MONEY LAUNDERING IN MALAYSIA

The Current Legal and Regulatory Environment

The G-7 industrial group established the The Financial Action Task Force (FATF) as a global money-laundering watchdog in 1989, as a response to mounting concerns over money laundering. The Financial Action Task Force is mandated to set standards for combating money laundering activities nationally and internationally, FATF developed 40 recommendations which should be considered by national governments, to implement anti money laundering programmes.

This "40 Recommendations" serves as the international benchmark for governments to implement anti-money laundering measures within their respective jurisdictions. Failure to implement such measures leads to a country being identified as a "non-compliant country" by the FATF.

Malaysia, in fulfilling its international obligations and commitment to establishe the FATF's 40 Recommendations, passed the Anti-money Laundering Act (AMLA) in year 2001.

In conformity with prevailing global aspirations, and in order to fortify steps against terrorists and other illegal money laundering activities, the Malaysian Government introduced the Anti-Money Laundering Act, 2001 (AMLA). The Central Bank of Malaysia, Bank Negara Malaysia (BNM) has been appointed by

the competent authority for the purpose of combating money laundering activities under the above act which came into effect on 15 January 2002.

However on March 2007, this Act was renamed as Anti-Money Laundering and anti-Terrorism Financing Act 2001 (Act 613) and revised Act came into force on 6 March 2007, is to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences and to provide for the forfeiture of terrorist property and property involved in, or derived from, money laundering and terrorism financing offences, and for matters incidental thereto and connected therewith.

Categorically, the AMLA is Malaysia's statutory testimony that the Malaysian government is committed to the fight against corruption and matters linked with it, in particular, money laundering. This is evident from section 20 of the AMLA, which says 'the provisions of this part shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.'

Under Section 4 of the AMLA's Act 2001, there is a RM5.0 million (USD1.45 million) fine or imprisonment of five years or both on conviction for an offences of money laundering. For bankers in partivular, this may be a far-reaching statutory power and penalty but so far, the provision has not created the type of disruptive dispotition some quarters expected before the coming into force of the instrument.

Defining Laundering

Under the Malaysian anti money-laundering is deemed, inter alia, as 'an act of a person who engages directly or indirectly in transaction that involves proceeds of an unlawful activity.'

As defined under section 3 of the AMLA, the Act makes money laundering an offence and defines money laundering as the act of a person who:

a) Engages directly or indirectly, in a transaction that involves proceeds of an unlawful activity.
b) Acquires, receives, possesses, disguises, transfers, convert, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
c) Conceals, disguises or impedes the establishment of the true nature, origin, location, movement, dispotition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity.

The bottom line is that for a transaction to be deemed money laundering, the money or asset concerned must, first of all, be the subject matter of an unlawful act. Thus, drug money or money derived from crime or criminal acts is caught under the definition. Money gotten pursuant to kidnapping, robbery or extortion, for example, and transmitted in the aftermath is clearly laundered money. Even legal money can become illegal if moving it violates a country's foreign exchange controls or other financial regulations.

Enforcement Thus Far

In respect of the enforcement of the AMLA, over the past two years, there have already been two charges which resulted in convictions.

Case:

The AMLA was finally tested in April 2004 when the Malaysian Sessions Court allowed an application by the prosecution to jointly prosecute a woman doctor on 8 charges of money laundering. She was alleged to have received money, amounting to RM41.2 million or USD11.8 million thorough the account of Megabridge Sdn. Bhd. at a local bank on June 10, 2003. the offence, under Section 4(1) of the AMLA 2001, is punishable by a fine to RM5 million or USD1.45 million or up to 5 years imprisonment or both.

The second charged under this Act was in February 2009. According to the facts of the case, a former freelance land broker was charged in the Session Court with money laundering involving RM2 million. He pleaded not guilty to receiving the money, allegedly proceeds from illegal activities, in a local bank cheque from an account belonging to one Malaysian. The offence was alleged committed on January 9, 2009. the Malaysian government is currently prosecuting these cases as well as investigating several others.

Thus far, the Attorney-General Chambers of Malaysia has prosecuted a total of 21 money laundering cases, of which , the defendants of the two cases noted were convicted in 2005 and 2007 respectively. The other 19 cases are at various stages

of prosecution. These cases involved a total of 738 charges of money laundering offences with an accumulated amount of RM262.1 million (USD87 million).

BNM in collaboration with other members of National Co-ordination Committee to Counter Money Laundering (NCC) will continue to be vigilant and responsive to evolving money laundering threats, as well as money laundering standards and trends. A key challenge for regulators is in striking an appropriate balance, in terms of the regulatory focus, between overall risks pertaining to the financial system and those relating to money laundering. There are currently also no globally accepted models that can be used to quantify money laundering or terrorism financing risk in a given financial system. As such, the studies conducted by international bodies such as the Financial Action Task Force on Money Laundering (FATF), the Asia/Pacific Group on Money Laundering (APG) or the World Bank on money laundering threats would continue to be used to formulate best practices in Malaysia.

The KMPG Survey

While these initiatives may be regarded as commendable, a consulting firm, KPMG International in a 2004 survey maintained that Malaysia still has some way to go in achieving its aim of eliminating money laundering. In its AML Survey, KPMG argues that the challenge for policymakers and law enforcement agencies want to engage the banking industry more effectively, give banks evidence that their efforts are leading to higher detection rates and prevent the industry from being used by criminals.

The same KPMG Survey also observed that most banks were expecting spending relating to money laundering controls, to rise by more than 40 percent over the next three years. This does indicated that much remains to be done to enhance AML systems and controls, and the Malaysian banking system needs to buck up.

Contributions of SAIs toward fighting corruption and anti-money laundering:

1. **Contributions of SAIs towards fighting fraud and corruption**

   a) SAIs recognize that they have no legal mandate to prosecute corruption and money laundering.

   b) However, they wound still contribute by collecting evidence in the course of conducting their audits and by pointing out suspected cases of corruption and money laundering, if possible to the appropriate authorities to take further action.

   c) In order to carry out the function that is expected from them, they need to develop competence and capacity so that they can assist the relevant authorities in pursuing their investigations.

   d) SAIs should introduce alternative communication channels for the public to inform them of suspected cases of corruption.

e) SAIs need to engage all stakeholders in the audit process; and

f) SAIs need to perform a pro-active role by engaging themselves in direct discussion with auditors on system controls.

2. International institutions – role and expectations:

a) It should take the lead in providing the information framework.

b) It should standardize information and enhance information sharing so that information should be consistent over time and across sectors.

c) It should establish audit trail, data base on corruption.

d) it should provide guidelines and establish specific mechanism for SAIs to assist in the audit process; more insight in the activities of NGOs desirable and

e) It should make it a condition that NGOs only get the funding from donors through the government if they fulfill accountability requirements and specific criteria.