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Anti-Money Laundering Compliance – 5 Things Reporting Institutions Need to Know

Introduction

Since the introduction of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFPUAA"), the Government has taken a phased approach in imposing anti-money laundering ("AML") reporting obligations on various intermediaries and entities in the country. Whilst the initial phase of implementation was focused on financial institutions and capital market intermediaries, over the years, various other entities have been made reporting institutions ("RIs") under the AMLATFPUAA. The wide array of RIs now include financial institutions, stockbroking companies, fund managers, and recognised market operators such as peer-to-peer platforms and cryptocurrency exchanges. Professionals such as lawyers, accountants and company secretaries and various other entities including trust companies, dealers in precious metals or precious stones, moneylenders, casinos, and real estate agents have been subject to AML reporting requirements for several years. The obligations imposed upon such reporting entities revolve around conducting "Know Your Customer" ("KYC") checks when onboarding new clients, carrying out ongoing customer due diligence during the course of the relationship, reporting suspicious transactions and proper recordkeeping. These requirements are currently set out in Bank Negara Malaysia's ("BNM") Policy Documents on Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Financial Institutions, and Designated Non-Financial Businesses and Non-Bank Financial Institutions, and the Securities Commission's ("SC") Guidelines on Prevention of Money Laundering and Terrorism Financing for Reporting Institutions in the Capital Market. RIs are required to adhere to these rules not only to counter money laundering but also terrorism financing ("TF") and proliferation financing ("PF") which is the financing of weapons of mass destruction.

Wading through AML rules can appear to be cumbersome and overwhelming at times. This, however, need not be the case. This Update seeks to point out five key points that RIs need to take heed of.

Tone at the top – the board is ultimately accountable

A commonly held misconception among some RIs is that AML compliance is an operational matter and as a result, it is often consigned to the management without any meaningful oversight by the Board of Directors ("Board"). While intermediaries in the financial markets such as banks and broking firms have been RIs for several years, entities who have recently been gazetted may not appreciate the extent of

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the Board's role. However, BNM's policy documents make it clear that the Board has to maintain accountability and oversight for establishing anti money laundering and counter terrorism financing ("AML/CFT") policies.

In granular terms, what this means is that the Board should not only approve AML policies but should assess the implementation of these policies. The Board should also define the lines of authority and responsibility for implementing AML/CFT measures and this has to be followed by regular reporting by senior management and the Audit Committee to the Board. This feedback loop is critical because it ensures that AML issues and concerns are regularly cascaded up to the Board. Just as the responsibility for good corporate governance starts with the Board of a company, the underlying proposition is that, nurturing an environment where employees take compliance issues seriously is one that must be fixed on the highest governing body in a company or firm.

AML compliance is not just the Compliance Officer's job

Just as the role of the Board is clearly defined, it is critical to ensure that each of the moving parts within an RI's operations are affixed with clear roles and responsibilities. This involves the following:

- **Senior management, who are accountable for the implementation and management of AML/CFT compliance programmes.** This means that they are responsible for formulating the necessary policies, designing the mechanisms to monitor suspicious transactions and reporting to the Board periodically on the AML risks faced and the internal controls in place to manage these risks. Senior management is also responsible for ensuring that AML training is conducted and a Compliance Officer is appointed. Employee training is particularly critical so employees are aware of how to spot red flags and know where to turn to in the event that they are faced with a suspicious transaction.
- **The Compliance Officer acts as the reference point within the firm on all AML/CFT matters.** He or she has to maintain internal criteria for the detection and reporting of suspicious transactions and acts as the point person with BNM's Financial Intelligence and Enforcement Department for this purpose.
- **The internal AML auditor is required to carry out an independent audit** to test the RI's compliance with the law, relevant guidelines and internal AML/CFT policies, and to submit a report to the Board outlining corrective measures where necessary. At this point, BNM has not set out the frequency of the audit and this is left to the RI to decide based on its organisational needs.

Given that this is a rapidly evolving sector, it is important that RIs keep abreast of developments in this space and ensure that the key staff involved in AML compliance are well equipped to discharge their functions effectively.

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A risk-based approach enables an optimum use of an RI's resources

While BNM's policy documents provide specific requirements in terms of the obligations of RIs, it also eschews a "one size fits all" approach. In line with global standards set by the Financial Action Taskforce¹ ("FATF"), RIs are instead required to apply a risk-based approach in dealing with money laundering and terrorism financing threats. This is extremely beneficial because what this means in practice is that RIs can design their AML processes around the nature of risks that they face in conducting their business.

How then should businesses implement a risk-based approach in dealing with AML compliance? One useful tool is for the RI to carry out an AML institutional risk assessment within the organisation. Risk assessments are often conducted within an organisation to identify business risks that a company faces in its day-to-day operations and to ensure that appropriate processes to manage these risks are in place. This tool can be similarly used in the context of AML compliance. Questions that one should pose in conducting an effective AML risk assessment are – what are the most pressing AML risks that arise in the course of my business and how can these risks be mitigated?

Commonly identified risks as set out in BNM's policy documents are client risk, geographical risk, and transaction risks. Examples of client risks are non-resident clients, clients with cash intensive businesses, clients whose ownership structure is excessively complex or persons from locations known for high rates of crimes such as drug production or human trafficking. Another risk is geographical risk, which refers to the location of the business or the origin of customers. In this respect, the list of countries set out in the FATF website categorised as requiring a "call for action" and those under increased monitoring would need specific attention. It is important that RIs consistently update themselves on these lists given the need for enhanced due diligence where clients or transactions involve these jurisdictions. Similarly, product and transaction risks are gaining traction in light of the frenetic pace of development in financial products such as cryptocurrencies and other digital assets. In fact, data has shown that total transaction volume in cryptocurrencies worldwide has grown to US\$ 15.8 trillion in 2021, up 567% since 2020. Of this, the increase in illicit transaction volume was 79%, translating to US\$ 14 billion worth of illicit funds². Amid this surge of interest in cryptocurrencies and other digital assets, regulators have called for increased caution in this sphere. The FATF has also issued a specific policy document detailing the risks and types of controls that businesses should consider when dealing with new asset classes such as virtual currency³.

¹ The FATF, which Malaysia is a member of, is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorism financing and financing of proliferation of weapons of mass destruction. www.fatf-gafi.org

² Chainalysis, Crypto Crime Report 2022

³ Virtual Assets and Virtual Asset Service Providers, FATF Updated Guidance for a Risk Based Approach, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf>

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That said, having a high-risk rating does not automatically mean that the RI should not conduct business with a particular client. Instead, what it does mean is that specific controls must be in place to manage those risks. If the relevant controls are applied, and the residual risk is low, this means that the risk assessment exercise which has been undertaken provides a basis for proceeding with the business relationship.

Data, not cash ... is king

The fulcrum on which AML compliance rests is the need to keep oneself well informed. The **KYC** process of conducting due diligence on a customer is critical in ensuring that an RI is not used to facilitate money laundering. In order to fulfil these requirements of knowing one's customer at the outset of a business relationship and continuing to be aware of red flags during the course of the relationship (ongoing customer due diligence), an RI's approach has to be data driven. Whether the client is an individual or a corporate entity, it is critical for an RI to obtain sufficient information about the client, the identity of beneficial ownership in the case of companies or other legal entities, the nature of business involved and whether they are politically exposed persons ("**PEPs**"). This can be done either through manual or automated approaches. Public registers provide important information about companies such as shareholding, directorships, business conducted and financial information. The internet provides a wealth of information to independently verify information, and Google searches can yield useful information about potential or existing clients. Staying updated about countries, individuals and organisations which fall within FATF's "call to action" list and the United Nations Security Council's sanction lists as well as the Ministry of Home Affairs and the Ministry of International Trade and Industry's Strategic Trade Office would keep RIs well informed if a particular client has been tagged for involvement in AML, TF or PF. Data analytic tools provided by third party service providers enable the pooling and aggregation of information from various sources which can assist RIs in making connections between clients and PEPs, providing data on beneficial ownership or other useful information.

AML enforcement is an important part of the financial eco system

The AMLATFPUAA provides for both criminal enforcement for money laundering as well as civil forfeiture proceedings. Enforcement agencies are also given power under the AMLATFPUAA to freeze and seize property which are suspected to be the subject matter of money laundering or terrorism financing, subject to the pre-requisites set out in the law. In several recent high-profile cases, the prosecution has preferred money laundering charges in the same trial as the predicate offences, such as the SRC International Sdn Bhd (SRC) trial involving former Prime Minister, Dato' Sri Najib Tun Razak, who was charged with a single count of abuse of power under the Malaysian Anti-Corruption Commission Act 2009 ("**MACC Act**") as well as three counts of criminal breach of trust ("**CBT**") under the Penal Code and three counts of money laundering under section 4(1) of the AMLATFPUAA. The case resulted in a conviction on all seven charges with a sentence of 12 years' imprisonment and a fine of MYR 210 million for the offence under section 23(1) of the MACC Act, and ten years' imprisonment

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on each of the three CBT charges and each of the three money laundering charges under the AMLATFPUAA; with the court ordering the custodial sentences to run concurrently⁴. The decision was affirmed by the Court of Appeal⁵ and most recently by the Federal Court.

Unlike criminal charges for money laundering, civil forfeiture proceedings are directed at the property which is the subject matter of money laundering. The principle in civil forfeiture cases is that there must be sufficient evidence before the court that the property is the subject matter or was used in the commission of an offence of money laundering or terrorism financing or are proceeds from a serious offence. In addition, if the person holding such property demonstrates that he or she is a purchaser in good faith for valuable consideration in respect of the property, the forfeiture order cannot be made with respect to such property. The recent Court of Appeal decision in *Badan Perhubungan Umno Negeri Pahang v Public Prosecutor and other appeals [2022] 2 MLJ 572* demonstrates the application of this principle.

The action taken by the United States ("US") authorities for money laundering as a result of the flow of funds into the US following several of the 1Malaysia Development Berhad ("1MDB") bond issuances has resulted in the conviction of Roger Ng, the former head of Goldman Sachs in Malaysia, and heavy penalties on Goldman Sachs as a firm. Roger Ng faces as many as 30 years in prison⁶. When announcing the filing of civil forfeiture actions associated with 1MDB in 2016, the US Attorney General at the time, Loretta E. Lynch stated "[T]oday's case is the largest single action ever brought by the department's Kleptocracy Asset Recovery Initiative, which was established by Attorney General [Eric] Holder in 2010 to forfeit the proceeds of foreign official corruption and, where possible, to use the recovered assets to benefit the people harmed. This case, and the Kleptocracy Initiative as a whole, should serve as a sign of our firm commitment to fighting international corruption. It should send a signal that the Department of Justice is determined to prevent the American financial system from being used as a conduit for corruption"⁷. The message is clear – global markets are inextricably linked, and a weak compliance culture will prove fertile ground for fraud. We simply cannot ringfence our markets from being abused by bad actors and it is imperative that the risks surrounding money laundering or terrorism financing are appreciated and addressed.

Conclusion

We are at the crossroads of several simultaneous shifts – geopolitics, the increasing disintermediation within the financial industry, the use of technology in financial markets, and the ease of access within global markets. All of these changes provide increased opportunities for money laundering and terrorism

⁴ *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak* [2020] 11 MLJ 808 (High Court)

⁵ *Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor* [2022] 1 MLJ 137

⁶ Former Goldman banker Ng found guilty in 1MDB fraud scheme, Bloomberg, reported in the Edge Malaysia, April 11, 2022. Also see US Department of Justice website at <https://www.justice.gov/usao-edny/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering>

⁷ <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-significant>

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financing to occur, resulting in increased vigilance amongst regulatory authorities and strong enforcement action where markets are abused. Compliance with AML obligations is often seen as an impediment to smooth business transactions, a vexation to clients or simply a cost of doing business. Yet, as we can see from the discussion above, it is becoming apparent that AML compliance is a business need that cannot be overlooked.

Should you require further information on Anti-Money Laundering compliance, please feel free to reach out to our team at your convenience, through the Christopher & Lee Ong partners listed hereunder.

You can also find this opinion piece in the Edge Malaysia in two parts published on [25 September 2022](#) and [30 September 2022](#).

Author – Key Contact



Shanti Geoffrey
Partner

D +603 2267 2733
M +601 7963 1117
[shanti.geoffrey](mailto:shanti.geoffrey@christopherleeong.com)
[@christopherleeong.com](mailto:shanti.geoffrey@christopherleeong.com)

Contacts



John Mathew
Partner

T +603 2273 1919
M +601 2377 7792
[john.mathew](mailto:john.mathew@christopherleeong.com)
[@christopherleeong.com](mailto:john.mathew@christopherleeong.com)



Tan Yi Li
Partner

T +603 2273 1919
D +603 2267 2691
[yi.li.tan](mailto:yi.li.tan@christopherleeong.com)
[@christopherleeong.com](mailto:yi.li.tan@christopherleeong.com)

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

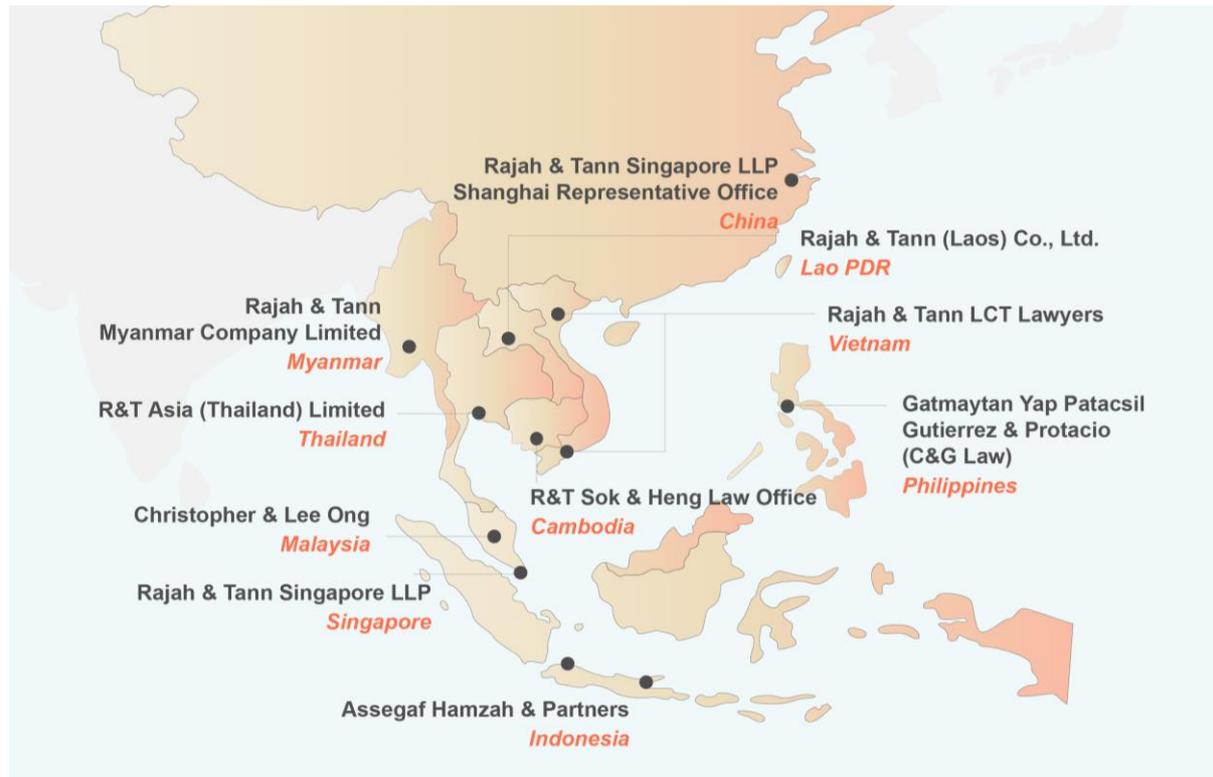
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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