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**Cross Border Statutes and Other Measures To Curb Money Laundering**

**Introduction**

1. Over the past 25 years, there has been growing concern over the threat posed by modern and sophisticated forms of transnational crime. This is in contrast with the 19<sup>th</sup> century when issues of criminal justice policy were thought of in almost exclusively national terms. More countries in the world are beginning to see the importance of enhancing co-operation and coordination in the fight against cross border criminal activities. This shows that reliance on unilateral domestic legislative and law enforcement measures is no longer sufficient. One of the factors that has contributed to the growth of cross-border criminal activity is the technological revolution. While technological developments have brought economic benefits and led to growth in world trade, they have also provided criminals with new opportunities and wider geographical horizons to carry out money laundering activities. For example, mass communications have facilitated contacts with criminal associates in other continents whilst modern banking has facilitated international criminal transactions and give criminals access to new channels that enables them to launder huge illicit profits.

2. Money laundering can have severe macroeconomic consequences on a country. It can cause unpredictable changes in money demand, pose risks to the soundness of financial institutions and financial systems, contaminate legal financial transactions, and increase the volatility of international capital flows and exchange rates due to unanticipated cross-border transfers. Money laundering can also have a dampening effect on foreign direct investment if a country's commercial and financial sectors are perceived to be under the control and influence of organized crime. The most obvious reason to

establish anti-money laundering measures is to stop criminals from benefiting from money laundering, specifically:

- a. to stop them from enjoying the benefits of their profits (this may act as a deterrent as well as a punishment);
- b. to prevent them from reinvesting their funds in future criminal activities (that is to strip them of their working capital base); and
- c. to provide the criminal justice system with a means to detect and investigate criminal activities by providing an audit trail and an evidentiary link for prosecution purposes between criminal acts and major organisers.

3. In recognising the need for a consolidated and concerted effort in anti-money laundering, Malaysia has taken various measures, namely, the enactment of Anti-Money Laundering Act 2001 (AMLA) and development of counter-measures for sharing of information and law enforcement cooperation. The following conclusion was drawn by the Asia/Pacific Group on Money Laundering (APG) evaluators from the mutual exercise carried out in Malaysia in July 2001 -

"Malaysia has made significant progress in establishing an appropriate anti-money laundering regime in the last few years".

### **Statutes addressing cross border money laundering in Malaysia**

#### **AMLA**

4. The AMLA was gazetted on 5 July 2001 and came into force on 15 January 2002. The AMLA provides for the offence of money laundering in general, investigation, freezing, seizure and forfeiture of the proceeds of serious crimes, suspicious transaction reporting and record-keeping. The AMLA also provides for the establishment of a competent authority to be appointed by the Minister of Finance. In this regard, the Central Bank of Malaysia was appointed as the competent authority with effect from 15 January 2002. The Financial Intelligence Unit of the Central Bank of Malaysia is the

secretariat to a coordinating committee consisting of several enforcement agencies which is responsible to administer and enforce the AMLA together. Currently, the AMLA sets out 176 money laundering predicate offences under 22 Acts of Parliament<sup>1</sup>. In curbing money laundering internationally, the AMLA provides the following provisions:

- (a) Section 4 – makes it an offence for any person to engage in, attempt to engage in or abets the commission of money laundering. “Money laundering” has been defined to mean the act of a person who engages in a transaction that involves proceeds of any unlawful activity. Meanwhile, “unlawful activity” has been defined to mean a serious offence, as specified in the Second Schedule, or a foreign serious offence. By virtue of this definition, if a person commits an offence in a foreign country as stated in a certificate issued by the government of that foreign country and such offence would have been a serious offence in Malaysia, the person could also be caught under section 4 if he launders money in Malaysia.
  
- (b) Section 10 - allows the Central Bank of Malaysia to communicate financial intelligence to a corresponding authority of a foreign State pursuant to any existing arrangement between Malaysia and the foreign state. The Central Bank of Malaysia may enter into Memorandum of Understanding (MOU) with a corresponding authority in that foreign state on co-operation in the exchange of financial intelligence subject to the following conditions:

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<sup>1</sup> Predicate offences under the Second Schedule of the AMLA are provided in the following statutes: Anti-Corruption Act 1997, Banking and Financial Institutions Act 1989, Betting Act 1953, Child Act 2001, Common Gaming Houses Act 1953, Companies Act 1965, Copyright Act 1987, Customs Act 1967, Dangerous Drugs Act 1952, Dangerous Drugs (Forfeiture of Property) Act 1988, Development Financial Institutions Act 2002, Explosives Act 1957, Firearms (Increased Penalties) Act 1971, Futures Industry Act 1993, Insurance Act 1996, Internal Security Act 1960, Kidnapping Act 1961, Money-Changing Act 1998, Optical Discs Act 2000, Penal Code, Securities Industry Act 1983 and the Takaful Act 1984.

- (i) the exchange of financial intelligence is limited to information obtained by the Central Bank of Malaysia under section 14 of the AMLA;
- (ii) there exists a Government-to-Government arrangement between Malaysia and the foreign State under which the corresponding authority of the foreign state has agreed to communicate to Malaysia, upon Malaysia's request, information received by them that corresponds to any thing required to be disclosed to the Central Bank of Malaysia under section 14 of the AMLA;
- (iii) the Central Bank of Malaysia is satisfied that the foreign corresponding authority has given appropriate undertakings-
  - (I) for protecting the confidentiality of any thing disclosed to it;
  - and
  - (II) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any proceedings.

Currently, Malaysia has signed MOUs for the sharing of financial intelligence with the Australian Transaction Reports and Analysis Centre (AUSTRAC) on 29 January 2003, the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) on 31 July 2003 and the Anti-Money Laundering Council, the Republic of Philippines on 4 August 2004.

- (c) Section 23 - requires any person leaving or entering Malaysia with an amount in cash, negotiable bearer instruments or both, exceeding such value as the competent authority may prescribe by order published in the *Gazette*, to declare to the competent authority such amount in such form as the competent authority may specify. Any person who contravenes subsection (1) commits an offence 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. Currently, this requirement is dependent on the enforcement of sections 24 and 25 of the Exchange Control Act 1953.

Under ECM 13, a subsidiary legislation issued under the Exchange Control Act 1953, a resident who carries ringgit notes exceeding RM1,000 on his person or in his baggage-

- i. upon his arrival in Malaysia from any place outside Malaysia; or
- ii. upon his leaving Malaysia for any destination outside Malaysia,

is required to seek the permission of the Controller of Foreign Exchange and to declare the actual amount in the Travellers' Declaration Form (TDF). The same requirement applies to any non-resident traveller but the declaration is made in the IMM 26 form. With respect to foreign currency, a resident is required to seek permission if the amount of foreign currency that he brings out of Malaysia exceeds RM10,000 equivalent and also to make a declaration in the TDF. There is no limit on the amount of foreign currency that a non-resident traveller carries into Malaysia but if the amount that he brings out exceeds the amount that he brings into the country, permission needs to be obtained. Declaration needs to be made by the non-resident in the IMM 26 form if the amount of foreign currency exceeds USD 2,500.

- (d) Section 29(3) - empowers the Central Bank of Malaysia with any relevant enforcement agency in Malaysia to coordinate and cooperate with any law enforcement agency in and outside Malaysia in investigations of any serious offence, for example the laundering of proceeds from the "anti-terrorist" offence under the Penal Code and investigations of any foreign serious offence.

- (e) Section 82 - stipulates the circumstances where an act is an offence under the AMLA, i.e. where the act is committed on the high seas on board any ship or on any aircraft registered in Malaysia, by any citizen or any permanent resident on the high seas on board any ship or on any aircraft or by any citizen or any permanent resident in any place outside and beyond the limits of Malaysia may be dealt with as if it had been committed at any place within Malaysia. However, no charge as to any offence shall be inquired into in Malaysia unless a diplomatic officer of Malaysia, if there is one, in the territory in which the offence is alleged to have been committed certifies that, in his opinion, the charge ought to be brought in Malaysia and where there is no such diplomatic officer, the sanction of the Public Prosecutor shall be required.

#### **Mutual Assistance in Criminal Matters Act 2002 (MACMA)**

5. The MACMA which came into force on 1 May 2003 provides comprehensive international assistance in criminal matters including:

- (a) providing and obtaining evidence and things;
- (b) the making of arrangements for persons to give evidence, or to assist in criminal investigations;
- (c) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (d) the restraining of dealing in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (e) the execution of requests for search and seizure;
- (f) the location and identification of witnesses and suspects;
- (g) the service of process such as issuance of summons, warrant and order by any court or any judge;
- (h) the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence;

- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and
- (j) the examination of things and premises.

MACMA extends the scope of assistance and cooperation to any offence which, upon conviction, is liable to imprisonment for a term of one year and above, or the death penalty. The term “serious offence” under MACMA includes offences of money laundering and financing of terrorist. The MACMA does not limit other formal and informal cooperation with international organisations like INTERPOL. Although MACMA went into effect on 1 May 2003, according to sections 16 and 17, legal assistance to foreign countries may be given as long as there is a treaty or other agreement between Malaysia and the requesting foreign country in principle. Even if there is no treaty or agreement, similar assistance may be given to any foreign country by the special direction of the Minister. However, extradition is not covered under MACMA but is dealt with under the Extradition Act 1992.

### **Extradition Act 1992**

6. The Extradition Act 1992 aims to deny asylum to a fugitive criminal. By mutual agreement, Malaysia has entered into an arrangement with Hong Kong, Indonesia, Thailand and United States to extradite fugitives accused or convicted of extraditable offences.

### **7. Other Measures to Curb Money Laundering**

#### **(i) Domestic cooperation**

The National Coordination Committee to Counter Money Laundering (NCC) is an inter-agency committee specially set up to counter money laundering at the national level. The NCC was established in April 2000 to ensure adequate co-operation and information sharing among the different government agencies. It enables its members to be informed of any new or developing technologies of money laundering techniques. The NCC’s relationship with the Asian/Pacific Group on Money Laundering (APG) also provides an international channelling of information to the enforcement agencies,

supervisory and regulatory authorities in Malaysia of which some are members of the NCC. The NCC consists of 13 different government agencies, that is, the Central Bank of Malaysia, Ministry of Finance, Attorney-General's Chambers, Ministry of Foreign Affairs, Ministry of Home Affairs, Royal Malaysian Police, Anti Corruption Agency, National Drug Agency, Royal Malaysian Customs, LOFSA, Securities Commission, Companies Commission of Malaysia and Inland Revenue Board. The NCC has adopted a set of Terms of Reference to guide its activities. The NCC's objectives are as follows:

- Develop national policy on measures to counter money laundering.
- Coordinate national policies with regional and international initiatives.
- Agree on action plan for the countering of money laundering in Malaysia.
- Ensure Malaysia complies with its APG membership requirements and paragraph 15 of the UN Political Declaration and Action Plan Against Money Laundering, that is to have anti-money laundering legislation in place by year 2003.
- Develop and ensure proper implementation of measures to counter money laundering based on internationally accepted standards, i.e. 40 Recommendations of the Financial Action Task Force.
- Identify and remedy any overlap or discrepancy between the existing and proposed measures to counter money laundering.
- Monitor the effectiveness of measures that have been implemented.
- Liaise with foreign governments and international organisations or bodies on matters relating to money laundering which includes terrorism.

Each NCC member agency is responsible for *inter alia* research into matters relating to money-laundering, sharing of information and reporting on progress. Each NCC member agency nominates a person to act as the central contact point for all communications between the NCC member agencies and the NCC to keep abreast of any developments in the country relating to money laundering efforts. Initiatives may be taken by the member agency concerned depending on the question. In addition to meeting as the need arises, the NCC meets every quarter to discuss the implementation of the AMLA.

(ii) **International Cooperation**

(a) Egmont Group

The FIU in the Central Bank of Malaysia has been admitted as a member of the **Egmont Group of Financial Intelligence Units** at its Plenary Meeting in July 2003. The Egmont Group is an informal international grouping which has emerged in a specific anti-money laundering context. Malaysia's membership in the Egmont Group would pave the way for international co-operation in term of sharing of financial intelligence amongst corresponding authorities.

(b) Asian/Pacific Group on Money Laundering (APG) :

Malaysia became a member of the APG on 31 May 2000 and was the co-chair, together with Australia, until its term ended in June 2002. The APG conducted mutual evaluation exercises on Malaysia as well as its offshore financial centre in Labuan on 9-12 July 2001 and 2-6 April 2001 respectively. The reports of these evaluation exercises have been very positive and have commended Malaysia's efforts to counter money laundering.

8. **Exchange of Information and Technical Assistance**

Malaysia has entered into a few international agreements in relation to combat money laundering as follows:

- (a) Malaysia, Indonesia and the Philippines signed a Trilateral Agreement on Information Exchange and Establishment of Communication Procedures on 7 May 2002 to strengthen co-operation in addressing cross-border incidents and transnational crimes. Through the treaty, the intelligence agencies of the three countries would be able to work more cohesively in the fight against terrorism. The treaty is open to participation by other ASEAN nations and acts as a signal for their involvement in efforts to combat terrorist activities. To date Cambodia, Thailand and Brunei have acceded to the Agreement. Malaysia has signed a Joint Declaration of Cooperation to Combat International Terrorism with the United States on

14 May 2002, which, among others, allows for the disclosure of intelligence and terrorist financing information, documents or data.

- (b) ASEAN-US Joint Declaration on Cooperation to Combat International Terrorism was signed on 1 August 2002. A Memorandum of Understanding on Cooperation to Combat International Terrorism was also signed on 2 August 2002 with Australia. Malaysia has signed a Treaty on Mutual Legal Assistance in Criminal Matters with 7 ASEAN countries, namely, Brunei, Cambodia, Indonesia, Lao PDR, the Philippines, Singapore and Vietnam on 29 November 2004. Two other ASEAN countries, Thailand and Myanmar, are still in the process of considering signing the treaty. Among others, the Treaty will facilitate cross-border co-operation in gathering financial evidence for court proceedings.

## 9. **Training Initiatives**

Generally, Malaysia will participate in the training initiatives by organisations such as the IMF and ADB and will continue to upgrade the knowledge and skills required in financial investigations. **Special emphasis is placed on continuous training** of law enforcement officers and private sector personnel involved in implementing the AML/CFT initiatives. For example, the following training courses/workshops were conducted in the year 2005:

- **Financial Investigation Training**, 24 January–4 February 2005, Kuala Lumpur, organised by the ASEM Anti-Money Laundering Project in collaboration with the UNODC, Bangkok.
- **Mutual Legal Assistance (MLA) training for Malaysia**, 15–17 February, 2005, Kuala Lumpur, organised by the ASEM Anti-Money Laundering Project in collaboration with the UNODC, Bangkok.
- **Prosecutor Training for Malaysia**, 11–17 April 2005, Kuala Lumpur, organised by the ASEM Anti-Money Laundering Project in collaboration with the UNODC, Bangkok.

- **Regional Judicial Officers Training**, 24 – 29 April 2005, Kuala Lumpur, organised by the ASEM Anti-Money Laundering Project in collaboration with the UNODC, Bangkok.

The Central Bank of Malaysia is currently working in collaboration with UNODC to implement the Anti-Money Laundering Computer Based Training (AMLCBT) programme for the relevant agencies in Malaysia. The AMLCBT programme is an e-learning training initiative to ensure consistent training and greater outreach to the relevant sectors involved in the fight against money laundering and terrorism financing.

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