

In meeting the supervisory responsibilities expected of the supervisors specifically under Pillar 2 of the new Basel capital accord, various capacity building initiatives are being undertaken to equip supervisors with the necessary knowledge and skills. In addition to knowledge acquisition, supervisory processes are being reviewed and enhanced to facilitate the assessment of a bank's capital management and processes.

Globalisation and market liberalisation under the Financial Sector Masterplan will see the emergence of new and significant players. The formation of bigger

banking entities arising from the merger of the commercial banks and finance companies within each banking group, emergence of new foreign incorporated Islamic banks, increasing complexity of operations arising from the greater regional presence, cross-selling activities within entities in the same banking group and outsourcing of banking institutions operations will necessitate the Bank to continuously set new benchmarks for its supervisory approaches and activities. Efforts will continue to be taken to ensure that the supervisors are equipped with the necessary skills and capacity to manage these challenges.

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

Overview

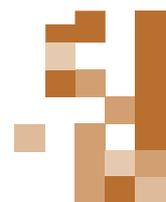
Malaysia continued to develop and enhance its national AML/CFT regime by strengthening its AML/CFT legislative framework as well as by improving domestic and international co-operation, and upgrading the capacity of law enforcement personnel in these important areas. Bank Negara Malaysia, as the lead agency for the National Co-ordination Committee to Counter Money Laundering (NCC) that co-coordinates the implementation and enforcement of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLA) and AML/CFT measures, is committed in ensuring that Malaysia's financial system is sound, robust and free from abuse.

During the year, Bank Negara Malaysia extended the AMLA regulatory net to new reporting institutions and invoked other reporting obligations under Part IV of the AMLA to existing reporting institutions. More importantly, extensive AML/CFT briefings, training and awareness sessions were conducted throughout the country for the law enforcement personnel and the respective regulatory authorities in the public sector as well as various categories of new reporting institutions in the private sector.

Enhancing the Role of the NCC

The NCC continued to ensure that the national AML/CFT regime remained up to date and relevant to the evolving threats of money laundering and terrorism financing. Domestic co-operation was further strengthened by regular meetings of the NCC members during the year to develop, among others, AML/CFT policies, and to coordinate the effective implementation of the AML/CFT measures, based on internationally accepted standards as contained in the Financial Action Task Force on Money Laundering's (FATF) Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorism Financing. The FATF, which is an inter-governmental body established by the G-7 Summit in Paris in 1989, develops and promotes policies to combat money laundering and terrorism financing. During the year, the NCC continued to ensure that the developments in the national AML/CFT regime are consistent with the FATF's Recommendations.

The NCC's role in the national AML/CFT regime is further strengthened by changes in its composition. The NCC now comprises senior level representation from the various enforcement agencies. The Ministry of Domestic Trade and Consumer Affairs Enforcement Division, which is responsible for enforcing the Optical Discs Act 2000 and Copyright Act 1987, was included as a new member of the NCC. During the year, the National Narcotics Agency ceased to be a member as matters relating to the enforcement of the Dangerous Drugs Act 1952 is under the purview of the Royal Malaysian Police, which is one of the founding members of the NCC.



Enhancing AML/CFT Legislative Framework

Instead of a new anti-terrorism financing statute, Malaysia amended five pieces of legislation namely, the AMLA, the Penal Code, the Subordinate Courts Act 1948, the Courts of Judicature Act 1964 and the Criminal Procedure Code to enable Malaysia to accede to the following two international conventions on terrorism:

- The International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9 December 1999 and comply with the United Nations Security Council Resolutions on counter-terrorism measures, in particular Security Council Resolution 1373 (2001) of 28 September 2001; and
- The International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations.

The Anti-Money Laundering (Amendment) Act 2003 and the Penal Code (Amendment) Act 2003 were *gazetted* as law on 25 December 2003. The Penal Code (Amendment) Act 2003, among others, extended the application of the Penal Code to extra-territorial offences under the new Chapter VIA, which deals with, among others, the suppression of the financing of terrorist acts, and added on additional grounds for extra-territorial criminal jurisdiction to be sought. The Subordinate Courts (Amendment) Act 2004 and the Courts of Judicature (Amendment) Act 2004 were *gazetted* as law on 23 December 2004. The amendments, among others, extended the extra-territorial criminal jurisdiction of the High Court to offences under the new Chapter VIA of the Penal Code. The consequential amendments to the Criminal Procedure Code on police powers in relation to terrorism offences would be tabled in Parliament after deliberation by the Select Committee of the Lower House of Parliament.

The Anti-Money Laundering (Amendment) Act 2003, among others, extended the reporting of suspicious transactions to Bank Negara Malaysia to cover the reporting of suspected terrorism financing activities. This new law also extended the AMLA mechanism for tracing, freezing, seizing, forfeiting and confiscating assets to include assets used for the financing of terrorist acts. The new Part VIA of the AMLA empowers the Minister of Internal Security to deem any entity as a terrorist, whose property could then be seized and forfeited to the Federal Government.

AMLA Regulatory Net

Extension to New Reporting Institutions

The AMLA requires a reporting institution to report to Bank Negara Malaysia any transaction where the identity of the person involved, the transaction itself or any other circumstances concerning the transaction gives the reporting institution reason to suspect that it involves proceeds of an unlawful activity. The statutory requirement to report suspicious transactions has been invoked incrementally on conventional, Islamic and offshore entities since the commencement of the AMLA on 15 January 2002. During the year, the AMLA regulatory net was extended to the stockbrokers and futures brokers with effect from 31 March 2004 and to the lawyers, accountants and company secretaries with effect from 30 September 2004. Lawyers and accountants are required to report to the Bank any suspicious transaction identified in the course of carrying out the following types of business activities for their clients:

- (i) buying and selling of immovable property;
- (ii) managing client's money, securities or other property;
- (iii) managing of accounts including savings and securities accounts;
- (iv) organising of contributions for the creation, operation or management of companies; or
- (v) creating, operating or managing of legal entities or arrangements and buying and selling of business entities.

Company secretaries are required to report to Bank Negara Malaysia any suspicious transaction identified in the course of carrying out the following types of business activities for their clients:

- (i) acting as a formation agent of legal entities;
- (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal entities or arrangement;
- (iv) acting as (or arranging for another person to act as) a trustee of an expressed trust; or
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

The extension of the AMLA regulatory net to cover lawyers, accountants and company secretaries is a significant milestone in the national AML/CFT regime. Money laundering schemes have become more complex as countries endeavour to implement comprehensive AML/CFT measures in the financial sector to detect and deter money laundering, terrorism financing and other transnational crime, thereby forcing criminals to turn to these professionals to assist them in accessing the financial system. The timely invocation of the AMLA reporting obligations on these professionals during the year further denied criminals indirect access to the financial system through the professional 'gatekeepers' who could structure complicated financial transactions with the view to hide tainted proceeds.

Increasing Reporting Obligations

The AMLA reporting obligations are invoked gradually on the reporting institutions to provide sufficient time for them to implement and discharge their AMLA reporting obligations. The statutory requirement to report suspicious transactions to Bank Negara Malaysia was initially invoked on Lembaga Tabung Haji, Bank Kerjasama Rakyat Malaysia Berhad and Bank Simpanan Nasional on 15 January 2003. In order to facilitate such reporting to Bank Negara Malaysia, any obligation as to the secrecy or other restriction on the disclosure of information imposed by written law or otherwise on these institutions were overridden and their officers reporting suspicious transactions in good faith to Bank Negara Malaysia were provided immunity from civil, criminal and disciplinary proceedings. During 2004, the remaining reporting obligations under Part IV of the AMLA, where relevant, were invoked on Lembaga Tabung Haji, Bank Kerjasama Rakyat Malaysia Berhad and Bank Simpanan Nasional with effect from 31 March 2004. These reporting obligations include retention of records for a period of six years, conducting customer due diligence, as well as establishing internal reporting and compliance programmes that are designed to reduce their vulnerability to misuse by criminals.

Increasing Predicate Offences

In 2004, the number of money laundering predicate offences in the Second Schedule to the AMLA was increased from 150 to 168 serious crimes from 24 pieces of legislation. The inclusion of the new money laundering predicate offences in the AMLA would enable Bank Negara Malaysia to track the financial trail of these offences and share the financial intelligence with the relevant enforcement agencies.

Enhancing AML/CFT Compliance

During the year, Bank Negara Malaysia developed a comprehensive AML/CFT Compliance Handbook as a reference guide to assist reporting institutions in discharging their obligations under the AMLA. The Handbook contains various documents and literature on the national AML/CFT initiatives pertaining to specific industries, including industry specific regulatory and compliance guidelines, international standards and recommendations as well as circulars and core compliance standards. The CD-ROM copy of the Handbook was distributed during the year to the conventional, Islamic and offshore reporting institutions and the various trade associations. Reporting institutions could refer to the Handbook for assistance in establishing, among others, suspicious transactions reporting mechanisms, record-keeping, customer due-diligence, compliance and on-going training of employees.

Domestic Co-operation

Awareness Programme

The AML/CFT awareness programme was conducted nationwide through a series of briefings for the various categories of new reporting institutions as well as the respective regulatory authorities. The objectives of the briefing sessions were to educate the reporting institutions on their obligations and responsibilities under the AMLA and to establish their working relationship with the Financial Intelligence Unit (FIU) in Bank Negara Malaysia. In addition to the AMLA briefings, Bank Negara Malaysia organised training courses and workshops to upgrade the knowledge and skills of the various law enforcement personnel involved in the fight against money laundering and terrorism financing. During the year, the following training sessions were conducted:

- Briefing on the AML/CFT measures to members of the Malaysian Bar Council in January 2004;
- Briefing on the AMLA invocation and reporting obligations to the capital market intermediaries in March 2004;
- Briefing on the AMLA to Heads and Senior Officers of the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs in April 2004;
- Seminar on the AML/CFT measures to the Sabah Law Association in May 2004;
- Briefing on the AMLA invocation and reporting obligations were conducted at 18 locations for lawyers, accountants and company secretaries from July – September 2004; and
- Briefing on the AMLA to senior officials of the Companies Commission of Malaysia on 5 November 2004 in connection with the invocation of the AMLA reporting obligation on company secretaries.

Combating the crimes of money laundering and terrorism financing is essential to the integrity of the financial systems. The training sessions were effective platforms to raise concerns and exchange ideas on best practices and on the practical implementation of the AML/CFT measures. Arising from these training sessions, which raised the reporting institutions' level of compliance with international standards, the national AML/CFT regime is now better supported by the contribution of the financial and non-financial reporting institutions that hold critical information on transactions that may hide criminal schemes.

AMLA Investigation Reference Guide

As part of the efforts to document the AMLA investigation processes, a Working Group on the AMLA Investigation Reference Guide, comprising members from the relevant agencies in the NCC drafted a set of required tasks to assist investigators in carrying out investigation in relation to money laundering and terrorist financing offences under the AMLA. The successful formulation of the AMLA Investigation Reference Guide is the result of co-operation among experienced domestic law enforcement personnel, who were unstinting in sharing their knowledge and skills in conducting investigations into financial crimes. After the NCC has adopted the AMLA Investigation Reference Guide in the coming year, it would be distributed to the relevant law enforcement agencies to facilitate investigations into any breaches of the AMLA provisions.

Sub-Committee for Information Sharing

The NCC set up a Sub-Committee for Information Sharing during the year for better analysis and sharing of information gathered from suspicious transactions reports (STRs) and for better use of financial intelligence. This Sub-Committee provides a formal mechanism where intelligence developed by Bank Negara Malaysia based on information obtained from the STRs could kick-start investigations into suspected money laundering offences, terrorism financing and other serious crimes.

International Co-operation

As Malaysia is a member of the Asia/Pacific Group on Money Laundering (APG) Technical Assistance Donor and Provider Group, Bank Negara Malaysia provided technical assistance to the National Bank of Cambodia in drafting the relevant AML/CFT Guidelines for banking institutions in Cambodia. In addition, Bank Negara Malaysia will continue to participate in the AML/CFT mutual evaluation exercises undertaken by various jurisdictions that are members of the APG. Collaborative efforts are also enhanced through the signing of Memorandums of Understanding on the sharing of financial information with various jurisdictions.

Capacity Building

Training Initiatives

Capacity building continued to be the focus of Bank Negara Malaysia with emphasis on financial investigation techniques in order to upgrade the expertise of law enforcement personnel. Experts from both domestic and foreign law enforcement agencies shared their knowledge and expertise at various training workshops during the year. The participating agencies included the Inland Revenue Board and the Attorney-General's Chambers of Malaysia, the National Criminal Intelligence Service and the National Terrorist Financial Investigation Unit of the United Kingdom, the Immigration and Customs Enforcement Division of the United States' Department of Homeland Security, and the United Nations Office of Drugs and Crime. During the year, Bank Negara Malaysia organised and participated in the following training programmes:

- (i) The Money Laundering and Terrorism Financing Seminar, Kuala Lumpur, March 2004;
- (ii) The AMLA Enforcement Workshop, Kuala Lumpur, September 2004;
- (iii) The Computer Forensic Introduction Workshop, Kuala Lumpur, November 2004; and
- (iv) The AMLA Net Worth Analysis Workshop, Kuala Lumpur, November - December 2004.

Internal Enabling Initiatives

Financial Intelligence System Phase I (FINS)

As the competent authority under the AMLA, Bank Negara Malaysia continued to receive STRs, which have improved in terms of quality and quantity during the year. For the purpose of facilitating the reporting of suspicious transactions by financial institutions, Bank Negara Malaysia developed FINS to assist the financial institutions in their online submission of STRs. FINS went live in May 2004 and enabled the financial institutions to submit STRs from the convenience of the compliance officers' work-stations in a high speed and secured web environment. The basic analysis tool in FINS automatically analyses the STRs received and thereby enables Bank Negara Malaysia's financial analysts to expedite their identification and review of the financial linkages between the dubious transactions.

Increase of Staff in the Financial Intelligence Unit (FIU)

In view of the expanding AMLA regulatory net and the additional responsibility of tracking the financing of terrorism, Bank Negara Malaysia increased the staff strength of the FIU from 18 to 24 with the creation of more high level posts in the department. In order to facilitate the effective implementation and enforcement of the AMLA, two new sections, namely the Compliance Section and the Investigation Support Section, were created during the year. The Compliance Section oversees the financial and non-financial reporting institutions' compliance with the AMLA obligations, while the Investigation Support Section helps the relevant law enforcement agencies with financial intelligence for their AMLA related investigations.

Challenges Ahead

Bank Negara Malaysia will continue to extend the AMLA regulatory net to other classes of reporting institutions such as trust companies, operators of forecast numbers and other gaming outlets, fund and asset management companies, unit trust companies, real estate agents, jewellers, dealers in precious metals and stones and antique dealers. The money laundering trends and typologies as well as international AML/CFT standards will determine the timing of the invocation of the AMLA obligations on any of these non-financial entities. In addition, the AMLA obligations will only be invoked after the requisite briefing sessions to, and consultations with, the respective industries and sufficient time is granted for the target reporting institutions to fully understand and prepare for their statutory obligations.

Another essential mechanism to ensure effective implementation of AMLA is to establish an informal AMLA enforcement framework for swift regulatory action against any reporting institution for its failure to comply with the AMLA reporting obligations. Such an informal enforcement framework would systematically enumerate corrective and pre-emptive actions against any errant reporting institution before its non-compliance deteriorates to a stage where it becomes the weakest link in the national AML/CFT regime and is abused by criminals to launder their tainted funds.

