

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY MALAYSIA**

ARTICLE 14 UNCAC

PREVENTION OF MONEY-LAUNDERING

MALAYSIA (SIXTH MEETING)

Legal Framework

The **Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001** (AMLA)¹ is the primary statute governing the AML/CFT regime in Malaysia. The Act was gazetted as law on 5 July 2001 and came into force on 15 January 2002.

The AMLA provides for the offence of money laundering and terrorism financing and the measures to be undertaken for the prevention of money laundering and terrorism financing offence.

The AMLA provides wide-ranging investigation powers including powers for law enforcement agencies and Public Prosecutor to freeze and seize properties that are involved or suspected to be involved in money laundering or terrorism financing offences, and the power of the court to forfeit properties derived from the proceeds of serious crimes.

The enforcement of the AMLA is undertaken by various ministries/agencies based on the predicate offences under their respective purview which is listed under the Second Schedule of the AMLA. As at November 2014, there are 356 offences under 42 pieces of legislation are listed under the Second Schedule of the AMLA.

The Central Bank of Malaysia or *Bank Negara Malaysia* is only empowered to investigate money laundering cases relating to laws administered by *Bank Negara Malaysia*, namely:

- Financial Services Act 2013
- Islamic Financial Services Act 2013
- Money Services Business Act 2011
- Development Financial Institutions Act 2002 (Act 618)

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) covers the following of reporting institutions, financial as well as designated non-financial businesses and professions (DNFBPs) as provided under its "First Schedule":

FIRST SCHEDULE

[Section 3, definition of "reporting institution"]

PART I

1. Activities carried out by—

- (a) a licensed bank;*
- (b) a licensed investment bank;*

- (c) a licensed insurer carrying on life business;
- (d) an approved financial adviser in relation to life business;
- (e) an approved insurance broker in relation to life business;
- (f) an approved issuer of designated payment instrument; and
- (g) an approved money-broker,
- as defined or provided in the Financial Services Act 2013 [Act 758].
2. Activities carried out by—
- (a) a licensed Islamic bank;
- (b) a licensed international Islamic bank;
- (c) a licensed takaful operator carrying on family takaful business;
- (d) a licensed international takaful operator carrying on family takaful business;
- (e) an approved Islamic financial adviser in relation to family takaful business;
- (f) an approved takaful broker in relation to family takaful business; and
- (g) an approved issuer of designated Islamic payment instrument,
- as defined or provided in the Islamic Financial Services Act 2013 [Act 759].
3. Activities carried out by a prescribed institution as defined in the Development Financial Institutions Act 2002 [Act 618].
4. Activities of—
- (a) dealing in securities;
- (b) dealing in derivatives; or
- (c) fund management,
- carried out by a holder of a licence under the Capital Markets and Services Act 2007 [Act 671].
5. Activities carried out by a licensee as defined in the Money Services Business Act 2011 [Act 731].
6. Activities carried out by the Lembaga Tabung Haji established under the Tabung Haji Act 1995 [Act 535].
7. Activities carried out by a licensee relating to postal financial services as defined in the Postal Services Act 2012 [Act 741].
8. Activities carried out by a common gaming house as defined in the Common Gaming Houses Act 1953 [Act 289].
9. Activities carried out by a member as defined in the Accountants Act 1967 [Act 94].
10. Activities carried out by an advocate and solicitor as defined in the Legal Profession Act 1976 [Act 166].
11. Activities carried out by a person admitted as an advocate pursuant to the Advocate Ordinance Sabah 1953 [Sabah Cap. 2].
12. Activities carried out by a person admitted as an advocate pursuant to the Advocate Ordinance Sarawak 1953 [Sarawak Cap 110].
13. Activities carried out by a person prescribed by the Minister or licensed by the Registrar of Companies to act as a secretary of a company pursuant to section 139A of the Companies Act 1965 [Act 125].
14. Activities carried out by a licensee as defined in the Pool Betting Act 1967 [Act 384].
15. Activities carried out by a totalizator agency as defined in the Racing (Totalizator Board) Act 1961 [Act 494].
16. Activities carried out by a racing club as defined in the Racing Club (Public Sweepstakes) Act 1965 [Act 404].

17. *Activities carried out by a notary public as defined in the Notaries Public Act 1959 [Act 115].*
18. *Activities carried out by a trust company as defined in the Trust Companies Act 1949 [Act 100].*
19. *Activities carried out by the Corporation as defined in the Public Trust Corporation Act 1995 [Act 532].*
20. *Activities carried out by a moneylender as defined in the Moneylenders Act 1951 [Act 400].*
21. *Activities relating to building credit business, development finance business, factoring business or leasing business carried out by companies incorporated pursuant to the Companies Act 1965 and businesses as defined and registered under the Registration of Businesses Act 1956 [Act 197].*
22. *Activities carried out by a licensee as defined in the Pawnbrokers Act 1972 [Act 81].*
23. *Activities relating to an estate agency practice carried out by a registered estate agent as defined in the Valuers, Appraisers and Estate Agents Act 1981 [Act 242].*
24. *Activities of dealing in precious metals or precious stones carried out by companies incorporated pursuant to the Companies Act 1965 and businesses as defined and registered under the Registration of Businesses Act 1956.*

PART II

Activities carried out by a Labuan financial institution as defined in the Labuan Financial Services Authority Act 1996 [Act 545].

Anti-Money Laundering regime of Malaysia:

Domestic regulatory and supervisory regime to banks etc to deter and detect all forms of money laundering in Malaysia includes the following measures:

A. The Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007, reproduced below:

Part I PRELIMINARY

1. Citation.

These regulations may be cited as the Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007.

Part II REPORT BY REPORTING INSTITUTIONS

2. Invocation of paragraph 14(b).

This part shall apply upon invocation of provision of paragraph 14(b) of the Act in respect of a reporting institution.

3. Suspicious transaction report (STR).

A reporting institution shall promptly report to the competent authority any attempt transaction or transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of

the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity regardless of the amount of the transaction.

Part III IDENTIFICATION OF ACCOUNT HOLDERS

4. Invocation of section 16

This part shall apply upon invocation of provision of section 16 of the Act in respect of a reporting institution.

5. Customer due diligence (CDD)

(1) A reporting institution shall conduct customer due diligence measures on its account holders, including when-

- (a) there is a suspicion of money laundering: or
- (b) it has doubt about the veracity or adequacy of information on the identity of the account holder

which it has obtained previously

(2) The reporting institution shall verify, by reliable means or from any independent source of document, data or information-

- (a) that any person who is purporting to act on behalf of the account holder is so authorized and the authority of that person : and
- (b) a beneficial owner on whose behalf an account is opened or a transaction is conducted and the identity of that person

(3) The reporting institution shall conduct ongoing due diligence on all its business relationship with any account holder.

Part IV RETENTION OF RECORDS

6. Invocation of section 17.

This part shall apply upon invocation of provision of section 17 of the Act in respect of a reporting institution.

7. Maintenance of records.

(1) A reporting institutions shall ensure that any records under Part IV of the Act including account holder identification records are maintained and any information relating to such records are made available on a timely basis when required by the competent authority.

(2) Any person who contravenes subregulation (1) commits an offences and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offences, to a further fine not exceeding one thousand ringgit for each day during which the offences continues after conviction.

B. Cash Treshold Report (CTR).

CTR refers to cash transactions exceeding MYR 50,000 (or any other amount advised) involving physical currencies (domestic or foreign currency) and bearer negotiable

instruments such as travellers' cheques but excludes bank drafts, cheques, electronic transfers or fixed deposit rollovers or renewals. These include transactions involving withdrawal of cash from accounts or exchange of bearer negotiable instruments for cash.

The requirements for CTRs are applicable to single or multiple cash transactions within the same amount specified in a day. Where there are deposit and withdrawal transactions, the amount must be aggregated. For example, a deposit of MYR 40,000 and a withdrawal MYR 20,000 must be aggregated to the amount of MYR 60,000 and hence, must be reported if it exceeds the amount specified.

Section 4A of the AMLA set out the offence of structuring transactions so as to avoid reporting CTR. A structuring involves splitting transactions into separate amounts under MYR 50,000 per day to avoid CTR transaction reporting requirements under the AMLA. To date, CTR reporting obligations are imposed on banking institutions and the licensed casino only.

C. Declaration of cash or negotiable bearer instruments under Sections 28 B and 28C Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 :-

28B. Persons leaving or entering Malaysia with cash or bearer negotiable instruments

(1) Any person leaving or entering Malaysia with an amount in cash, bearer negotiable instruments or both exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority.

(2) For the purposes of this section, a person leaves or enters Malaysia with cash or bearer negotiable instruments if the person brings the cash or bearer negotiable instruments with him in his accompanying baggage or on any conveyance or otherwise.

(3) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

28C. Movement of cash or bearer negotiable instruments by post, etc.

(1) Any person who moves into or out of Malaysia through the postal, courier or freight forwarding services, or by any other means, any cash, bearer negotiable instruments or both exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

The Anti-Money Laundering and Anti-Terrorism Financing (Cash and Negotiable Bearer Instruments Declaration) Order 2009

In exercise of the power conferred by subsection 23(1)2 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001, the competent authority makes the following order:

1. Citation and commencement.

(1) These order may be cited as the Anti-Money Laundering and Anti-Terrorism Financing (Cash and Negotiable Bearer Instruments Declaration) Order 2009.

(2) This order comes into operation on 1 January 2010

2. Declaration.

A person leaving or entering Malaysia with an amount in cash, negotiable bearer instruments or both, exceeding an amount equivalent to ten thousand United States dollars (**USD 10,000**) shall declare such amount to the competent authority in the Form Customs No. 22 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977

D. Declaration about receipts of cash or bearer negotiable instruments from outside Malaysia under Section 28E of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

(1) Any person who receives cash or bearer negotiable instruments or both which is moved to the person from outside Malaysia exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority and provide such other information as may be required by the competent authority.

(2) A declaration under subsection (1) shall be made within five business days from the day of the receipt of the cash or bearer negotiable instruments or both.

(3) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

E. Compliance Programme under Section 19 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

(1) A reporting institution shall adopt, develop and implement internal programmes, policies, procedures and controls to guard against and detect any offence under this Act.

(2) The programmes in subsection (1) shall include—

(a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of these employees;

(b) on-going employee training programmes, such as “know-your-customer” programmes, and instructing employees with regard to the responsibilities specified in sections 13, 14, 14A, 15, 16 and 17; and

(c) an independent audit function to check compliance with such programmes.

(3) A reporting institution shall implement compliance programmes under subsection (1) on its branches and subsidiaries in and outside Malaysia.

(4) A reporting institution shall also designate compliance officers at management level in each branch and subsidiary who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(5) A reporting institution shall develop audit functions to evaluate such policies, procedures and controls to test compliance with the measures taken by the reporting institution to comply with the provisions of this Act and the effectiveness of such measures.

F. Beneficial Ownership Disclosure under the Securities Industry (Central Depositories) Act 1991

Under the Securities Industry (Central Depositories) Act 1991 (Act 453) the term “beneficial owner”, in relation to deposited securities, mean the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description;

Section 4 of SICDA 1991- Application for approval to establish and maintain a central depository

4. (1) Any company incorporated under the Companies Act 1965 which proposes to establish and maintain a central depository shall apply to the Minister in writing for approval.

(2) An application made under subsection (1) shall be accompanied with the following:

(a) a copy of the memorandum and articles of association, duly verified by a statutory declaration made by a director of the applicant;

(b) a copy of the latest audited balance sheet, profit and loss account (together with any note thereon) and the reports, if any, of the auditors and the directors of the applicant;

(c) a statement on the following: (i) the name, place and date of incorporation of the applicant; (ii) the registered office and place or proposed place of business of the applicant; (iii) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and (iv) the name of the stock exchange, if any, in respect of which the central depository will be established and maintained;

(d) operational information on the system to be established and maintained by the central depository;

(e) a copy of the rules that will apply to the central depository;

(f) the proposed fees and charges which will be imposed by the applicant in respect of the facilities and services to be provided by the central depository, including fees and charges for— (i) the establishment and maintenance of securities accounts; (ii) the deposit and withdrawal of securities; Securities Industry (Central Depositories) 15 (iii) the issuance of statements of accounts under section 26; (iv) the effecting of entries in securities accounts in respect of transactions under section 31; (v) the issuance of records of

depositors under section 34; (vi) the effecting of entries in securities accounts pursuant to any charges or pledges of deposited securities under section 40; and
(g) such other information or documents as may be required by the Minister or the Commission for the purposes of determining the application and the suitability of the applicant to establish and maintain a central depository. (2A) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.
(3) At any time after receiving an application the Minister or the Commission may, by written notice, require the applicant to provide additional information or documents.

Financial Intelligence and Law Enforcement Agencies

The Financial Intelligence Unit (FIU) is established within the Financial Intelligence and Enforcement Department in Bank Negara Malaysia to manage and provide comprehensive analysis on the financial intelligence received relating to money laundering and terrorism financing. The financial intelligence received may come from various sources such as STRs and CTRs received from the reporting institutions, local law enforcement agencies and foreign FIUs.

The financial intelligence information will be disseminated to the respective law enforcement agencies for further action.

The law enforcement agencies have the power to enforce the law under Part V of the AMLA for any offence that is committed or has reason to suspect the commission of an offence under their respective purview. To assist investigation, the enforcement agency may also request for financial intelligence from the FIU.

Domestic Cooperation

The implementation of AML/CFT regime is coordinated by the NCC, a body established in 2000 to coordinate, implement and monitor the development of the national AML/CFT initiatives.

There are two levels of coordination:

1. NCC Working Group

Operational level where it involves coordination at the working level to address operational issues pertaining to the implementation and effectiveness of initiatives approved by the NCC High Level. At the operational level, sub-committees and task forces are established to discuss specific issues that require participation of various members.

2. NCC High Level

Formulates policy, provide advisory role and set out the strategic direction of the NCC. This level comprises of the Heads or Deputies of the member Ministries or agencies.

Members of the NCC

Comprised of 16 Ministries and government agencies from supervisory/regulatory authorities, law enforcement agencies and policy-making ministries. Bank Negara Malaysia is the Secretariat for the NCC. Members of the NCC are:

- Attorney General's Chambers;
- Bank Negara Malaysia;
- Companies Commission of Malaysia;
- Immigration Department of Malaysia;
- Inland Revenue Board of Malaysia;
- Labuan Financial Services Authority;
- Malaysian Anti-Corruption Commission;
- Ministry of Domestic Trade, Co-operatives and Consumerism;
- Ministry of Finance;
- Ministry of Foreign Affairs;
- Ministry of Home Affairs;
- Ministry of International Trade and Industry;
- Registrar of Societies;
- Royal Malaysia Police;
- Royal Malaysian Customs Department; and
- Securities Commission Malaysia.

International Cooperation

At the international level, Malaysia participates in various regional and international initiatives in its global fight against money laundering and terrorism financing.

Malaysia's membership in the Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units provides Malaysia with a platform to cooperate in various AML/CFT issues including in the areas of training and sharing of information.

1. Asia/Pacific Group on Money Laundering (APG)

APG is an autonomous and collaborative international organisation formed in 1997 in Bangkok, Thailand. Members of the APG comprise of 41 countries and a number of international and regional observers such as the Financial Action Task Force (FATF), International Monetary Fund (IMF), World Bank, United Nations Office on Drugs and Crime and the Egmont Group of Financial Intelligence Units.

Malaysia has been a member of the APG since 31 May 2000 and supports many initiatives undertaken by the APG such as the following:

- co-chair of the APG, together with Australia from 2000 – 2002;
- co-chair of the Regional Review Group under the FATF International Cooperation Review Group (ICRG) which is mandated to review member countries' AML/CFT measures identified by the ICRG from 2008 – 2010;

- co-chair of the Implementation Issues Working Group (IIWG) which is mandated to provide strategic support to members in the implementation of the FATF Recommendations from 2006 – 2010; and
- a current member of the APG Donor & Provider Group (DAP) which is mandated to provide technical assistance and advisory services in the region on a range of issues associated with AML/CFT.

2. Egmont Group of Financial Intelligence Units

Malaysia was admitted as a member of the Egmont Group in July 2003. Malaysia was also elected as the Asia Chair in the Egmont Committee for two terms (2006/2008 and 2008/2010).

The membership in the Egmont Group provides platform for Malaysia to share and to request financial intelligence with other Egmont Group members through a secured network.

3. Financial Action Task Force on Money Laundering (FATF)

As a member of the APG, Malaysia is subjected to periodic assessments or mutual evaluation on compliance with the FATF Standards on AML/CFT. Malaysia was assessed in 2001 and 2007 respectively, and currently scheduled to undertake the third mutual evaluation in the fourth quarter of 2014. The NCC spearheads Malaysia's preparation for the assessment.

Based on the Mutual Evaluation Reports (MER) of 40 countries that were published as at July 2007, Malaysia was one out of only three countries that were rated "Largely Compliant" against the FATF Recommendation on customer due diligence, while no country has been assessed to be fully compliant. Overall, Malaysia obtained nine "Compliant", 24 "Largely Compliant", 15 "Partially Compliant" and one "Non-Compliant" ratings against the FATF 40+9 Recommendations.

4. Association of Southeast Asian Nations (ASEAN)

Malaysia is an ASEAN member since its establishment on 8 August 1967. One of the fundamental principles of the ASEAN is to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations. In line with this principle, recognizing the detrimental effects of transnational crime, the ASEAN member countries have established a framework to strengthen and coordinate ASEAN collaboration in combating transnational crime:

- ASEAN Ministerial Meeting on Transnational Crime (AMMTC)
- The policy-making body for ASEAN cooperation in combating transnational crime.
- Senior Officials Meeting on Transnational Crime (SOMTC)
- Implement policies and plans adopted by the AMMTC.
- There are eight areas of transnational crime under the purview of SOMTC which are arms smuggling, cybercrime, illicit drug trafficking, international economic

crime, money laundering, sea piracy, terrorism and trafficking in persons. Malaysia is the lead shepherd for money laundering and sea piracy initiatives.

- Ministry of Home Affairs is the coordinating agency for Malaysia's representation to SOMTC.