Malaysia's Anti-Money Laundering / Counter Financing of Terrorism (AML/CFT) Programme

Overview

Malaysia has in place a comprehensive AML/CFT regime. The AML/CFT programme implemented in Malaysia is reinforced by the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLA) and its related AML/CFT regulations, which are consistent with international standards, namely, the Financial Action Task Force on Money Laundering (FATF) Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing (FATF 40+9 Recommendations). The FATF is the inter-governmental body that sets the international standard for the development of national and international policies to combat money laundering and terrorism financing.

A coherent AML/CFT programme is achieved through a robust and comprehensive legal framework, preventive measures as well as effective domestic and international inter-agency cooperation to support capacity building, surveillance and enforcement activities of the respective authorities. The legal and institutional framework for AML/CFT in Malaysia has been incrementally implemented and strengthened since 2002 and is applied to financial institutions as well as designated non-financial businesses and professions (DNFBPs).

In early 2007, the second round of the Asia/Pacific Group on Money Laundering (APG) Mutual Evaluation Exercise was carried out on Malaysia. The APG Mutual Evaluation Exercise provides an independent assessment of the state of Malaysia's AML/CFT programme and its compliance with international standards. Malaysia's ratings were comparable with many developed countries. 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. The results of the APG Mutual Evaluation affirm Malaysia's significant efforts in developing and implementing a comprehensive legal system in criminalising money laundering and terrorism financing, law enforcement, financial intelligence, freezing, seizure and confiscation of proceeds of crime, as well as implementing effective preventive measures for financial institutions and DNFBPs, which have served to safeguard Malaysia's financial system against the threat posed by money launderers and terrorist financiers. As an ongoing effort, Bank Negara Malaysia will continue to be vigilant in monitoring and ensuring effective implementation of the AML/CFT legal and regulatory framework, while directing attention towards capacity building as well as domestic and international cooperation.

AML/CFT Legal and Regulatory Framework

The AML/CFT legal and regulatory framework is regularly reviewed and where necessary, appropriate amendments to the laws and regulations are made to ensure that they remain effective and relevant in dealing with money laundering and terrorism financing threats. In this regard, the Anti-Money Laundering (Amendment) Act 2003 and consequential amendments to four other related acts, namely, the Penal Code (Amendment) Act 2003, Criminal Procedure Code (Amendment) Act 2006, Courts of Judicature (Amendment) Act 2004, and Subordinate Courts (Amendment) Act 2004 were brought into force in March 2007. The amendments were made to incorporate provisions dealing with the offence of terrorism financing. The new Part VIA in the Anti-Money Laundering (Amendment) Act 2003 provides for measures to be taken for the prevention of terrorism financing offences and for the forfeiture of terrorist property and property involved in, or derived from terrorism financing offences. Consequently, Malaysia's anti-money laundering legislation became known as the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

These amendments have put in place a set of comprehensive laws and in particular, recognises the procedures for freezing of terrorist-related property, thus enhancing Malaysia's compliance with the FATF Special Recommendations on Terrorist Financing while facilitating Malaysia's accession to the United Nations International Convention for the Suppression of the Financing of Terrorism.

The list of predicate offences under the AMLA has also been expanded to include a broader range of offences commonly associated with money laundering and terrorist financing. These offences include corruption, fraud, criminal breach of trust, illegal gambling, credit card fraud, currency counterfeiting, robbery, forgery, human trafficking, extortion, smuggling and drug-related crimes. The list of predicate offences may be expanded by the authorities from time to time as deemed necessary.

In 2007, an offence relating to piracy or the counterfeiting of non-artistic goods was included as a predicate offence in the AMLA. With this inclusion, the list of offences in the AMLA is fully compliant with the FATF Recommendations. The comprehensive coverage of predicate offences in the AMLA will facilitate the more timely detection of money laundering and terrorism financing activities through the receipt of suspicious transaction reports (STRs) in relation to such offences from all reporting institutions. The STRs will also facilitate prompt investigations and prosecutions by law enforcement agencies into suspected money laundering or terrorism financing offences.

Preventive Measures for Financial Institutions and DNFBPs

Malaysia's AML/CFT preventive measures are uniformly applied to both conventional and Islamic financial institutions, and to the DNFBPs. In 2006, Bank Negara Malaysia issued the AML/CFT Guidelines and relevant Sectoral Guidelines for banking institutions and insurers. Under the Guidelines, financial institutions in Malaysia are required to consistently apply AML/CFT procedures and controls across all domestic and foreign branches as well as their subsidiaries. This would include the requirement for financial institutions to appoint compliance officers in each branch and subsidiary with appropriate independence and authority to access records and submit STRs.

Out of the 19 FATF Recommendations on preventive measures for financial institutions that were assessed in the APG MER, Malaysia was rated "Compliant" and "Largely Compliant" against 15 Recommendations. The remaining four Recommendations were rated "Partially Compliant", due mainly to the inability of the APG assessment team to fully establish the effectiveness of the implementation of the Guidelines as the APG MER was conducted during the early implementation phases of the AML/CFT Guidelines issued by the Bank. With the Guidelines having been fully implemented, the Bank is confident of being able to achieve broad compliance against these recommendations.

The effectiveness of the implementation of the relevant AML/CFT Guidelines and controls at financial institutions are evaluated under the risk-based supervisory framework, as part of the assessment of the overall safety and soundness of individual financial institutions. With the increasing focus on ensuring adequate AML/CFT internal control programmes, financial institutions have significantly strengthened their internal mechanisms for the detection of suspicious transactions, resulting in an improved quality of STRs submitted to the Bank and more timely provision of requested information for investigation purposes.

Obligations to establish an AML/CFT compliance programme for the DNFBPs sector came into force in early 2007 following the issuance of the AML/CFT Sectoral Guidelines to a licensed casino, licensed gaming outlets, lawyers, accountants and company secretaries. These AML/CFT Sectoral

Guidelines, which were issued to the relevant reporting institutions between February and April 2007, specify the regulatory requirements that are in line with the AMLA and the relevant FATF 40+9 Recommendations.

During the year, Bank Negara Malaysia undertook both on-site and off-site compliance examinations, targeted at selected reporting institutions, in particular, institutions engaging in predominantly cash-based transactions where the risk of money laundering and terrorism financing may be more prevalent. Such institutions include accountants, company secretaries and lawyers, as well as licensed gaming outlets. These compliance examinations enabled Bank Negara Malaysia to determine the state of compliance of DNFBPs with the AML/CFT legal and regulatory requirements.

Domestic Cooperation and Capacity Building

While Bank Negara Malaysia is the designated competent authority under the AMLA, the National Co-ordination Committee to Counter Money Laundering (NCC) consisting of 13 Ministries and Government agencies was set up in 2000 in order to achieve a coordinated approach towards ensuring the effective implementation of national AML/CFT measures. The NCC provides an integrated platform for the relevant Ministries, Government agencies and supervisory authorities to ensure that Malaysia implements an effective national AML/CFT system in line with the international standards. Bank Negara Malaysia, as the Secretariat to the NCC, continued to play an instrumental role in this process by promoting a collaborative culture between the Government and private sector towards achieving AML/CFT compliance. Among other things, regular engagements, dialogues and consultations with self-regulatory organisations (SROs) and associations were held during the year to enhance AML/CFT awareness while emphasising the importance of preventive measures.

In 2007, the NCC formulated a national action plan to address the various recommendations put forward in the APG MER over the next few years. The action plan includes legislative amendments, measures to strengthen regulatory guidelines and compliance monitoring, measures to enhance the investigative powers of law enforcement authorities and, in the longer term, the establishment of a national asset management corporation for seized and forfeited assets.

To further support the effective implementation of the AML/CFT programme, the development of the necessary expertise and capabilities within supervisory and regulatory agencies, law enforcement agencies (LEAs) and other related Government agencies and Ministries continued to receive priority. In 2007, training programmes on AML/CFT continued to focus on the supervisory and regulatory framework, legal aspects, typologies, financial investigative methods and analytical skills. These training programmes were organised by the relevant domestic agencies in collaboration with multilateral/regional bodies so as to promote a broader exchange of experiences and knowledge on implementation of effective AML/CFT programmes.

During the year, another 29 officers successfully completed the Certified Financial Investigator Programme (CFIP) and graduated as Certified Financial Investigators (CFIs) (2006: 24 officers). To reinforce the skill sets and competencies developed among the CFIs, two training programmes on forensic accounting and case analysis using the i2 software were organised by the Sub-Committee for Inter-Agency Training under the NCC as part of the continuous development programme for Alumni members.

International Cooperation

In view that money laundering and terrorism financing activities are transnational in nature, Bank Negara Malaysia continues to promote the exchange of financial intelligence with its international counterparts. In 2007, six Memoranda of Understanding (MoUs) on the exchange of financial intelligence were signed, bringing the total number of MoUs signed by Bank Negara Malaysia to 13, as follows:

No	International Counterparts	Country	Date Signed
1.	Australian Transaction Reports and Analysis Centre	Australia	2 August 2002
2.	*Pusat Pelaporan dan Analisis Transaksi Keuangan* (Indonesian Financial Transaction Reports and Analysis Centre)	Republic of Indonesia	31 July 2003
3.	Anti-Money Laundering Council	Republic of the Philippines	4 August 2004
4.	Anti-Money Laundering Office	Kingdom of Thailand	18 April 2005
5.	China Anti-Money Laundering Monitoring and Analysis Center- People's Bank of China	People's Republic of China	30 June 2006
6.	Korea Financial Intelligence Unit	The Republic of Korea	30 April 2007
7.	Japan Financial Intelligence Centre	Japan	29 May 2007
8.	Serious Organised Crime Agency	United Kingdom	30 May 2007
9.	*Finanspolisen Rikskriminalpolisen* (National Criminal Intelligence Service, Financial Unit)	Sweden	30 May 2007
10.	Financial Crimes Enforcement Network	United States of America	2 July 2007
11.	*Unidad de Análisis Financiero* (Financial Analysis and Intelligence Unit)	Republic of Chile	21 August 2007
12.	The Central Bank of Sri Lanka	Sri Lanka	18 January 2008
13.	Ministry of Finance	Brunei Darussalam	4 February 2008

The voluntary and unsolicited sharing of financial intelligence between competent authorities represents an important tenet of the MoUs signed by the Bank. In the recent past, this has resulted in valuable leads provided for further investigations into money laundering offences by the relevant LEAs, and the subsequent prosecution and conviction of perpetrators in foreign countries. This experience underscores the importance of cross-border information sharing and mutual cooperation.

Bank Negara Malaysia has also participated in regional capacity building programmes to enhance AML/CFT knowledge and technical capability in selected ASEAN member countries. The Bank in collaboration with the Australian Transaction Reports and Analysis Centre, provided technical assistance to the Anti-Money Laundering Office (AMLO) of Thailand in September 2007, focusing on enhancing the framework and infrastructure for reporting suspicious transactions to the AMLO.

Challenges Ahead

Bank Negara Malaysia, as the competent authority, together with the NCC remains vigilant to evolving money laundering and terrorism financing threats. Money laundering and terrorism financing typologies have indicated ongoing threats in high cash concentrated activities such as casinos, cash couriers, as well as informal remittance systems. In this regard, among others, the NCC has established a task force on cross border transportation of currency and bearer negotiable instruments to address the only "Non-Compliant" rating against the FATF Special Recommendation IX on Cash Couriers. The task force, which consists of Bank Negara Malaysia, the Royal Malaysian Customs, Ministry of Home Affairs and Immigration Department, will be making recommendations on appropriate regulatory and enforcement measures to prevent as well as to detect cash couriers moving funds illegally for criminal activity.

To mitigate the potential risk of criminal abuse from the prevalent use of alternative and informal remittance services provided through money changers, these businesses will be subject to more stringent supervisory measures, while the use of formal remittance channels such as banking institutions and licensed non-bank remittance operators will be further encouraged.

The effective compliance monitoring of DNFBPs remains a challenge due to the sheer number of these entities. There are approximately over 30,000 DNFBPs nationwide established either as sole proprietorships, partnerships or limited liability companies. The Bank will continue to promote a more active role on the part of the SROs or the trade bodies to ensure the compliance of DNFBPs with legal and regulatory AML/CFT requirements. This will be supplemented with the development of a comprehensive risk-based compliance framework that appropriately reflects the unique characteristics of this sector.

As financial institutions strengthen their internal AML/CFT programmes in line with the more stringent regulatory measures and international standards, it can be expected that perpetrators of illegal activities will seek alternative channels to further financial crimes. There is therefore a need to ensure on a continuous basis that the AML/CFT supervisory framework remains comprehensive in terms of reporting institutions covered and the effective enforcement of the AML/CFT measures. The challenge is, however, to ensure that the costs associated with increased regulatory and compliance measures are also balanced with the money laundering and terrorism financing risk. To this end, Bank Negara Malaysia and the NCC will continue to work with the relevant business communities in instituting appropriate AML/CFT measures that are commensurate with the size, complexity and risk exposure of the reporting institutions.