

Strengthening the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Framework

In recognition of the increasing threats from money laundering and terrorism financing (ML/TF) in recent years, many countries including Malaysia have intensified efforts to develop and maintain an AML/CFT regime that is robust and can effectively respond to the constantly evolving risks and vulnerabilities. These efforts are aimed at protecting the integrity of the financial system and the economy. The AML/CFT regime in Malaysia is characterised by four pillars - a comprehensive legal framework, implementation of preventive measures, effective enforcement of laws and regulation and close cooperation between agencies, both domestically and internationally.

The first pillar is a comprehensive legal framework that provides for a wide range of ML/TF offences, sufficient powers of investigation and prosecution for relevant law enforcement agencies and a broad range of proportionate and dissuasive sanctions.

This is reinforced by the second pillar - the implementation of preventive measures to detect and deter ML/TF activities in financial transactions undertaken by financial institutions as well as designated non-financial businesses and professions (DNFBPs)¹. The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) and relevant regulatory requirements collectively aim to ensure that reporting institutions implement the necessary preventive measures and establish AML/CFT risk controls and programmes that are commensurate with the ML/TF risks associated with the profile of their business. Efforts are currently underway to further strengthen the AMLATFA and regulatory requirements in response to new and emerging risks, and to reflect industry practices that have evolved in managing ML/TF risks.

The third pillar is the effective enforcement of the laws and regulations to promote an environment that dissuades ML/TF activities. Investigations and enforcement actions are carried out by the relevant law enforcement agencies and supported by timely financial intelligence. As the competent authority under the AMLATFA, the Bank serves as the Financial Intelligence Unit (FIU) which is responsible for analysing reports submitted by the reporting institutions and disseminating financial intelligence to the relevant law enforcement agencies. The FIU also conducts supervisory and enforcement activities on reporting institutions under the Bank's purview.

The fourth pillar is the close cooperation and coordination between agencies both in Malaysia and across borders. Domestically, the National Coordination Committee to Counter Money Laundering (NCC) which was established since April 2000 plays an important role in strengthening cooperation between the various agencies involved in combating ML/TF and in coordinating inter-agency strategic and policy initiatives. This has included joint efforts in investigating and prosecuting crimes that involve multiple law enforcement agencies. At the international level, membership in the Egmont Group of Financial Intelligence Units provides Malaysia with a platform to cooperate particularly in the areas of training and sharing of information. Cooperation with international counterparts also continues to be forged. In 2013, the Bank signed two Memoranda of Understanding (MoUs) with the financial intelligence units of the Republic of South Africa and St Kitts-Nevis, bringing the total number of such MoUs in place so far to 37.

Amendments to the AMLATFA

During the year, the Bank under the ambit of the NCC proposed several amendments to the AMLATFA and revised the existing regulatory requirements in line with global standards and to ensure that the AML/CFT framework remains relevant and effective in combating ML/TF threats.

¹ Designated non-financial businesses and professions (DNFBPs) include casino, lawyers, accountants, dealers of precious metals and stones, gaming business, money lenders, pawn brokers, trust companies and real estate agents.

The proposed amendments to the AMLATFA were tabled for the first reading in Parliament in December 2013. The proposed amendments are aimed at:

(i) Enhancing clarity of reporting obligations

The amendments will clarify regulatory expectations and obligations of reporting institutions when conducting customer due diligence (CDD), including an expansion of the requirements relating to document retention. The amendments will also include an explicit requirement for reporting institutions to submit suspicious transaction reports (STRs) on suspicion of terrorism financing. To safeguard the confidentiality of information reported to the Bank, specific amendments are also being proposed to criminalise the act of tipping-off customers after an STR has been submitted to the Bank.

(ii) Strengthening measures on declaration for cross-border transportation of cash / bearer negotiable instruments (BNIs)

Reflecting heightened international concerns with cross-border transportation of cash or BNIs for ML/TF purposes, requirements on cash declarations will be expanded to include transportation of cash or BNIs via cargo, mail or other means as well as new requirements on the declaration of cash received from outside Malaysia. The amendments also provide specific powers for enforcement authorities to seize any undeclared cash or BNIs.

(iii) Widening the scope of offences and strengthening enforcement powers

The proposed amendments will expand the scope of money laundering offences to include any thing or any property which is used in connection with the commission of a serious offence in addition to expanding the definition of proceeds of an unlawful activity. The practice of structuring transactions in order to evade cash threshold reporting requirements will also be made an offence.

Provisions relating to the freezing, seizure and forfeiture of assets under investigation will be enhanced, by including the power to vary or revoke an order to freeze property. To ensure that penalties serve as a credible deterrent, the amendments will increase the maximum penalty for an ML offence to 15 years imprisonment, and a fine of not less than five times the sum or value of the proceeds of unlawful activity or instrumentalities of an offence at the time the offence was committed, or RM5 million, whichever is higher.

Revised Regulatory Requirements

The AML/CFT requirements, first issued under the AMLATFA in 2006 were also revised in 2013 to support the more effective implementation of AML/CFT measures by both regulators and reporting institutions. This included changes that would promote a more consistent application of AML/CFT requirements throughout the financial sector including the securities industry and financial institutions in the Labuan International Business and Financial Centre. The requirements were also enhanced by incorporating higher expectations following the recent changes in international AML/CFT standards.

The revised regulatory requirements reflect a stronger emphasis on the implementation of a risk-based approach to the management and control of ML/TF risks. This approach seeks to ensure that AML/CFT measures implemented by reporting institutions are proportionate to risk, while responding to concerns that the indiscriminate implementation of AML/CFT measures can result in the exclusion of legitimate consumers and businesses from the formal financial system.

The Bank revised and issued five AML/CFT policies to the financial sector, including the money services business sector, DNFBPs and non-financial sector, which came into effect in September 2013 and November 2013 respectively. The revisions cover the following areas:

(i) Introduction of a risk-based approach to AML/CFT

Reporting institutions are now required to adopt a risk-based approach to identify, assess, and mitigate the ML/TF risks associated with their products, services and operations. This includes requirements for reporting institutions to conduct comprehensive risk assessments and risk profiling of customers, and to implement the appropriate internal controls, policies and procedures to prevent their businesses from being used as a conduit for ML/TF.

(ii) Refined and strengthened CDD requirements

Taking into consideration the average transaction size and feedback from enforcement agencies, the CDD thresholds for money changing transactions were revised downwards from RM20,000 to RM3,000 and RM10,000. Reporting institutions are now required to sight and record the identification information of the customer or beneficial owner for transactions above RM3,000; whilst for transactions above RM10,000, reporting institutions are also required to retain a copy of the identification document. The revised thresholds would further strengthen safeguards against ML/TF risks in the money services business sector.

In line with efforts to promote greater financial inclusion, the list of identification documents which can be accepted for CDD verification purposes has also been expanded. The revised requirements allow the use of any official document bearing the photograph of the customer or beneficial owner, provided that the reporting institution is satisfied with the authenticity of the document presented.

To streamline the requirements with international standards, the requirements relating to politically exposed persons (PEPs) have been extended to include domestic PEPs² and persons entrusted with prominent functions by an international organisation. Reporting institutions are now required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or person entrusted with prominent functions by an international organisation, perform a risk assessment, and apply the appropriate CDD measures for the level of risk identified.

(iii) Enhanced requirements on AML/CFT compliance programme

Revised requirements were introduced to raise standards of compliance by reporting institutions. This included higher expectations placed on the compliance function and requirements for compliance officers to meet minimum 'fit and proper' criteria. An important objective of these requirements was to ensure that reporting institutions give adequate priority to AML/CFT activities in the key business activities of the institution, and to enhance the role of compliance officers in driving AML/CFT improvements within the reporting institutions. Considering the significance of the banking and insurance sectors in the financial system, the Bank introduced additional requirements to ensure that compliance officers in these financial institutions have sufficient stature, authority and seniority to effectively influence decisions that affect the level of compliance with AML/CFT requirements.

In view of the critical role of the board of directors, particularly of financial institutions and the larger reporting institutions, in setting the tone and influencing the culture of their institutions, the revised requirements also make the board specifically responsible for maintaining overall accountability for and oversight of the AML/CFT programme within the reporting institution.

(iv) Introduced new requirements on financial group reporting

To ensure that the activities of a financial group do not result in undue risks to the integrity of the financial system, the Bank now requires financial groups to implement AML/CFT compliance programmes on a group-wide basis and to appoint a group compliance officer

² Domestic PEPs are defined as individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials.

for AML/CFT. This will ensure that the AML/CFT compliance programme is consistent across the entire group and facilitate consolidated AML/CFT supervision by the Bank.

(v) Clarified requirements for dealing with customers from higher risk countries

In view of the increasing exposure to cross-border transactions and customers originating from other countries, the Bank enhanced regulatory expectations on financial institutions that transact with persons from countries deemed as higher risk by either the Financial Action Task Force (FATF)³ or the Government of Malaysia. In addition to the CDD, reporting institutions are required to apply counter-measures which are proportionate to the risk posed by these customers or transactions. These measures include reviewing existing relationships with customers or institutions in higher risk countries, and enhancing the intensity and frequency of audits on branches and subsidiaries operating in higher risk countries.

A series of awareness sessions on the revised requirements was conducted for all key sectors and will be continued in 2014 to support the effective implementation of the requirements by reporting institutions as part of their AML/CFT compliance and risk management programmes.

³ FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of weapons of mass destruction. Currently, FATF's membership comprises 34 member countries and two regional bodies.