Singapore

Since Singapore is the FATF's member, all banks in Singapore must consider and conduct their business actions in compliance with the FATF Recommendations and Singapore AML legal framework.¹⁹⁵ Association of Banks in Singapore (ABS) is a non-profit organisation that represents the interests of the commercial and investment banking community, upholds the integrity of its members, and cooperates with the international and domestic organization under the purpose of the ABS.¹⁹⁶ The ABS, which consists of eight banks, is also a member of the Steering Group.

¹⁹² *ibid* 37.

¹⁹³ *ibid* 133.

¹⁹⁴ *ibid* 37.

¹⁹⁵ The Financial Action Task Force 40+9 Recommendations.

¹⁹⁶ Association of Banks in Singapore (ABS), 'About us' <<https://abs.org.sg/about-us/our-role>> accessed 2 February 2019.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The ABS cooperates with MAS and CAD in order to improve the AML regime.¹⁹⁷

For example, the MAS and the ABS launched two critical guidelines: the ABS Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism on 13 November 2015, and the ABS's Guidelines on Tax Crimes and the Private Banking Industry Group's Industry Sound Practices for all banks to reduce the money laundering risk and increase the quality of the STRs obtained from the banks.¹⁹⁸

The 2016 FATF MER showed that the STR reporting regulation is generally well understood by banking and financial sector in order to conduct properly regarding the AML regulation's requirements.¹⁹⁹ Consequently, there were 29,082 STRs in 2014, which increased by approximately 30% from 2013.²⁰⁰ The ABS takes steps to decrease the money laundering risk by encouraging all banks to comply with AML legislation's requirements.

ABS, co-chaired with the MAS and STRO in the Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership (ACIP), has raised awareness on AML/CFT and encouraged the increase in quantity and quality of STRs filing to the STRO through its effective guidelines, which can support the STRO in producing useful intelligence for LEAs for investigations and prosecutions.²⁰¹ The next section explores the Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership.

¹⁹⁷ *Monetary Authority of Singapore* (n 106).

¹⁹⁸ *Association of Banks in Singapore* (n 83) 7; see also *Financial Action Task Force* (n 2) 113.

¹⁹⁹ *Financial Action Task Force* (n 2) 8.

²⁰⁰ *Association of Banks in Singapore* (n 83) 8.

²⁰¹ *Commercial Affairs Department* (n 60) 15.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.3.3.2 The Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership

The Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership (ACIP), which was established in April 2017, is the public-private collaboration between the industry and the government authorities such as MAS and CAD to exchange information and view on AML/CFT in order to identify, assess, and mitigate the international risks of money laundering and terrorist financing in Singapore.²⁰² ACIP improves the level of communication between the regulated sector and the regulators, which enhances the preventive measure, especially the STR requirements, by sharing financial information between them in order to understand and de-risk money laundering.²⁰³

Leng, the former Assistant Managing Director (Banking & Insurance) of MAS, supports that the ACIP institutionalises the close relationship and partnership between the relevant industries and Singapore government concerning with the AML/CFT matters because such collaborative method brings about various perspectives to analyse, identify and solve the transnational risks in order to better detect, deter and defend the country from international crimes.²⁰⁴ Furthermore, Chew, the former Director of CAD, also stated that ACIP enhances both regulated sector and regulator to apply ACIP as best practice and share the relevant products to develop a better understanding the risks and the STR requirements.²⁰⁵ It was clearly seen on

²⁰² Internal Security Department (ISD), a specialised and dedicated squad of investigators that gathers and analyses financial intelligence regarding all terrorism-related activities, and the terrorist financing activities, also works with and uses STRO's intelligence in supporting its investigation; see *Monetary Authority of Singapore* (n 106); see also *International Monetary Fund* (n 177) 6.

²⁰³ Straits Times, 'New Singapore offensive against money laundering, terrorism financing' (*Straits Times*, 25 April 2017) <<http://www.straitstimes.com/business/banking/offensive-against-money-laundering>> accessed 31 January 2018.

²⁰⁴ *Monetary Authority of Singapore* (n 106).

²⁰⁵ *ibid.*

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

14th May 2018 that ACIP issued two best practice guidelines on approaches towards the trade-based money laundering and the misuse of legal persons in order to advocate private sectors and public agencies to identify the ultimate beneficial owners.²⁰⁶

FATF identifies trade-based money laundering as the process of hiding the process of crime, as well as transferring value via the exercise of trade transactions in order to legitimate their criminal origins, particularly the countries that are the financial and trade hub like Singapore and the UK.²⁰⁷ Moreover, ACIP also created a sub-group, namely Legal Persons Working Group (WG), to provide suggestions to the private sector.²⁰⁸ Consequently, ACIP helps to enhance a good understanding of money laundering risks, including the money laundering typologies, as well as support a good risk culture within the FIs.

STRO acts as a buffer between the financial sector and LEAs. ACIP is a private-public partnership that helps the STRO in bringing together the regulators, FIs, financial sector, LEAs, and other government entities to understand, identify, evaluate, and reduce risks of money laundering and its associated predicate crimes threatening Singapore.²⁰⁹ The STRO provides its feedback or recommendations via ACIP best practices paper to enhance national risk understanding of the FIs and other entities.²¹⁰ The next section examines Singapore Exchange Limited.

²⁰⁶ Low Jun Xiang, 'Singapore's ACIP releases guidance on Legal Persons and Trade-Based Money Laundering' (*AML-CFT*, 15 May 2018) <<https://aml-cft.net/singapores-acip-releases-guidance-on-legal-persons-and-trade-based-money-laundering/>> accessed 31 May 2018.

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*

²⁰⁹ The ACIP working group on Trade-Based Money Laundering (TBML) concentrates common TBML 'red flags' and emerging typologies as industry best practices for the identification and reduction of TBML risks; see Association of Banks in Singapore (ABS), 'AML/CFT Industry Partnership (ACIP)' (18 May 2018) <<https://www.abs.org.sg/industry-guidelines/aml-cft-industry-partnership>> accessed 20 July 2019.

²¹⁰ *ibid.*; see also Law Society of Singapore, "Anti-money laundering ('AML') and countering the financing of terrorism ('CFT') industry partnership ('ACIP') best practices papers" <<https://www.lawsociety.org.sg/For-Lawyers/Running-Your-Practice/Anti-Money-Laundering-and-Counter-Terrorism-Financing/AML-and-CFT-Industry-Partnership-Best-Practices-Papers>> accessed 20 July 2019.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.3.3.3 The Singapore Exchange Limited

The Singapore Exchange Limited (SGX), a self-regulatory organisation, acts as a regulator to develop a marketplace with respective transparency, fairness and safety through the monitoring and supervising under the regulations of the Singapore Exchange Securities Trading Limited (SGX-ST) Listing Manual (the Listing Manual).²¹¹ It also reviews the listed companies on the SGX-ST that are required to strictly comply with the Listing Manual on regular basis, or else they would be investigated and imposed for violating such regulations by the SGX.²¹² For example, the SGX enables to issue guidance, administer the rules for the relevant marketplace, monitor surveillance on the conduct of its stakeholders, enforce compliance with the rules, and impose financial sanctions or warn the companies which breach its regulations.²¹³ The SGX has issued a financial trade surveillance handbook on market misconduct to support brokerages or the business of brokers to deter, detect, defend and stop the market rigging.²¹⁴ However, only the investigations in relation to anti-money laundering and counter-terrorist financing would be under the supervision of the MAS.²¹⁵

Although Singapore has the strong AML legislation framework it has also faced several money-laundering cases and delisting that has weakened its position as

²¹¹ Chan, Leow and Shiao (n 93) 228.

²¹² Ong Chong Tee, the MAS Deputy Managing Director; see Aaron Low, 'MAS to up its market surveillance capability, says SGX should remain a self-regulatory organisation' (*The Straits Times*, 28 January 2016) <<http://www.straitstimes.com/business/companies-markets/mas-to-up-its-market-surveillance-capability-says-sgx-should-remain-a>> accessed 7 September 2017.

²¹³ Nish Shetty, Janice Goh and Wan Ho, 'Financial services compliance' (Getting The Deal Through, May 2018) <<https://gettingthedealthrough.com/area/107/jurisdiction/58/financial-services-compliance-singapore/>> accessed 2 February 2019.

²¹⁴ Price Waterhouse Coopers (PWC), 'Managing Upstream Risk' (2016) 22 Regulatory Reform Review: An Asian Perspective 1, 21.

²¹⁵ Aaron Low (n 212).

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

an international financial centre. Even though in the Singapore stock market, the SGX regulatory committee set recently that all foreign-listed firms have a Singapore-based auditor, in an offer to strengthen investors' confidence about the SGX stocks.²¹⁶

STRO plays a key role to exchange information with the SGX in order to receive information regarding securities and capital markets lodged by FIs and disseminate to LEAs to conduct further investigations and prosecutions of money laundering and associated predicate offences under the CDSA 1992.²¹⁷ The STRO works with the SGX to improve the transparency of the process and the ability to comply with the AML regulations.²¹⁸ Therefore, the STRO database contains the crucial financial intelligence that can help LEAs deal with a variety of crimes.²¹⁹ The next section examines the Establishment of Singapore Financial Intelligence Unit.

5.4 The Establishment of Singapore Financial Intelligence Unit

Section 3A of the CDSA 1992 established the STRO as a Singapore's central body to receive, analyse financial information from obliged entities, including from government agencies and reporting entities upon request, and then distribute to relevant law enforcement and/ or regulatory authorities.²²⁰ Section 39 of the CDSA 1992 determines for all persons to submit the STRs to the STRO if they know or have

²¹⁶ The Economist, 'Advantage Singapore' (22 July 2020) <<https://www.eiu.com/n/advantage-singapore/>> accessed 25 December 2020.

²¹⁷ 'Court extends ban on Airocean's ex-director'.

²¹⁸ Monetary Authority of Singapore (MAS), 'Capital Markets Enforcement' (January 2016) at 25 <<https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Monographs-and-Information-Papers/MAS-Capital-Markets-Enforcement.pdf>> accessed 20 July 2019.

²¹⁹ *ibid.*

²²⁰ Section 3A of the CDSA 1992 (2000 Rev Ed).

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

reasonable grounds to suspect that any assets involve drug dealing or criminal conduct.²²¹ Therefore, the STRO officers can obtain additional information and document from obliged entities to conduct its analysis.²²² The STRO applies all information to improve the strategic analysis to deal with money laundering and associated crimes, and then uses such information and statistics in the national risk assessment report (NRA).²²³ While Thailand's FIU, AMLO, has the power to order any person to provide a statement or give a written explanation or any account, documents or other evidence for examination or analysis.²²⁴

STRO can directly access to all online information of the law enforcement and other government authorities, including the SPF's system, namely CRIMES II, which allow the STRO to link with all database regarding the enforcement activities operated by the SPF.²²⁵ STRO issues its guidelines to ensure the intelligence delivering to the relevant authorities, including the foreign FIUs with the effective, secured, dedicated, and protective approaches under s 41(1) of the CDSA 1992.²²⁶ STRO creates security vetting on its officers and manages its training for its staff on the understanding of their duties in dealing with confidential and sensitive intelligence. STRO has developed its standard operating procedure (SOP) to ensure its operation meeting international standards.²²⁷

²²¹ Sections 39, 48C of the CDSA 1992 (2000 Rev Ed).

²²² Section 39 of the CDSA 1992 (2000 Rev Ed).

²²³ *Financial Action Task Force* (n 2) 182.

²²⁴ Section 38 of the AMLA 1999; see *Asia/Pacific Group on Money Laundering* (n 2) 181.

²²⁵ STRO has developed a Web-based Intelligence Analytic and Graphical Visualisation System (WINGS), which is a very specialised analytical instrument to effectively analyse and integrate all various information from CRIMES and commercial databases for the STRO; see *Financial Action Task Force* (n 2) 182.

²²⁶ *ibid* 182.

²²⁷ *ibid* 183.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

STRO has the power and ability to decide and operate its function independently.²²⁸ It has its specific budget allocated from the overall SPF budget.²²⁹ It has full autonomy in deciding on its deployment to organize its functions and manpower under s 2 of the CDSA 1992.²³⁰ While Thailand's FIU is not under the Prime Minister Office, Ministry, or Sub-Ministry, but directly reports to the Prime Minister in order to conduct its function independently and neutrally.²³¹ Consequently, the FATF noted that Thailand's FIU has still faced a minor deficiency regarding adequate operational independence. For example, the Anti-Money Laundering Board (AMLB) has a significant power over the Transaction Committee (TC), the AMLO, and the Secretary-General of the AMLO although the Thailand AMLA 1999 empowers the AMLO as an independent body, not within the structure of another authority.²³² The FATF rated 'compliant' for Singapore level of compliance with the FATF Recommendation 29, whilst Thailand was rated 'largely compliant'.²³³

Paragraph 13.3 of the MAS Notice on the Prevention of Money Laundering and Countering the Financing of Terrorism guides that the suspicions of circumstances include the event when the relevant financial sector for any person cannot complete the AML measures as required by paragraphs 6, 7 and 8, or when the client is reluctant, unable or unwilling to present any information asked by such relevant financial sector, and demands to withdraw a pending application to initiate business relations or a pending transfer, or to quit existing business relations.²³⁴ Nevertheless,

²²⁸ *ibid* 183.

²²⁹ *ibid* 183.

²³⁰ Section 2 of the CDSA 1992.

²³¹ Section 40 of the AMLA 1999; see *Asia/Pacific Group on Money Laundering* (n 2) 182.

²³² Sections 25, 40 of the AMLA 1999, which has been analysed in chapter 6; see *Asia/Pacific Group on Money Laundering* (n 2) 183.

²³³ *Financial Action Task Force* (n 2) 183; see *Asia/Pacific Group on Money Laundering* (n 2) 183.

²³⁴ Paragraph 13.3 of the Notice to Holders of Stored Value Facilities, MAS Act 1970, CAP. 186; see also *Monetary Authority of Singapore* (n 98) 26.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

in the 2016 MER, the FATF rated ‘compliant’ for Singapore in implementing the FATF Recommendation 29 while Thailand was rated ‘largely compliant’ for this Recommendation.²³⁵

The FATF said that the insurance sector in Singapore has not well understood the STR requirements by submitting the defensive reporting to the FIU,²³⁶ which can illustrate that such insurance sector had insufficient compliance resources to operate its role properly, including the denial about the AML risks that are originated by their businesses without analysis.²³⁷ Besides the fear of financial sanctions, the obliged entities lack the knowledge on money laundering typologies and fail to adopt such knowledge and risk-based strategic policies and procedures that can bring about the defensive reporting.²³⁸

Singapore realised that all obliged entities must also focus on their staff training in relation to the entire suspicious transaction reporting requirements in order to prevent from the issue of a flood of poor quality of suspicious transaction reports or defensive reporting, which are submitted by the fear of sanctions and the lack of precise guidelines.²³⁹ However, the STRO has not received the low quality and usefulness of the STRs by submitting without much consideration of whether there are bases for suspicion, but fear of sanctions. For example, there are 10,931 STRs in 2009; 11,312 STRs in 2010; 12,024 STRs in 2011; 15,917 STRs in 2012; 18,297 STRs in 2013 and 24,483 STRs in 2014. The STRs are increasing every year, but

²³⁵ *Financial Action Task Force* (n 2) 183.

²³⁶ *Financial Action Task Force* (n 2) 91.

²³⁷ Michael Levi, ‘E-gaming and money laundering risks: a European overview’ (2009) 10 *ERA Forum* 533, 544.

²³⁸ Jayesh D’Souza, *Terrorist Financing, Money Laundering, and Tax Evasion: Examining the Performance of Financial Intelligence Units* (CRC Press 2011) 128.

²³⁹ Jean-Francois Thony, ‘Processing Financial Information in Money Laundering Matters: The Financial Intelligence Unit’ (1996) 4 *EUR. J. Crime Crim. L. & Crim. Just* 257, 261.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

some reporting entities filed the unnecessary STRs to the STRO such as the money-lender and insurance.²⁴⁰

Thus, the MAS and the STRO, including relevant law enforcements, should enhance their guidance and mutual communication practically to direct and indirect each other rather than motivating them with administrative or criminal sanctions for any breaches.²⁴¹ Therefore, banks in Singapore have paid about US\$2.8M per year for such compliance cost, and in consequence the budgets of AML compliance cost might increase at least 20 per cent in 2016.²⁴²

Banks in Asia have spent approximately US\$1.5bn (SG\$2bn) per year for AML compliance to prevent the banking system from financial crimes at banks and this burden has kept rising.²⁴³ The STRO analyses STRs by using tools like data analytics. It also observed steady growth in STRs filed in recent years. It must develop the process of enhancing STRO's data analytic engine to increase its effectiveness of Singapore's FIU.²⁴⁴

²⁴⁰ Law Society of Singapore, 'Suspicious Transaction Reporting' <<https://www.lawsociety.org.sg/For-Lawyers/Running-Your-Practice/Anti-Money-Laundering-and-Counter-Terrorism-Financing/Suspicious-Transaction-Reporting>> accessed 22 December 2018; see *Financial Action Task Force* (n 2) 99.

²⁴¹ Manuel Beccar Varela, Maximiliano D'Auro, Franciaco Zavalía and Tadeo Leandro Fernandez, 'Argentina' in Nicolas Bourtin (ed), *The International Investigations Review* (7th edn, Law Business Research 2017) 19.

²⁴² Jamie Lee, 'Anti-money laundering compliance costs Asia banks SG\$2 billion a year' (*The Business Times*, 17 June 2010) <<http://www.asiaone.com/business/anti-money-laundering-compliance-costs-asia-banks-2-billion-year-report>> accessed 5 September 2017.

²⁴³ LexisNexis received 210 responses on a survey conducted in late 2015-respondents included those from China, Hong Kong, Indonesia, Malaysia, Singapore and Thailand.

²⁴⁴ *Commercial Affaires Department* (n 60) 5.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The STRO is the Singapore FIU, located within the CAD,²⁴⁵ aiming to deal with the receipt and analysis of the STRs,²⁴⁶ financial information, the Cash Movement Reports (CMRs), the Cash Transaction Reports (CTRs), in order to disseminate²⁴⁷ the intelligence to relevant law enforcement authorities to deter, detect, seize proceeds of crime.²⁴⁸ The STRO's responsibilities include providing instructions, guidance, case studies, and feedback to improve the quality of the STRs obtained from the reporting entities.²⁴⁹ For example, STRO works with CAD to improve its procedures to enhance the intelligence and its exchange of intelligence with other FIUs.²⁵⁰ As a member of the Egmont Group, the STRO also supports the international cooperation and exchange FIU intelligence among the Egmont Group members, including the global forums and regional organisations in the international AML/CFT efforts.²⁵¹ Therefore, the foreign FIUs' feedback supports the effective cooperation from the STRO, especially the quality and the timeliness of the intelligence granted.²⁵²

The CDSA 1992 empowers the STRO to have the powers to communicate and share intelligence disclosed to the relevant authorised officer to a corresponding

²⁴⁵ The STRO is now located under the Intelligence Group (IG) in the CAD of the SPF. The reporting entities should submit the copy of STR to the MAS for updated information; see PricewaterhouseCoopers (PWC), 'Know Your customer: Quick Reference Guide' <<https://www.pwc.com/gx/en/financial-services/publications/assets/pwc-anti-money-laundering-2016.pdf>> accessed 19 January 2019.

²⁴⁶ Section 3A(a) of the CDSA 1992 (2000 Rev Ed).

²⁴⁷ Section 3A(b) of the CDSA 1992 (2000 Rev Ed).

²⁴⁸ Competent authorities include relevant enforcement and regulatory authorities; see Commercial Affairs Department (CAD), *Commercial Affairs Department Annual Report 2014* (CAD 13); see also *Cox* (n 10) 616.

²⁴⁹ Singapore Police Force (SPF), 'Suspicious Transaction Reporting Office (STRO)' (2 March 2018) <<https://www.police.gov.sg/about-us/organisational-structure/specialist-staff-departments/commercial-affairs-department/aml-cft/suspicious-transaction-reporting-office>> accessed 8 December 2018.

²⁵⁰ *Financial Action Task Force* (n 2) 54.

²⁵¹ The STRO is a member of the Egmont Group of Financial Intelligence Units (Egmont Group); see *Singapore Police Force* (n 248).

²⁵² *Financial Action Task Force* (n 2) 127.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

authority²⁵³ of a foreign jurisdiction.²⁵⁴ However, due to the low number of the Letters of Undertaking and Memoranda of Understanding,²⁵⁵ STRO is limited in the number of foreign FIUs to directly access, exchange and share relevant information and some tax information from the Customs because there were some restrictive regulations on the share of information.²⁵⁶

Under the Egmont Group Principles of Exchange, STRO has developed the standard operating procedure to support the exchanging intelligence between foreign counterparts, including undertake joint money laundering investigations with foreign partners in order to identify possible money laundering.²⁵⁷ Therefore, the mutual international cooperation between the foreign FIUs and foreign regulatory agencies in a close working relationship with international FIUs through the Egmont Group, as well as doing the investigations of this case, is important to the STRO to obtain relevant information, documents and evidences from other FIUs in order to help fight money laundering effectively. Therefore, STRO issued its 'Guidelines (STRO) on

²⁵³ Corresponding authority means the authority of foreign jurisdiction accountable for gaining information that corresponds to anything needed to be disclosed to an authorised agency under the s 39(1) of the CDSA 1992. Section 39(1) of the CDSA 1992 and Part VA of the Legal Profession Act and the Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015 determine that STRO communicates any intelligence disclosed to any authorised officer relating to the knowledge and/or suspicion that any property is obtained from crime or drug trade. This Provision provides that the law practice or legal practitioner must reveal the matter and submit the STRs to STRO or a relevant authorised officer via the e-filing system; see *Law Society of Singapore* (n 228).

²⁵⁴ Sections 40, 41 of the CDSA 1992 (2000 Rev Ed) allow the STRO can share financial intelligence with its foreign counterparts or foreign FIU, based on the reciprocity and confidentiality through their memoranda of understanding (MOUs); see *Sharpe, Morris and Selvam* (n 142) 29.

²⁵⁵ The terms 'Letters of Undertaking' hereinafter 'LOU'; the term 'Memoranda of Understanding' hereinafter 'MOU'; STRO had signed 30 MOUs with the foreign FIUs, as well as had received two LOUs from the Switzerland and Norway FIUs; see United Nations Office on Drugs and Crime (UNODC), *Country Review Report of Singapore* Review by Lebanon and Swaziland of the Implementation by Singapore of articles 15-42 of Chapter III "Criminalisation and law enforcement" and articles 44-50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010-2015 (at 194) <<https://uncaccoalition.org/files/Cycle1-Country-Report-Singapore.pdf>> accessed 13 December 2018.

²⁵⁶ Recommendation 40; see *Financial Action Task Force* (n 2) 204.

²⁵⁷ Egmont Group of Financial Intelligence Units, *Egmont Group of Financial Intelligence Units Principles for Information Exchange between Financial Intelligence Units* (Egmont Group 2013) 4; see also *Financial Action Task Force* (n 2) 56, 127.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

International Request for Third Party dissemination’ and ‘Guidelines on Outgoing request for assistance from STRO to foreign FIUs’ to improve the capacity of relevant sectors in identifying possible money laundering risk.²⁵⁸ Such guidelines assist STRO in ensuring the dissemination of the STRs through dedicated, secured, protective, and effective ways,²⁵⁹ as well as enhancing the cooperation between competent authorities.²⁶⁰

Additionally, STRO and MAS closely work to issue the rules on the ‘know your customer’ (KYC) principles which are inconsistent with the Recommendations of the FATF to improve the quality and quantity of the STRs, as well as promoting the AML/CFT awareness of private sector.²⁶¹ STRO and other law enforcement authorities have used STRs to detect a broad kind of financial crime and terrorist financing, especially money laundering.²⁶² The STRO has also attempted to evolve the red flag indicators, which are used as the criteria for private and public sectors in order to reduce money laundering risk in their sectors.²⁶³

The 2008 FATF Mutual Evaluation Report (MER), the FATF Recommendation 26 requires the FIUs to focus on detecting and identifying money laundering

²⁵⁸ Section 41 of the CDSA 1992; see *Financial Action Task Force* (n 2) 56, 204, 208.

²⁵⁹ *Financial Action Task Force* (n 2) 182.

²⁶⁰ *ibid* 42.

²⁶¹ The STRO and law enforcement authorities (LEAs) work with other relevant competent agencies, including private sector to enhance the red flag indicators by using the database from the national risk assessment (NRA) in order to develop the detection of money laundering in public and private sectors; see *Financial Action Task Force* (n 2) 17; see also Ministry of Home Affairs (MHA), Ministry of Finance (MOF), and Monetary Authority of Singapore (MAS), *Singapore National Money Laundering and Terrorist Financing Risk Assessment Report* (MHA, MOF and MAS 2014); see also Law Gazette, ‘Red flag indicators – Reporting suspicious transactions: Your reporting obligations’ <<https://lawgazette.com.sg/practice/compass/red-flag-indicators-reporting-suspicious-transactions/>> accessed 8 December 2018.

²⁶² Law Society of Hong Kong, ‘Unclear whether suspicious transaction reports helping to win the AML/CFT fight’ *Hong Kong Lawyer* (October 2016) <<http://hk-lawyer.org/content/unclear-whether-suspicious-transaction-reports-helping-win-amlctf-fight>> accessed 14 January 2019.

²⁶³ *Financial Action Task Force* (n 2) 17.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

cases rather than on detecting and identifying the predicate offences.²⁶⁴ According to the 2008 MER, the FATF rated ‘Large Compliant’ with the operational independence of Singapore’s FIU (i.e. the STRO).²⁶⁵ In the 2011 FATF Second Follow-up Report, the FATF stated that Singapore has enhanced its degree of compliance with the FATF Recommendations of ‘Largely Compliant’ at a minimum.²⁶⁶ Then, in 2016 the FATF rated Singapore FIU a ‘Compliant.’ The improved rating indicated that Singapore effectively met the FATF requirement.²⁶⁷

The STRO has provided its publications and training session to the reporting entities in order to update the latest information regarding the typologies of money laundering²⁶⁸ and also detect the STRs submitting to the STRO.²⁶⁹ For example, since 2000 the CAD has used the STR information to seize US\$ 111m of the proceeds of crime.²⁷⁰ Furthermore, the STRO reported that in 2012 there were 17,975 STRs, 22,417 in 2013 and 29,082 in 2014.²⁷¹ The STRO reported that a third (about 10,080 STRs) came from the banking sectors, while there were 6,737 STRs from casinos and 6,645 STRs from the money-changers or remittance agents.²⁷² In 2016 there was an increase of 12 per cent of the STRs (total of 34,129 STRs), which were

²⁶⁴ Financial Action Task Force (FATF), Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Singapore (FATF/OECD 2008) 65.

²⁶⁵ *Financial Action Task Force* (n 2) 65 and 181.

²⁶⁶ Financial Action Task Force (FATF), Anti-Money Laundering and Combating the Financing of Terrorism – Singapore Mutual Evaluation Second Follow-Up Report (FATF 2011) at para 15.

²⁶⁷ *Financial Action Task Force* (n 2) 183, 207.

²⁶⁸ The STRO analyses the data into financial intelligence to detect money laundering, including terrorism financing and associated criminal offences; see *Commercial Affaires Department* (n 60) 26.

²⁶⁹ There was a 4 per cent increase in the number of STRs submitted to the STRO compared to 2016; see *Commercial Affaires Department* (n 60) 27.

²⁷⁰ *Cox* (n 10) 616.

²⁷¹ Today Weekend, ‘30,511 suspicious financial transactions reported in Singapore in 2015’ (*Todayonline*, 20 September 2016) <<http://www.todayonline.com/singapore/30511-suspicious-financial-transactions-reported-singapore-2015>> accessed 17 September 2017.

²⁷² The figure sharply increased to 30,511 in 2015; see *Today Weekend* (n 271).

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

more than one-third of STRs filed from the banking sector submitted to the STRO.²⁷³

However, the STRO argued that such increase implied a higher level of awareness of anti-money laundering efforts by the reporting entities only.²⁷⁴ These reporting activities play a significant role in fighting money laundering in Singapore.²⁷⁵

The STRO has the power to directly access relevant law enforcement information; also, the Singapore Police Force (SPF) has direct access to the STRO intelligence.²⁷⁶ However, the 2016 FATF MER assessed that Singapore has restricted access to trade and tax information.²⁷⁷ According to the 2016 FATF MER, the STRO has to deal with the issue of sufficient intelligence regarding the trade and tax to conduct its responsibilities.²⁷⁸

Section 21 of Part IV of the Criminal Procedure Code (CPC) and s 39(1) of the CDSA 1992 oblige relevant regulated sector, including individuals, to submit the suspicious transaction reports (STRs) to the STRO when they know or have reasonable grounds to suspect that any asset involves the proceeds of crime or intends to link to the criminal conduct pursuant to an offence under s 44(1)(a) of the CDSA 1992.²⁷⁹ Under the CDSA 1992, the person that reveals potential offences receives

²⁷³ Aperio Intelligence, 'UK publishes 2017 National Risk Assessment of money laundering and terrorist financing' (October 2017) *Financial Crime Digest* 1, 24 <https://www.aperiointelligence.com/wpcontent/uploads/2015/03/aperio_intelligence_fcd_october2017.pdf?utm_source=October+2017++Financial+Crime+Digest&utm_campaign=b552c9bf13Aperio_Intelligence_FCD_October_2017&utm_medium=email&utm_term=0_1bcf699e5b-b552c9bf13-198192249> accessed 3 November 2017; see also Tan Tam Mei, '12% increase in suspicious transactions reported: Commercial Affairs Department' (*Straits Times*, 9 October 2017) <<http://www.straitstimes.com/singapore/12-increase-in-suspicious-transactions-reported-says-commercial-affairs-department>> (accessed 30 January 2018).

²⁷⁴ *Aperio Intelligence* (n 273).

²⁷⁵ *Singapore Police Force* (n 248).

²⁷⁶ *Financial Action Task Force* (n 2) 7.

²⁷⁷ *ibid* 6.

²⁷⁸ Singapore criminalised the laundering of proceeds from tax offences as money laundering predicate offences pursuant to ss 62, 63 of the Goods and Services Tax Act; see also The Second Schedule of the CDSA 1992.

²⁷⁹ Section 21 of Part IV of the Criminal Procedure Code (CPC) and ss 39, 44(1)(a) of the CDSA 1992 (2000 Rev Ed); *Ang Jeanette v PP* [2011] 4 SLR 1.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

legal protection such as the legislative immunity against civil proceedings and anonymity.²⁸⁰ Failure of these regulations would be imposed on criminal sanctions.²⁸¹ Therefore, the CDSA 1992 obliges a member of the reporting sector to report the grounds of suspicion of ML activities or associated predicate offences to the STRO.²⁸²

After receiving information from REs, the STRO delivers intelligence to the MAS or competent authorities to initiate their investigations and prosecutions applicable to money laundering offence as set out in the CDSA 1992's requirements.²⁸³ However, the STRO noted that there are a large and increasing number of STRs submitted by defensive reporting (i.e. filing STRs without sufficient consideration of whether there are grounds for suspicion).²⁸⁴ In *R v Da Silva*, the Court considered that the FIs must think that the term 'suspicion' means beyond the possibility that is more than imaginary, unrealistic or fictitious, and closely connected to facts exist.²⁸⁵ Additionally, the law does not need the suspicion to be clearly or absolutely grounded and fixed on exact facts or specified on reasonable ground.²⁸⁶ Similar to Singapore, the High Court Judge also adjudicated in *Ow Yew Beng v PP*²⁸⁷ and *Koh Hak Boon & Ors v PP*²⁸⁸ that the term 'suspicion' for the relevant sector means a level of conviction of money laundering offence that is lower than certainty, but a higher one than speculation.

²⁸⁰ Sections 39(6), 40 and 40A of the CDSA 1992 (2000 Rev Ed).

²⁸¹ Notice on Reporting of Misconduct of Representatives by Financial Advisors [Notice No. FAAN14].

²⁸² CDSA 1992, s. 39(1).

²⁸³ *Financial Action Task Force* (n 2) 98.

²⁸⁴ *ibid* 98.

²⁸⁵ [2006] EWCA Crim 1654.

²⁸⁶ *R v Da Silva* [2006] EWCA Crim 1654.

²⁸⁷ [1993] 3 SLR 427

²⁸⁸ [2003] 1 SLR 536.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

The CDSA 1992 protects a person (including an officer, an employee or an agent), who submits an STR or relevant information to STRO as soon as possible after knowledge regarding suspicious transactions had been received, under section 39 of CDSA 1992, from money laundering offences.²⁸⁹ Therefore, reporting entities that fail to file an STR to the STRO can be imposed of a money laundering offence.²⁹⁰ Then, the FIs must deal with the situation after the STR such as how to avoid a risk of tipping-off.²⁹¹ In *WBL Corporation ensLtd v Lew Chee Fai Kevin*, the WBL Corporation (Corp.) suspected Kevin Lew Chee Fai (Lew), the former chief financial officer at the WBL Corp., that he had involved in insider dealing activity that could be money laundering offence.²⁹² The WBL Corp. had earlier filed an STR to the STRO.²⁹³ The Court considered that s 40 of the CDSA 1992 discharged the WBL Corp. that filed a proper STR from legal liability for money laundering offence.²⁹⁴ Consequently, MAS took civil action against Lew for insider dealing, but no criminal prosecution.²⁹⁵

After that, in 2015 MAS, AGC, CAD and STRO have instigated a legal investigation of the 1MDB case, which was suspected to involve with the money laundering proceeding.²⁹⁶ Consequently, the MAS stated that Falcon Private Bank has been shut down by withdrawing its bank license because it related to the suspicious 1MDB transactions.²⁹⁷ Furthermore, the eight banks, consisting of the BSI Bank,

²⁸⁹ Section 40 of the CDSA 1992 (2000 Rev Ed) removes the mental factor of a possible money laundering charges, without which the money laundering offence could not be imposed.

²⁹⁰ Section 39(1) of the CDSA 1992 (2000 Rev Ed); *Koh Hak Boon & Ors v Public Prosecutor* [1993] 3 SLR 427.

²⁹¹ Section 48 of the CDSA 1992 (2000 Rev Ed).

²⁹² [2012] 2 SLR 978 at [31].

²⁹³ Sections 39(1), 40, 44 of the CDSA 1992 (2000 Rev Ed).

²⁹⁴ *WBL Corporation Ltd v Lew Chee Fai Kevin* [2012] 2 SLR 97.

²⁹⁵ *Lew Chee Fai Kevin v MAS* [2012] SGCA 12.

²⁹⁶ *Chan and Shiau* (n 93) 239.

²⁹⁷ Section 28(5) of the MAS Act 1970. The MAS also fined Falcon Private Bank, which owned by the International Petroleum Investment Company from Abu Dhabi, about S\$4.3m for AML breaches;

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

Falcon Bank, DBS Bank, UBS AG,²⁹⁸ Standard Chartered Bank,²⁹⁹ Coutts & Co Ltd,³⁰⁰ Credit Suisse and United Overseas Bank, had been fined a total of SG\$291 million for different violations of the MAS's AML requirements, especially the breaches of the MAS Notice 1014 and 626.³⁰¹

However, several individuals were convicted and sentenced to prison for money laundering offences, failing to report the STRs and market misconduct.³⁰² For example, Jens Sturzenegger, the Singapore branch manager of the Falcon Bank, was arrested by the CAD on 5 October 2015.³⁰³ Yak Yew Chee, a former Managing Director of BSI Singapore Bank, was sentenced to 18 weeks' imprisonment and fine of S\$24,000 on 11 November 2016 for concealing the net worth of Low Taek Jho and for failing to report the STRs of funds by Low Taek Jho.³⁰⁴ Yeo Jiawei, the former

see Ann Williams, 'MAS shuts down Falcon Private Bank in Singapore, slaps fines on DBS and UBS after 1MDB probe' (*Straits Times*, 11 October 2016) <<https://www.straitstimes.com/business/banking/mas-shuts-down-falcon-private-bank-in-singapore-slaps-fines-on-dbs-and-ubs-after> > accessed 20 January 2019.

²⁹⁸ Falcon Private Bank Ltd, Singapore Branch (Falcon Bank) was withdrawn license of the merchant bank status because of its serious failure in AML controls and inappropriate conduct by its senior management at the head office in Switzerland and the Singapore branch (i.e. it failed to adequately evaluate irregularities in activities regarding customer accounts, and STRs); see *Williams* (n 297).

²⁹⁹ Singapore Branch.

³⁰⁰ Singapore Branch.

³⁰¹ The former chairperson influenced the Singapore branch related to the processing the suspicious transaction despite several red flags under the Guidelines to MAS Notice 1014 on Prevention of Money Laundering and Countering the Financing of Terrorism (24 April 2015) (i.e. this guideline to all merchant banks) and the Guidelines to MAS Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism (24 April 2015) (i.e. this guideline to all banks); see also Monetary Authority of Singapore (MAS), 'Financial penalties imposed on Credit Suisse and UOB for 1MDB-related transactions' <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/Financial-Penalties-Imposed-on-Credit-Suisse-and-UOB-for-1MDB-Related-Transactions.aspx>> accessed 9 September 2017.

³⁰² *ibid.*

³⁰³ Jens Fred Sturzenegger was imprisoned 28 weeks and fined SG\$128,000 over six charges; *Public Prosecutor v Jens Fred Sturzenegger* Singapore State Courts; see *Commercial Affaires Department* (n 60) 46.

³⁰⁴ *Williams* (n 297).

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

Wealth Planner at BSI Bank, involved with several 1MDB related suspicious transactions around SG\$26m.³⁰⁵ Eventually, he was sentenced to 30 months' imprisonment, the longest jail term in the 1MDB case in Singapore, and faced seven charges pending before the Court (i.e. two charges for money laundering, four charges of cheating and one charge of forger, respectively.)³⁰⁶

The STRO created the Project STRO Data Management, Analytics and Reporting System (Project STRARS), to make its information technology system easy and secured for the reporting entities when filling the form and submitting the STRs to the STRO for collecting, analysing, and delivering financial intelligence, especially helping to raise the AML awareness in the financial industry.³⁰⁷ This experience illustrates that the STRO has realised that technological system is an important tool to fight money laundering effectively.

The CDSA 1992 empowers the STRO to obtain and analyse information, and then disseminate intelligence to LEAs and its foreign counterparts, subject to national legislative and operational framework.³⁰⁸ The STRO has full autonomy in deciding on its budget and resource to carry out its core functions through independent arrangements for information exchange with national competent agencies and foreign counterparts that can support the role of STRO to meet international standards.³⁰⁹ The next section examines the model of Singapore's FIU.

³⁰⁵ *Commercial Affaires Department* (n 60) 46.

³⁰⁶ *ibid* 47.

³⁰⁷ In 2016, the STRO achieved two national and international awards (namely the National Team Excellence Symposium, and the International Exposition for Team Excellence Competition) for this Project. In 2017 the STRO also obtained a Gold award for the Project at the International Convention on Quality Control Circles (ICQCC) in Philippines; see *Commercial Affaires Department* (n 60) 28.

³⁰⁸ Financial Action Task Force and Asia Pacific Group on Money Laundering (n 2) 204.

³⁰⁹ *ibid* 183.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

5.5 The Model of the Singapore Financial Intelligence Unit

The Singapore financial intelligence unit is the STRO, which was established in 2000 under the Intelligence Group (ING) of the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF).³¹⁰ Section 3A of the CDSA 1992 provides the STRO to act as the principal agency accountable for receiving and analysing the reports of suspicious transactions, namely the suspicious transaction reports (STRs), which consist of all kinds of reports from reporting entities, including information from reporting entities and government authorities upon request and then disseminating the financial intelligence to relevant law enforcement bodies.³¹¹

Additionally, STRO has its budget, which was delivered from the overall SPF's budget to support its independent functions.³¹² The CDSA 1992 determines that the Minister appoints a STRO to work under the purposes of this Act.³¹³ Singapore FIU model is an administrative-type FIU similar to the UKFIU model.³¹⁴ Unlike Thailand, its FIU model is a hybrid-type FIU, which combines the administrative, judicial and law enforcement-type FIUs.³¹⁵ Thony noted that the administrative-FIU model should be completely independent.³¹⁶

In relation to the independence of the Singapore FIU, the 2016 FATF MER of Singapore rated 'compliant' on Recommendation 29, which presented that Singapore meets the requirement of the FATF Recommendations effectively. The FATF noted that the Singapore FIU has the authority and ability to handle its core functions independently. It seems that the FIU receives its appropriate own distinct budget,

³¹⁰ *ibid* 181.

³¹¹ Section 3A of the CDSA 1992 (2000 Rev Ed).

³¹² *Financial Action Task Force* (n 2) 183.

³¹³ Section 2(1) of the CDSA 1992 (2000 Rev Ed).

³¹⁴ *Pieth and Aiolfi* (n 36) 420.

³¹⁵ Ashley Lee, 'Asia's anti-money laundering focus sharpens' (2015) *International Financial Law Review* 1, 1.

³¹⁶ *Thony* (n 238) 257, 268.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

resources and full autonomy in deciding on its operations to manage its responsibilities. In accordance with the CDSA 1992, the AML/CFT Steering Committee and the ACIP supports the independence of the Singapore FIU effectively.

As the above investigation on Singapore system, Thailand can learn important lessons from Singapore in order to improve the system and fight against the money laundering, including learning the FIU model of Singapore and emphasising the operational independence of the STRO. In addition, Thailand government should establish the committee consisting of the private and public sectors to strengthen the STRs regime and develop the independence of the Thailand like Singapore do. Such lessons can help the Thailand government support the role of STRO in dealing with its duty. The next section assesses the evaluation of the implementation of AML policy of Singapore.

5.6 Evaluation of Implementation of AML policy of Singapore

This thesis compares the legislation regarding the role of the Singapore's FIU at the domestic level in dealing with money laundering with the UK's and Thailand's under the implementation of the FATF Recommendation 29.³¹⁷ In the 2008 FATF Mutual Evaluation Report (MER), the FATF assessed that the Singapore had an extensive legislative framework and robust AML/CFT system.³¹⁸ Cox noted that Singapore's AML provisions are the most robust financial crime prevention laws and

³¹⁷ The former FATF Recommendation 26.

³¹⁸ Singapore conducted a compliant with 11; largely compliant with 32; partially compliant with four; and non-compliant with two of the FATF 40 + 9 Recommendations; see *Financial Action Task Force* (n 2) 128; see also *Yeo and Tan* (n 28) 1148; see also *Chanjarorn* (n 43), see also *Cox* (n 10) 615.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

procedures in Asia.³¹⁹ In 2011, the FATF indicated that Singapore has achieved the level of compliance with the FATF Recommendations, i.e. the ‘Largely Compliant’ at a minimum.³²⁰ The FATF’s assessment showed that Singapore has enhanced its AML regime in line with the FATF’s recommendations in the 2008 MER.³²¹ However, the FATF noted that deficiencies still existed regarding statistical data, the wire transactions, the AML guidance, the feedback, the transparency, the beneficial ownership of legal persons, as well as the politically exposed persons (PEPs).³²² The FATF concluded that the Singapore’s financial intelligence unit (FIU), the STRO used well-structured systems and robust coordination mechanism to deal with FIU intelligence information into the relevant competent agencies to support identification and investigation of money laundering activities.³²³

The 2016 MER concluded that Singapore has a strict legal framework, which has increased the number of the money laundering investigations, prosecutions and convictions.³²⁴ Therefore, this has been improved by Singapore legislation, money laundering investigation policies, and the financial intelligence.³²⁵ For example, Singapore implemented the FATF standards by complying with the level of ‘Compliant’ for 18 and ‘Largely Compliant’ for 16 of the FATF 40 Recommendations.³²⁶ Alt-

³¹⁹ Cox (n 10) 396.

³²⁰ Yeo and Tan (n 28) 1148.

³²¹ *ibid* 1148.

³²² *Financial Action Task Force* (n 2) 3, see also Cox (n 10) 615.

³²³ Radish Singh and Ankur Shukla, ‘A closer look at the FATF Mutual Evaluation Report for Singapore’ (Deloitte & Touche Financial Advisory Services 2016) 3 <<https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/finance/sea-fas-closer-look-at-the-fatf.pdf>> accessed 3 January 2019; see also Cox (n 10) 615.

³²⁴ *Financial Action Task Force* (n 2) 6.

³²⁵ Johnathan W Lim, ‘A facilitative model for cryptocurrency regulation in Singapore’ in David Lee, *Handbook of Digital Currency: Bitcoin, Innovation, Financial Instruments, and Big Data* (Academic Press 2015) 361.

³²⁶ Know Your Country, ‘Singapore’ <<https://www.knowyourcountry.com/singapore1111>> accessed 4 September 2017.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

though Singapore has an excessive robust investigative framework, it has not sufficiently illustrated the effectiveness in identifying or investigated money laundering regarding foreign criminal offences, which involved Singaporean shell companies and money mules in receiving the proceeds of foreign wire transfer crimes.³²⁷ Therefore, the FATF recommended that Singapore should bridge the gaps in money laundering regime, including strengthening the comprehensive risk assessment of all types of legal person to verify money laundering, improving the effectiveness of supervision of non-financial institutions, as well as investigating more offences of the laundering of foreign proceeds of crime in relation to the money mules and shell companies.³²⁸

According to the 2016 FATF MER, the level of effectiveness of Singapore's AML system and the level of compliance with the FATF standards can contribute to the knowledge for Thailand to improve its AML policies. Levi asserted that the positive working relationship between the efficiently trained and motivated staff in FIs and the FIUs and relevant law enforcements can develop the AML regime in order to achieve an AML regime like the UK.³²⁹ Thus, Singapore has also attempted to increase an extensive international cooperation network for improving the supervision, regulation, law enforcement and financial intelligence in combating money

³²⁷ Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford University Press 2018) 169; see Michael Findley, Daniel Nielson and Jason Sharman, 'Global shell games: Testing money launderers' and terrorist financiers' access to shell companies' (Griffith University Centre for Governance and Public Policy 2012) 3 <http://www.michael-findley.com/uploads/2/0/4/5/20455799/global_shell_games.media_summary.10oct12.pdf> accessed 2 January 2019.

³²⁸ *Chanjarorn* (n 43).

³²⁹ Michael Levi, 'Banks, policing and the regulation of money laundering in England and Wales' in Joseph J Norton and George Walker (eds), *Bank: Fraud and Crime* (2nd edn, Informa Law from Routledge 2000) 46.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

laundering.³³⁰ The FATF rated Singapore's FIU as 'compliant' in line with its Standards.³³¹

The CDSA 1992 established STRO as a Singapore's FIU and an independent agency in dealing with money laundering and its associated crimes, particularly STRs regime, by working with LEAs and competent authorities to detect such crimes.³³² It is responsible for receiving and analysing from REs, as well as disseminating intelligence regarding money laundering to relevant LEAs as the administrative-FIU model, and this systematic process can support the operational independence of the STRO.³³³ As a result, the FATF and APG rated compliant for the effectiveness of the STRO in line with the international standards.³³⁴

Regarding the independence of the Singapore FIU, the cooperation between the STRO and the Attorney-General's Chambers (AGC) is a key element to ensure that strong enforcement action is carried out money laundering, in particular the operational independence of the FIU. In addition, the MAS is a statutory board³³⁵ with acts as the central bank of Singapore, in particular is not a part of the Government, therefore, it has greater independence and flexibility in its operations, which could also support the independence of the Singapore FIU while carry out its functions without political influence and interference.³³⁶ Furthermore, the Anti-Money Laun-

³³⁰ Ministry of Home Affairs (n 4).

³³¹ *Financial Action Task Force* (n 2) 183.

³³² CDSA 1992, s 3A; see *Financial Action Task Force* (n 2) 17.

³³³ CDSA 1992, s 39).

³³⁴ *Financial Action Task Force* (n 2) 183.

³³⁵ The MAS's Board Directors consist of Cabinet Members; see Veltrice Tan, 'The art of deterrence: Singapore's anti-money laundering regimes' (2018) 25(2) *Journal of Financial Crime* 1, 7 <http://eprints.lse.ac.uk/88777/1/Tan_The%20Art%20of%20Deterrence_Accepted.pdf> accessed 25 December 2020.

³³⁶ Veltrice Tan, 'The art of deterrence: Singapore's anti-money laundering regimes' (2018) 25(2) *Journal of Financial Crime* 1, 7 <http://eprints.lse.ac.uk/88777/1/Tan_The%20Art%20of%20Deterrence_Accepted.pdf> accessed 25 December 2020.

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

dering and Countering Financing Terrorism Steering Committee (AML/CFT Steering Committee), as well as the ACIP would be the great example of best practices to assist the Singapore FIU to operate its function independently. The Singapore FIU is best practice for the independence of the FIU it was rated 'compliant' for Recommendation 29. As reasons mentioned above, the Thailand government also learn the valuable lessons from Singapore to enhance its independence of the FIU effectively.

5.7 Conclusion

The primary objective of this chapter was to demonstrate the role of competent authorities and FIU towards tackling money laundering in Singapore. This chapter has revealed several AML legislations and the result of their operations in STR regime, including several key similarities and differences between their roles in order to meet the international requirements. To achieve the FATF Recommendations, the Singapore government by MAS issued and revised the MAS to Notice 626 and 1014 to assure that the financial sector in Singapore would strongly comply with the international AML legal requirements, especially the STR requirements. The STRO is responsible for the examination for compliance of AML requirement by receiving, analysing the STRs and other financial information and delivering the intelligence to the relevant regulatory and law enforcement agencies under the CDSA 1992.

The robust collaboration and continuous cooperation between the MAS and private sector are significant to support the obliged entities to increase their understanding of money laundering risks in order to prevent the financial institutes from being used, intentionally or unintentionally for the purpose of criminal activities. However, the STRO should improve more sophisticated data analytics capabilities

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

to gain the financial intelligence and disseminate to relevant law enforcement authorities.

In line with the FATF Recommendations, the FATF considered that Singapore has implemented its AML regime with a strong commitment to the international standards effectively. In consequence, the Singapore government has acted proactively in establishing and refocusing the deterrent and preventive measures pursuant to the FATF standards to control FIs and individuals to comply with such measures. Along with other AML facilitation initiatives, such as the Egmont Group and the APG, the cooperation between jurisdictions seeks to increase the ease of preventing the financial market from money laundering. For instance, the most common AML strategy used in Singapore, the UK and Thailand has been the imposition of financial sanctions and investigation of alleged breaches of AML requirements on FIs to prevent the FIs and relevant persons from being used for future money laundering activities. In Singapore, the Attorney-General, as the Public Prosecutor has the legal power to prosecute money laundering, similar to the UK's Crown Prosecutor Service and Thailand's Attorney-General. However, The FIU of Singapore adopts the similar model to the UK's which is administrative model FIU, while Thailand's FIU has been using hybrid type FIU. In summary, Singapore, as an international financial market and transportation centre, should develop more strategic information sources, namely the global electronic fund transaction reports, market data, to improve the existing reports that allow awareness and understanding of the threat of money laundering. Singapore has developed STRs system to improve its information technology system to be secured and convenient for the reporting entities when filing the STRs to the STRO. MAS, STRO and industry sector regulators would also create their guidelines on AML measures such as CDD, the handbook of STRs, and the kind of

CHAPTER FIVE: Analysis of Competent Authorities and Financial Intelligence Unit in Singapore

suspicious transactions for each reporting entity, including the NRA, which are usually publicly available.

Therefore, the MAS and STRO should enhance a much better understanding of money laundering risks with the reporting entities by improving the level of mutual communication and information sharing between the reporting entities and law enforcement authorities, including delivering the feedback from the STRO and relevant authorities to the reporters effectively. These approaches can develop the quality of the STRs filed. However, in Singapore the STRO is not able to impose financial penalties on the REs for failing the STR regulations, but the MAS is able to impose such penalties in order to prevent future money laundering offence. Similar to the UK's FIU, NCA cannot impose any sanctions on the REs. Still, the enforcement strategy of Singapore can be in contrast to that used in the UK by the FCA who can initiate criminal proceedings for a broad scope of financial crime related to criminal offences, especially money laundering. The AMLO, Thailand's FIU, is able to impose financial fines and instigate criminal proceedings for money laundering offence because the AMLA 1999 provides the judicial and law-enforcement powers (i.e. hybrid-FIU model) to the AMLO to utilise it in the duty.

In relation to the independence of the FIU, the Singapore AML/CFT Steering Committee, as well as the ACIP are the key elements to enhance the Singapore FIU to operate its functions free from the undue interference and influence.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

CHAPTER SIX

Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

6.1 Introduction

Thailand requires foreign investment to develop the country's economy.¹ However, the risk of money laundering from a number of criminal activities continues to threaten Thailand,² but has also affected the reputation of its financial system.³ Examples of money-laundering activities in Thailand include hiring a nominee to open an account for the true beneficial owner for criminal purposes and the use of trading transactions to hide the money trail.⁴ In 1999 Walker estimated the annual amount of money laundering in Thailand was approximately US\$ 32,834m.⁵ In 2016, the National Institute of Development Administration (NIDA) concluded that the total amount of money laundered in Thailand was over THB 400bn (approximately £9.3bn) annually.⁶ Thailand also continues to exist significantly as a transit jurisdiction for the illegal trafficking of drugs and a centre for money laundering

¹ Seng Tan and Kumar Ramakrishna, 'Interstate and intrastate dynamics in Southeast Asia's War on Terror' (2004) 24(1) SAIS Review of International Affairs 91, 97.

² For example, drugs, illicit remittances, cross-border crimes, illegal narcotics, logging and wildlife trafficking, illegal gaming, official corruption, underground lotteries, prostitution, human trafficking, counterfeit medicine, luxury automobile contraband smuggling, including arm trade; see U.S Department of State, 'International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes' (US Department of State, 2017) 8, 172 <<https://www.state.gov/documents/organization/268024.pdf>> accessed 15 August 2018; see also Know Your Country, 'Thailand' <<http://www.knowyourcountry.com/thailand1111.html>> accessed 28 May 2017.

³ Anti-Money Laundering Office (AMLO), 'Summary of 2016: National Money Laundering and Terrorism Financing Risk Assessment' <http://www.amlo.go.th/amlo-intranet/media/k2/attachments/NRAYSumY2559YEN_7527.pdf> accessed 31 May 2018.

⁴ Trade-based money laundering is the process of disguising the proceeds of crime and moving value via the use of trade transactions in an attempt to legitimate their illegal origins; see Financial Action Task Force (FATF), 'Trade Based Money Laundering' (FATF 2006) 3 <<https://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>> accessed 21 July 2019; see also Anti-Money Laundering Office (AMLO), 'Money Laundering Situation in Thailand' at 1, 3 <http://www.amlo.go.th/amlo-intranet/media/k2/attachments/TypoYEng_3117.pdf> accessed 20 May 2018.

⁵ John Robert Walker, 'How big is global money laundering?' (1999) 3(1) Journal of Money Laundering Control 25, 34.

⁶ Thai currency is Thai Bath hereinafter 'THB'; see *Anti-Money Laundering Office* (n 3).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

activities.⁷ It is estimated that 40 per cent of Thailand's GDP (i.e. US\$ 2bn) is laundered by enormously illicit drug traders annually through financial institutions (FIs) in Thailand.⁸

In 2016, the Anti-Money Laundering Office (AMLO), Thailand's FIU, estimated that illegal proceeds in Thailand exceeded THB 400bn per year comprising of corruption about 34.46%, drugs about 23.15%, tax evasion about 12.84%, stock market manipulation about 8.71%, and customs evasion about 8.02%. The activities account for 87.18% of total proceeds from all 28 predicate offences.⁹ For these reasons, the Thailand government must address the weaknesses in its money laundering policies and by producing up-to-date risk assessments and mitigation measures, as well as training AML staff, financial sector staff, and customs-check-point staff in order to prevent the financial sector from being abused by criminals.¹⁰

⁷ Peter Chalk, 'Southeast Asia and the Golden Triangle's Heroin Trade: Threat and Response' (2000) 23(2) *Studies in Conflict & Terrorism* 89, 91.

⁸ Zachary Abuza, 'Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiyah' (2003) 25(2) *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 169, 188, 193.

⁹ *Anti-Money Laundering Office* (n 3).

¹⁰ *ibid.*

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

The Thailand government has implemented the international AML standards¹¹ into its national legislation which includes AML preventive regulations regarding the suspicious transaction reports (STRs),¹² civil asset seizure, and forfeiture, as well as the international cooperation.¹³ The government also established the Thailand's financial intelligence unit as key agency to deal with the STRs regime in line with international AML instruments.¹⁴

The FATF Recommendation 29 refers to the independence of the FIU that Thailand has implemented into the AMLA 1999, s 40 already.¹⁵ However, it is essential to find the degree of the independence of the Thailand FIU, as well as the influence or interference that hinder the independence of its FIU while acts as the national agency fighting money laundering, in particular how effective Thailand meet the international AML standards under the military coup regime (political influence).

¹¹ The principal International standards consist of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention), United Nations Convention Against Transnational Organised Crime, 2000 (Palermo Convention), and the United Nations Convention Against Corruption 2003 (Merida Convention), the FATF Recommendations, as well as best practices and industry guidelines. See discussion in chapter 3.

¹² The Anti-Money Laundering Office (AMLO) is Thailand's FIU. The three main tasks of the AMLO comprise (1) the legal enforcement and the proceeding of legislative actions against the assets associated with money laundering/terrorist financing offences; (2) the supervision of the obliged entities in AML/CFT matters; and (3) analysing the financial intelligence, and conducting strategic analysis, including acting as a domestic and international coordinator on anti-money laundering (AML) policies, as well as AML/CFT monitoring and supervision; see Anti-Money Laundering Office (AMLO), 'Background' (6 October 2011) <<http://www.amlo.go.th/index.php/en/2016-05-21-21-37-20/background>> accessed 27 November 2018.

¹³ Thailand Anti-Money Laundering Office (AMLO) is the Thailand FIU in the form of the hybrid-FIU model (administrative, judicial, and law enforcement-FIU models). Each country can choose its preferred model FIU independently, such as administrative, law enforcement, judicial or prosecutorial, and hybrid-type FIUs; see The Nation, 'AMLO seeks law to block funding for weapons of mass destruction' (*The Nation*, 9 October 2015) <<http://www.nationmultimedia.com/national/AMLO-seeks-law-to-block-funding-for-weapons-of-mas-30270498.html>> accessed 12 September 2017.

¹⁴ Anti-Money Laundering Act B.E.2542 (1999), s 40.

¹⁵ Anti-Money Laundering Act B.E.2542 (1999), s 40.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

According to the FATF and Egmont Group standards, an operational independence of an FIU is considered as a basic condition to an effective AML framework, then the results of FIUs having such independence of its functions has a significant effect on the efforts to fight money laundering.¹⁶ Regarding the independence of the FIU, the Thailand FIU was rated ‘largely compliant’ in implementing the FATF Recommendation 29, nevertheless there was an issue in term of its degree of operational independence, not sufficiently independent, which Thailand needs to improve it when deal with the STRs regime.¹⁷ The 2017 Thailand MER criticized the Thailand FIU in relation to such weakness, in particular s 25(3) of the AMLA 1999 on the independence of the FIU that can significantly undermine the performance of the FIU in fighting money laundering.¹⁸ In contrast, Thailand has several military coups, which such situations implied the unusual exploitation of the Thailand FIU’s functions for the benefits of the government under the coups regime. The thesis argues that the Thailand FIU may suffers from the lack of independence since there were several coups and the FIU is often subjected to the supervision of military government or political authorities that could be influenced and interfered by those who are outside the Thailand FIU. Therefore, it is vital to clarify this issue in order to find out the way to lead the FIU to meet the international AML standards¹⁹ efficiently.

Thus, this chapter reviews and focuses on the independence and role of the AMLO, Thailand’s FIU to implement,²⁰ under the AMLA 1999 by comparing with

¹⁶ Egmont Group of Financial Intelligence Units, *Understanding FIU Operational Independence and Autonomy* A Product of the Egmont Centre of FIU Excellence and Leadership (ECOFEL) (Egmont Group 2018) 3.

¹⁷ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 183.

¹⁸ *ibid.*

¹⁹ The FATF Recommendation 29 and the best international practices such as the Egmont Group of Financial Intelligence Units and Basel Committee on Banking Supervision.

²⁰ For example, receiving, analysing, disseminating, collecting evidence, and investigating in order to prosecute money laundering and predicate offences.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the UK's and Singapore's to understand how Thailand's FIU deals with international AML standards.²¹ The chapter also examines how effective the Thailand's FIU has implemented international AML standards.²² The chapter then proceeds to highlight the certain loopholes and weaknesses regarding the independence of the Thailand FIU within the AML legal framework of Thailand. Consequently, the Thailand AML framework can effectively be improved in addition to regulating the role of FIU. The next section examines the Thailand's AML legislative framework.

6.2 Thailand Anti-Money Laundering Legislative Framework

Thailand, as member of the Asia/Pacific Group on Money Laundering (APG) and is duty-bound to implement international AML initiatives into its national regulations.²³ As previously outlined, this comprises the 1988 Vienna Convention, the 2000 Palermo Convention, the 2003 Merida Convention, the FATF Recommendations and Basel Core Principles.²⁴ The effective implementation of such international instruments on money laundering into domestic legislation is dependent on a stable and democratic system of government, but in Thailand there have been several military coups against the democratically elected government and these political interruptions have adversely affected the action to enact and reform the legislation.²⁵

²¹ A comparison of three countries (the UK, Singapore and Thailand) is to identify differences and similarities, strengths, weaknesses and loopholes for improving Thailand's capability in implementing the FATF standards.

²² Goredema suggested that the AMLO is an interesting pattern for an institution to deal with money laundering; see Charles Goredema, 'Measuring Money Laundering in Southern Africa' (2005) 14(4) African Security Review 27, 36.

²³ Thailand and many other APG countries are signatories to the three principal UN AML conventions (consisting of the Vienna, Palermo and Merida Conventions).

²⁴ The implementation of the international AML standards and industry guidelines, as soft law, are discussed in chapter 3; see Seehanat Prayoonrat, *An Overview of the Legal Framework of Thailand's AML-CFT Activities* (Anti-Money Laundering Office 2006) 9.

²⁵ Thailand had never been colonised, but instead had faced several military coups from 1932 to 1973, recently had on 22 May 2014; Akihiko Kawaura, 'Generals in defense of allocation: Coups and military budgets in Thailand' (2018) 58 Journal of Asian Economics 72, 73; see also Shalendra D Sharma, *The Asian Financial Crisis New International Financial Architecture: Crisis, Reform and Recovery* (Manchester University Press 2003) 100; see also Asia/Pacific Group on Money Laundering

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Consequently, Thailand has progressed slowly in implementing its operating plan to establish and take all action plans to determine and freeze terrorist assets, as well as closely supervising AML activities.²⁶ However, the Thailand government has strictly adopted the international standards into its domestic legislation to strengthen the AML regime.²⁷ For instance, the Thailand government enacted the Anti-Money Laundering Act B.E. 2542 (1999)²⁸ that criminalising money laundering and established the AMLO.²⁹

Under the 1999 Act, Financial Institutions (FIs),³⁰ Designated Non-Financial Business and Professions (DNFBPs)³¹ must report any cash transaction with the value of THB2m (approximately £47,600) or more and any property transaction valued THB5m (estimate £119,000) or higher to the AMLO.³² If they fail to comply with such STR obligations, they will be fined up to THB 1m (approximately

(APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures: Thailand Mutual Evaluation Report* (APG 2017) 14.

²⁶ Financial Action Task Force (FATF), 'FATF Public Statement - 16 February 2012' <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatfpublicstatement-16february2012.html>> accessed 7 November 2015, see also Nophakhun Limsamarnphun, 'Thailand under new pressure on anti-money laundering laws' (*The Nation*, 18 February 2012) <<http://www.nationmultimedia.com/opinion/Thailand-under-new-presure-on-anti-money-launderi-30176140.html>> accessed 11 September 2017, see also Financial Action Task Force (FATF), 'FATF Public Statement - 19 October 2012' <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-19october2012.html>> accessed 11 September 2017.

²⁷ Price Water House Coopers Consulting (PWC), *Economic Crime in Thailand* (PWC 2016) 32.

²⁸ The Anti-Money Laundering Act B.E. 2542 (A.D.1999) hereinafter 'AMLA 1999'.

²⁹ Since 1999 Thai government has made five times of the amendments of the AMLA 1999 in order to update, strengthen, and improve such law to meet the international AML standards (namely, the amendments in 2003, 2008, 2009, 2013, and 2015); see Peeraphan Prempooti, 'Effective counter-measures against money laundering in Thailand' (March 2005) at 158 <http://www.unafei.or.jp/english/pdf/RS_No67/No67_18VE_Prempooti.pdf> accessed 25 May 2018.

³⁰ Section 3 of the AMLA 1999 defines the term 'financial institution'.

³¹ Section 16 of the AMLA 1999 amended in accordance with the AMLA (No.3) B.E.2552 (2009) defines the term 'designated non-financial business and professions (DNFBPs)'.

³² The AMLA 1999 does not define a specific amount of the threshold degree for each financial transaction. However, under s 13(1) of the AMLA 1999, the Ministerial Regulation No.2 determines that cash transaction values THB 2m or more, and s 13(2) of the AMLA 1999, such Regulation states that any property transaction value THB 5m or more.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

£23,800) and an additional amount not greater than THB 10,000 (approximately £240) for each day until the rectification is complete.³³

In Thailand, the definition of ‘suspicious transaction’ is determined by s. 3 of the AMLA 1999 to provide guidance on what amounts to suspicious activity.³⁴ Yingvoragan noted that transactions of unidentified cash to the high-risk countries from Thailand’s banks might be reported by the Money Laundering Reporting Officer (MLRO) to the AMLO because these transactions constitute grounds for suspicion.³⁵ As mentioned above, the thesis illustrates that Thailand’s AML provisional law identifies the definition of the term ‘suspicion’ more perspicuously than in the UK.³⁶ However, it is important to understand that s 3 of AMLO 1999 defines suspicious transactions with a broad explanation and general perspectives. Thus, the legal interpretation will be based upon the consideration of the relevant competent authorities when making their decision on each transaction.³⁷

³³ Section 62 para 1 of the AMLA 1999.

³⁴ Section 3 of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E.2556 (2013); on the other hand, the UK POCA 2002 does not provide what the definition of suspicion is; see discussion regarding ‘suspicion’ in the UK in the case of *R v Da Silva* and *K Ltd v National Westminster Bank Plc* in chapter 4.

³⁵ Pakorn Yingvoragan, ‘Impact of anti-money laundering measures on banks and consumer customers in United Kingdom and A comparative study with Thailand’ 1, 9 <http://www.oia.coj.go.th/doc/data/oia/oia_1498638576.pdf> accessed 24 May 2019.

³⁶ See discussion regarding definition of ‘suspicion’ in chapter 4.

³⁷ Section 3 of the AMLA 1999 defines ‘suspicious transaction’ as a transaction with reasonable grounds to believe that it is conducted to avoid the application of this Act, or transaction connected or possibly connected with the commission of a predicate offence or terrorist financing offence, notwithstanding the transaction being single or multiple, and shall include an attempt to conduct such a transaction’; see also *Yingvoragan* (n 35).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

However, given its inability to follow the stringent FATF guidelines and to make sufficient progress in 2012, Thailand was placed in the category of non-cooperative countries and territories (NCCTs),³⁸ which meant the country lacked both effective AML/CFT strategies.³⁹ The Thailand government had attempted to address these shortfalls by amending the AMLA 1999 via with the AMLA (No. 4) B.E. 2556 (2013) and the Counter-Terrorism Financing Act B.E. 2556 (2013).⁴⁰ This includes statutory provisions that criminalised terrorist financing, establishing and implementing adequate procedures to identify and freeze terrorist assets, as well as further strengthening AML/CFT supervision.⁴¹ These amendments established the AML/CFT regulatory and legislative framework and strengthened the levels of compliance in order to meet the national AML Action Plan regarding the strategic AML/CFT deficiencies.⁴² As a consequence, Thailand was removed from the FATF NCCTs list.⁴³ The FATF noted that Thailand had improved its AML regime and indicated that Thailand has established the legal and regulatory framework in its Action

³⁸ Financial Action Task Force (FATF), 'About the Non-Cooperative Countries and Territories (NCCTs) Initiative' <[http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/aboutthenon-cooperativecountriesandterritoriesncctinitiative.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/aboutthenon-cooperativecountriesandterritoriesncctinitiative.html?hf=10&b=0&s=desc(fatf_releasedate))> accessed 29 November 2018; see also Financial Action Task Force (FATF), 'Improving Global AML/CFT Compliance: On-going Process – 22 February 2013' (Thailand) <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/improvingglobalamlcftcomplianceon-goingprocess-22february2013.html#thailand>> accessed 2 November 2015; see also John Fotiadis, 'Thailand and the Financial Action Task Force' (2012) 6(8) E-Finance & Payments Law & Policy 14, 14.

³⁹ Chat Le Nguyen, 'Towards the Effective ASEAN Mutual Legal Assistance in Combating Money Laundering' (2012) 15(4) Journal of Money Laundering Control 383, 387.

⁴⁰ The Thai Parliament just passed an amendment to the AMLA 1999 as amended in accordance with the AMLA (No. 4) B.E. 2556 (2013) and enacted the Counter-Terrorism Financing Act B.E. 2556 (2013), hereinafter 'the CTPF Act', has become effective since 31 December 2016.

⁴¹ U.S. Department of State, '2015 Investment Climate Statement' <<http://www.state.gov/e/eb/rls/othr/ics/2015/241763.htm>> accessed 27 June 2015; see also Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press Releases: FATF remove Thailand from Public Statement on Money Laundering/ Financing of Terrorism' (Media Centre 1 May 2013) <<http://mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>> accessed 16 August 2018.

⁴² *Financial Action Task Force* (n 38).

⁴³ The non-cooperative countries and territories (NCCTs) list roles as the FATF dark list for the fail jurisdiction in fighting money laundering; see Anti-Money Laundering Office (AMLO), *Annual Report 2013* (Text and Journal Publication 2014) 7; see also *Financial Action Task Force* (n 33).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Plan to meet the FATF standards by responding to the strategic deficiencies that the FATF had identified in February 2010.⁴⁴ Thailand was, therefore, no longer subject to FATF's monitoring process under its ongoing global AML compliance process.⁴⁵ Nevertheless, Thailand has still worked with the Asia-Pacific Group on Money Laundering (APG) and continues to achieve the full range of AML issues identified in its Mutual Evaluation Report (MER).⁴⁶

In 2015 Thailand also revised the AMLA 1999.⁴⁷ The revision required the obliged reporting entities to ensure their AML policies, and internal handbooks were also revised and updated in line with the new legislation amendment in order to bridge the gaps, especially to ensure the confidentiality of STRs.⁴⁸ The 2015 amendment introduced three important issues. Firstly, the Parliament added more predicate offences regarding human trafficking,⁴⁹ misappropriation and associated crimes,⁵⁰ online gambling,⁵¹ unfair securities dealing practice and associated crime,⁵² as well as armaments.⁵³ Secondly, the AMLA 1999 extends the range of the money laundering offences by including knowingly obtaining, possessing, or using property linked

⁴⁴ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (FATF 2012) 7.

⁴⁵ Financial Action Task Force (FATF), 'Improving global AML/CFT compliance; On-going process – 3 November 2017' <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-november-2017.html>> accessed 3 May 2019.

⁴⁶ The 2007 MER relating to the implementation of the FATF Standards rated that Thailand was considered 'Compliant' for two and 'Largely Compliant' for four (i.e. it was partially compliant or non-compliant for all six of the Core FATF Recommendations); see International Monetary Fund (IMF), *Thailand: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism* (IMF 2007).

⁴⁷ The AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁴⁸ The AMLA 1999; see Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 168.

⁴⁹ Section 3(2) of the AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁵⁰ Section 3(4) of the AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁵¹ Section 3(9) of the AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁵² Section 3(20) of the AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁵³ Section 3(21) of the AMLA 1999 amended in accordance with the AMLA (No. 5) B.E. 2558 (2015).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

to criminal activities.⁵⁴ Additionally, the AMLA 1999⁵⁵ does not require the AMLO to prove intent before seizing the asset linked to illegal activities.⁵⁶

6.3 The Establishment of the Competent Authorities in Thailand

As previously outlined in the thesis, money laundering needs a globally coordinated response.⁵⁷ Therefore, the FATF requires an effective administration to stop, mitigate or tackle money laundering.⁵⁸ Each jurisdiction should implement international AML policy into its domestic AML legislation in order to meet the standards.⁵⁹ The FATF identifies that the main mechanisms to tackle these issues are the creation of competent authorities, including FIUs.⁶⁰ Due to the substantial linkages in an important policies between the Recommendations and the UN Conventions and UN Security Council resolutions, every country are required to comply with the standards, including the principle of independence of the FIU in line with Recommendation 29.⁶¹ The FATF Recommendations establish the competent AML authorities' powers, responsibilities and other institutional measures such as investigative,

⁵⁴ Section 5(3) of the AMLA 1999 added in accordance with the AMLA (No. 5) B.E. 2558 (2015).

⁵⁵ The AMLA 1999 amended in accordance with the AML (No. 5) B.E. 2558 (2015).

⁵⁶ AMLA 1999.

⁵⁷ Ayodeji Aluko, 'The impact of money laundering on economic and financial stability and on political development in developing countries: The case of Nigeria' (2012) 15(4) *Journal of Money Laundering Control* 442, 443.

⁵⁸ Gregory Rose (ed), *Following the Proceeds of Environmental Crime: Fish, Forests and Filthy Lucre* (Routledge 2014) 59.

⁵⁹ *ibid* 59.

⁶⁰ Financial Action Task Force (FATF), 'High-risk and non-cooperative jurisdictions' at 10 <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc%28fatf_releasedate%29> accessed 1 December 2015; see also Nicholas Ryder, *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 25.

⁶¹ FATF Recommendation 29; the Vienna Convention; the Palermo Convention; the Merida Convention; and the UN Security Council Resolutions 1267 as well as 1373; for a discussion on these standards see chapter 2; see also Neil Jensen and Cheong-Ann Png, 'Implementation of the FATF 40+9 Recommendations: A perspective from developing countries' (2011) 14(2) *Journal of Money Laundering Control* 110, 111.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

law enforcement and supervisory authorities in order to enhance the transparency of business ownership, including making it more difficult to conceal the proceeds of crime.⁶²

The competent authorities, as part of the disclosure of financial information required, are also key mechanisms under AML standards in dealing with money laundering because they can help supervise the national AML policy, prosecute the money launderer and exchange intelligence with foreign FIUs.⁶³ In Thailand, there are several government agencies in relation to AML regulation and enforcement of the Thailand's AML legislation. The competent authorities can be categorised into three kinds of competent authorities comprising: primary authorities, secondary authorities and tertiary authorities.⁶⁴ Tan and Ramakrishna noted that sometimes there are deficiencies such as a lack of communicative coordination between different Thailand intelligence authorities or institutional rivalries that may hinder efforts in fighting money laundering in Thailand.⁶⁵ As the reason mentioned above, the FATF suggested that the AMLA 1999 should provide more sufficient powers to the Thailand competent AML authorities, including designing proper and transparent investigations in order to increase the greater effective AML control in Thailand.⁶⁶

Therefore, the thesis notes that the competent authorities are the end users receiving financial intelligence from Thailand's FIU to use in their investigations and prosecutions of money laundering offences, including preventing Thailand's jurisdiction from being criminal heavens. This section illustrates and analyses the role

⁶² Financial Action Task Force (FATF), *Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption* (FATF 2013) 11.

⁶³ European Union (EU), 'Preventing money laundering and terrorist financing across the EU: How does it work in practice?' <https://ec.europa.eu/info/sites/info/files/diagram_aml_2018.07_ok.pdf> accessed 2 May 2019.

⁶⁴ *Ryder* (n 60) 25.

⁶⁵ *Tan and Ramakrishna* (n 1) 91, 98.

⁶⁶ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 100.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

of the competent authorities and determines how important they have been in implementing international standards (i.e. the FATF Recommendations) in Thailand. The next section explores the role of the primary authorities with regard to AML policies.

6.3.1 The Role of Primary Authorities

The FATF suggests that countries should formulate their national AML policies which focus on the review of the money laundering risk and the coordination of competent authorities and FIUs.⁶⁷ The FATF determines that competent authorities refer to policy-makers, the FIU, law enforcement authorities (LEAs) and supervisors⁶⁸ who facilitate the development and implementation of national AML policies.⁶⁹ Ryder identified that primary authorities supervise the national AML policy and promote its implementation of international standards.⁷⁰ In Thailand, the primary competent agencies⁷¹ manage AML policies to meet the international standards' requirements.⁷² However, each of these offices coordinates with several officials and secondary authorities.⁷³ This includes for example, the Royal Thai Police (RTP), the Department of Special Investigation (DSI), the AMLO, Royal Thailand Customs (RTC), Office of Narcotics Control Board (ONCB) and National Anti-Corruption Commission (NACC), the Securities and Exchange Commission (SEC).⁷⁴

⁶⁷ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2018) 6.

⁶⁸ The term 'supervisor' is defined as 'the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions (i.e. financial supervisors) and/or designated non-financial businesses/professions (DNFBPs) with requirements to combat money laundering and terrorist financing; see *Financial Action Task Force* (n 60) 122.

⁶⁹ *Financial Action Task Force* (n 38) 11.

⁷⁰ *Ryder* (n 60) 25.

⁷¹ See discussion regarding definition of primary authorities in chapter 3.

⁷² See discussion in subtopics 6.3.1.1 and 6.3.1.2

⁷³ See discussion regarding definition of secondary authorities in chapter 3.

⁷⁴ See discussion in subtopic 6.3.2.7.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

6.3.1.1 Ministry of Justice

The Ministry of Justice of Thailand (MOJ), is the primary authority that oversees the criminal justice system. Furthermore, the Minister of Justice is the Vice Chairman of Anti-Money Laundering Board (AMLB).⁷⁵ The MOJ provides the notification relating to ideas, problems, and obstacles in the application of the regulation.⁷⁶ The MOJ supervises the Department of Special Investigation (DSI), which is a specialist in law enforcement agency responsible for investigating money laundering predicate offences, as well as other relevant international regulations.⁷⁷

6.3.1.2 Ministry of Finance

The Ministry of Finance (MOF) is a primary AML authority that issues the national AML policies, rules, procedures, and conditions for competent authorities to apply against money laundering. It also acts as a licensing authority for commercial banks, specialised banks, finance companies, credit providers, money changers, money transfer agents, securities companies, investment advisor companies and insurance companies.⁷⁸ Sections 5 and 6 of the Commercial Bank Act B.E. 2505 (1962) (CBA) does not provide power to the MOF and the Bank of Thailand (BOT) to allow the banking license of the shell banks in Thailand in line with the international standards.⁷⁹ The MOF is not only the effective administrator of Thailand's

⁷⁵ Section 24 of the AMLA B.E. 2542 (1999) as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

⁷⁶ *Anti-Money Laundering Office* (n 43) 66.

⁷⁷ See discussion in subtopic 6.3.2.2; see also Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 27.

⁷⁸ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 32.

⁷⁹ Sections 5 and 6 of the Commercial Bank Act B.E. 2050 (1962) (CBA) as amended by ss 4 and 5 of the CBA (No.2), B.E. 2522 respectively.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

AML policy, but the MOF also manages the fund for the AMLO to fight money laundering efficiently.⁸⁰ In July 2012, the AMLO opened an account named ‘Anti-Money Laundering Fund’⁸¹ from which the Office can deposit and withdraw money through the system of the MOF.⁸² For example, the AMLO transfers half of the seizure and forfeited assets⁸³ to the MOF⁸⁴ in accordance with the AMLA 1999, including other related laws.⁸⁵ The AMLO reported that the total US\$6,529,980 was provided to the AML Fund, while funds sent to the MOF are about US\$25,262,561.⁸⁶ These figures and collaboration measure how effective the national AML policies have been in implementing international standards. In addition, the MOF and the AMLO incorporated the amendment of the AMLA1999 and other related laws to enhance the disclosure system for the detection of a cross border transaction of currency and expand competent AML agencies’ power to detect, seize and forfeit the illegal proceeds of crime.⁸⁷

In the UK the primary authorities are the HM Treasury, the Home Office and the Foreign and Commonwealth Office.⁸⁸ On the other hand, Singapore’s primary authorities include the Ministry of Finance (MOF), Monetary Authority of Singapore

⁸⁰ Sections 49 or 51 para two amended in accordance with the AMLA (No.5) B.E. 2558 (2015); see also *Asia/Pacific Group on Money Laundering* (n 17) 64.

⁸¹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 63.

⁸² *Anti-Money Laundering Office* (n 43) 54.

⁸³ Section 51 para two amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

⁸⁴ *Anti-Money Laundering Office* (n 43) 25.

⁸⁵ In 2016, there are funds sent to the MOF about US\$6,063,484; see Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 63.

⁸⁶ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 183.63.

⁸⁷ Anti-Money Laundering Office (AMLO), *The Kingdom of Thailand: National Strategy for Combating Money Laundering and the Financing of Terrorism 2010-2015* (Office of the Welfare Promotion Commission for Teachers and Educational Personnel 2011) 22.

⁸⁸ See discussion in Chapter 4, subtopic 4.3.1.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

(MAS), as well as the Anti-Money Laundering and Countering the Financing of Terrorism Steering Committee.⁸⁹ In term of independence of the FIU, Thailand primary authority launches the appropriate AML policies including the independence of the FIU to support it in conducting its functions effectively. The primary authorities implement the range of soft law such as the UN Conventions, the FATF, the Egmont Group and Basel into national AML legislation regarding the AMLA 1999 which are in line with the substantial AML principles of those international standards. However, the primary authorities have to support the FIU as an independent agency whether administrative model, law-enforcement model, judicial/prosecutorial model or hybrid model.⁹⁰ Even though, there is no ‘one-size-fits-all’ model for transposing into each country and because there are several differences in their legal contexts, especially Thailand regarding the situations of military coups. Therefore, the thesis investigates to find the answer the research questions. The next section presents the role of secondary involving with the independence of the Thailand FIU.

6.3.2 The Role of Secondary authorities

The secondary authorities support the primary authorities and implement domestic AML policy efficiently.⁹¹ Moreover, they also help the AMLO and the Thailand government to improve the AML regime by enhancing, amending, and enacting AML legislation to respond to the better implementation of international standards.⁹² Here, the secondary authorities include Thailand’s FIU (AMLO), law enforcement

⁸⁹ See discussion in Chapter 5, subtopic 5.3.1.

⁹⁰ See discussion in Chapter three; see also International Monetary Fund (IMF) and World Bank, *Financial Intelligence Units: An Overview* (IMF and World Bank 2004) 10.

⁹¹ *Ryder* (n 60) 25.

⁹² Anti-Money Laundering Office (AMLO) *Annual Report 2017* (Amarin Printing 2018) 11, 60.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

authorities (the Royal Thailand Police (RTP), the Department of Special Investigation (DSI), the Office of Narcotics Control Board (ONCB), the Royal Thailand Customs (RTC), the National Anti-Corruptions Commission of Thailand (NACC)), and the financial regulatory agencies such as the Securities and Exchange Commission (SEC).

6.3.2.1 The Royal Thailand Police

The Royal Thailand Police (RTP) is a law enforcement authority that reports directly to the Prime Minister (i.e. the RTP is under the control of the Prime Minister).⁹³ The Police Commissioner General is also appointed by the Prime Minister and subject to the cabinet and royal approval.⁹⁴ The prime responsibility is to maintain public order via enforcement of Thailand's law.⁹⁵ A Director-General of the RTP is also a member of the AMLB.⁹⁶ Thailand Criminal Procedure Code empowers the RTP to detect, identify, investigate, interrogate, and gather evidence regarding criminal cases, especially money laundering offences under the Criminal Procedure and several Criminal Acts in order to forward the case to the public prosecution.⁹⁷ The RTP also has extensive powers of investigation, search and seizure under Thailand law similarly to other regulatory authorities, including the DSI, the Revenue and

⁹³ ASEANAPOL Secretariat, 'The Royal Thai Police' (*ASEANAPOL E-Bulletin*) <<http://www.aseanapol.org/information/royal-thai-police>> accessed 10 May 2019.

⁹⁴ U.S. Department of States, '2009 Country Reports on Human Rights Practices: Thailand' (11 March 2010) <<https://www.state.gov/j/drl/rls/hrrpt/2009/eap/136010.htm>> accessed 13 September 2017.

⁹⁵ *ibid.*

⁹⁶ Section 24 of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No.38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board; see also *Anti-Money Laundering Office* (n 43) 72.

⁹⁷ Netipoom Maysakun, 'Money Laundering in Thailand' <https://www.unafei.or.jp/publications/pdf/RS_No73/No73_13PA_Netipoom.pdf> accessed 7 June 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Customs Departments.⁹⁸ The RTP is working with the AMLO by receiving the intelligence involving money laundering offences and charging base on a list of predicate offences of money laundering.⁹⁹

6.3.2.2 Department of Special Investigation

Under the Special Cases Investigation Act B.E. 2547 (2004), the Department of Special Investigation (DSI) is a legalised department of the Ministry of Justice of Thailand.¹⁰⁰ To complement the RTP, the DSI independently operates the investigation of the certain ‘special cases’, including complex criminal cases, the cases involving organised criminal organisations, cases connecting with high-ranking government officials, and cases relating to national security.¹⁰¹ The Special Cases Investigation Act 2004 empowers the DSI to conduct investigations on the special cases. For example, DSI as competent authority has a legal basis to share confiscated proceeds of crime on request of foreign counties under the AMLA 1999.¹⁰² DSI investigated the fake government-to-government rice export case, AMLO has been pursuing charges against Siam Indica Company over the exploit of fraudulent government-to-government (G-to-G) contracts.¹⁰³ In addition, the case of conspiracy to

⁹⁸ Melisa Uremovic and Visitsak Arunsuratpakdee, ‘Thailand’ in Nicolas Bourtin (ed), *The International Investigations Review* (7thedn, The Law Reviews 2017) 273.

⁹⁹ King-Oua Laohong, ‘AMLO, banks team up in anti-gambling effort’ (*Bangkok Post*, 19 June 2018) <<https://www.bangkokpost.com/news/crime/1487874/amlo-banks-team-up-in-anti-gambling-effort>> accessed 10 May 2019.

¹⁰⁰ Special Cases Investigation Act 2004.

¹⁰¹ Section 21 of the Special Cases Investigation Act 2004 as amended by ss 4, 5 and 6 of the Special Case Investigation Act (No. 2) B.E. 2551 (2008).

¹⁰² *ibid.*

¹⁰³ The defendants did not export the rice to China on a G-to-G basis as announced by the Thai Commerce Ministry, but instead repackaged the rice purchased from the previous government’s rice-pledging scheme from domestic sales. Previous, over Baht7 bn worth of assets owned by Siam Indiga Company and its major shareholder were confiscated by authorities pending further legal actions; The Nation, ‘DSI takes up 7 special cases including corruption files’ (*Politics*, 4 November 2017) <<https://www.nationthailand.com/news/30330843>> accessed 24 November 2020.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

commit money laundering and jointly laundering money and obtaining stolen property because of the discovery of the proceeds of crime in Klongchan Credit Union Cooperative Limited case paid to Wat Phra Dhammakaya, Phra Dhammajayo, and the related people by 27 cheques valued more than Baht1.4m. This case was completed and its files were submitted to the Office of the Attorney-General for prosecuting 5 alleged offenders.¹⁰⁴ Furthermore, AMLO disseminated financial intelligence reports to DSI on the basis of STRs around 24 reports in 2016, which increased from 10 reports in 2015.¹⁰⁵ In 2017, DSI was requested by AMLO to investigate Mr Panthongtae Shinawatra and his four accomplices with conspiracy to commit money laundering.¹⁰⁶ The Act provides the power for the DSI to investigate certain special cases under the Revenue Code, Customs Law, the Foreign Business Act, the Computer Act, or the Patent Act.¹⁰⁷ For example, when the DSI completes an investigation, the case will be submitted to the Public Prosecutor to file an indictment.¹⁰⁸ The DSI and AMLO signed the Ordinance on the Coordinated Implementation of the Special Investigation Law to Serve the Operations under the Anti-Money Laundering Act 2014.¹⁰⁹

¹⁰⁴ The Special Case No.27/2016; see Department of Special Investigation (DSI), 'DSI's important performance in the fiscal year 2017 and the operational direction for the next year' <<https://www.dsi.go.th/en/Detail/DSIaposs-important-performance-in-the-fiscal-year-2017-and-the-operational-dire-T0002326>> accessed 24 November 2020.

¹⁰⁵ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 46.

¹⁰⁶ Special case no.25/2017 is the case requested for DSI's investigations by AMLO regarding MR Panthongtae is Mr Thaksin Shinawatra's son; Mr Thaksin was overthrown in military coup in 2006; see Department of Special Investigation (DSI), 'DSI's important performance in the fiscal year 2017 and the operational direction for the next year' <<https://www.dsi.go.th/en/Detail/DSIaposs-important-performance-in-the-fiscal-year-2017-and-the-operational-dire-T0002326>> accessed 24 November 2020.

¹⁰⁷ Special Cases Investigation Act B.E. 2547 (2004); Melisa Uremovic and Visitsak Arunsuratpakdee, 'Thailand' (*The Law Reviews*, July 2018) <<https://thelawreviews.co.uk/edition/the-international-investigations-review-edition-8/1172150/thailand>> accessed 20 February 2019.

¹⁰⁸ Tom Obokata, *Transnational Organised Crime in International Law* (Hart 2010) 125.

¹⁰⁹ *Anti-Money Laundering Office* (n 43) 93.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

6.3.2.3 The Royal Thailand Customs

The Customs Act of B.E. 2496 (1926) was taken place by the Customs Act B.E. 2560 (2017) because of a number of ambiguities, creating difficulties for persons and companies to ensure compliance.¹¹⁰ For example, s 27 chapter IV of the 1926 Act defined the terms ‘customs evasion’ and ‘customs avoidance’ as different offences.¹¹¹ However, s 3(7) of the AMLA 1999 defines term ‘custom avoidance and custom evasion’ as the ‘smuggling under the customs law’ as the predicate ML offence.¹¹² Therefore, the Royal Thailand Customs (RTC) has participated with the AMLO, DSI and RTP to expand capacity in dealing with money laundering effectively, covering powers of seizure of suspicion currency.¹¹³ However, an alleged offender’s assets may be subject to confiscation by the AMLO for breach of ‘customs avoidance’.¹¹⁴

The AMLO itself has the power to confiscate the currency on suspicion of predicate offences or money laundering offences in the case that the RTC may not

¹¹⁰ Michael Ramirez, ‘Long awaited changes to the Thai Customs Act signed into law’ (2017)3 Thai-American Business, p. 38 <[https://www.tilleke.com/sites/default/files/2017 Jul Long Awaited Changes Thai Customs Act.pdf](https://www.tilleke.com/sites/default/files/2017%20Jul%20Long%20Awaited%20Changes%20Thai%20Customs%20Act.pdf)> accessed 24 November 2020.

¹¹¹ Section 27 of the Customs Act of B.E. 2496 (1926); see the Supreme Court of Thailand Judgment No. 967/2507 [1964], 612-613/2511 [1968] and 6925/2538 [1995].

¹¹² Section 3 of the AMLA 1999 ‘Predicate offence’ means any offences including ‘s3(7) relating to smuggling under the customs law.’

¹¹³ Exchange Control Act (No. 2) B.E. 2559 (2016).

¹¹⁴ *ibid.*

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

conduct a timely confiscating or stopping of such currency at the border after receiving the issued order from the AMLO.¹¹⁵ Moreover, it has established effective structures for LEAs and AMLO's money laundering investigations and instituted the relevant AML policies, as well as procedures for LEAs nationally.¹¹⁶ Normally, the Customs Agency must report the information in case of grievance or allegation or must arrest for proceedings regarding predicate offence of money laundering. For example, the Customs officers confiscate a large amount of cash that has been brought into the jurisdiction.¹¹⁷ The next section demonstrates the role of the Office of Narcotics Control Board (ONCB).

6.3.2.4 Office of Narcotics Control Board

The Office of Narcotics Control Board (ONCB) is an independent body under the Minister of Justice preventing and suppressing illegal drug-related offences under the Narcotics Control Act B.E.2519 (1976).¹¹⁸ The ONCB is also responsible for investigating narcotics predicate offences and the confiscation of the proceedings associated with drug offences.¹¹⁹ The Measures for the Suppression of Offender in an Offence relating to Narcotics 1991 provides the power for the LEAs to seize,

¹¹⁵ Asia/Pacific Group on Money Laundering (APG), *Mutual Evaluation of Thailand: 1st Follow-Up Report* (APG 2018) 4.

¹¹⁶ *Anti-Money Laundering Office* (n 43).

¹¹⁷ Section 3(7) of the AMLA 1999, s 242 of the Customs Act 2017, and the Clause 4 of the Prime Minister Office Regulation on the Coordination in Compliance with the AMLA 1999, 2001.

¹¹⁸ Provision of drug-related offences are determined in a raft of laws differently defined in the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E.2534 (1991) the two most important Acts are the Narcotics Act 2522 (1979) and the Psychotropic Substances Act B.E. 2518 (1975); see *Asia/Pacific Group on Money Laundering* (n 17) 28; see also Office of the Narcotics Control Board (ONCB), 'About us' <https://www.oncb.go.th/EN_ONCB/Pages/background.aspx> accessed 27 November 2020; see Siam Legal, 'Criminal Drug Offences in Thailand' <<https://www.siam-legal.com/litigation/criminal-defence-drug-offences-in-thailand.php>> accessed 15 May 2019.

¹¹⁹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 28.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

restrain, or forfeit all proceeds of the drug trade, as well as prosecuting offences that are committed outside the jurisdiction.¹²⁰

The ONCB has participated with AMLO and other domestic authorities (such as the Office of the Attorney General (OAG), RTP, DSI, Office of National Anti-Corruption Commission (NACC)) via signing the Agreement of Operations in Cases among State Organisations in line with the Anti-Participation in Transnational Organised Crime Act B.E. 2556 (2013) in order to identify threats and risks, review risk mitigation strategies, design and implement appropriate policy responses.¹²¹ Specifically, this aspect of Thailand uses the risk assessment to help ascertain the main criminal and terrorist threats and the key vulnerabilities that allow them to display and to identify appropriate responses for the LEAs to deal with those threats, including to produce the AML policy and strategy effectively.¹²²

6.3.2.5 The National Anti-Corruption Commission of Thailand

By the virtue of the Organic Act on Counter Corruption B.E. 2542 (1999) (Anti-Corruption Act) and the Constitution of the Kingdom of Thailand B.E. 2560 (2017) established, the National Anti-Corruption Commission of Thailand (NACC) created an independent commission responsible for the prevention of bribes to public officials.¹²³ More recently, its remit was extended to the bribery of foreign and public international officials.¹²⁴ The 2017 Constitution ensures that the NACC performs its

¹²⁰ Section 5 of the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics B.E.2534 (1991).

¹²¹ *Anti-Money Laundering Office* (n 87) 56.

¹²² The Anti-Money Laundering Board Notification regarding Listing and Delisting of Designed Persons under Resolution or Notification under the United Nations Security Council; see also *Anti-Money Laundering Office* (n 87) 11, 83.

¹²³ Organic Act on Counter Corruption B.E. 2542 (1999), s 232 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

¹²⁴ Organic Act on Counter Corruption B.E. 2542 (1999), s 232 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

duties independently in line with this Constitution and the laws.¹²⁵ Therefore, the 1999 Act empowers the NACC to investigate allegations that governmental and political officials conduct malfeasance regarding corruption, unusual wealth, unexplained wealth, and money laundering in their offices.¹²⁶

Under the Thailand Criminal Code B.E. 2499 (1956) and the AMLA 1999, the NACC and the AMLO have the power to conduct investigations on offences which are committed outside the Kingdom of Thailand.¹²⁷ Under the Agreement of Operations in Cases among State Organisations in line with the Anti-Participation in Transnational Organised Crime Act 2013, the NACC has also participated with the AMLO to increase presently committed resources.¹²⁸ For example, to prosecute the State official for corruption, the NACC has the authority to enquire into facts and collect evidence or the offence to be proven, and for the offender to be prosecuted and then penalised.¹²⁹ Furthermore, the NACC has the power to institute the prosecution of its action or designate an attorney to initiate the prosecution on its behalf.¹³⁰ For example, s 123 of the Organic Act on Counter Corruption 1999 regarding State official's corruption as the predicate offence of money laundering in the AMLA 1999.¹³¹

6.3.2.6 Office of Attorney General

Office of Attorney General (OAG), namely the State Attorney organ, independently administer criminal cases, safeguard national benefit, protect civil rights,

¹²⁵ Section 215 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

¹²⁶ Section 103/3 of the Organic Act on Counter Corruption 1999.

¹²⁷ Section 8 of the Criminal Code 1956 and s. 6 of the AMLA 1999.

¹²⁸ *Asia/Pacific Group on Money Laundering* (n 17) 59.

¹²⁹ Section 26(1) of the Organic Act on Counter Corruption 1999.

¹³⁰ Section 97 para 2 of the Organic Act on Counter Corruption 1999.

¹³¹ Section 3(5) of the AMLA 1999 and s. 123 of the Organic Act on Counter Corruption 1999

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

and provide legal assistance, develop international legal cooperation, produce the quality research, improve the laws in Thailand, including file lawsuits, and proceed with criminal procedures as a sole prosecution agency.¹³² Additionally, the Constitution of the Kingdom of Thailand B.E.2560 (2017) ensures that the status of the OAG as an independent in consideration and disposition of cases with the honest and fair performance of duties in line with the Public Prosecution Organ and Public Prosecutors Act B.E. 2553 (2010) in order to assure the OAG's independence of its operation.¹³³ On the other hand, the 2017 Constitution does not identify the AMLO's status like the OAG, which can manage the personnel, budgetary affairs, and other activities of the OAG independently,¹³⁴ but the AMLA 1999 only assures the AMLO's status in s.40 of the AMLA 1999 that the AMLO is an office to work independently and neutrally, i.e. not under the Prime Minister Office, Ministry, or Sub-Ministry.¹³⁵ Consequently, the AMLO shall certify its status by the 2017 Constitution to ensure that its staff functions independently without political interference and intervention.

The OAG requires coordination with the LEAs' investigators under the Mutual Assistance in Criminal Matters Act B.E.2535 (1992) (MACM) because of the complex matters, including involving cross-border evidence collection, asset restraint and recovery.¹³⁶ Therefore, the OAG proposed Extradition Act B.E 2551

¹³² Section 248 of the Constitution of the Kingdom of Thailand 2017, and ss. 14, 21 23 of the Public Prosecution Organ and Public Prosecutors Act B.E 2553 (2010); see Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 27; Office of the Attorney General (OAG), 'Authorities and functions' <http://www.ago.go.th/agoen/function_2.php> accessed 28 May 2019.

¹³³ Office of the Attorney General (OAG), 'About us' <<http://www.ago.go.th/agoen/history.php>> accessed 28 May 2019.

¹³⁴ Section 248 of the Constitution of the Kingdom of Thailand 2017.

¹³⁵ Section 40 of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E.2551 (2008).

¹³⁶ Sections 6, 7 of the MACM 1992; Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 7.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

(2008), as well as the treaties on the Mutual Legal Assistance to seek the support and cooperation from other LEAs.¹³⁷ For example, the U.S. Department of Justice cooperated with the OAG to extradite the international illegal arms trafficker Viktor Bout to the United States for trial.¹³⁸

When compared to Singapore's Attorney General's Chambers (AGC) and the UK's Crown Prosecutor Service (CPS), the OAG in the same way coordinates with the FIU and other competent authorities' investigation such as cross-border transactions, the asset recovery, and restraints in relation to money laundering.¹³⁹ Under s. 55 of the AMLA 1999, the OAG can submit the Transaction Committee (TC)'s order, namely the 'ex parte restraining order' to convert to the Court order in order to seize suspicious assets involving money laundering.¹⁴⁰ As mentioned above, the AMLO submits the TC's order to the OAG for obtaining the court order to seize the criminal property to the State.

It is important to note that the OAG is independent in issuing orders in cases with expeditious and just performance with no any prejudice, especially when such order shall not be considered as an administrative order.¹⁴¹ Thailand's AMLO order, conversely, is an administrative order that can petition the Administrative Court to revoke the AMLO order.¹⁴² However, the 2017 Constitution does not certify the

¹³⁷ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 27.

¹³⁸ James H Freis, 'The role of the FIU in combating transnational organised crime, including working within government, with overseas governments and with business' (2011 Anti-Money Laundering and Counter-Terrorism Financing Conference, Sydney, Australia, 7 November 2011) at 14 <<https://www.fincen.gov/sites/default/files/shared/20111110.pdf>> accessed 23 May 2019.

¹³⁹ The AMLO is a Thailand's FIU; see Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 7.

¹⁴⁰ Section 55 of the AMLA 1999.

¹⁴¹ Section 248 para two of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

¹⁴² Section 5 of the Administrative Procedure Act B.E.2539 (1996).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

AMLO's independence like the OAG.¹⁴³ Furthermore, the AMLO is not the Independent Constitutional Organisation like the NACC.¹⁴⁴ As mentioned above, this thesis noted that the AMLO should be an Independent Constitutional Organisation like the NACC or like the OAG, which obtains certified independence according to the 2017 Constitution in order to support the AMLO to meet the FATF's requirement effectively and prevent the AMLO from the political interference or influence. Although, the AMLO has become an independent authority under the direct supervision of the Prime Minister to ensure more independence and impartially of the Office.¹⁴⁵ The next section explains the role of the Securities and Exchange Commission.

6.3.2.7 Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is an independent and supervisory public organisation which seeks to achieve a sustainable, efficient, fair, and transparent capital market.¹⁴⁶ Under the Securities and Exchange Act B.E. 2535 (1992), the SEC supervises a broad range of sectors, including investment firms, asset management firms and financial advisors.¹⁴⁷ The Secretary-General of the SEC is a member of the AMLB for making the AML policy on money laundering issues.¹⁴⁸

¹⁴³ Section 248 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

¹⁴⁴ Sections 232, 234 para two of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

¹⁴⁵ See discussion in Subtopic 6.4.1.

¹⁴⁶ The SEC was established on 16 May 1992 under the Securities and Exchange Act B.E. 2535 (1992); see Securities and Exchange Commission (SEC), 'Introduction' <<http://www.sec.or.th/EN/SECInfo/LawsRegulation/Pages/IntroductoryLaw.aspx>> accessed 17 February 2016.

¹⁴⁷ Section 3(20) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

¹⁴⁸ Section 24(2) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

The SEC collaborates with AMLO and the Bank of Thailand (BOT) in order to support Thailand's compliance with the FATF Recommendations by creating effective preventive measures such as the Know Your Customer (KYC) and Customer Due Diligence (CDD) rules for the securities sector to fight money laundering and terrorist financing offences.¹⁴⁹ In March 2007 the SEC launched an enforceable AML/CFT Notification, which explained the preventive measure on CDD for the securities organisation.¹⁵⁰ Therefore, all securities and asset management sectors must comply with the issuance of the CDD and KYC by filing the suspicious transaction report (STR) to the AMLO.¹⁵¹ The SEC Act requires all operators of securities businesses to have reporting obligations under the AMLA 1999.¹⁵² The securities body has the best practice of compliance with the requirements of the FATF Standards to diminish the risks of money laundering and to promote an effective form of protection for investors and/or consumer, and also to create a regime that encourages related securities sector to operate with the respective legislative framework. For example, the securities companies¹⁵³ have the legal obligation to report the STRs to the AMLO.¹⁵⁴ The SEC focuses on the verification of the financial information report to ensure its member sectors to comply with the AML regulations strictly.¹⁵⁵ In 2016,

¹⁴⁹ Anti-Money Laundering Forum, 'Thailand' (*Central Authority for Reporting*, 23 June 2009) <<https://www.anti-moneylaundering.org/asiapacific/Thailand.aspx>> accessed 29 December 2018.

¹⁵⁰ *International Monetary Fund* (n 46).

¹⁵¹ Sections 13 to 16 of the AMLA 1999.

¹⁵² Santhapat Periera, Dussadee Rattanopas and David Duncan, 'Jurisdiction update: Thailand – Securities & Banking' (13 March 2012) <https://www.tilleke.com/sites/default/files/2012_Mar_Compliance_Securities_Banking_Thailand.pdf> accessed 12 May 2019.

¹⁵³ Under section 3 of the AMLA 1999, the FIs include a securities company under the law on securities and exchange; see the AMLO's issuance of the Counter-Terrorist Financing Act B.E.2556 (2013); Notification No. Kor Lor Tor. Kor Thor. (Wor) 23/2557 (2014) Re: Risk Management to Prevent the Use of Securities Business for Money Laundering and Financing of Terrorism <<https://capital.sec.or.th/webapp/nrs/data/6330se.pdf>> accessed 18 May 2019.

¹⁵⁴ Section 3(4) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

¹⁵⁵ Yingyong Karnchanapayap, 'Amendments to the Securities and Exchange Act B.E.2535 (1992)' (December 2008) 1 <<https://www.tilleke.com/sites/default/files/Amendments-SEC-Act.pdf>> accessed 18 May 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Thailand's SEC conducted the Memorandum of Agreement Regarding Cooperation for the Purposes of Anti-Money Laundering and Combating the Financing of Terrorism with the AMLO in order to improve the effectiveness of coordination on supervision over securities sector to control and suppress money laundering and Thailand AML supervision structural framework.¹⁵⁶ The SEC in line with the guidance issued by the AMLO supports the efficiency of the risk management regarding the KYC/CDD and STRs principles enough for the prevention of the use of securities firms for money laundering that could destroy the reputation of the financial market.¹⁵⁷

The thesis clarifies the primary authorities in the three countries. Thailand's primary authorities consist of the MOF and MOJ. The UK's primary authorities include the HM Treasury, the Home Office, and the Foreign and Commonwealth Office.¹⁵⁸ Singapore primary authorities comprise the MOF, the MAS, and the Anti-Money Laundering and Countering the Financing of Terrorism Steering Committee.¹⁵⁹ Among the three countries, most of the primary authorities have the power to make and supervise the AML/CFT strategies and guidelines in each country's jurisdiction. However, only the MAS's duty of AML supervision can impose financial

¹⁵⁶ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 9, 60; see also Securities and Exchange Commission (SEC), 'SEC keeps close watch on announcement of FATF blacklist' (13 February 2012) <https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=4574> accessed 18 May 2019.

¹⁵⁷ Clause 30(1) of the Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 (2013) Re: Standard Conduct of Business, Management Arrangement, Operating System, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries dated 6 September 2013.

¹⁵⁸ See discussion in chapter 4.

¹⁵⁹ See discussion in chapter 5.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

penalties on the FIs such as warnings/reprimands to criminal prosecution and removal of the license, including the fine for REs who fail to comply with the CDSA's requirement.¹⁶⁰

The AMLO is the key agency accountable for seeking, restraint of illegal proceeds and investigating predicate offences similarly to other competent authorities such as the DSI and the RTP, who can instigate asset restraint proceedings via the OAG.¹⁶¹ The AMLO, NACC, ONCB and RTC are able to investigate elements of money laundering and associated predicate offences. However, they have to submit such cases to the DSI or RTP in order to complete any money laundering investigation, and they also have to make a decision whether or not to hand over the matter to the OAG for prosecutions.

The thesis illustrates that the second competent authorities in Thailand seem more effective in supporting the Thailand FIU when dealing with money laundering offence.¹⁶² For example, the NACC is the independent agency acting as a role in preventing, investigating corruption predicates, which are the money laundering of-

¹⁶⁰ Section 71 of the Singapore Banking Act 1970 also empowers the MAS to fine any bank which contravenes any of the provision in this 1970 Act; see discussion in subtopic 5.3.1.2; see Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Singapore* Fourth Mutual Evaluation Report (FATF and APG September 2016) 8; see also Monetary Authority of Singapore (MAS), 'MAS imposes penalties on Standard Chartered Bank and Coutts for 1MDB-related AML breaches' (2 December 2016) <<http://www.mas.gov.sg/news-and-publications/media-releases/2016/mas-imposes-penalties-on-standard-chartered-bank-and-coutts-for-1mdb-related-aml-breaches.aspx>> accessed 5 December 2017; see also Stanley Lai, Francis Mok and Tham Kokleong, 'Singapore: payment systems – proposed payments framework' (2017) 32(1) *Journal of International Banking Law and Regulation* 1, 1.

¹⁶¹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 51.

¹⁶² Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 183.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

fences. Unlike the Thailand FIU, the NACC and the OAG are the constitutional bodies, which become more independent than the AMLO in operating its functions under the Anti-Money Laundering Board (AMLB) regime.¹⁶³

Regarding the FIU model, the Thailand FIU employs the FIU hybrid model, which takes actions much more quickly than the FIU in line with the administrative type like the UK.¹⁶⁴ In spite, the 2017 FATF MER rated ‘largely compliant’ for Thailand in implementing the Recommendation 29.¹⁶⁵ However, the FATF criticised that Thailand FIU had been experienced an issued of an insufficient independence of the FIU. In contrast, the UKFIU was rated ‘partially compliant’ by the FATF in implementing the Recommendation 29, but the FATF raised the UK as best practice.¹⁶⁶ Regarding the independence of the UKFIU, the Joint Financial Analysis Centre (JFAC) is hosted by the NCA and works together officials, analytical ability, skills and intelligence from four authorities, comprising the NCA, Her Majesty’s Revenue and Customs, the Financial Conduct Authority and the Serious Fraud Office – in a collaborative and innovative working ecosystem in order to develop into an effective units for wider financial analysis to produce the intelligence to improve existing investigation, intelligence and independence development of the competent authorities

¹⁶³ Section 25(3) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.; see also Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 28.

¹⁶⁴ See discussion in chapter 4.

¹⁶⁵ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand Fourth Round Mutual Evaluation Report* (APG 2017) 183.

¹⁶⁶ FATF Recommendation 29; see Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist financing measures – United Kingdom Fourth Round Mutual Evaluation Report* (FATF 2018) 224.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

and the FIU in dealing with SARs regime without undue influence and interference.¹⁶⁷ Apart of the JFAC, the Joint Money Laundering Intelligence Taskforce (JMLIT) comprises the LEAs and the financial sector to exchange and analyse financial information and intelligence regarding money laundering threat, which also supports the independence of the UKFIU by generating positive result since its establishment in 2015 and is deemed internationally to become an example of best practice.¹⁶⁸ As reasons mentioned above, the JFAC and FMLIT would be the key elements of the UK to enhance the independence of the UKFIU that Thailand should learn this valuable lessons from this best practice.

In regard to independence of the FIU, Thailand has made several amendments to the AMLA 1999 to the FIU provisions regarding its role and duties, administration and its degree of the independence from the influence of the Thailand government.¹⁶⁹ The thesis stresses on the unusual powers of the AMLB, which can influence and interfere of the independence of the Thailand FIU.¹⁷⁰ This thesis aims to examine what the lessons Thailand can learn from best practices whether the UK or Singapore in order to improve the independence of the FIU.

6.3.3 The Role of Tertiary authorities

The tertiary authorities comprise the Bank of Thailand (BOT), the Securities and Exchange Commission (SEC) and the Thailand Chamber of Commerce (TCC)

¹⁶⁷ National Crime Agency (NCA), 'Money laundering and illicit finance' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance>> accessed 23 December 2020.

¹⁶⁸ National Crime Agency (NCA), 'Money laundering and illicit finance' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance>> accessed 23 December 2020.

¹⁶⁹ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 181.

¹⁷⁰ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist financing measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 183.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

which comply with the AML legislation in order to support the reporting entities to comply with the STR regulations stringently and effectively. The next section explains the role of the Bank of Thailand.

6.3.3.1 Bank of Thailand

Efforts to tackle money laundering are conducted by the FIUs, which has a close working relationship with banks who are susceptible to money laundering activities.¹⁷¹ Thus, the banks are the most important actors in the AML regime because they act as the gatekeepers to restrain, prevent, protect, and reduce the threat of money laundering crime before monies are transacted in the placement stages of money laundering.¹⁷²

To safeguard fiscal stability and monitor banking supervision, the Bank of Thailand (BOT), as the Thailand central bank and prudential regulator supervisor, plays the key role in ensuring that it complies with the FATF Recommendations and co-operates with the AMLO, the MOF and the SEC.¹⁷³ The BOT is accountable for the MOF, but it has considerable autonomy regarding its operations.¹⁷⁴ It enacts the

¹⁷¹ Peter Ellinger, Eva Lomnicka and Christopher Hare, *Ellinger's Modern Banking Law* (Fifth edn, Oxford University Press 2009) 92.

¹⁷² Nicholas Ryder, 'The Financial Services Authority and money laundering: A game of cat and mouse' (2008) 67(3) Cambridge Law Journal 635, 638.

¹⁷³ Section 16 of the AMLA 1999 amended by the AMLA (No.5) B.E. 2558 (2015) and ss 24 and 77 of the Commercial Banking Act B.E. 2505 (1962) (CBA); General Guide to Account Opening according to the Guidelines on sound Management of Risks related to Money Laundering and Financing of Terrorism; see John Taskinsoy, 'Asian Miracle, Asian Tiger, or Asian Myth? Financial Sector and Risk Assessment through FSAP Experience: Enhancing Bank Supervision in Thailand' 1, 8 <https://www.researchgate.net/profile/John_Taskinsoy3/publication/332963246_Asian_Miracle_Asian_Tiger_or_Asian_Myth_Financial_Sector_and_Risk_Assessment_through_FSAP_Experience_Enhancing_Bank_Supervision_in_Thailand/links/5cd3f365a6fdccc9dd974276/Asian-Miracle-Asian-Tiger-or-Asian-Myth-Financial-Sector-and-Risk-Assessment-through-FSAP-Experience-Enhancing-Bank-Supervision-in-Thailand.pdf> accessed 20 May 2019; see also the Bank of Thailand Notification No. FPG. 7/2559 (2016) Re: Regulations on Acceptance of Deposits or Money from Customers 1 <<https://www.bis.org/bcbs/publ/d353.pdf>> accessed 20 May 2019.

¹⁷⁴ Santhapat Periera, David Duncan and Supanon Triumnuk, 'Jurisdiction update: Thailand-Securities & Banking' (8 May 2019) <https://www.tilleke.com/sites/default/files/2013_May_Complanet_Securities_Banking.pdf> accessed 11 May 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

banking regulations, issues banking licenses, and supervises banks, FIs, including regulated firms, as well as controlling AML/CFT operational risk.¹⁷⁵ Furthermore, the Governor of Bank of Thailand is one of 14 ex-officio members of the AMLB in order to improve the AML policy, risk management, and supervise the financial regulatory agencies (such as commercial banks) regarding the effective fight against money laundering and the promotion of the Thailand financial system.¹⁷⁶

In addition, the BOT has launched several AML guidelines that are reliant on the participation and co-operation from FIs because the advisory guidance establishes the internal and external controls (namely, the internal reporting system and the process after the nominated official receiving financial information respectively), including measures to avoid money launderers to use the financial market without detection.¹⁷⁷ Therefore, the BOT introduced measures and practical guidance to stem the capital inflows and effectively maintain Thailand's economy. For example, it issued the '2005 Guidelines for On-site Examination on AML/CFT Compliance' in order to evaluate whether strategies and measures, including the operational procedure of the information system regarding AML/CFT of the FIs, are compliant with the FATF and Basel Regulations.¹⁷⁸ Furthermore, in 2006, the BOT prohibited FIs from issuing and selling means of exchange in Thailand to non-residents that made

¹⁷⁵ The BOT has licensing and supervisory authority for the following sector: asset management firms; money transfer agents; personal loan firms; e-money service providers; credit card service providers, and e-payment service providers under the s 3 of the Bank of Thailand Act B.E. 2485 (1942) as amended by s. 3 of the Bank of Thailand Act (No.4) B.E. 2551 (2008); see also *Asia/Pacific Group on Money Laundering* (n 17) 32.

¹⁷⁶ Section 24 of the AMLA 1999 additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

¹⁷⁷ International Monetary Fund (IMF) Factsheet, 'The IMF and the fight against money laundering and the financing of terrorism (September 2013) at 1 <<https://www.imf.org/external/np/exr/facts/pdf/aml.pdf>> accessed 23 May 2019.

¹⁷⁸ Bank of Thailand (BOT), 'Guidelines for On-site Examination on AML/CFT Compliance' (BOT 2005) at 1, 3 <https://www.bot.or.th/english/financialinstitutions/prureg_hb/riskmgt_manual/download/documentfordownload/riskmanagementexaminationmanaul_08_antimoneylaundering.pdf> accessed 20 May 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the effective fighting against money laundering.¹⁷⁹ To meet the Basel and FATF Standards,¹⁸⁰ the BOT formulated its Policy Statement on 19 January 2007, which describes the KYC and CDD practices for FIs under the supervision of the BOT pursuant to the Ministerial Regulation on Designating Types of Transactions where FIs and Business and Professions under Section 16 are required to have their customers identify themselves (B.E. 2554) (2011).¹⁸¹

In 2011, Thailand government responded to the international standards by encouraging all relevant FIs and non-FIs to comply with the AMLA 1999 to meet the AML standards.¹⁸² The BOT signed the Memorandum of Agreement Regarding Cooperation in the Supervision of Institutions under the Bank of Thailand's Mandate for the Purposes of Anti-Money Laundering and Combating the Financing of Terrorism' with the AMLO on 10 April 2015 in order to promote supervisors' knowledge and build the capacity of their operational performance effectively.¹⁸³ Therefore, this thesis noted that the problem arises from ignorance of AML rules and guidelines, and this brings about organisational defection. The competent authori-

¹⁷⁹ Bruno Coelho and Kevin P Gallagher, 'Capital Controls and 21st Century Financial Crises: Evidence from Colombia and Thailand' (January 2010) Working paper series Number 213.

¹⁸⁰ Financial Stability Institute (FSI), *FSI Survey: Basel II, 2.5, and III Implementation* (Bank for International Settlements 2015) 1,38.

¹⁸¹ By the virtue of s 16 of the AMLA 1999 amended in accordance with the AMLA (No.3) B.E.2552 (2009), the Ministerial Regulation Designating Types of Transactions where Financial Institutions and Business and Professions under Section 16 Are Required to Have Their Customers Indentify Themselves (B.E. 2554) (2011) requires a broad range of customer identification information and transaction report reportable to the AMLO, such as cash transactions, asset transactions, and transactions regarding moveable assets over 700,000 Thai Baht that connect with the transaction or payment of money via electronic ways in cash.

¹⁸² The Thailand government considered that the compliance of international AML standards was very crucial policy amended by amending the 1999 Act accordance with the AMLA (No.3) B.E. 2552 (2009).

¹⁸³ *Anti-Money Laundering Office* (n 87) 59.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

ties' control and monitoring system for transactions reporting to the AMLO and record keeping¹⁸⁴ is vital in dealing with money laundering and improving the Thailand's AML/CFT supervision structural framework.¹⁸⁵ For example, ss 35 and 36 of the AMLA 1999 provide the power to the TC to issue a written order withholding the suspicious transaction depending on the evidence.¹⁸⁶ As a result of the TC's order, the customers whose transactions are withheld cannot use such money in their bank accounts until the specific time passed.¹⁸⁷ The next section concerns the role of the Thailand Chamber of Commerce.

6.3.3.2 Thailand Chamber of Commerce

Under the Chambers of Commerce Act B.E. 2509 (1966), in 1966 the Thailand Chamber of Commerce (TCC) serves as the central coordinating agency between the Private and Government Sector in order to support Thailand's business and trade, safeguard Thailand's commercial interests with other countries equally.¹⁸⁸ The TCC has also instituted an arbitration commission to deal with arguments between members, who are a unit of people working for supporting trade, industry, agriculture, finance, or economy, without seeking benefits or sharing revenues.¹⁸⁹

¹⁸⁴ *Bank of Thailand* (n 174) 1, 14.

¹⁸⁵ *Asia/Pacific Group on Money Laundering* (n 17) 32.

¹⁸⁶ Sections 35 and 36 of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

¹⁸⁷ However, s 48 para four provides that such customers may produce evidence that the money in such transactions are not the money linked with the commission of the predicate or money laundering offences in the written order that the seizure order may be revoked.

¹⁸⁸ Section 4 of the Chambers of Commerce Act 1966; see Thai Chamber of Commerce (TCC), 'History' <<https://www.thaichamber.org/en/about>> accessed 20 May 2019.

¹⁸⁹ International Monetary Fund (IMF), 'ASEAN – Association of Southeast Asian Nations' <https://asean.elibrary.imf.org/abstract/IMF002/08866-9781451969429/08866-9781451969429/08866-9781451969429_A001.xml?redirect=true> accessed 20 May 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Under s 15 of the Chambers of Commerce Act B.E. 2509 (1966), the Board of Trade of Thailand consists of the Thailand Chamber of Commerce, foreign chambers of commerce, trade associations, State enterprises, and co-operatives.¹⁹⁰ The Trade Association Act B.E. 2509 (1966) also defines the term ‘trade association’ as an institution established by several persons, who are engaged in enterprises, for the promotion of the enterprises rather than for sharing profit or income.’¹⁹¹ The objective of the Trade Association Act is to regulate laws and contribute extensive knowledge to firms within the industry in Thailand, and to protect the Thailand economy from being used by the grouping of entrepreneurs, particularly issues on countering organised crime (i.e. money laundering) and terrorism.¹⁹² In addition, the TCC supports the AMLO to promote the knowledge regarding the risk of money laundering and the connection with the AMLO to counter money laundering and strengthen international trade and investment opportunities.¹⁹³ The next section explains the role of the Office of Insurance Commission.

6.3.3.3 Office of Insurance Commission

The financial system is broadly linked and complicated system, which allows the vulnerability of international economy to affect the Thailand’s economy and generates risk to the financial stability of FIs, especially the insurance business.¹⁹⁴ The Office of Insurance Commission (OIC) is the Thailand prudential regulator and supervisor of the insurance industry, which has licensing and supervisory authority for

¹⁹⁰ Section 15 of the Chambers of Commerce Act 1966.

¹⁹¹ Section 4 of the Trade Association Act B.E. 2509 (1966).

¹⁹² *Asia/Pacific Group on Money Laundering* (n 17) 171.

¹⁹³ *International Monetary Fund* (n 46) 226.

¹⁹⁴ Office of Insurance Commission (OIC), *Annual Report 2017* (OIC 2018) 133.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

life insurance firms and operational adherence to regulations via market supervision.¹⁹⁵ The Insurance Commission Act B.E.2550 (2007) established the OIC as an independent government agency accountable for the Department of Insurance, Ministry of Commerce.¹⁹⁶ Under the supervision of the MOF, it participates with the AMLO to promote the programmes regarding transferring supervisor's knowledge, to enhance ability at the AMLO in order to improve the Thailand's AML/CFT supervision structural framework, and to reduce the risks in financial market effectively.¹⁹⁷ For instance, the AMLO and OIC cooperate in evolving supervisory tools to develop the risk-based approach, including AML guidelines by signing the Memorandum of Agreement Regarding Cooperation in the Supervision of Insurance Business for the Purposes of Anti-Money Laundering and Combating the Financing of Terrorism with the AMLO in 2011 in order to ensure the Thailand insurance industry remains globally benchmarked.¹⁹⁸ The OIC also issued its Notification on Rules and Procedures, Methods and Conditions for Setting Minimum Requirements for risk management by Insurance company, which comprises the provision regarding risk management system and policies.¹⁹⁹ Furthermore, the OIC has worked with the AMLO to amend AMLA 1999 to include the legal power to supervise compliance with preventive measures FIs prudential supervisors pursuant to the AMLA 1999 and Ministerial Regulations.²⁰⁰ The next section explores the role of the Ministry of Agriculture and Cooperatives.

¹⁹⁵ *Asia/Pacific Group on Money Laundering* (n 17) 9.

¹⁹⁶ Insurance Commission Act B.E. 2550 (2007).

¹⁹⁷ *Asia/Pacific Group on Money Laundering* (n 17) 9.

¹⁹⁸ *ibid.*

¹⁹⁹ *Office of Insurance Commission* (n 194) 137.

²⁰⁰ *Anti-Money Laundering Office* (n 82); see *Anti-Money Laundering Office* (n 86) 57.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

6.3.3.4 The Ministry of Agriculture and Cooperatives

Thailand's agricultural cooperatives relate to several activities such as loans, credit, savings and the supply of agricultural input.²⁰¹ The Ministry of Agriculture and Cooperative (MOAC) promotes regulations and oversees all cooperatives to ensure the performance²⁰² is in line with the law on cooperatives, especially taking deposits and offering credit in order to prevent the use of all cooperatives for the money laundering activities.²⁰³ The MOAC participates in the development of the regime for cooperatives, which falls within the FATF's definition of a financial institution.²⁰⁴ Furthermore, the MOAC provides guidance regarding the national strategy on AML associated with the support of the use of innovation to improve the cooperation from government and private parties.²⁰⁵

The tertiary competent authorities in Thailand supports the AMLO to increase the effectiveness of the operation in controlling and fighting money laundering. Similar to the tertiary competent authorities in the UK and Singapore, they disseminate financial intelligence for the LEAs for their investigation and prosecution of predicate and money laundering offences.²⁰⁶ The FATF introduces the AML reporting systems as a measure of effectiveness in fighting money laundering.²⁰⁷ However, this thesis found that the STRs regime requires the good quality of STRs to

²⁰¹ Nicolas Faysse and Wattanaï Onsamrarn, 'The differing strategies of agricultural cooperatives in Thailand: from managing market links to self-reliance' (2018) 11(3) *Journal of Community development Research (Humanities and Social Sciences)* 13, 15.

²⁰² Section 3(5) of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E.2551 (2008) defines 'financial institution' includes 'cooperatives under the law on cooperatives, limited to a cooperative with operating capital exceeding two million Baht of total share value and having objectives of its operation relating to acceptance of deposits, lending of loans, mortgage, pawning or acquiring of money or asset by any means'.

²⁰³ *Asia/Pacific Group on Money Laundering* (n 17) 32, 40, 177.

²⁰⁴ *Anti-Money Laundering Office* (n 43).

²⁰⁵ *Anti-Money Laundering Office* (n 87) 87.

²⁰⁶ *Asia/Pacific Group on Money Laundering* (n 17) 54.

²⁰⁷ FATF Recommendation 33 regarding the statistics of STRs received, disseminated; on ML/TF investigations, prosecutions, convictions; on property frozen, seized, confiscated, and on mutual legal assistance or other international requests for cooperation.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

support the FIU producing the financial intelligence for investigation and prosecution of predicate and money laundering offences.²⁰⁸ The starting point of the STR reporting process is the term ‘suspicion’ in the mind of a regulated person, competent authorities, or FIs’ employees who interpret or consider suspicious activities or transactions (namely, a subjective test)²⁰⁹ and then report to the official in the internal control system of the STRs regime. In the UK, Goldby comments that s 330 of the POCA 2002 encourages FIs, especially banks, to file the over-SARs report to the NCA without the consideration of the grounds for suspicion because the POCA determines the liability of the breach of s 330 for filing the SAR to the FIU.²¹⁰

Similar to the UK, Thailand FIs possibly submit numerous insufficient STRs to the AMLO because s 62 of the AMLA 1999 imposes a financial fine and imprisonment to any person who does not comply with such STRs requirement.²¹¹ In Thailand, s 3 of the AMLA 1999 defines the term ‘suspicious transaction’ for the REs to consider, while in the UK, the POCA 2002 does not define such a term in the statute.²¹²

Section 35 of the AMLA 1999 provides the power to the TC to give a written order withholding the suspicious transaction for a fixed period, which shall not be

²⁰⁸ Serious Organised Crime Agency (SOCA), *Suspicious Activity Reports Regime Annual Report 2010* (SOCA 2010) 14, 15; see also NC Morrison, ‘Money laundering legislation in the UK’ (1995) 14(1) *International Banking and Financial Law* 3, 3.

²⁰⁹ See the decision of the Court of Appeal in *K Ltd v National Westminster Bank* [2007] 1 WLR 311 CA (Crime Div); [2006] EWCA Civ 1039, Judge Longmore identified that the existence of suspicious is subjective fact and so there was ‘no legal requirement that there should be reasonable grounds for the suspicion. The state of suspicion does not need a solid ground, and it depend on subjective test; see *Ellinger, Lomnicka and Hare* (n 171) 158.

²¹⁰ Section 330(2) of the POCA 2002; *Ahmad v HM Advocate* [2009] H CJAC 60; [2009] SCL 1093 at 30; see Miriam Goldby, ‘Ani-money laundering reporting requirements imposed by English Law: measuring effectiveness and gauging the need for reform’ (2013) *Journal of Business Law* 367, 375.

²¹¹ Section 62 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

²¹² See detail of the term ‘suspicion’ in the court decision of *R v Da Silva* [2007] 1 WLR 303 CA (Crim Div); *K Ltd v National Westminster Bank* [2007] 1 WLR 311 CA (Crime Div); [2006] EWCA Civ 1039 in chapter 4.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

longer than three working days if there is probable cause to suspect and enough evidence to believe that the transaction is related or possibly related to the commission of the predicate or money laundering offences²¹³ (i.e. where there is convincing evidence regarding such offences, the TC can order to withhold the transaction for a fixed period, which shall not be over than ten working days).²¹⁴ In this case, the banks do not want consent from the TC to manage transactions unless the TC provides a written order withholding the transaction, and the banks will not interrupt the reported transaction.²¹⁵ But in Thailand after submitting the STR, the CDSA 1992 does not determine that the banks require the consent of the Suspicious Transaction Reporting Office (STRO).²¹⁶ Consequently, the bank can proceed with the client's transaction.²¹⁷

Contrary to the UK, when the SAR has been submitted to the NCA, the transaction is immediately frozen and requires the appropriate consent from the NCA, and this means the banks cannot execute any action on the transaction after reporting the SAR to the NCA because there is an immediate effect to such the transaction.²¹⁸ Although the FATF Recommendation 33 promotes the effectiveness of AML measures, it still generates the cost of AML compliance that the FIs in every jurisdiction must take into account such costs.²¹⁹ For example, the cost of compliance with STR requirements affecting the benefits of the FIs includes hiring AML experts,

²¹³ Section 35 of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

²¹⁴ Section 36 of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

²¹⁵ *Yingvoragan* (n 35).

²¹⁶ Law Society of Singapore, 'FAQ guidance from the Suspicious Transaction Reporting Office of CAD on lodging a suspicious transaction report' <<https://www.lawsociety.org.sg/For-Lawyers/Running-Your-Practice/Anti-Money-Laundering-and-Counter-Terrorism-Financing/FAQ-guidance-from-the-Suspicious-Transaction-Reporting-Office-of-CAD-on-Lodging-a-Suspicious-Transaction-Report>> accessed 28 May 2019.

²¹⁷ *ibid.*

²¹⁸ Sections 335, 336 of the POCA 2002.

²¹⁹ FATF Recommendation 33.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

training, and expensive technology for best practice compliance procedures.²²⁰ However, the non-compliance with AML laws and regulations could bring about large fines.²²¹

This thesis investigates that the AMLA 1999, s 38 provides AMLO the direct and indirect access to a broad scope of information to enable it to appropriately conduct its functions.²²² As reasons mentioned above, AMLO is extremely empowered by the AMLA 1999, s 40 under the FIU administrative, law-enforcement and judicial/prosecutorial models (hybrid model).²²³ In contrast, the UK and Singapore are under the FIU administrative type, but the FATF raised them as best practices. It is essential to learn the valuable lessons, in particular the independence of the FIU from those countries to enhance the Thailand FIU in order to meet the international standards.

6.4 The Establishment of the Thailand Financial Intelligence Unit

The FATF Recommendation 29 states that countries should institute an FIU to serve as a national centre for receiving, analysing financial information regarding potential money laundering,²²⁴ associated predicate offences and terrorist financing, and then disseminating the outputs of such analysis of information in order to support

²²⁰ David Chaikin, 'How effective are suspicious transaction reporting system?' (2009) 12(3) *Journal of Money Laundering Control* 238, 243-244; see also Rowan Bosworth-Davies, 'Money laundering – chapter five: the implications of global money laundering laws' (2007) 10(2) *Journal of Money Laundering Control* 189, 189.

²²¹ Pornsan Chuaphanich, 'Anti-money laundering (AM)/countering terrorist financing (CTF)' (Price waterhouse Coopers (PWC), 30 November 2018) <https://www.oic.or.th/sites/default/files/institute/course/88436/public/aml_knowledge_sharing_oic_nov18.pdf> accessed 24 May 2019.

²²² AMLA 1999, s 38.

²²³ AMLA 1999, s 40 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008).

²²⁴ Section 3(21) para 4 of the AMLA 1999 as amended in accordance with the AMLA (No.4) B.E. 2556 (2013) defines suspicious transaction as a transaction with reasonable grounds to believe that it is acted to avoid the compliance of this Act, or such transaction to linked or possibly linked with the perpetration of a predicate offence or terrorist financing offence; however, the transaction can be single or multiple and shall cover an attempt to act such transaction.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

their capacity to fight money laundering.²²⁵ As a result, the FIU is a type of state authority to tackle money laundering.²²⁶ Under the domestic AML legislation, each FIU must receive further information from reporting entities, as well as having access to relevant financial, administrative and law enforcement information properly.²²⁷ Furthermore, the FATF Recommendations determine the FIU should support the information exchange between other competent authorities and international FIUs.²²⁸

As Thailand's FIU, the AMLO²²⁹ is a founder and a member of Asia-Pacific Group on Money Laundering (APG), i.e. FATF-Style Regional Bodies (FSRBs) for the Asia-Pacific region in combating money laundering consistent with the FATF.²³⁰ The AMLO is also a member of the Egmont Group, which enables the exchange of information with other international FIUs based on the mutual agreement pursuant to the Egmont Group's Principles.²³¹ Under the AMLA 1999, the main legal principle of AML legislation can be divided into three core bodies consisting of the AMLB,

²²⁵ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2016) 24.

²²⁶ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of Council of Europe, 'Financial intelligence units' <<https://www.coe.int/en/web/mon-eyval/implementation/fiu>> accessed 14 January 2019.

²²⁷ FATF Recommendation 29.

²²⁸ Financial Action Task Force (FATF) Standards, 'FATF 40 Recommendations' (October 2013) <<http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf>> accessed 30 May 2015.

²²⁹ Anti-Money Laundering Office (AMLO) is a Thailand's FIU.

²³⁰ The mission of the APG also deals with the combat against terrorist financing. However, this dissertation does not discuss this issue; see Asia-Pacific Group on Money Laundering (APG) 'Overview of APG Member' <<http://www.apgml.org/members-and-observers/page.aspx?p=8c32704a-5829-4671-873c-7b5a23ced347>> accessed 31 May 2015; see also Egmont Group of Financial Intelligent Units, 'List of Member FIUs' <http://self.gutenberg.org/articles/egmont_group_of_financial_intelligence_units> accessed 31 May 2015; Asia/Pacific Group on Money Laundering (APG), 'Members & observers' <<http://www.apgml.org/members-and-observers/members/default.aspx>> accessed 14 September 2017.

²³¹ The Egmont Group facilitates to shape the FIUs as the operational autonomy and independence; see U.S. Department of State, 'The Egmont Group of Financial Intelligence Units' <<https://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239473.htm>> accessed 25 June 2018.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the TC, and the AMLO.²³² According to the AML preventive measures,²³³ the AMLA 1999 requires the reporting entities such as FIs, regulated professions, or the Land Offices²³⁴ to report a suspicious transaction reporting (STRs) to the AMLO in order to process, examine, and analyse such information into intelligence.²³⁵ The submission of an STR is the initiating point of the AML measures in the UK, Singapore and Thailand.²³⁶ The STR can instigate the Thailand AML process in asset proceedings because the TC is able to have the power to issue a written order a seizure or attachment of asset connected with the commission of the predicate or money laundering offences.²³⁷ From these procedures, the AMLO by the court order could vest the suspected property to the State in order to interrupt the flow of illegal money to the organised crimes or criminals.²³⁸

6.4.1 Role of Thailand Financial Intelligence Unit

This section critically analyses the power and role of the Thailand's FIU, AMLO, in implementing the international²³⁹ and domestic²⁴⁰ standards in order to

²³² The AMLA 1999.

²³³ *Ryder* (n 60) 92.

²³⁴ Section 16 para one of the AMLA 1999 amended in accordance with the AMLA (No. 3) B.E. 2552 (2009).

²³⁵ Under Ministerial Regulation Designating the Cash Threshold Which Businesses and Professions under Section 16 Shall Report to the Anti-Money Laundering Office (B.E. 2554) (2011) and the s 13 of the AMLA 1999, financial institutions are duty-bound to report the transactions regarding the cash transactions of THB700,000 and above; or wire transfers or electronic transactions of THB50,000; all cash transactions equal to or above THB2m, as well as electronic transactions the threshold is THB100,000.

²³⁶ Sections 13 to 16 of the AMLA 1999 amended in accordance with the AMLA (No.3) B.E.2552 (2009) determine the STR system obliging the reporting entities (REs) in Thailand. Whilst the suspicious activity reporting regulation in the UK is enacted in the Proceeds of Crime Act 2002, and the suspicious transaction reporting rule in Singapore is determined in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Chapter 65A).

²³⁷ Section 48 of the AMLA 1999.

²³⁸ Sections 48 and 49 of the AMLA 1999.

²³⁹ FATF Recommendations.

²⁴⁰ The principal Thailand's legal framework is the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

support the effective investigations and prosecutions in combating money laundering.²⁴¹ The AMLO is Thailand's FIU, which has an institutional autonomy to operate its functions and resources responsible for receiving the STRs submitted by the reporting entities (REs).²⁴² The AMLO's primary objective is to collect and then analyse the relevant financial report from various FIs for the investigation and prosecution by relevant law enforcement authorities.²⁴³ In other words, Morrison noted that the reporting of suspicious transactions regarding laundered funds is the most significant instrument for the AMLO to instigate legal proceedings in fighting money laundering.²⁴⁴ Therefore, the analysis of the STR is focused on detecting, tracing and identifying money laundering in order to deliver the financial intelligence to the relevant LEAs to investigate and prosecute the case.²⁴⁵

In Thailand, the AMLO can impose financial penalties on a person who fails to comply with the AML procedures.²⁴⁶ Similar to the UK and Singapore, Thailand's AMLA 1999 provides expanded criminal offences, especially predicate and money laundering offences that have been enacted to target launderers and anyone who assists the launderer.²⁴⁷ Section 3 of the AMLA 1999 determines the 28 groups of the predicate offences, namely the underlying criminal offence that leads to criminal

²⁴¹ Comparing with the UK and Singapore's legal framework, which discussed in chapter 4 and 5.

²⁴² By the virtue of s 40(2) of the AMLA 1999 and the Part 4 of the Ordinance of the Anti-Money Laundering Office Concerning the Anti-Money Laundering Office's Administration, B.E. 2556 (2013), the Financial Intelligence Division within the AMLO has powers to receive the STRs from the reporting entities. Additionally, s 16 of the AMLA 1999, the 'Ministerial Regulation Designating Types of Transactions where Financial Institutions and Business and Professions under Section 16 Are Required to Have Their Customers Identify Themselves (B.E. 2554) (2011)' also requires a broad range of customer identification information and transaction report reportable to the AMLO, such as cash transactions, asset transactions, and transactions regarding moveable assets over THB700,000 that connect with the transfer or payment of money via electronic ways in cash.

²⁴³ *Anti-Money Laundering Forum* (n 149).

²⁴⁴ *Morrison* (n 208) 3.

²⁴⁵ Sections 40, 48 of the AMLA 1999.

²⁴⁶ Section 64/1 of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

²⁴⁷ Section 3 of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

proceeds, which are the subject of money laundering offence.²⁴⁸ However, in Singapore the First and Second Schedules of the CDSA 1992 identify the predicate offences as more than 400 serious offences,²⁴⁹ whilst the UK's POCA determines that all serious crimes are predicate offences.²⁵⁰ Thus in order to achieve the better practice, the Thailand AMLA 1999 should increase the predicate offences to cover all serious crimes similar to Singapore and the UK to deal with the typologies of money laundering. Moreover, the AMLA 1999 should list all predicate offences in Schedule of AMLA 1999 to enhance the clear understanding for the relevant FIs, competent authorities, lay people, and FIUs to implement such offences. Currently, the AMLA 1999 identifies 'predicate offence' in s 3 as any offences relating to criminal activities, and this could lead to confusion in interpreting what activities relate to the predicate offences.²⁵¹ It causes uncertainty about what many predicate offences are and what definition of each offences is. For example, s 3(3) of the AMLA 1999 determines that the predicate offence is the offence 'relating to public fraud under the Penal Code or offence under the law on loans of a public fraud nature'.²⁵² According to s 3(3) of the AMLA 1999, people and FIs need to find out how the exact section of the Penal Code concerned with this predicate offence, i.e. there are eight offences (namely, from sections 341 to 348), involving with the fraud offence in the Thailand Penal Code.²⁵³ Moreover, this predicate offence also concerns s 4 of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E. 2527

²⁴⁸ Section 3 of the AMLA 1999; the CDSA 1992; and the POCA 2002.

²⁴⁹ The First and Second Schedules of the CDSA 1992.

²⁵⁰ POCA 2002.

²⁵¹ AMLA 1999, s 3.

²⁵² Section 3(3) of the AMLA 1999.

²⁵³ Section 341-348 of the Thai Penal Code B.E. 2499 (1956).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

(1984).²⁵⁴ The thesis advises that the Thailand Government learn a lesson from the UK and Singapore and change the provisional AMLA 1999. Furthermore, s 40 of the AMLA 1999 provides that the AMLO should function independently and neutrally in fighting money laundering and financing terrorism effectively.²⁵⁵ However, the AMLO has to carry out acts in the implementation of resolutions of the AMLB and the TC, and to perform other administrative tasks under AMLA 1999.²⁵⁶

The FATF confirms that the STR/SAR benefits the countries, especially the FIUs, to detect money laundering and trigger the investigation.²⁵⁷ Under the AMLA 1999, the AMLO, therefore, has both direct and indirect power to access to additional financial and law enforcement information from FIs and relevant law enforcement authorities database legally and timely.²⁵⁸ Therefore, the AMLO analyses the STRs, then delivers and exchanges the financial intelligence for the execution of the AMLA 1999 or relevant laws, or under a memorandum of understanding (MOU) signed between domestic or foreign authorities.²⁵⁹ This is comparable with the UK's FIU and Singapore's FIU, which have the power to gain the proper information in order to assist FIUs' analysis and dissemination of STRs/SARs.²⁶⁰ For the reasons mentioned above, all relevant FIs must comply with the AMLA 1999 by reporting three types of transactions to the AMLO. They three types of transactions include cash transactions in the amount of THB 2m or above,²⁶¹ transactions involving assets worth THB

²⁵⁴ Section 4 of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E. 2527 (1984).

²⁵⁵ Section 40 of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

²⁵⁶ Section 40(1) of the AMLA 1999.

²⁵⁷ *Morrison* (n 208) 3, 4.

²⁵⁸ Section 46 of the AMLA 1999 para one amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

²⁵⁹ Section 40(3) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

²⁶⁰ See discussion in chapter 4 and 5.

²⁶¹ Section 13(1) of the AMLA.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

5m or above,²⁶² and lastly suspicious transactions regardless of the values specified under first or second.²⁶³ In addition, to meet the FATF requirements, s 16 of the AMLA 1999 requires nine groups of professions accountable for reporting the STRs to the AMLO.²⁶⁴ If they do not comply with the STRs requirements, the AMLO has the provisional power to issue an order, or else such professions who fail to comply with the provision of ss 16 and 62 of the AMLA 1999 can be fined.²⁶⁵

It is questionable that all STRs with the number of suspicious transactions to the AMLO (for example, a total of the STRs: 166,578 STRs in 2011; 110,835 STRs in 2012;²⁶⁶ 74,596 STRs in 2013; 13,964 STRs in 2014;²⁶⁷ 8,953 STRs in 2015; 18,191 STRs in 2016; and 32,209 STRs in 2017) have all appropriate quality of the STRs because some FIs may fear of the civil penalty from the AMLO when they fail to comply with the AML regulations, and this can be called ‘defensive reporting’.²⁶⁸

On the other hand, the thesis illustrates that there were a larger number of the STRs with more suspicious transaction reports in 2011 and in 2012 than in 2013 to 2017. The AMLO noted that the number of the STRs received from 2013 to 2017 had obviously decreased because the Supervision and Examination Division of the AMLO rechecked such STRs and sent back to those reporting entities to revised them again if they are incomplete reports.²⁶⁹ Similar to the UK and Singapore, Thailand has faced this problem and it has affected the AMLO’s operation such as the

²⁶² Section 13(2) of the AMLA.

²⁶³ Section 13(3) of AMLB, see also *Anti-Money Laundering Office* (n 38) 47.

²⁶⁴ Section 16 para one of the AMLA 1999 amended in accordance with the AMLA (No.3) B.E.2552 (2009).

²⁶⁵ Sections 16 and 62 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

²⁶⁶ *Anti-Money Laundering Office* (n 43) 48.

²⁶⁷ Anti-Money Laundering Office (AMLO), *Annual Report 2014 of Anti-Money Laundering Office* (AMLO 2015) 36.

²⁶⁸ *Anti-Money Laundering Office* (n 87) 37.

²⁶⁹ *Anti-Money Laundering Office* (n 267) 36.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

delay of the analysis and dissemination of the intelligence to the LEAs. The FIs are also impacted by the cost of AML compliance, including budgets for AML experts and high technology to detect money laundering.²⁷⁰ Thus, to enhance the understanding of the AML regulations, the AMLO has a function to issue AML guidelines on KYC/CDD for all REs to focus on the compliance with the AMLA 1999, as well as guidelines and relevant regulations which are conducted by the ordinance of the AMLB.²⁷¹

In order to connect with crime and submit the good quality of the STRs, the staff need to understand the term ‘suspicious transaction’ that has been redefined to cover any transactions which are believed to be performed for the objective of avoiding the obligation of the AMLA 1999.²⁷² Likewise, it includes a transaction which concerns or might concern the proceeds of predicate offences, regardless of whether it is a single or series of transactions, including an attempt to enter into such transaction.²⁷³ Therefore, if the staff lack the AML training, they will submit insufficient quality of the STR because they really fear of the financial sanction from the AMLO.²⁷⁴

Therefore, the AMLO has its three main tasks: first, the enforcement of law and the proceeding of legal action against the assets associated with money laundering and financing terrorism offences; second, the supervision of the reporting entities in AML/CFT matters; third, the financial intelligence analysis in order to conduct strategic analysis, coordination of policies, and financial intelligence exchange for

²⁷⁰ Section 25 of the AMLA 1999 amended in accordance with the AMLA (No.5) 2558 (2015).

²⁷¹ Section 40(3/1) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

²⁷² Section 3 of the AMLA 1999.

²⁷³ Section 3 of the AMLA 1999.

²⁷⁴ HLA Hart, *The Concept of Law* (3rdedn, Oxford University Press 2012) 15, 282.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

both domestic and international levels.²⁷⁵ Therefore, the AMLO requires its officials and relevant competent authorities to comply with the relevant laws strictly, especially maintaining confidentiality regarding the STRs and financial intelligence pursuant to s 37 of the AMLA 1999.²⁷⁶

According to s 40(3/2) of the AMLA 1999, the AMLO needs to conduct the national risk assessment (NRA) in supporting the AML/CFT policy and strategy, and then report to the AMLB and the Cabinet, as well as delivering it to the relevant sectors such as competent authorities, REs under ss 13 and 16 of the AMLA 1999 for improving their understanding and adapting their AML/CFT policies and strategies.²⁷⁷ This 1999 Act determines that the AMLO shall issue such NRA to the persons involving the provision of s 40(3/2) of the 1999 Act. Actually, the AMLO only publicises its 2016 NRA via its website with a brief version (i.e. Thailand's NRA has 10 pages), which makes general people who want to understand the situation of AML/CFT risk cannot use such a report for supporting the relevant sector or individuals to recognise the current AML/CFT risks and trends.²⁷⁸ However, the situation in Singapore is different. The government in Singapore requires FIs to take NRA

²⁷⁵ Anti-Money Laundering Office (AMLO), 'Mission and Responsibilities' (5 June 2016) <<http://www.amlo.go.th/index.php/en/2016-05-21-21-37-20/2016-06-04-15-32-54>> accessed 22 May 2018.

²⁷⁶ Section 37/1 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

²⁷⁷ Section 40(3/2) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E.2558 (2015).

²⁷⁸ *Anti-Money Laundering Office* (n 3); see Monetary Authority of Singapore (MAS), 'National Risk Assessment' (26 November 2016) <<http://www.mas.gov.sg/regulations-and-financial-stability/anti-money-laundering-countering-the-financing-of-terrorism-and-targeted-financial-sanctions/anti-money-laundering-and-countering-the-financing-of-terrorism/national-risk-assessment.aspx>> accessed 1 February 2018; see also HM Treasury and Home Office, 'UK national risk assessment of money laundering and terrorist financing' (15 October 2015) <<https://www.gov.uk/government/publications/uk-national-risk-assessment-of-money-laundering-and-terrorist-financing>> accessed 1 February 2018.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

report findings into account when they create their risk assessments.²⁷⁹ Thus, any person can download a full version of Singapore's NRA from the website (i.e. Singapore's NRA has 94 pages),²⁸⁰ and this practice is similar to the UK (i.e. the UK's NRA has 110 pages).²⁸¹ Thus, the AMLO should be more transparent and allow the full version of the NRA to be downloaded by public in order to increase their participation for responding to the ML/FT risk properly.

Under s 40 of AMLA 1999, one of the important AMLO functions is to conduct crucial projects with regard to the dissemination of knowledge, the providing of education, and the training involving the execution of this Act, including support to both Government and private sectors to organised such projects.²⁸² Consequently, AMLO can bring the knowledge to launch and design the specialised training or educational program for relevant competent authorities and the public in order to disseminate essential information, educate, and provide training regarding the provisions of this Act.²⁸³

Therefore, it is crucial to note that there is an expectation that the AMLO will be more proactive than its performance by commencing more money laundering cases and imposing stronger financing penalties for any person who fails to comply with the AML regulations under the AMLA 1999.²⁸⁴ On the other side, the UK's

²⁷⁹ *Anti-Money Laundering Office* (n 3); see also Kyle Wombolt, William Hallatt, Siddhartha Sivaramakrishnan and Pamela Kiesselbach, 'Enhanced anti-money laundering regime in Singapore: an update' (*Lexology*, 31 July 2015) <<https://www.lexology.com/library/detail.aspx?g=b5294fb8-c631-4c48-b015-64f27decb3ce>> accessed 17 January 2018.

²⁸⁰ *Monetary Authority of Singapore* (n 278).

²⁸¹ *HM Treasury and Home Office* (n 278).

²⁸² Section 40 of the AMLA 1999 determines the function of the AMLO.

²⁸³ Asian Development Bank (ADB), *Technical Assistance to the Kingdom of Thailand for Promoting International Cooperation on Anti-Money Laundering and Combating the Financing of Terrorism* Financed by the Cooperation Fund for Regional Trade and Financial Security Initiative (ADB 2005) 1; see also Anti-Money Laundering Office (AMLO), 'Botswana Conference' <http://www.amlo.go.th/amlofarm/farm/en/index.php?option=com_content&id=11438&catid=1&lang=th> accessed 14 December 2015.

²⁸⁴ AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Financial Conduct Authority (FCA) and the Singapore's MAS are responsible for financial-related crimes matters as the administrative body regarding producing AML regulatory regulations, including supervising, monitoring, prosecuting and imposing the financial penalty to regulated the FIs if they violate the AML statutory provisions.²⁸⁵ The UK's FIU (i.e. NCA) and Singapore's FIU (STRO), conversely, have the power and duties only to receive, analyse, and disseminate the financial information to relevant LEAs.²⁸⁶

This thesis seeks to find out an appropriate role of the FIU, which improves the Thailand's independence in dealing with its functions without influence and interference from government, politics and industry. The UK is the member states of the EU community and the G7, the co-founder of the FATF that may influence on the FATF MER when rate to the UK. Even though, the UK becomes vulnerable to be the world's money laundering capital, i.e. a lot of scale of money laundering impacting annually in the UK approximately the hundreds of billions of pounds,²⁸⁷ was laundered in the UK, but the UK has never been categorised as the NCCT yet.²⁸⁸ In contrast, Thailand was grouped as the NCCT in 2012. The research needs to understand what Thailand should improve to meet the international standards, such as the amendment of the AML legislation on the role of FIU. National Crime Agency (NCA) has responded to conduct the UK a hostile atmosphere for money laundering by targeting people engaged in money laundering with a view to securing their pros-

²⁸⁵ *Yingvoragan* (n 32).

²⁸⁶ See discussion in chapter 4 and 5, respectively.

²⁸⁷ National Crime Agency (NCA), 'Money laundering and illicit finance' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance>> accessed 23 December 2020.

²⁸⁸ London could become the world's next money laundering capital; see also Adrian Zorzut, 'London could become global cash laundering epicenter after Brexit, report warns' (The New European September 17, 2020) <<https://www.theneweuropean.co.uk/brexit-news/london-uni-claims-britain-will-be-money-laundering-epicentre-88546>> accessed 23 December 2020.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

ecution and conviction and disrupting their techniques; recovering, seizing and confiscating criminal proceedings; training financial investigators and competent authorities from across the UK law enforcement; and performing it harder to abuse the UK's financial system, but the UK has not refer to the independence of the UKFIU yet. NCA argued that it emphasises on the cooperation with domestic and international partners to deal with the international threat of money laundering, as well as works alongside main FIs enables them to detect and interrupt money laundering activities in the national and international levels.²⁸⁹ This thesis focuses on the enhancement of the AML laws regarding the independence of the FIU. The study of the proper FIU model is necessary to answer the research questions. The next section examines the FIU model in Thailand.

6.5 The Model of the Thailand Financial Intelligence Unit

The AMLO, Thailand's FIU, is overseen, monitored, and evaluated by the AMLB.²⁹⁰ AMLO is an independent, neutral, and autonomous state agency, which directly reports to the Prime Minister.²⁹¹ The Thailand government asserts that AMLO and Secretary-General are free from undue influence and interference.²⁹² AMLO receives, analyses, delivers, and exchanges its intelligence to relevant agencies nationally and internationally under the Ministerial Regulation under the AMLA

²⁸⁹ National Crime Agency (NCA), 'Money laundering and illicit finance' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance>> accessed 23 December 2020.

²⁹⁰ Section 25(3) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

²⁹¹ Section 40 of the AMLA 1999.

²⁹² Section 41 of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

1999, which demonstrates AMLO's type FIU as an administration-type FIU.²⁹³ Sections 35, 36 and 48 of the AMLA 1999 provide AMLO to issue orders for seizure, restraint or forfeiture of assets, and these are in line with a prosecutorial-type FIU.²⁹⁴ Additionally, s 38 of the AMLA 1999 empowers the AMLO to have a law enforcement power such as the power for authorising to search, pursue, examine, seize, or attach the asset or evidence when there is reasonable ground to believe that the delay happening in the receiving of a warrant of the search could make such property or evidence to be concealed, moved, converted, and eliminated from its original status, including conducting electronic surveillance for collecting the evidence connected with the commission of the money laundering offence, which is consistent with a law-enforcement-style FIU.²⁹⁵ As the reason above, AMLO combines with three FIU models, namely a hybrid-model FIU.²⁹⁶ Therefore, Thailand's FIU has authority to use its extensive enforcement power, to instigate criminal proceedings, or to impose the financial penalties on reporting entities by itself. For instance, if any person fails to comply with the STRs regime, the AMLO can fine not over THB 1m (approximately £23,800) and an additional amount not over 10,000 Thai Baht (approximately £238) for each following day until rectification is achieved.²⁹⁷

Conversely, the UK and Singapore adopt the type FIU as administrative-type FIU.²⁹⁸ It is important to note that the UK's FIU, National Crime Agency (NCA), does not have an extensive array of civil enforcement power to instigate criminal

²⁹³ Section 40(4) of the AMLA 1999.

²⁹⁴ Sections 35, 36, 40(5) and 48 of the AMLA 1999.

²⁹⁵ Section 38 of the AMLA 1999; see *Prempooti* (n 29).

²⁹⁶ Seehanart Prayoonrat, 'The Need and Compliance Issues of Thailand's Regime on Anti-Money Laundering and Combating the Financing of Terrorism' (DJuridical Science thesis, Chulalongkorn University 2007) 250; see also *Prempooti* (n 29).

²⁹⁷ Section 40(5) of the AMLA 1999 amended in accordance with the AMLA (No.2) B.E.2551 (2008), s 62 amended in accordance with the AMLA (No.5) B.E.2558 (2015) and s 64/1 of the AMLA 1999 added in accordance with the AMLA (No.4) B.E.2556 (2013).

²⁹⁸ See discussion in chapter 4 and 5, respectively.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

proceeding, but it can disseminate the financial intelligence to relevant agencies such as the Financial Conduct Authority (FCA) to investigate and prosecute the money laundering and its associated predicate offences.²⁹⁹ Similarly, Singapore's FIU, (STRO), delivers the intelligence to other authorities such as the MAS, namely the regulatory authority, to impose a financial penalty.³⁰⁰ Such penalty proceedings are conducted by the MAS while criminal proceedings are operated by the Public Prosecutor.³⁰¹ In Thailand, the AMLO, namely hybrid model FIU, can investigate, fine, seize, and arrest in money laundering and its associated predicate offences.³⁰²

This thesis anticipates exploring of the alternative FIU type consistent with the AML strategy to strengthen the implementation of the international standards in Thailand by comparing it with the FIU model of the UK and Singapore. The next section illustrates the key role of the Anti-Money Laundering Board (AMLB).

6.6 Anti-Money Laundering Board (AMLB)

As discussed earlier, the significant part of the accountability framework for the AMLO is the Anti-Money Laundering Board (AMLB).³⁰³ The thesis noted that the Board is an important mechanism to drive the effectiveness of AMLO performance because ss 24 and 25 of the AMLA 1999 provide the extensive authority for the AMLB, which shall have the power and authorities to support and monitor the AMLO in dealing with money laundering pursuant to the AMLA 1999.³⁰⁴ However,

²⁹⁹ See discussion in chapter 4.

³⁰⁰ See discussion in chapter 5.

³⁰¹ Lev Bromberg, George Gilligan and Ian Ramsay, 'Financial market manipulation and insider trading: an international study of enforcement approaches' (2017) 8 *Journal of Business Law* 652, 657.

³⁰² Sections 38, 40 and 48 of the AMLA 1999.

³⁰³ Sections 3 as amended in accordance with the AMLA (No.2) B.E. 2551 (2008) and s 25 of the AMLA 1999 as amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

³⁰⁴ Section 24 Para one as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the 2017 Thailand Mutual Evaluation Report (MER) by APG assessed that the AMLO was not sufficiently independent in dealing with their responsibilities, particularly the STRs pursuant to the AMLA 1999 and international standards.³⁰⁵ In other words, the 2017 MER demonstrated that the AMLB had the power over the AMLO, the TC including the Secretary-General obviously.³⁰⁶

The AMLB consists of 14 members, including six qualified experts positioned by the Cabinet, three Permanent Secretaries of the MOF, the Ministry of Foreign and MOJ respectively, including Secretary-General of the National Security Council, Attorney General, Commissioner-General of the RTP, Governor of the BOT, Secretary-General of the Securities and Exchange Commission, Secretary-General of the NACC, and the Secretary-General of the AMLO as members.³⁰⁷ It is questionable if most of AMLB members involved with the Government or appointed by the Cabinet³⁰⁸ will have any interference or influence on the future independent operation of the AMLO.

The process of the AMLB is advanced by using a sub-committee that includes representatives from some of AMLO's principal external domestic stakeholders.³⁰⁹ However, the government by the Prime Minister General Prayut Chan-o-cha as the chief of the National Council for Peace and Order (NCPO) can use the Article 44 of the Interim Constitution of Thailand, which gives the regime absolute power to shift the AMLO Secretary-General Pol Maj-General Romsit Wiriyasan to the

Money Laundering Board and s 25 of the AMLA 1999 as amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

³⁰⁵ *Asia/Pacific Group on Money Laundering* (n 17) 182.

³⁰⁶ Section 25 of the AMLA 1999 in accordance with the AMLA (No.5) B.E. 2558 (2015).

³⁰⁷ Section 24 of the AMLA 1999 additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No.38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

³⁰⁸ Sections 24 and 25 of the AMLA 1999 in accordance with the AMLA (No.5) B.E. 2558 (2015), respectively.

³⁰⁹ *Anti-Money Laundering Office* (n 267).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Prime Minister's Office after four months of this position (i.e. from February to June 2018).³¹⁰ The Thailand Government responded that a shift is urgently needed to properly and effectively adjust human resources management in order to address the administration problems and prevent damages from occurring.³¹¹

The AMLO is actually not under the Prime Minister and the cabinet, but it is directly answerable to the Prime Minister under s 41 of the AMLA 1999.³¹² This is quite different when compared to the UK as the National Crime Agency (NCA), the UK's FIU, is completely a Non-Ministerial Department reporting through the Home Secretary to Parliament.³¹³ To facilitate the efficient response to the money laundering threat, the UK has an agency, namely 'the NCA Remuneration Review Body' (NCARRB), which was established as the independent mechanism to review and advise the UK government on the pay and allowances of NCA officers designated with operational powers.³¹⁴ This organisation shows that the UK government's aspiration to assure the operational independence of the UK's FIU effectively. Additionally, the Joint Money Laundering Steering Group (JMLSG) promotes good practice

³¹⁰ The Nation, 'PM uses Article 44 power to shift AMLO head Romsit to PM's Office' (*The Nation*, 14 August 2018) <<http://www.nationmultimedia.com/detail/politics/30352156>> accessed 24 May 2019.

³¹¹ The National Council for Peace and Order (NCOP; or Junta)'s absolute power under Article 44 of the Interim Charter of Thailand provide the PM or the Junta leader to issue any order considered essential to 'strengthen public unity and harmony' or to prevent any act that undermines public peace and security. For example, the provision permits soldiers to detain person for up to seven days without a court warrant and to prosecute person for national security crimes; see *The Nation* (n 103); see also *The Straits Times*, 'What you need to know about Article 44 of Thailand's interim constitution' (*The Straits Times*, 7 April 2015) <<https://www.straitstimes.com/singapore/what-you-need-to-know-about-article-44-of-thailands-interim-constitution>> accessed 24 May 2019.

³¹² Section 41 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2558 (2015).

³¹³ The NCA set by the Crimes and Courts Act 2013, s 1; National Crime Agency (NCA), *Annual Report and Account 2014-15* (Williams Lea Group 2015) 5 <<http://www.nationalcrimeagency.gov.uk/about-us>> accessed 18 February 2016.

³¹⁴ *ibid.*

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

for relevant parties in fighting money laundering, as well as providing practical help in interpreting the MLRs.³¹⁵

On the other hand, Singapore has the Anti-Money Laundering and Countering the Financing of Terrorism Steering Committee (AML/CFT Steering Committee)³¹⁶ comprising the Permanent Secretary of the Ministry of Home Affairs, Permanent Secretary of the Ministry of Finance, including Managing Director of the Monetary Authority of Singapore.³¹⁷ This Committee published a national AML/CFT Policy Statement in order to prevent the integrity of the Singapore financial market from money laundering and other criminal acts.³¹⁸

Furthermore, this Committee also issues the National Risk Assessment (NRA) to the public in order to identify the risks of money laundering and terrorist financing and to promote the awareness of such criminal activities.³¹⁹ AMLO has produced only two reports of the summary of 2012 and 2016 NRA through its website very briefly when compared with the NRA of the UK and Singapore.³²⁰ The AMLO has kept its full NRA version as confidential, but it would be useful for the public to access the full version rather than the brief version in order to understand

³¹⁵ Joint Money Laundering Steering Group (JMLSG), 'Joint Money Laundering Steering Group (JMLSG)' <<http://www.jmlsg.org.uk/>> accessed 28 May 2019.

³¹⁶ See discussion in subtopic 5.3.1.3.

³¹⁷ Ministry of Finance (MOF), 'Singapore's AML/CFT Policy Statement' (4 December 2017) <<http://www.mof.gov.sg/Policies/Anti-Money-Laundering-Countering-the-Financing-of-Terrorism-AML-CFT/Singapores-AML-CFT-Policy-Statement>> accessed 6 December 2017.

³¹⁸ *Asia/Pacific Group on Money Laundering* (n 17) 65.

³¹⁹ Ministry of Home Office, Ministry of Finance (MOF) and Monetary Authority of Singapore (MAS), *Singapore National Money Laundering and Terrorist Financing Risk Assessment Report 2013* (Ministry of Home Office, MOF and MAS 2014).

³²⁰ Anti-Money Laundering Office (AMLO), 'Thailand's ML/FT Risk profile by sector: An excerpt from the NRA conducted with the IMF's technical assistance between 2011-2012' <http://www.amlo.go.th/amlo-intranet/media/k2/attachments/Thailands_MLFT_Risk_Profile_by_Sector_2011-2012_5124.pdf> accessed 30 May 2019; see also *Anti-Money Laundering Office* (n 3).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

and be aware of the money laundering risk. The next section discusses the role of the Transaction Committee.³²¹

According to the independence of the AMLO, it is important to criticize s 25(3) of the AMLA 1999, which may affect the operational independence of the AMLO, TC, and the Secretary-General because of the intervention of the AMLB.³²² For example, the AMLB has the power to hold or restrain any act or AMLO's order if the Board considers such an act or order as discrimination or violation of basic human rights.³²³ Actually, the court has the judicial power to consider this issue, but the AMLB uses this power to proceed with this issue instead. It is important to amend s 25(3) of the AMLA 1999 by transferring the AMLB power to the court in order to reduce the AMLB's power in interrupting the operational independence of the AMLO to meet the FATF Recommendation 29 regarding the independence and autonomy in its operation.³²⁴ On the other hand, the UK and Singapore have non board like the way Thailand has (i.e. the AMLB). Additionally, to avoid political influence and interference, the AMLO should be reconstituted as an independent body in the same way as the National Anti-Corruption Commission (NACC) be.³²⁵

Moreover, the government should amend the AMLA 1999 to reduce AMLB's powers, especially s 25(3) of the AMLA 1999 regarding the AMLB's responsibilities, and then change the AMLO's model from hybrid-Model FIU into administrative-model FIU, which is similar to the UK and Singapore. Consequently,

³²¹ Anti-Money Laundering Office (AMLO), 'National Risk Assessment Reports' <<http://www.amlo.go.th/index.php/en/national-risk-assessment/national-assessment-reports>> accessed 30 May 2019.

³²² Section 25(3) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

³²³ *ibid.*

³²⁴ FATF Recommendation 29.

³²⁵ The Organic Act on Counter Corruption B.E. 2542 (1999); ss 215, 232 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the Secretary-General will be selected by the Parliament for a term of four years pursuant to the Constitution of the Kingdom of Thailand. The reshaping AMLO as an independent and autonomous agency will accept a guarantee of the AMLO's independence, neutrality, and autonomy.³²⁶ These changes can better prevent the AMLO from being abused by its absolute power by the government than the old style.

6.7 Transaction Committee

By a virtue of the ss 32 and 34 of the AMLA 1999, the AMLB establishes a Transaction Commission (TC) to consider a transaction or asset connected with the commission of the predicate or money laundering offences, and issue an order withholding the suspicious transactions, carry out the act pursuant to s 48, supervise the AMLO's operation, and issue AML regulations and guidance.³²⁷ Section 38 of the AMLA 1999 also empowers a member of the TC, the Secretary-General and the competent official to request information concerning the STRs from the REs, government bodies, and any related to parties for its examination or analysis.³²⁸ For instance, the AMLO under the TC's order uses stringent measures (i.e. a written order to withhold the suspected assets and money in the transaction) to prevent crimes, especially the predicate offences and money laundering.³²⁹

Even though the FATF Recommendation 29 determines that the FIU should be independent body, certain AML legislation may undermine its independence, for

³²⁶ Vinay Bhargava and Emil Bolongaita, *Challenging Corruption in Asia: Case Studies and a Framework for Action* (World Bank 2004) 197.

³²⁷ Section 32 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E.2558 (2015) and s 34 of the AMLA 1999 in accordance with the AMLA (No.2) B.E.2551 (2008).

³²⁸ Section 38 of the AMLA 1999. For example, AMLO can order the concerned person or FIs to send their related officials for giving statements or provide written explanations, document, or evidence for the AMLO's examination or consideration under s 38(1) of the AMLA 1999.

³²⁹ Section 34(2) of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

example, the AMLB's powers provided by s 25(3) of the AMLA 1999. This thesis illustrates that its powers can adversely affect the AMLO's independence, which will be critically assessed in the following subsection. The next section investigates the implementation of the independence of the Thailand FIU in the STRs regime in order to meet the requirements of the international standards.

The Implementation of Independence of Financial Intelligence Unit in Thailand

The AMLO, is considered a hybrid model which combines between the LEA, administrative and judicial model that does not act as a link between the REs and the LEAs when dealing with the STRs. There is a direct communication between the REs and the LEAs in the STR regime, which could increase the defensive reports or insufficient quality STRs to AMLO. The UN Convention against Corruption 2003 encourages each country to provide the authorities the vital independence to support them to carry out their independent functions and free from any unjustified and undue influence and interference.³³⁰ FATF Recommendation 29 determines that the establishment of the FIU could be either within an existing authority or as an independent national body.³³¹ However, the functions of the FIU has to be independent free from any unduly political, governmental or industrial interference or influence in its operational independence.³³² It is very interesting to know that the Thailand FIU often suffers from a lack of independence because there are several military coups in Thailand and the military governments require to supervise the FIU in order to use the FIU to control the opposite of the government, such as the case of *Suthichai Yoon*

³³⁰ Article 6: Preventive anti-corruption body or bodies of the United Nations Convention against Corruption 2003 <https://www.unodc.org/pdf/corruption/publications_unodc_convention-e.pdf> accessed 29 November 2020.

³³¹ FATF Recommendation 29.

³³² FATF Recommendation 29 and Interpretative Note to FATF Recommendation 29.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

and groups vs AMLO.³³³ therefore, the Thailand FIU has been subjected to the supervision of political body or its analytical duty is also interfered and influenced by political and military persons who are outside the Thailand FIU.³³⁴

This section focuses on the role which the Thailand FIU, AMLO, plays in the fight against ML and its responsibilities to meet international standards, especially. Its core and non-core duties are critically evaluated, and it is examined how independent the Thailand FIU is and the relationship which it has with the REs and the LEAs. More importantly, the section compared analyses the similarity and difference between the UK and Singapore FIUs and learn the valuable lessons from best practices.

Section 25(3) of the AMLA 1999 provides the power to the Anti-Money Laundering Board (AMLB) which may undermine the operational independence of AMLO in dealing with its functions of Thailand FIU.³³⁵ The National Council for Peace and Order (NCPO) issued Order 38/2560 (2017) which could interfere and influence on the independence of AMLO, especially holding or restraining any act of the Transaction Committee, the AMLO or the Secretary-General which the AMLB considers as breach of basic human rights.³³⁶ The thesis notes that the AMLA

³³³ Suthichai Yoon and Groups filed the AMLO to conduct an illegal investigation into the properties and financial transaction of Yoon and several journalists who criticised Thailand Prime Minister Thaksin Shinawatra in 2002. The AMLO officials had requested their financial transactions from 17 financial institutions. In 2002, the prime minister was a board chair in the AML Committee by the AMLA 1999. After that, Yoon and his groups sued a petition with the Administrative Court against the AMLO officials and Shinawatra as the AMLB chair. Yoon and his groups believed that the government had ordered the AMLO secretly to investigate such properties and transactions by citing only the anonymous letters, which still lacked credibility to make it believable that any property connected with criminal assets and predicate offences of money laundering; see *Suthichai Yoon and Groups v. AMLO* [2002] Administrative Court 1251, 1252/2545 (2002)

³³⁴ As in the case of *Suthichai Yoon and Groups v. AMLO* [2002] Administrative Court 1251, 1252/2545 (2002) where the government influenced and interfered the independence of the Thailand FIU.

³³⁵ Section 25(3) of the AMLA 1999 and The National Council for Peace and Order (NCPO) Order 38/2560 (2017).

³³⁶ Section 25(3) of the AMLA 1999 and The National Council for Peace and Order (NCPO) Order 38/2560 (2017).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

1999 does not provide any guideline, example and the definition of the terms of ‘basic human rights’. Therefore, the AMLB can hold or restrain ‘any act of AMLO’ whatever it requires without transparent guidance. The thesis suggests that the Thailand Constitution and AMLA 1999 should assure the independence of AMLO in its functions preventing from the judicial power and interfere or influence of the AMLB under s 25(3) of AMLA 1999 in order to protect AMLO in using its powers in STR regime by cutting off s 25(3) of AMLA 1999.

The AMLB’s power under s 25(3) of the AMLA 1999 could conflict with objective of the FATF Recommendation 29 and negatively affect the independence of responsibility for taking the decision of AMLO in analyzing cases and disseminating the resulting financial intelligence under the STR regime.³³⁷

6.8 Evaluation of the Implementation of FATF Recommendations of Thailand

According to the 2007 MER, the APG and FATF rated Thailand’s level of compliance with the FATF Recommendation 26 regarding the FIU as the ‘partly compliant’.³³⁸ However, the 2017 MER, the APG rated Thailand as the ‘largely compliant’ with the FATF Recommendation 29 (i.e. former FATF Recommendation 26). But, Singapore was rated ‘compliant’ and the UK was rated ‘partially compliant’ with such the Recommendation.³³⁹ According to the latest APG MER, it illustrated that Thailand has significantly developed the compliance with the AML/CFT measures and the strong political support for the reforms and the cooperation at the policy and operation levels since the 2007 MER. To develop the compliance with

³³⁷ Section 25(3) of the AMLA 1999 and The National Council for Peace and Order (NCPO) Order 38/2560 (2017) and FATF Recommendation 29.

³³⁸ Now is changed into Recommendation 29; see *International Monetary Fund* (n 46) 101.

³³⁹ *Asia/Pacific Group on Money Laundering* (n 17) 181, 183; see also Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom Fourth Round Mutual Evaluation Report* (FATF 2018) 225.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

the FATF in Thailand, the 2016 NRA Report suggested that the deeper understanding of risk and context, including information sharing, is significant to the REs, competent authorities, and the FIU for complying with the international AML standards.³⁴⁰

According to the operational independence of the AMLO, the thesis considers that it is questionable to analyse the roles of government and the AMLO in case that the Thailand government was accused of intervening the AMLO's independent operation, and this could affect Thailand's reputation for good governance. For instance, in the case of *Suthichai Yoon and Groups v AMLO*,³⁴¹ Yoon and Groups filed the AMLO to launch an illegal investigation into the assets and monetary transaction of Yoon and several journalists who criticised the Thailand government under Prime Minister Thaksin Shinawatra regime in 2002.³⁴² The AMLO officials had requested their financial information from 17 banks.³⁴³ In 2002, the prime minister was a board chair in the AML Committee by law (namely, the AMLA 1999).³⁴⁴ After that, Yoon and his groups sued a petition with the Administrative Court against the AMLO officials and the Prime Minister Thaksin as the AMLB chair.³⁴⁵ Yoon and his groups believed that the government had ordered the AMLO secretly to investigate such properties and transactions by citing only the anonymous letters, which still lacked credibility to make it believable that any property connected with criminal assets and predicate offences of money laundering.³⁴⁶ The AMLO accused that the anonymous

³⁴⁰ *Anti-Money Laundering Office* (n 3).

³⁴¹ [2002] Administrative Court 1251, 1252/2545 (2002).

³⁴² Prime Minister Thaksin Shinawatra's government.

³⁴³ *Suthichai Yoon and Groups v. AMLO* [2002] Administrative Court 1251, 1252/2545 (2002).

³⁴⁴ Section 24 of the AMLA 1999

³⁴⁵ *Suthichai Yoon and Groups v. AMLO* [2002] Administrative Court 1251, 1252/2545 (2002).

³⁴⁶ Clause 1 of the Ministerial Regulation No. 8 B.E. 2543 (2000) Issued under the provisions of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

letter alleged that Yoon and his groups had joined in extortion and blackmail activities of predicate offences with the organised crime group.³⁴⁷ He noted that this investigation was breached the AMLA 1999 because of no suspicious transactions.³⁴⁸ Therefore, the AMLO did not have the legal authorities from the AMLA 1999 to request financial information about his money transaction from the FIs.³⁴⁹ Yoon consisted that the political factors (i.e. Prime Minister Thaksin secretly ordered the AMLO to investigate) intervened in the independent operation of the AMLO in such illegally investigating his business transaction.³⁵⁰ Finally, the AMLO removed such order to investigate Yoon and Groups cases following the Administrative Court's judgement.³⁵¹

According to the AMLA 1999, it identifies the duties and responsibilities of the AMLO to conduct the NRA report, and then submit the result to the AMLB, including the Cabinet, as well as disseminating the report to relevant competent agencies which supervise the REs,³⁵² to understand and make their AML policies and guidelines in fighting money laundering regime.³⁵³ Moreover, the AMLO also issues the AML action plan, jointly with relevant government agencies in implementing the AML strategy for combating the terrorist financing.³⁵⁴ To supervise the obliged reporters, the AMLO notifies the lists of REs,³⁵⁵ who do not fully comply

³⁴⁷ Sections 3, 40 of the AMLA 1999; see Southeast Asian Press Alliance (SEAPA), 'AMLO scandal: Thaksingate' (20 March 2002) <<https://www.seapa.org/amlo-scandal-thaksingate/>> accessed 30 May 2019.

³⁴⁸ Section 3 of the AMLA 1999.

³⁴⁹ Section 40 of the AMLA 1999.

³⁵⁰ His business included the Nation Group (i.e. media and publication); see Nation Group, 'History of the Nation Group' <http://www.nationgroup.com/about_2.php> accessed 13 May 2019.

³⁵¹ *Suthichai Yoon and Groups v. AMLO* [2002] Administrative Court 1251, 1252/2545 (2002).

³⁵² The agencies supervising the REs under ss 13, 16 of the AMLA 1999.

³⁵³ Section 40(3/2) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

³⁵⁴ Section 40(3/3) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2556 (2015).

³⁵⁵ Under Sections 13, 16 of AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

with this Act or the AML/CFT law, to respective supervisory agencies to consider taking action under relevant laws.³⁵⁶

The AMLO promotes the cooperation in sharing information for combating the money laundering and financing of terrorism.³⁵⁷ The AMLO gathers and collects data or statistics. Then, the AMLO examines, monitors, and evaluates the implementation of this Act, analyses reports or data related to suspicious transactions, and assesses the money laundering risk.³⁵⁸ The AMLO gathers evidence for the purpose of taking legal proceeding against offenders under this Act in order to investigate and prosecute any violator under the provisions of this Act.³⁵⁹ After that, the AMLO delivers the intelligence or other information related to financial transactions in accordance with the requirements of the Act.³⁶⁰ Furthermore, it is important for the AMLO to conduct the projects with regard to the dissemination of knowledge, the giving of education and the training in the field involving the execution of the Act. It is also important to provide assistance or support to both Government and private sectors in organising such projects in order to raise the awareness of the money laundering risks.³⁶¹ For example, the delegation is sent to attend the relevant conferences in order to raise awareness of the significance of the AML regime regarding investigations, AML techniques, typologies of money laundering, and the way to deal with the international organised crime.

³⁵⁶ Section 40(3/4) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2556 (2015).

³⁵⁷ Section 40(3/5) of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E. 2556 (2015).

³⁵⁸ Section 40(4) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

³⁵⁹ Section 40(5) of the AMLA 1999.

³⁶⁰ Section 40(3) of the AMLA 1999 amended in accordance with the AMLA (No.4) B.E. 2556 (2013).

³⁶¹ Section 40(6) of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

The FATF Recommendation 29 regarding the role and responsibilities of the FIU in preventing money laundering determines that the FIU shall be responsible for acting as a national centre to deal with the STRs/SARs regime (such as a receipt, analysis of STRs/SARs, and dissemination of intelligence depending on the FIU models in each jurisdiction).³⁶² This Recommendation does not prejudge or identify which model should be applied in each country. In Thailand, the country has adopted the hybrid-model FIU, which includes receipt, analysis of STRs, dissemination of intelligence, investigation of money laundering case, confiscation of asset connected with money laundering offence, as well as prosecution of offenders in terrorism financing case under the law on money laundering (including, counter-terrorism financing).³⁶³ Such absolute power may be abused by the politician as it is seen in the case of *Suthichai Yoon and Groups v AMLO* in 2002.³⁶⁴ The administrative-model FIU as utilised in the UK and Singapore may be more appropriate for Thailand's FIU because this style of the FIU does not have the judicial or law-enforcement power to impose any sanctions. This FIU model might prevent the FIU from being abused by the political influence. For the reason above, this style would encourage the operational independence of FIU without the undue interference in Thailand.

Although the three countries imposed large financial sanctions on offending financial institutions, there is an obvious difference between the enforcement stance implemented by Thailand, the UK and Singapore: the capacity to pursue criminal proceedings regarding money laundering. The criminal offence of money laundering

³⁶² Financial Action Task Force (FATF) Recommendation 29.

³⁶³ Sections 40, 46/1 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E.2558 (2015).

³⁶⁴ [2002] Administrative Court 1251, 1252/2545 (2002).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

in Thailand is mainly enforced by AMLO.³⁶⁵ The AMLO's ability to prosecute money laundering cases is provided by the AMLA 1999.³⁶⁶ For example, in 2016 there were 148 investigations; 83 prosecutions and 29 convictions of money laundering or predicate offences.³⁶⁷ Furthermore, in 2017 the AMLO filed 138 cases to the public prosecutor with a total asset worth of 26,027,988,407.94 baht.³⁶⁸ In the same year, the AMLO investigated transactions or assets connected with a commission of money laundering or predicate offences in a total of 363 cases and seized or restrained such assets in a total of 148 orders.³⁶⁹ On the other side, the UK's LEAs achieved approximately 7,900 investigations; 2,000 prosecutions and 1,400 convictions for money laundering and predicate offences per year.³⁷⁰ Whilst, in 2014 Singapore had 217 money laundering cases investigated; 354 individuals prosecuted; as well as 343 individuals convicted for money laundering.³⁷¹ These figures refer to the statistics in three countries and lead to the point that Thailand should be criticised for the low number of such investigations, convictions and prosecutions.

However, it is necessary to remember that money laundering is so complex and lengthy that the AMLO may have limited capacity to obtain more criminal convictions. The number of money laundering convictions obtained by the AMLO clearly shows the difficulty in investigating and pursuing criminals. To deal with these problems, the AMLO has concerned the pursuing administrative financial

³⁶⁵ Sections 40, 46/1 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E.2558 (2015).

³⁶⁶ Sections 40, 46/1 of the AMLA 1999 amended in accordance with the AMLA (No.5) B.E.2558 (2015).

³⁶⁷ *Asia/Pacific Group on Money Laundering* (n 17) 55.

³⁶⁸ *Anti-Money Laundering Office* (n 87) 41.

³⁶⁹ *ibid* 44.

³⁷⁰ *Financial Action Task Force* (n 339) 58.

³⁷¹ *Asia/Pacific Group on Money Laundering* (n 17) 58

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

sanctions and the optional model of FIU, i.e. administrative-model FIU similar to the UK and Singapore.

6.9 Conclusion

The current situation of money laundering in Thailand is critical because the highest money laundering risk is mostly found in public entities such as the financial institutions, especially the channel of finance and banking sector.³⁷² Thailand has implemented international legal AML standards, such as the UN Conventions and the FATF Recommendations, in countering money laundering regime, but its provision has not still reached such international AML standards. However, the Thailand government has attempted to transpose the FATF standards by enacting the AMLA 1999 in line with the international AML standards, including best practices and industry guidelines. However, due to the lack of the effectiveness of AML strategies, Thailand has still not met the FATF standards. Therefore, in 2012 the FATF categorised Thailand into the NCCT list as a fail jurisdiction to fight with money laundering. However, in 2013 the FATF withdrew Thailand from the FATF public statement because the FATF was satisfied with Thailand in implementing the FATF Recommendations.³⁷³ For example, Thailand implemented the risk-based AML policy of preventive measures, the robust legislation (i.e. Thailand has enacted the AMLA (No.4) 2013; enacted the Counter Terrorism Financing Act B.E.2556 (2013)).³⁷⁴ This legislation has enhanced the KYC, CDD, customer recorded-keeping, and the guidelines on AML/CFT in order to reduce the risk of money laundering effectively.

³⁷² Sutthi Suntharanurak and Napat Jantatanatip, 'Audit to Detect Fraud and Corruption: Evaluation of the Fight against Corruption and Money Laundering Country paper of Thailand' Research Project No. 3 of the Office of the Auditor General Fiscal Year 2015, 5.

³⁷³ *Ministry of Foreign Affairs of the Kingdom of Thailand* (n 41).

³⁷⁴ Financial Action Task Force (FATF), 'Press releases: FATF removes Thailand from Public Statement on money laundering/financing of terrorism' (1 May 2013) <<http://www.mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>> accessed 30 May 2019.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

Therefore, the AMLO should continue improving such AML guidelines and best practice for supervision, including the implementation for the REs to assure that the risk-based approach (RBA) is engaged at the same level.

However, the stringent AML regulations have been enacted considerably in order to prevent money laundering and helped Thailand meet the international AML requirements. Consequently, the pro-active legislation regarding the STR regime may also affect the FIs, the competent authorities, and the AMLO. For instance, such as the AMLA 1999 empowers the AMLO to temporarily withhold any transaction where there is any evidence or possible cause to believe the asset might be connected with the commission of money laundering or its associated predicate offences.³⁷⁵

The evaluation of the compliance with the FATF Standards regarding the roles, responsibilities, administration, and the degree of the operational independence of Thailand's FIU is hi-lighted in this thesis although it is argued that the AML regulations in three countries cause the burdensome responsibilities to the relevant people and FIs, such as the banks paying expensive money to hire experts and high technologies to detect suspicious transaction, which can be called 'the cost of the AML compliance'. Consequently, the FIU is a key role in implementing AML policy and measures in line with international standards.

Nevertheless, it is questionable that the model of Thailand FIU, hybrid-model FIU, may not be useful and appropriate for the AMLO because the REs produce the poor quality of the STRs, namely the defensive reporting, to the AMLO. They submit the STR because they fear of the sanctions if they fail to comply with the STR requirements. On the other side, the UK and Singapore have adopted the administra-

³⁷⁵ Sections 3, 48 of the AMLA 1999.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

tive-model FIU, and their FIUs become the buffer between the FIs and LEAs. Therefore, the latter model assists the REs and LEAs in having better atmosphere and communication between them rather than the hybrid-FIU model in Thailand, of which the AMLO acts as the roles of FIU and LEA at the same time. The AMLO is responsible for receiving, analysing, disseminating the intelligence, investigate, and then imposing penalty on the FIs when failing the STR regulations.

As the thesis found out that s 25(3) of the AMLA 1999 provides the judicial power of the AMLB to hold or restrain any act of the TC, the AMLO, or the secretary-General if the AMLB scrutinises such order involving discrimination, or breaches fundamental human rights.³⁷⁶ Such power obviously interrupts the FATF Recommendation 29 regarding the operational independence and autonomy of the AMLO.³⁷⁷ Therefore, it is essential to amend this section by cutting off this power of the AMLB to meet the international standards because there is the court's responsibility to consider these issues. On the other hand, the UK and Singapore do not have the legal provision regarding the absolute power as Thailand does. This thesis also recommends that the Thailand government should change the form of the AMLO onto an independent constitutional agency, similar to the NACC and the OAG, in order to prevent the AMLO from political intervention. According to the independent constitutional agency, the Thailand Parliament will select the Secretary-General for the term of four years in accordance with the Constitution of the Kingdom of Thailand 2017. The 2017 Constitution ensures that the AMLO is an independent and autonomous agency.

³⁷⁶ Section 25(3) of the AMLA 1999 as additionally amended by the Order of the Head of the National Council for Peace and Order (NCPO) No. 38/2560 (2017) Re: The Revision of the Powers and Duties of the Anti-Money Laundering Board.

³⁷⁷ FATF Recommendation 29.

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

According to the hybrid-model FIU of the AMLO, it causes that the AMLO has a large number of burdens in operating such as receiving, analysing, disseminating, investigating and prosecuting, and all of these can be called ‘absolute power’ that certain governments or politicians may abuse the AMLO to work for the political benefit as *Yoon and Groups v AMLO*.³⁷⁸ On the other side, the FIU of the UK and Singapore adopt the administrative-model FIU that is accountable for receiving, analysing and delivering financial intelligence only. FIUs in both countries focus on their duties and then disseminate the information to the relevant LEAs to investigate and prosecute.

The AMLO is independent of the executive regulatory agency that can have the sufficient funds, resources or official training, including proper technology independently and effectively. However, the AMLO has to enhance and update a code of conduct or ethics for AMLO staff in order to promote good governance (such as transparency of investigation or confiscation, accountability of the fiscal budget use and citizen participation via AMLO website) and best practices of the preventive role of AML by minimising the risk of money laundering. The AMLO can promote the robust risk-based approach and STR system through preventive roles of the FIU, strengthen internal control for the REs to reduce money laundering chances via the internal control and proactive AML strategy, and raise public awareness regarding the NRA report via AMLO website. The AMLO requires the preventive role that includes promoting the effective internal control in the REs to reduce the defensive reporting from the reporter, emphasising proactive AML strategic plan to reduce the cost of compliance, as well as coordinating with mass media in combating money

³⁷⁸ [2002] Administrative Court 1251, 1252/2545 (2002).

CHAPTER SIX: Analysis of Competent Authorities and Financial Intelligence Unit in Thailand

laundering to enhance the communication among governmental sector and private sector.

Furthermore, the AMLA 1999 should permit the public's right to know information related to the NRA in order to improve the awareness of the money laundering risk that the FIs and individuals can acknowledge by publishing the full version of the NRA. These changes have distributed a conducive atmosphere for possibly powerful AML coalitions and positive developments in Thailand. The thesis proposes best practices referred to the FIUs of the UK and Singapore. Both of them are popularly regarded as successful models in combating money laundering. However, the FIU model should be tailored to these techniques in order to create proper mandates for Thailand.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

CHAPTER SEVEN

COMPARISON OF OPERATIONAL INDEPENDENCE OF THE UNITED KINGDOM, SINGAPORE AND THAILAND

7.1 Introduction

The thesis examines the implementation of the international anti-money laundering (AML) standards regarding the role of FIU under the FATF Recommendations. The research questions are:

1. What is the AML policy relating to the roles of the Thailand FIU?
2. How effective has Thailand's FIU been in implementing the FATF standards?
3. What additional strategies should Thailand implement to fight money laundering?
4. What are the lessons that Thailand should learn lessons from the UK and Singapore?

Based on the previous examination on the implementation of the international standards regarding the operational independence and transparency of the Financial Intelligence Units (FIU) of the United Kingdom (UK), Singapore and Thailand, this chapter provides a comparative analysis of the implementation of the operational independence and transparency of the FIUs in the three selected countries. Purposes served by the chapter are twofold. First, it highlights similarity and difference features of the operation independence and transparency of the FIUs in three jurisdictions while implementing the international standards. Second, it provides recommendations for Thailand to improve the effectiveness of its operational independence and transparency via an evaluation of the lessons offered by the UK and Singapore. In pursuit of its purposes, this chapter is consisted of three sections. The first section relates to the comparative

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

legal research and the implementation of soft law in the three countries, which is the basis for guiding the comparison of the operational independence of the FIUs in three jurisdictions. The second section illustrates a comparative analysis of three FIUs for similarities and differences of each jurisdiction to adapt an appropriate model for the Thailand's FIU. The thesis compares the three FIUs following the role of the FIU, the operational independence of FIU and transparency of the FIU. The final section of this chapter offers Thailand recommendations to enhance the effectiveness of its FIU, based on the best practices found in the results of the comparison and suggests what Thailand should learn and commit to facilitate an appropriate process for these practices to achieve.

7.2 Concept of Comparative legal approach

The thesis examines the role of the Thailand FIU to find an appropriate model to implement under the international standards. The approach explores the differences and similarities between the single legal system or the different legal systems and works out the solutions of the legal issue under the examination.¹ The goal of comparative law had a purely scientific objective, which aims to clarify the causes which underline the origin, development and extinction of legal institutions in order to make as a science of knowledge with its own an independent science.²

Hoecke noted that comparing domestic law with the one or more countries has become obligatory in the doctrinal legal research.³ Zweigert and Kotz added that the basic methodological principle of the comparative law is an important tool enhances domestic legislation.⁴ Dehousse

¹ Marie-Luce Paris, 'The Comparative Method in Legal Research: The Art of Justifying Choices' <<https://researchrepository.ucd.ie/rest/bitstreams/22767/retrieve>> accessed 12 November 2020.

² Esin Orucu, 'Developing Comparative Law' in Esin Orucu and David Nelken (eds), *Comparative Law: A Handbook* (Hart 2007) 44.

³ Mark Van Hoecke, *Methodology of Comparative Legal Research* (2015) 9; see P Ishwara Bhat, 'Comparative method of legal research: Nature, process and potentiality' (2015) 57(2) *Journal of the Indian Law Institute* 147.

⁴ Konrad Zweigert and Hein Kotz, *An Introduction to Comparative Law* (Tony Weir tr, 2nd edn, OUP 1998) 34.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

argued that the researcher should study the different competences of each body in order to write a full picture of similarities and differences analyse the functions of such bodies, including and the relations among the various bodies in order to understand the implementation of the international standards.⁵

Zweigert and Kotz argue that the dominant approach to comparative law is functionalism focusing on the function of laws⁶ what laws really do to reach the social purpose.⁷ There are three premises of functional method, comprising (i) legal systems face the same issues; (ii) solving the same problem, various legal systems emerge different results; as well as (iii) despite various measures selected, legal systems achieve similar solutions.⁸ The functional comparisons involve the tool for channelling the human behaviour and also claim that the law contribute to social needs.⁹ Therefore, the application of the functional method in comparative starts with the establishment of the problem-solution approach and then chooses a particular practical problem in order to examine how such issue is solved by the law in different legal system.¹⁰ The next step, similarities and differences between the results would be listed, explained, considered and assessed in order to address the social problem that the current function of legal institutions is a matter for sociological consideration.¹¹ The researchers may achieve the similar or same practical solutions, but if they find that there are great differences, they should recheck the answer to ensure the research quite wide enough.¹² The comparative research is not perfect until it has been illustrated that the legal

⁵ Renaud Dehousse, 'Comparing National and EC Law: the problem of the level of analysis' (1994) 42(4) AM. J. COMP 761, 771.

⁶ Zweigert and Kotz (n 4) 3.

⁷ Richard Hyland, 'Comparative Law', in Dennis Patterson (ed), *A Companion to Philosophy of Law and legal Theory* (Wiley-Blackwell 2010) 185.

⁸ Zweigert and Kotz (n 4) 43-44.

⁹ Hyland (n 7) 184, 185-87

¹⁰ Oliver Brand, 'Conceptual comparisons: Towards a coherent methodology of comparative legal studies' (2007) 32(2) Brooklyn Journal of International Law 405, 410.

¹¹ Jaakko Husa, 'Farewell to Functionalism or Methodological Tolerance?' (2003) 67(3) Journal of Comparative and International Private Law 419, 425; see also Vernon Valentine Palmer, 'From Leretholi to Lando: Some Examples of Comparative Law Methodology' (2005) 53(1) The American Journal of Comparative Law 261.

¹² Zweigert and Kotz (n 4) 39.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

systems under consideration achieve similar solutions in similar circumstances.¹³ Brand concludes that functional approach scrutinised explaining how rules are similar or different from one country to another, how such rules are transferred, as well as how they are expressed in differing or similar types of laws. However, the results that the researchers find in the different countries must be cut loose from their conceptual context and stripped of their national doctrinal overtones so that they may be viewed purely in the light of their current function, as an effort to satisfy a specific legal requirement.¹⁴ Legrand argues that the researcher should understand and examine a legal rule in a political, economic, social and ideological context to find the actual meaning attributed to the rule under the legal system.¹⁵ Similar to Hoecke, he focuses on the significance of equally deeming the doctrinal framework and concludes that comparative legal research methods can be used to carry out the comparative law, namely the function method; the analytical approach (i.e. analysing legal concept and rule); the structural approach (i.e. analysing the framework of the rule); the historical approach (i.e. analysing legislative development); as well as the law-in-context approach (i.e. emphasising on social context, politics, economy and culture).¹⁶ Hoecke notes that such methods can be employed in the comparative legal research, and used the selection of such approach to design research objectives, including research questions in the thesis.¹⁷ In summary, the comparative research focuses on the similarities and differences between the various legal systems or contexts, which cannot use only the surface of law or doctrinal legal framework because the comparative research develops the deeper understanding of the issue, background and context that arranges the compared legal systems.

¹³ Brand (n 10) 405, 410.

¹⁴ Zweigert and Kotz (n 4) 44.

¹⁵ Pierre Legrand, 'How to Compare Now' (July 1996) 16(2) Legal Studies 232, 235.

¹⁶ Hoecke (n 3) 9.

¹⁷ Hoecke (n 3) 8-21, 29.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

This thesis needs an assessment of the relevant legal systems (common and civil law) and FIU styles (administrative and hybrid FIU models) in three jurisdictions in order to compare the legislation on independence of the FIU. The UK FIU and Singapore FIU employ the FIU administrative model, which are different to the Thailand FIU hybrid type. The FATF rated the UK and Singapore a number of positive comments about their implementation of the FATF standards.¹⁸ According to comparative legal research, this thesis focuses on the specific issues, namely the independence of the FIU by comparing the three national FIUs – the UK, Singapore and Thailand, because they have the same core function in line with the FATF Recommendations in fighting money laundering. However, the UK and Singapore use the administrative-FIU model, Thailand uses the hybrid-FIU type.¹⁹ Therefore, the thesis examines the FIUs in the three countries within their legal AML framework and context in line with the same best international practices, such as the FATF, Egmont Group and Basel standards.²⁰

Comparative legal research in this thesis mainly contributes to new knowledge by illustrating the similarities and differences of the legislation regarding the roles of FIUs in three countries, besides the doctrinal legal method and socio-legal approach.²¹ Furthermore, it can be a tool for making the contribution to knowledge, especially the creation of an appropriate model of FIU for Thailand under the international standard regime.²² This research method guides the thesis to assess how the adaption of legislation, which have been complied in other countries, may provide the appropriate solution to other country like Thailand.²³

¹⁸ See discussion in chapter 4 and 5.

¹⁹ See discussion in chapter 3.

²⁰ Waleed Alhosani, *Anti-Money Laundering: A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units* (MacMillan 2016) 15.

²¹ *Zweigert and Kotz* (n 4) 4; see also *Alhosani* (n 20) 15.

²² Gerhard Dannemann, 'Comparative Law: Study of Similarities and Differences?' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford handbook of Comparative Law* (Oxford University Press 2008) 383.

²³ Michael Salter and Julie Mason, *Writing Law Dissertations* (First Published, Pearson Education 2007), 183.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

In this thesis, it is essential to compare the role of the FIUs in those jurisdictions, in particular their independence in operating their functions by reviewing from their FATF MERs, which illustrated their performance under the best international practices in fighting money laundering. The research also studies the competent AML authorities in order to examine their relationship with the FIUs and such authorities how effective they involve with the independence of the FIU in each country.²⁴ In order to understand what the three FIUs work with the international standards because the 2018 FATF MER rated ‘partially compliant’ for the UK in implementing the FATF Recommendation 29 while the 2016 FATF MER rated ‘compliant’ for Singapore’, whilst the 2017 APG MER rated ‘largely compliant’.²⁵

In summary, in this thesis the comparative legal research focused on identifying any similarities or differences between the legislation of the role of FIU, especially regarding the independence and transparency of the FIU in three countries. The thesis aims to understand how far Thailand FIU is far from the standards and learn what the valuable recommendations and lessons from the UK FIU and Singapore FIU. The comparison of the independence and the role of the FIUs in the three countries assists the doctrinal legal principles and the social-legal approach for deeper understanding the implementation of the international soft law, such as the FATF Recommendations and AML standards in order to make contribution to knowledge in the thesis.

²⁴ See discussion in chapter 4, 5 and 6 respectively.

²⁵ There are four level of compliant under the FATF standards, namely noncompliant; partially compliant; largely compliant and compliant. In 2007, the FATF Review of the UK considered the UKFIU to be ‘generally effective’, with a high degree of independence; see Transparency International UK, ‘Combating money laundering and recovering looted gains: Raising the UK’s game’ 27 <https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Transparency_Intl_UK_Recovering_Looted_Gains_June_2009.pdf> accessed 22 December 2020.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

7.3 The implementation of international soft law

Watson refers to the legal transplantation as a phenomenon where a legislative regulation transposes from one jurisdiction to another and notes that there is no linkage between legislation and the societal context, in which it performs; for this reason, legislation can move easily to jurisdictions that are various from the place of its origin.²⁶ For example, Watson finds legislative transplantation has the most significant contribution in changes in several legal systems by citing cases of transmitting the European law to several international jurisdictions.²⁷ As a consequence, the recipient jurisdiction's social, economic, cultural and political forces impact on the decision of the legal transferability, which creates the legislative texts similar to the recipient jurisdiction or different from such origin.²⁸ However, Kahn-Freund argues that the political differentiation other than other social forces has performed as a major obstacle of legislative transplantation.²⁹ Therefore, the significance of legal implementation as a central study to comparative law to allow comparative law-makers and law lawyers to appreciate similarities and differences between the legal systems and to be in a place to produce the recommendations.³⁰

As soft law, the FATF has spearheaded global efforts to counter financial crime, which was established as a joint UK-U.S. engage at the 1989 Group of 7 (G7) Paris Summit to deal with the proceeds of drug trafficking.³¹ Recommendation 29 provides that the national legislation be transposed to ensure the operational independence of the FIU from the government and industry.³²

²⁶ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Virginia University Press 1974) 21-30.

²⁷ Alan Watson, 'Legal transplants and European Private Law' (December 2000) 4.4 *Electronic Journal of Comparative Law* <<https://www.ejcl.org/44/art44-2.html>> accessed 1 January 2021.

²⁸ Otto Kahn-Freund, 'On the uses and misuses of Comparative law' (1974) 37(1) *The Modern Law Review* 1, 7-11, 17.

²⁹ *Kahn-Freund* (n 28) 1, 27.

³⁰ Shen Zongling, 'legal transplant and Comparative law' (1999) 51(4) *Revue Internationale De Droit Compare* 853, 854.

³¹ Denisse Rudich and Andrew Liu, 'FATF turns 30: The evolution and impact of the AML/CFT standard setter – part 1' (*Thomson Reuters Accelus* December 3, 2019) <<https://www.linkedin.com/pulse/fatf-turns-30-evolution-impact-amlcft-standard-setter-denisse-rudich/>> accessed 6 December 2020.

³² Egmont Group of Financial Intelligence Units (Egmont Group), *Understanding FIU Operational Independence and Autonomy* (Egmont Group October 2018) p. 7.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

Each country shall implement the standard in order to meet its requirements. For example, the FIU should be operationally independent in carry out its functions freely.³³ Moreover, this Recommendation suggest countries should apply for the Egmont Group and implement its Statement of Purpose and Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases.³⁴ Such Egmont Group Statement was also considered as soft law that countries have to comply with the Principles.

Recommendation 29 requires to countries to ensure that the FIUs have operational independence without the influence or interference in order to increase an effective AML/CFT system, which mainly consists of the stable institutions (i.e. FIUs) with transparency, integrity, accountability.³⁵ The lack of such operational independence of the FIUs could cause significant weakness and shortcomings in implementing an effective AML/CFT framework. The Thailand government must ensure adequate operational independence to illustrate the transparency of its governance of the implementation of the international standards requirement efficiently. Otherwise, Thailand might be announced as the NCCT, which had strategic AML/CFT deficiencies, like the situation of the 2012 FATF Public Statement again.³⁶

According to the STRs/SARs regime and the implementation of risk-based approach throughout the FATF Recommendations, it is approximated that 3.1 per cent of worldwide turnover (about \$1.28trn) is spent fighting financial organised crime.³⁷ For example, FIs in Europe

³³ The Interpretive Note to Recommendation 29 (Financial Intelligence Units).

³⁴ *ibid.*

³⁵ FATF Recommendation 29; see also Financial Action Task Force (FATF), *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF Updated October 2019) p. 7.

³⁶ According to the non-cooperative countries and territories (NCCTs) FATF announced that Thailand has taken towards improving its AML/CFT regime, including by substantially completing an AML/CFT risk assessment for its financial sector. Thailand should work on implementing its action plan to address the remaining deficiencies, including by: (1) adequately criminalizing terrorist financing (Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); and (3) further strengthening AML/CFT supervision (Recommendation 23); see Financial Action Task Force (FATF), 'FATF Public Statement – 16 February 2012' <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatfpublicstatement-16february2012.html>> accessed 7 December 2020.

³⁷ *Rudich and Liu* (n 31).

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

alone have spent approximately \$83.5bn on AML/CFT compliance in 2017.³⁸ By comparison, the FIs in Asia have spent around \$1.5bn on such compliance in 2016. Furthermore, the FIs in North America were estimated at \$25.3bn.³⁹ As reasons mentioned above, the costs of AML compliance become too high for each FI as well as the sanctions compliance costs also continue to increase, this impacts on the implementation of the AML soft law in such country.⁴⁰

In 2017 FATF launched a Supplement on customer Due Diligence to its 2013 Guidance on Financial Inclusion, which would prevent the unserved or undeserved clients resorting to cash and unregulated channels that causes limitation of transparency and increases the ML risk.⁴¹

An efficient AML system generally requires some structural elements to be in place, for instance: political stability; high-level commitment to solve AML issues; stable institutions with accountability, integrity, and ‘transparency’; the rule of law; a capable, effective and ‘independent’ judicial system.⁴² In this thesis focuses on the role, operational independence and transparency of the FIU that governments should be required to engage in order to meet the international standards.⁴³

7.4 The application of the comparative law and the implementation of the soft law to the research

Regarding the independence of the FIU, the UN Conventions (the Vienna Convention and Palermo Convention) may not refer to the independence of FIU, unlikely the Merida Convention refers to it in order to encourage its member states to implement the international AML standards

³⁸ Rudich and Liu (n 31).

³⁹ Rudich and Liu (n 31).

⁴⁰ Rudich and Liu (n 31).

⁴¹ Financial Action Task Force (FATF), *FATF Annual Report 2017-2018* (FATF 2018) p. 38

⁴² *Financial Action Task Force* (n 35) 7.

⁴³ *Financial Action Task Force* (n 35) 48, 63.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

efficiently. Similar to the Anti-Corruption Agencies, an important element of the FIU is the operational independence, transparency and autonomy without undue interference and influence in order to ensure that the FIU under the globally AML standards is able to perform its functions effectively.⁴⁴

Moreover, the Recommendations of the Financial Action Task Force (FATF) on money laundering were launched for being another AML soft law for its member states to implement and recognised as the global standards for countering money laundering, including the EU, which has transposed six EU directives (1991, 2001, 2005, 2015, 2017 and 2020) on the issue.⁴⁵ One of the most important FATF Recommendations (Recommendation 29) provides that countries shall set a FIU that act as a national and neutral centre for the FIU core functions.⁴⁶

Scherrer argued that FIU's budget independence and adequacy of human resources available increase the FIUs' ability to deal with their functions in SARs/STRs regime for example the EU FIU gains budget from €600,000 to above €14m annually.⁴⁷

With regard to the independence of the FIU, the thesis analyses and compares that the three countries have a variation of economic sizes, criminal typologies and crime rates, but there are the FIUs to do the FIU's core functions under the SARs/STRs regime. As reasons mentioned above, then they differentiate between FIUs depending on whether or not they have a national legislation

⁴⁴ World Bank Group, 'Module 2: role of the Financial Intelligence Unit (incorporating peer reviewers comments) (The World Bank Group) 4 <<http://pubdocs.worldbank.org/en/834721427730119379/AML-Module-2.pdf>> accessed 16 December 2020.

⁴⁵ Anthony Amicelle, Julien Berg, and Killian Chaudieu, 'Part II: Comparative analysis of Financial Intelligence Units (FIUs) in Canada, France, Switzerland and United Kingdom' in Amandine Scherrer, *Fighting tax crimes – Cooperation between Financial Intelligence Units: Ex-Post Impact Assessment* European Parliamentary Research Service (EPRS) (European Parliament March 2017) p. 31 <https://www.europarl.europa.eu/RegData/etudes/STUD/2017/598603/EPRS_STU%282017%29598603_EN.pdf> accessed 16 December 2020.

⁴⁶ See the discussion in chapter 3.

⁴⁷ Amandine Scherrer, *Fighting tax crimes – Cooperation between Financial Intelligence Units: Ex-Post Impact Assessment* European Parliamentary Research Service (EPRS) (European Parliament March 2017) 1, 15 <https://www.europarl.europa.eu/RegData/etudes/STUD/2017/598603/EPRS_STU%282017%29598603_EN.pdf> accessed 16 December 2020.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

on the FIUs. The thesis seeks to find out the approaches which best practices apply to enhance their FIU concerned the independence of each FIU and its role.

The case of the Thailand FIU is an appropriate example supporting Kahn-Freund claim's that in the modern time of international societal, economic factors there are no other forces than politics (i.e. several military coups in the two decades in Thailand) that has worked as the major hindrance to the procedure of the democracy and legal transplantation. The military governments has attributed the failure of implementation of the international standards that caused Thailand suffering from the sanction of the NCCT list in 2012.⁴⁸

The UK and Singapore are outstanding examples of developed countries following the international standards effectively. The UK and Singapore base their actions on reasoning and global rules rather than emotion or politics under the principle of individualism, which support the value of the independence, autonomy and liberty.⁴⁹ As previously examined, both countries preserve their international reputations as the world financial centres.

With reference to the independence of the UKFIU, the FATF rated a high level of independence of the UK FIU under the implementation of the Recommendation 29.⁵⁰ However, in 2018, the FATF rated only partially compliant on the Recommendation 29 for the UK FIU because of the lack of human resources for proper working in the FIU.⁵¹ The UK government has attempted to establish the cooperative committees or the groups, such as the JMLIT, JMLSG or JFAC to enhance the independence of the UK FIU similar to the Singapore government that has tried to

⁴⁸ See discussion in chapter 6.

⁴⁹ Mark Van Hoecke, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law' (1998) 47(3) *International and Comparative Law Quarterly* 495, 503-505.

⁵⁰ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom* Fourth Round Mutual Evaluation Report (FATF 2018) 204.

⁵¹ Lord Bates, 'The UK's Mutual Evaluation Report by the Financial Action Task Force on its Anti-Money Laundering and Counter-Terrorist Financing regime' Statement UIN HLWS1131 (10 December 2018) <<https://questions-statements.parliament.uk/written-statements/detail/2018-12-10/hlws1131>> accessed 24 December 2020; see also *Financial Action Task Force* (n 50) 159, 224-225.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

enhance the independence of the FIU by establishing the Singapore AML/CFT Steering Committee, and the ACIP as the key factors to support the Singapore FIU's independence in order to perform its functions efficiently. Comparatively, Singapore FIU was rated compliant for the implementation of the FATF Recommendation 29 in 2016.⁵²

This thesis examines the independence of FIU. In Thailand, the national AML legislation does not provide sufficient operational independence of FIU, but determines the exceeding powers of AMLB over the Thailand FIU through the AMLA 1999, s. 25(3).⁵³ The AMLA 1999, s. 40 provides that the FIU as an independent body not under the Prime Minister Office, Ministry, or sub-Ministry, to function independently and neutrally such as core functions of the FIU, including taking legal proceedings against offenders.⁵⁴ Nevertheless, the Thailand FIU becomes under the order of the AMLB in line with the AMLA 1999, s. 25(3), which could undermine the operational independence of the FIU under the international AML standards.⁵⁵ As reasons mentioned above, the thesis illustrates that there is insufficient for operational independence of the AMLO in functioning its duties.

The thesis displays that the AMLB may monitor the FIU for certain reasons such as it can ensure operational independence by allowing the government (military coup) to control the AMLO, such as appointing its Secretary-General from the coup's staff. Therefore, it is essential to ensure the degree of the FIU independence to guard against such pressure (interference and influence).

⁵² See discussion in chapter 6.

⁵³ AMLA 1999, s. 25(3) amended in accordance with the National Council for Peace and Order (NCPO) Order 38/2560 (2017); see also Adrian Vermeule, 'Conventions of Agency Independence' (2013) 113 Columbia Law Review 1163, 1181.

⁵⁴ AMLA 1999, s. 40 amended in accordance with the AMLA (No.2) B.E. 2551 (2008).

⁵⁵ AMLA 1999, s. 25(3) amended in accordance with the National Council for Peace and Order (NCPO) Order 38/2560 (2017); the FATF Recommendation 29 in this chapter is as the soft law that Thailand needs to implement it into national legislation effectively.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

7.5 Comparative analysis of FIUs in three jurisdictions

In Thailand, the AMLO is the FIU and it serves as a national centre for the core functions such as the receipt and analysis of STR, other information regarding ML and its associated predicate offences, as well as for the dissemination of the results of that analysis to the relevant LEAs and foreign FIUs.⁵⁶

The international standards determine that FIU regulation, responsibilities, access to financial information⁵⁷ when deciding relating to the category of data/information that FIU may have direct deliver to, each government should take into consideration the international requirements regarding operational independence of FIUs.⁵⁸ Therefore, FIU should be an independent body from the law enforcement authority (LEA) in each country as a buffer between reporting entities and LEAs in the STR regime in order to disseminate intelligence to the appropriate local authorities (e.g. a prosecutor or law enforcement agency, including sharing with a foreign FIU when relevant).⁵⁹ The judicial or prosecutorial FIU could be politically independent and be get investigated STRs without the delay, however it would have not a natural connection for the REs.⁶⁰ The thesis considers that the hybrid FIU may combine the strength of each style of the FIU to support its main functions. As above reasons, the absolute power of the FIU can bring about the political influence or interference. Certain undeveloped countries might suffer from the lack of governance to deal with this power, especially the countries under the military coups.

⁵⁶ AMLA 1999, s. 40.

⁵⁷ See FATF Recommendations 29 and 40 and the related Interpretative Notes.

⁵⁸ See FATF Recommendation 16 and the related to Interpretative Notes.

⁵⁹ Boudewyn Verhelst, 'The Organisation of a Financial Intelligence Unit,' Paper presented to a training seminar for Council of Europe evaluators, Brussels, March 25, 2013; see Interpretative Note C to FATF Recommendation 29.

⁶⁰ Ioana Deleanu, 'FIUs in the European Union – facts and figures, functions and facilities' in Brigitte Unger, Joras Ferwerda, Melissa van den Broek and Ioana Deleanu, *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar 2014) p. 98.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

In the UK, the idea of operational independence is applied quite widely across government, via both public-sector bodies, and the myriad of private companies who are contracted to carry out public functions. While this may sound like a good idea to be an effective tool for the UK government under Gordon Brown as Chancellor, implemented central bank independence in 1997, on the basis that having monetary policy under the direct control over the government, as it had used to be, was too vulnerable to harmful short-term electioneering moves.

7.6 The operational independence of the FIU

The issue of FIU independence has been the subject of the thesis. However, this thesis has mainly stressed on the principle themes (i.e. role of FIU, operational independence and transparency). The implementation of the soft law (i.e. international AML standards) is a great challenge in Thailand. The fundamental point that this thesis to illustrate is that the AML legal provisions are essential, but not sufficient to ensure the FIU independence. The issues have been extensively examined and are normally undisputed. It is not complex to understand why the FIU independence is vital in modern financial market including monetary systems. In the STR regime, the FIU independence is a way to protect AML officials against any undue interference or influence. However, this might be a reason why the FIU independence appears to be weakly by the AML legal provision.⁶¹ The 2017 Thailand MER considered the Thailand FIU regarding its role and responsibilities, administration and its level of operational independence from government.⁶² AMLO Secretary-General is responsible for the retention and utilization of all financial information and intelligence held by AMLO under s. 38 of the AMLA 1999, then

⁶¹ Section 25(3) of the AMLA 1999 amended in accordance with the National Council for Peace and Order (NCPO) Order 38/2560 (2017).

⁶² Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures: Thailand Mutual Evaluation Report* (APG December 2017) p. 181.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

dissemination to the relevant LEAs, as well as collection of the evidence for the purpose of examination of the transactions or assets or to restrain transactions, seize or restrain or act including take legal proceedings against offenders under the 1999 Act.⁶³

According to s. 40 of the AMLA 1999, the Thailand FIU is an office not under the Prime Minister Office, Ministry, or Sub-Ministry that it did not under the Ministry of Justice oversight as in the past.⁶⁴ Then s. 41 of the AMLA 1999 provides that the AMLO Secretary-General's powers to freely supervise its staff and resources.⁶⁵ The Secretary-General should perform his roles and duties independently as provided by the AMLA 1999 but he has to be directly answerable to Prime Minister instead.⁶⁶ Moreover, it creates ambiguous that the AMLA 1999 provides the significant power to the AMLB over the AMLO, Secretary-General and Transaction Committee under s. 25(3) of the AMLA 1999 that can undermine the operational independence and transparency of the Thailand FIU (namely, AMLO).⁶⁷

Nevertheless, APG criticized that there are severe penalties that any persons, such as the Prime Minister, a Minister or a person holding political positions could be sentenced if they commit or order the Transaction Committee, AMLO Secretary-General or a competent official of AMLO to examine transactions, seize or restrain or act under this 1999 Act without proper evidence for the purpose of persecution or bring about damage or harm another or for political reason or acting so mala fide could obtain three to thirty years imprisonment or a fine from sixty-thousand to six hundred thousand Baht or both.⁶⁸ Similar to a Transaction Committee member, the Secretary-General, Deputy Secretary-General or competent official who follow the direct

⁶³ Sections 38 and 40 of the AMLA 1999.

⁶⁴ Section 40 amended in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008).

⁶⁵ Section 41 of the AMLA 1999 amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015).

⁶⁶ Paragraph 2 of section 41 of the AMLA 1999 amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015).

⁶⁷ AMLA 1999, s. 25(3) amended in accordance with the National Council for Peace and Order (NCPO) Order 38/2560 (2017).

⁶⁸ Section 61/1 of the AMLA 1999 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008).

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

instruction or the order under Paragraph one of s. 61/1 of the AMLA 1999 illegally under this Act would receive such penalties.⁶⁹ Furthermore, s. 11 of the AMLA 1999 determines heavy penalties (i.e. three times as much penalty as that provided) for an offence of malfeasance in office that force both public officers and politicians.⁷⁰

Section 40(3) of the AMLA 1999 meets the FATF standard requirement and encourages AMLO to engage independently with other competent authorities and foreign FIUs on the exchange of information.⁷¹ The APG noted that the 1999 Act clearly provides AMLO as an independent body since it does not within the structure of another agency.⁷² In summary, the FIU independence shall not only rely on the location of the FIU but also the level of operational independence its functions without the interference and influence whether government or industry.⁷³

7.7 Recommendations for Thailand to improve the independence of the Thailand FIU

Thailand should establish and strictly enforce, heavy sanctions for interference or non-cooperation with independent investigations.⁷⁴ The Thailand FIU should maintain political independence and impartiality at all times by carrying out all duties impartially and without discrimination on such grounds as race, colour, sex, language, religion or politics.⁷⁵ The purpose of investigation should be to secure independent evidence.⁷⁶ Thailand should amend a clear statement of

⁶⁹ Paragraph one of section 61/1 of the AMLA 1999 added in accordance with the Anti-Money Laundering Act (No.2) B.E. 2551 (2008).

⁷⁰ Section 11 of the AMLA 1999.

⁷¹ Section 40(3) of the AMLA 1999 amended in accordance with the Anti-Money Laundering Act (No.4) B.E. 2558 (2013).

⁷² *Asia/Pacific Group on Money Laundering* (n 62) 181.

⁷³ Interpretative Note to FATF Recommendation 29.

⁷⁴ Office of the United Nations High Commissioner for Human Rights, 'Human Rights Standards and Practice for the police: Expanded pocket book on Human Rights for the Police' Professional Training Series No. 5/Add.3 (UN 2004) <<https://www.ohchr.org/documents/publications/training5add3en.pdf>> accessed 12 November 2020.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

AML/CFT policy, and corresponding orders, requiring full disclosure and the cooperation of all officials with operational independence.⁷⁷

In case of an agency that is given budgetary independence from the government by submitting the financial support of the regulated industry, an inappropriate sense of loyalty to the donors may arise.⁷⁸ The FIU is shielded from the political vagaries of budget making, which contributes to the independence of the FIU

7.8 Conclusion

FIU are an important component of the global counter money laundering and related crime by using the intelligence as a key element for investigating and prosecuting such offences. The independence of the FIU is a challenge in the design and establishment of the FIU because there is no set formula to ensure the effectiveness of the FIU in each country, which relying on the existing contexts of the jurisdictions. Each FIU has to tailor to the particular situation of the country under the international AML standards. However, the FIU's model, the resources available for the responsibility, the criminal typology, as well as the legal and administrative systems of such jurisdiction are considered to design the form of FIU. This thesis has illustrated several weaknesses of the Thailand FIU and compare to best practices, in particular the UK and Singapore to learn the valuable lessons from such countries to adapt into its FIU.

The thesis shows that the significance of the FIU shall be the FIU's independence in operate its functions without undue influence and interference whether politics or industry because the FATF Recommendation 29 determines that the FIU shall have the independence while conducting

⁷⁷ *ibid.*

⁷⁸ Valentina Ivanovic, 'Financial independence of Central Bank through the balance sheet prism' (2014) 2 *Journal of Central Banking Theory and Practice* 37, 45.

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

its responsibilities. Therefore, beyond complying with the standards, each government including the competent authorities require to ensure that its FIU contributes the independent function efficiently. Furthermore, the FIU should be the independent and credible agency capable of dealing with the reporting entities, relevant LEAs, the foreign FIUs and international counterparts finally.

This chapter has provided a comparison on the role, the operational independence and the transparency of the FIUs of the UK, Singapore and Thailand with the objectives of highlighting the best practice emerging in each jurisdiction and thereby providing recommendations for Thailand to enhance the effectiveness of its FIU. Based on the discussion on the theories of comparative law and soft law, this comparison seeks similarities and differences of the FIUs under the different legislative frameworks of FIU in each country context by applying the theory of comparative law and international soft law that required the countries to transpose the global standards into their national legislation. This thesis analyses the results and provides Thailand recommendations to enhance its FIU based on the valuable experiences of the UK and Singapore.

The significant similarity among FIUs of the three countries is that all of them follow the international AML soft law, i.e. FATF Recommendation 29, which aims to promote the operational independence and transparency of the FIUs in each country without any undue political, government or industry influence or interference, which might undermine the FIU's operational independence. Thesis illustrates both similarities and differences of the three FIUs emerging from the comparison. In employing the role of the FIUs, the UK FIU (NCA) is similar to the Singapore FIU (STRO), which employ their core mandate and functions of a FIU and provides further clarity on the rules contained in the international standards. Both FIUs play a central role in, the countries' AML/CFT operational networks, and support to the work of other competent authorities and LEAs. However, they consider that there are various FIU roles and

Chapter 7 Comparison of Operational Independence of the United Kingdom, Singapore and Thailand

models, FATF Recommendation 29 does not influence a country's choice for a specific model, and use equally to all of FIUs.

The thesis compares Thailand FIU with the FIU of the UK and Singapore from the assessment of their MERs. The challenges of Thailand are the need to improve the independence of its FIU to engage in core functions, in particular its operational independence which may be undermined, influenced and interfered by the powers of AMLB under s25(3) of the AMLA 1999.⁷⁹ Moreover, removing legal obstacles, such as the current military coup regime in Thailand which controlling the Thailand government in writing the effective legal AML legislation in order to develop and improve the independence of Thailand FIU to meet the standards.

As reasons mentioned above, the thesis assesses that the Thailand FIU could adapt the FIU administrative model as the UK and Singapore in order to fulfil the functions of the Thailand FIU to meet the international AML standards effectively.

⁷⁹ AMLA 1999, s. 25(3) amended in accordance with the National Council for Peace and Order (NCPO) Order 38/2560 (2017).

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATIONS

8.1 Research Questions and Literature Review

The purpose of this thesis is to examine the anti-money laundering (AML) legislation regarding the role of the Financial Intelligence Unit (FIU)¹ and the implementation of the Financial Action Task Force (FATF) Recommendations² in Thailand.

Generally, an FIU's institutional design, which includes its placement within the governmental structure, has an effect on its functions, nevertheless, there is 'no one size fits all' being appropriate for all jurisdictions and there is the best institutional setup for FIU under the government structure or political regime.³ Each of FIU models has advantages and disadvantages; certain models should be sensitive to the current situations in each country including the political circumstances, legislative system, the risk-environment and resources of the specific jurisdiction. However, it is important that best international practices for FIUs have been identified regarding the operational independence of the FIUs in continuing their core functions. Transparency International claim that coupled with accountability and transparency mechanisms, the operational independence of the FIUs is a key element of the effective

¹ Anti-Money Laundering Act B.E. 2542 (1999) (AMLA), s. 40 regarding the powers and responsibilities of Thailand's Financial Intelligence Unit (FIU), or 'AMLO'.

² Forty Financial Action Task Force (FATF) Recommendations, in particular, the FATF Recommendation 29 and the related Interpretative Note.

³ Transparency International, 'Financial Intelligence Units (FIUs): Effective institutional design, mandate and powers' <<https://knowledgehub.transparency.org/helpdesk/financial-intelligence-units-fius-effective-institutional-design-mandate-and-powers>> accessed 25 December 2020.

CHAPTER Eight: Conclusion and Recommendations

FIU.⁴ Therefore, each country should adapt the appropriate measures from the FATF standards.

The aim of this thesis was to determine whether the Thailand AML legislation regarding the role of FIU achieves the FATF Recommendations. In achieving the purposes of this thesis, ‘appropriate’ was defined as meaning that the AML legislation must promote the FIU in carrying out its functions independently, and be capable of applying the FATF standards.⁵

The research questions were designed to respond to the FATF’s evaluation⁶ of the Thailand FIU, the Anti-Money Laundering Office (AMLO), with reference to the operational independence, which means the Anti-Money Laundering Board (AMLB) has significant power over the AMLO under s. 25(3) of the AMLA 1999.⁷ The FATF criticised the operational independence of the AMLO, which could compromise its ability to operate properly.⁸ As a consequence, the FATF rated Thailand a ‘largely compliant’ level for Recommendation 29.⁹ Thailand had faced several military coups which has resulted in the Thailand government being unable to enact the AML/CFT laws in line with the FATF requirements.¹⁰ The FATF removed Thailand from its blacklist in 2013 because new legislation was introduced, the AMLA (No.4)

⁴ *Transparency International* (n 3).

⁵ FATF Recommendation 29 focuses on the operational independence of the FIU in carrying out its functions freely without any undue political interference and influence.

⁶ Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Thailand* Fourth Round Mutual Evaluation Report (APG 2017) 182.

⁷ AMLA 1999, s 25(3) amended in accordance with the AMLA (No.5) B.E.2558 (2015).

⁸ *Asia/Pacific Group on Money Laundering* (n 6) 182.

⁹ *Asia/Pacific Group on Money Laundering* (n 6) 183.

¹⁰ Nophakhun Limsamarnphun, ‘Thailand under new pressure on anti-money laundering laws’ (*The Nation*, 18 February 2012) <<http://www.nationmultimedia.com/opinion/Thailand-under-new-pressure-on-anti-money-launderi-30176140.html>> accessed 11 September 2017; see also *Asia/Pacific Group on Money Laundering* (n 6) 14; see also Akihiko Kawaura, ‘Generals in defense of allocation: Coups and military budgets in Thailand’ (2018) 58 *Journal of Asian Economics* 72, 73.

CHAPTER Eight: Conclusion and Recommendations

B.E.2556 (2013) and the Counter Terrorist Financing Act B.E. 2556 (2013),¹¹ which addressed the concerns identified by the FATF. The Egmont Group noted that an independent FIU is significant to an effective AML/CFT regime because it supports the work of LEAs, AML/CFT supervisors, and its counterparts in order to promote the AML/CFT investigations and prosecutions.¹² However, the crucial evaluation of the role of AMLO under the AMLA 1999 is that its operational independence is insufficient to support the AML legislation regarding the role of AMLO to meet the international standards. Therefore, it is important to clarify these issues in this thesis.

In reviewing the existing literature on the subject, this thesis observed that there were no published resources that examined the role of AMLO regarding its operational independence when comparing with best practices (i.e. the UK and Singapore). Conversely, the existing literature focused on individual issues such as the AML legal framework, the implementation of the international standards, the relationship between the role of the competent authorities and the FIU in fighting money laundering and its associated predicated offences, the establishment of the FIU, the model of FIU, and the evaluation of FIU in the implementation of international standards.¹³ Therefore, it is important to address the issues of the appropriate role of the

¹¹ Ministry of Foreign Affairs of the Kingdom of Thailand, 'Press release: FATF removes Thailand from Public Statement on Money Laundering/Financing of Terrorism '(1 May 2013) <<http://www.mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>> accessed 21 July 2019.

¹² Egmont Group of Financial Intelligence Units, 'Understanding FIU operational independence and autonomy' A product of the Egmont Centre of FIU Excellence and Leadership (ECOFEL) (October 2018) <https://www.egmontgroup.org/sites/default/files/filedepot/FIU_Independence_and_Autonomy/20181019%20Understanding%20FIU%20Operational%20Independence%20and%20Autonomy_FINAL%20VERSION.pdf> accessed 21 July 2019; see also Nomzi Gwintsa, 'Challenges of establishing financial intelligence units' in Charles Goredema (ed), *Money Laundering Experiences, A Survey* Monograph No 124, Institute for Security Studies (June 2006) <<https://issafrica.org/chapter-3-challenges-of-establishing-financial-intelligence-units>> accessed 27 July 2019.

¹³ See discussion in chapter 2 and 3.

CHAPTER Eight: Conclusion and Recommendations

AMLO under the supervision of the AMLB by examining how the Thailand government has interpreted and amended the AMLA 1999 to support the appropriate role of the AMLO in carrying out its functions without political interference and influence. This thesis was initiated to demonstrate that the role of AMLO under the AMLA 1999 was suitable to counter money laundering. The principal arguments were established in the disagreement that the AMLA 1999 should not provide the AMLB the judicial powers over the AMLO.¹⁴ The next section of the chapter discusses the conclusion drawn from this thesis.

8.2 Conclusions

Chapter three concluded that the effectiveness of the control of money laundering depends on the application of the international AML standards and the level of compliance with such instruments.¹⁵ There are three levels of international AML policy: international legal framework; regional legal framework; and global best practices and industry guidelines.¹⁶ For example, the Merida Convention determines that the FIUs shall have the operational independence in undertaking their functions and work without any political interference or influence.¹⁷ Furthermore, the Egmont Group also supports the operational independence of the FIUs because in their opin-

¹⁴ AMLA 1999, s. 25(3).

¹⁵ Nicholas Ryder, *Money Laundering – An Endless Cycle?: A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 2, 11

¹⁶ International legal framework (e.g. the UN AML conventions); regional legal framework (e.g. the EU AML Directives); as well as global best practices and industry guidelines (e.g. the FATF Recommendations).

¹⁷ United Nations Convention against Corruption, 2003 (Merida Convention), art 36.

CHAPTER Eight: Conclusion and Recommendations

ion an independent FIU promotes the effectiveness of the control of the money laundering regime.¹⁸ Thus, the insufficient operational independence might interfere with the efficiency of the FIU in conducting the investigations and prosecutions of money laundering and its associated predicate offences.¹⁹ As a soft law, the FATF Recommendations do not bind the countries to comply with its standards, but the FATF can identify such jurisdictions that have AML strategic deficiencies as the high risk and Non-Cooperative Countries and Territories (NCCTs).²⁰ It is questionable how each country implements the international standard to pass the FATF's assessment to avoid its sanctions and which model of FIU (namely, judicial, law-enforcement, administrative, and hybrid models) each jurisdiction should employ to fight money laundering successfully.²¹ The chapter concluded that the deeper understanding of the international AML instruments regarding the role of FIU, the money laundering risks, and the assessment of such risks could assist in dealing with the threat efficiently.²²

¹⁸ Egmont Group of Financial Intelligence Units, 'New publication: understanding FIU operational independence and autonomy' (October 2018) <<https://egmontgroup.org/en/content/new-publication-understanding-fiu-operational-independence-and-autonomy>> accessed 8 July 2019.

¹⁹ *ibid.*

²⁰ For instance, the FATF identified Thailand as the NCCT jurisdiction that has strategic deficiencies in countering money laundering regime; see Financial Action Task Force (FATF), 'FATF Public Statement – 19 October 2012' <<http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublic-statement-19october2012.html>> accessed 25 March 2018; see also Financial Action Task Force (FATF), 'About the Non-Cooperative Countries and Territories (NCCT) Initiative' <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/aboutthenon-cooperativecountriesandterritoriesncctinitiative.html>> accessed 10 April 2018; see also Financial Action Task Force (FATF), High-risk and non-cooperative jurisdictions <<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>> accessed 22 July 2019.

²¹ Egmont Group of Financial Intelligence Units, 'Financial Intelligence Units (FIUs)' <<https://egmontgroup.org/en/content/financial-intelligence-units-fius>> accessed 8 July 2019.

²² United Nations Office on Drugs and Crime (UNODC), *State of Implementation of the United Nations Convention against Corruption: Criminalisation, Law Enforcement and International Cooperation* (2nd edn, UN 2017) 168.

CHAPTER Eight: Conclusion and Recommendations

Chapter four examined the implementation of the international standards in the UK. In particular, the chapter focused on the incorporation of FATF Recommendation 29 into its AML legal framework regarding the role of the FIU. The FATF praised the UK's legal AML framework, particularly the Proceeds of Crime Act 2002 (POCA) and Money Laundering Regulations 2017 (MLRs) as best practices which go beyond the international AML requirements.²³

However, the reporting entities have submitted an increased number of SARs to the National Crime Agency (NCA) as a result of 'defensive' or 'preventive' reporting. This has proven to be problematic for the NCA as the intelligence provided by the related SARs is of a very poor quality, which negatively impacts the quality of the intelligence disseminated by the NCA to the related LEAs. One of the main reasons for the increased number of SARs submitted by reporting entities in the UK is a fear factor created by the number of financial penalties imposed in the UK for weak AML reporting systems.²⁴ The chapter concluded that the administrative-style FIU has a significant level of operational independence because the FIs are well connected with primary authorities such as the central bank or treasury ministry in complying with the SARs requirements.²⁵ This model of FIU acts as a safeguard, which

²³ Financial Conduct Authority (FCA), 'Examining the future of anti-money laundering regulations' <<https://www.fca.org.uk/news/speeches/examining-future-anti-money-laundering-regulations>> accessed 28 October 2016; see also Karen Harrison and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (2nd edn, Routledge 2017) 223; see HM Treasury, 'Transposition of the Fifth Money Laundering Directive: Consultation' (Crown April 2019) 21, 59 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795670/20190415_Consultation_on_the_Transposition_of_5MLD_web.pdf> accessed 11 July 2019.

²⁴ The NCA reported that between 2015 and 2016 there was an increase of 44 per cent in order to protect themselves from money laundering investigations or prosecutions; see Home Office and HM Treasury, *Action Plan for Anti-Money Laundering and Counter-Terrorist Finance* (Home Office 2016) 43.

²⁵ Guy Stessens, *Money Laundering – A New International Law Enforcement Model* (Cambridge University Press 2008) 188, 189; see also Danato Masciandaro and Alessio Volpicella, 'Designing financial supervision: The puzzling case of the FIUs against money laundering' (2016) 2(1) *Journal of Financial Regulation* 79, 79.

CHAPTER Eight: Conclusion and Recommendations

enhances the cooperation and communication between the REs and LEAs, as well as improving the effective intelligence contribution to fighting the money laundering regime.²⁶ The UK's AML legislation determines the role of NCA in order to receive, analyse, and disseminate the information to the relevant authorities for further investigations and prosecutions.²⁷ In summary, the UK's AML framework ensures that the NCA has its operational independence and ability to cooperate and exchange intelligence amongst FIUs in line with the Recommendation 29 effectively.²⁸

Chapter five examined the implementation of international initiatives in Singapore, which concentrated on the Recommendation 29 into its AML legal framework regarding the role of the FIU. This chapter also examined the roles of competent authorities and FIU towards incorporating to tackle money laundering. This chapter determined the AML legislation and the result of their compliance with STR requirements, including primary similarities and differences between their roles. The Singapore government Monetary Authority of Singapore (MAS) seeks to enhance the understanding and compliance of the AML regulations by issuing guidelines in order to ensure that the REs strongly comply with the international and national AML legal requirements.

²⁶ Donato Masciandaro, 'Financial Supervisory Unification and Financial Intelligence Units '(2005) 8(4) *Journal of Money Laundering Control* 354, 360.

²⁷ The Crime and Courts Act 2013, Sch 8(2) para 158; the 2013 Act provides that the NCA is to have the functions conferred by the POCA 2002, ss.1(3)(b), 1(5); see Government Digital Service, 'Serious Organised Crime Agency has closed' <<https://www.gov.uk/government/organisations/serious-organised-crime-agency>> accessed 18 July 2019.

²⁸ FATF Recommendation 29 and art 14 (1)(b) of the United Nations Convention Against Corruption 2003; see also International Monetary Fund (IMF) & World Bank, *Financial Intelligence Units: An Overview* (IMF 2004) 3; see also *Ryder* (n 15) 21; see also House of Lords, *Money Laundering and the Financing of Terrorism* Volume I: Report of European Union Committee (19th Report of Session, The Stationery Office 2009) 22; see also Dong Hopton, *Money Laundering: A Concise Guide for All Business* (2nd edn, Routledge 2009) 19-20, 192.

CHAPTER Eight: Conclusion and Recommendations

The FATF concluded that Singapore has adopted its AML regime with a strong commitment to the international instruments efficiently.²⁹ As a consequence, the Suspicious Transaction Reporting Office (STRO) has acted as a proactive agent by concentrating on the STRs regime and coordinating with the competent authorities. The STRO adopts an administrative-FIU model similar to the NCA while the AMLO applies a hybrid-FIU style. The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA) does not provide any powers of investigation or prosecution for the STRO that support the STRO sufficient operational independence in dealing with its functions effectively. Contrary to the STRO, the AMLO can impose sanctions on FIs and instigate criminal proceedings by the virtue of AMLA 1999 that empowers the judicial and law-enforcement powers to the AMLO.³⁰ The chapter concluded that the STRO concentrates on its duties and responsibilities regarding the STRs regime with the operational independence rectified by the CDSA 1992.

Chapter six examined the implementation of international standards in Thailand by focusing on the FATF Recommendation 29 into its AML legal framework regarding the role of the FIU. This chapter reviewed and concentrated on the role of the AMLO,³¹ in line with the AMLA 1999 to understand how the AMLO incorporates international AML instruments by comparing it with the UK and Singapore.³²

²⁹ Mark Pieth and Gemma Aiolfi, 'Synthesis: Comparing international standards and their implementation' in Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Anti-Money Laundering - A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar 2004) 416; see also Dennis Cox, *Handbook of Anti Money Laundering* (Wiley 2014) 615.

³⁰ AMLA 1999, s. 40.

³¹ For example, receiving, analysing, disseminating, collecting evidence, and investigating in order to prosecute money laundering and predicate offences.

³² A comparison of three countries (the UK, Singapore and Thailand) is to identify differences and similarities, strengths, weaknesses and loopholes for improving Thailand's capability in implementing the FATF standards.

CHAPTER Eight: Conclusion and Recommendations

The chapter examined how effective Thailand's FIU has been in adopting international AML regulations.³³ The chapter proceeded to highlight certain weaknesses and loopholes within Thailand's AML legal framework to recommend the Thailand government to amend the AML legislation regarding the role of FIU to meet the FATF Recommendations. As a result of the military coups, the Thailand government could not enact the AML/CFT legislation to meet the FATF requirements because of the effectiveness issue of the democratic process in Thailand's Parliament in such a period.³⁴

The chapter determined that the government should revise the legislation. For example, the Constitution of the Kingdom of Thailand 2017 should make sure that the AMLO is an independent agency as certified by the Constitution as the National Anti-Corruption Commission (NACC) and Office of Attorney General (OAG). This is significant to support the regulatory reforms that reduce opportunities for political intervention and interference in the AMLO's operation by not reporting to the Prime Minister, but the President of the Representatives.

The thesis concluded that the government should consider adopting an administrative-FIU model to Thailand's FIU in order to improve the operational independence and develop the effectiveness of the AMLO in fighting money laundering practically.

In the light of the current deficiencies and disadvantages of the AMLO in counteracting money laundering, it is difficult to retain the current model of the AMLO. The current functions of the AMLO, along with deficiencies therein, were

³³ Goredema suggested that the AMLO is an interesting pattern for an institution to deal with money laundering; see Charles Goredema, 'Measuring Money Laundering in Southern Africa' (2005) 14(4) *African Security Review* 27, 36.

³⁴ *Limsamarnphun* (n 10).

CHAPTER Eight: Conclusion and Recommendations

evaluated in chapters three and six. There is no harm in briefly recalling the following main deficiencies of the AMLO that cause ambiguity, namely (1) its operational independence from the AMLB and Government; (2) its role in sufficiently analysing STRs on money laundering in order to provide feedback to the reporting entities and increase the quality of the STRs; (3) the relationship between REs and LEAs; (4) the absence of strategic analysis in order to formulate a strengthened strategy for its future work; and (5) opening the NRA report to the public widely. For these reasons, the Thailand government should consider the role of the AMLO, particularly operational independence in dealing with the STRs to meet the international requirements.

Generally, the AMLO is a hybrid-style FIU, which is a combination of an administration-FIU, judicial-FIU and law enforcement-FIU models. Unlike Thailand, the NCA and STRO use the administrative-FIU model. The change from hybrid into administrative-FIU model enhances cooperation between the REs and LEAs because the FIU (i.e. AMLO) will be the buffer between the REs and LEAs, and this can create a proper atmosphere and relationship in the STRs reporting regime. Furthermore, the AMLO and relevant competent authorities should issue more comprehensive and clear guidelines regarding STRs reporting and the term ‘suspicion’ for helping the REs to produce STRs more good quality submitting to the AMLO. This process can reduce the poor quality of the STRs from the REs and the cost of AML compliance of the REs at the same time.

The AMLO should develop and implement a communication strategy for publishing money laundering trends and typologies and annual reports to share with REs and other AML/CFT partners in a timelier manner. In addition, the AMLO

CHAPTER Eight: Conclusion and Recommendations

should review its production of statistics on AML/CFT matters to confirm the truthfulness of such statistics and strengthen its ability to produce effectively consistent and accurate statistics.

To ensure the operational independence and avoid conflict of interest, the Thailand FIU should have a duty to report to the Parliament, not to Prime Minister. Furthermore, the Head of Thailand FIU should be appointed from the Committee of Parliament, not by the cabinet. Moreover, s. 25(3) of the AMLA 1999 should be used to limit the judicial power of the AMLB because of the intervention of the operational independence of the Transaction Committee (TC), the AMLO, and the Secretary-General. It is important to limit the power of the AMLB in order to develop the operational autonomy and independence of the AMLO that will promote the Thailand AML laws to meet the international standards. Furthermore, the Thailand government should sufficiently contribute additional budgetary resources for the AMLO to enhance the dedicated capacity of its responsibilities such as human and technological resources.

The chapter concluded that this thesis has been undertaken with a view to propose the optimal model for the Thailand FIU in counteracting money laundering. The recommendations describe the optimal model for the Thailand FIU so that STRs can deal with it more effectively and provide the key factors that ensure the success of the proposed FIU model.

There are several lessons that Thailand could learn from the UK and Singapore: the administrative-FIU model and the robust AML policy regarding the operational independence of FIU. Moreover, in Thailand and Singapore, the banks still execute the suspicious transaction even though they filed the STRs to Thailand's FIU (i.e. AMLO). Unlike the UK, the UK banks cannot execute the suspicious transaction

CHAPTER Eight: Conclusion and Recommendations

after submitting the SARs to the UK's FIU (i.e. NCA) because the POCA 2002 stops such transactions immediately. The FATF stated that the UK has the vital structural elements needed for an efficient AML/CTF system, including institutional and political stability, governmental accountability, rule of law, and a professional and independent legal profession.³⁵ As mentioned above, the Thailand government realises that political stability is also key element for Thailand to improve the independence of the FIU without the politic influence, in particular from the military coups in the STRs regime under the AMLA 1999.

8.3 Recommendations

One of the aims of understanding the appropriate legislation regarding the role of FIU in line with international standards is to support the Thailand government to enhance the issues in the AML law. This thesis has argued that s. 40 of the AMLA 1999 might fulfil the functions of the AMLO in accordance with the FATF Recommendation 29. It empowers the AMLO in dealing with money laundering and its associated predicate offences. When the AMLO has performed its responsibilities, such as receiving the reports from FIs for disseminating intelligence to LEAs³⁶ or gathering evidence for taking legal proceedings against offenders³⁷ under the AMLA 1999. This thesis has illustrated that certain provisions of the AMLA 1999 require the improvement in order to meet the requirements of international standards, especially the powers and responsibilities of the role and operational independence of the

³⁵ Financial Action Task Force (FATF), *Anti-Money Laundering and Counter-Terrorist Financing Measures - United Kingdom Fourth Round Mutual Evaluation Report* (FATF 2018) 21.

³⁶ Anti-Money Laundering Act B.E. 2542 (1999), s. 40(3).

³⁷ Anti-Money Laundering Act B.E. 2542 (1999), s. 40(5).

CHAPTER Eight: Conclusion and Recommendations

AMLO by amending the AMLA 1999 regarding such issues that enhance the implementation of the FATF Recommendations. Furthermore, the applicable UK and Singapore legislation regarding the role of FIU provides that the optional FIU model as an administrative-FIU model should be adopted by Thailand. The application of the administrative-FIU style will support the AMLO's operational independence from being abused by political interference and influence. Moreover, this model will prevent the AMLB from using s. 25(3) of the AMLA 1999 to intervene and control the AMLO by holding or restraining the act of AMLO, which the AMLB sees as a breach of basic human rights.³⁸ As a consequence, the person having made the transaction, whose asset has been confiscated, may produce evidence that the asset in such transaction does not involve with the commission of the offence so that the confiscation may be revoked under the Ministerial Regulation.³⁹ Furthermore, the person also files a petition to the Court to claim the return of the asset.⁴⁰ The thesis has pointed out that the AML provisions on the role of AMLO can meet the requirements of the FATF Recommendations by amending the AML provision concerning the role of AMLO and its operational independence. This success is demonstrated in the FATF's MER that raised the UK's AML legal framework to be an example of best practices to benchmark for the development of Thailand's AML legal framework.⁴¹ FATF also raised Singapore that its success was the implementation of systems by government agencies such as the STRO, MAS and LEAs, as well as the enhanced

³⁸ Anti-Money Laundering Act B.E. 2542 (1999), s. 25(3) amended in accordance with the AMLA (No.5) B.E.2558 (2015).

³⁹ Anti-Money Laundering Act B.E. 2542 (1999), s. 48.

⁴⁰ Anti-Money Laundering Act B.E. 2542 (1999), s. 51/1 para two amended in accordance with the AMLA (No.5) B.E.2558 (2015).

⁴¹ *Financial Action Task Force* (n 35) 6, 47.

CHAPTER Eight: Conclusion and Recommendations

awareness among FIs.⁴² Thus, Thailand can learn lessons from best practices in order to develop its AML legislation to meet international standards. This is argued that best practices use the common law system, but Thailand employs civil law system in how Thailand can benchmark from such jurisdiction. However, it is clear from the FATF MER that FATF and Egmont Group network have supported all member states to develop their legislation to meet the international requirements.

Therefore, it is challenging as the future success of the implementation of the FATF Recommendations depends on the application of a national legal provisions that should consider the role of FIU without political interference and influence. The thesis focuses on how to improve the AML legislation regarding the role of FIU and the operational independence among limited capacity and resources for implementation of international standards.⁴³ This is a challenge for Thailand government to amend the AMLA 1999 in line with the best practice of international standards.

The National Risk Assessment Report (NRA)⁴⁴ in Thailand should be published in order to raise public awareness of the growing money laundering threat and its typologies in jurisdiction. The NRA has been published only a brief version on the AMLO's website, which is still not sufficient to enhance the deeply understanding concerning the money laundering risk in Thailand effectively.

⁴² Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), *Anti-Money Laundering and Counter-Terrorist Financing Measures – Singapore Fourth Round Mutual Evaluation Report* (FATF and APG 2016) 183; see also Benjamin Cher, 'Singapore lauded by anti-money laundering global taskforce but more could be done, says FATF' (*The Edge*, 27 September 2016) <<https://www.theedgesingapore.com/article/singapore-lauded-more-can-be-done-combat-money-laundering-terrorism-financing>> accessed 21 July 2019.

⁴³ *Asia/Pacific Group on Money Laundering* (n 6) 48.

⁴⁴ Hereinafter referred to as the 'NRA'.

CHAPTER Eight: Conclusion and Recommendations

The predicate offences set forth in the AMLA 1999 do not meet the FATF Standards because the AMLA 1999 determines only 28 designated categories of offences.⁴⁵ Thus, the list of predicate offences should be extended to comprise the minimum list of offences as defined in the General Glossary of the FATF Recommendations with a view to fulfilling the relevant FATF Recommendations in this regard. This is unlike the UK AML system, where the POCA 2002 adopts an ‘all crime’ basis for money laundering. When Singapore has more than 400 predicate offences in the Schedules of the CDSA 1992, the AMLA 1999 should added the number of predicate offences and illustrate such lists in the Schedules of the CDSA 1992 in order to help users clearly understand and meet the FATF requirements.

The oversight of the FIU is the crucial lesson that Thailand should learn from the UK because the UKFIU has several effective private and public committee, such as the JMLSG, JMLIT, JFAC, SARs Regime Committee, to monitor and supervise the AML policies regarding the SARs regime, in particular the independence of the FIU without the political influence. Similar to Singapore, the Singapore’s Anti-Money Laundering and Countering Financing Terrorism Steering Committee (AML/CFT Steering Committee), as well as the ACIP would be best practices to increase the independence of the Thailand FIU because they comprise the private and public sector to enhance the STRs regime, especially when the Thailand FIU operate its functions. As reasons mentioned above, the thesis considers that the AML Committee, which consists of the several sector can improve the independence of the FIU whether the quality of STRs/SARs or the key element to empower the Thailand FIU in conducting its functions without the interference and influence of the AMLB or government under the military coup.

⁴⁵ Anti-Money Laundering Act B.E. 2542 (1999), s 3.

8.4 Further Areas for Research

The thesis focused on the examination of the AML legislation regarding the role of FIU under the international standards, the FATF Recommendation 29 in particular. It would be useful to examine this legislation to compare the legislation related to the role of FIUs in the UK and Singapore in implementing such international standards. This would illustrate a clearer picture of the legislative framework regarding the effective role of FIU to meet the international standards requirements. Another area for examination was the role of AMLB under s. 25(3) of the AMLA 1999.⁴⁶ It would be beneficial to examine this issue in the context of international standards to see whether the Act would provide an appropriate power of the AMLB in controlling the TC,⁴⁷ the AMLO⁴⁸ and the Secretary-General⁴⁹ in line with the FATF Recommendation 29 which provides operational independence to them.⁵⁰

⁴⁶ Anti-Money Laundering Act B.E. 2542 (1999), s. 25(3) amended in accordance with the AMLA (No.5) B.E.2558 (2015).

⁴⁷ Anti-Money Laundering Act B.E. 2542 (1999), s. 34.

⁴⁸ Anti-Money Laundering Act B.E. 2542 (1999), s. 40.

⁴⁹ Anti-Money Laundering Act B.E. 2542 (1999), s. 41.

⁵⁰ Financial Action Task Force (FATF) Recommendation 29.

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