

**EXPLANATORY NOTE ON  
ANTI MONEY LAUNDERING (AMENDMENT) ACT 2003**

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**1.0 INTRODUCTION**

Malaysian government took a step in combating money laundering by introducing the Anti-Money Laundering Act in July 2001 (hereinafter referred to as the AMLA). The AMLA gives certain agencies authority to trace, seize and ultimately confiscate criminally derived wealth and enabling inter government exchange of information with counterparts in other countries.

The amendments to the AMLA have been passed by the Parliament on 20<sup>th</sup> November 2003 and gazetted as law on 25 December 2003. The effective date of the amendment will be notified by way of Gazette Notification. This is the first amendment since the enforcement of the AMLA in 2001. The purpose of the amendment is to cover the element of terrorist financing in combating terrorism activities in Malaysia.

Before the amendment, the AMLA consisted only 92 sections with 2 schedules. The amendment insert new provision in Part VIA which covers suppression of terrorism financing offences and freezing, seizure and forfeiture of terrorist property.

Basically, the reason for the amendment is to accede to the United Nation Convention for the Suppression of the Financing of Terrorism. In fact there are no specific provisions to address terrorism financing offence and it provides ancillary amendments to current provisions so as to strengthen a legal mechanism in combating money laundering and terrorist financing.

The objective of this article is to discuss some of the changes brought about by the amendment. Under the amendment there are 22 sections, which have been amended. In line with the strong tendency of terrorism around the globe the government made some amendment to the AMLA so that it may become one of the effective legal mechanism for combating money laundering and terrorist financing. By this amendment, the AMLA shall be construed as Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (hereinafter referred to as the Amendment Act).

## 2.0 FEATURES OF THE AMENDMENT ACT

Part I	Preliminary (commencement, application, interpretation)	Amendments to section 1,2 and 3 of the AMLA
Part II	Money laundering Offences	No amendment
Part III	Financial Intelligence	Amendments to section 10 and 12 of the AMLA
Part IV	Reporting Obligation	Amendment to section 14 of the AMLA
Part V	Investigation	Amendment to section 32 of the AMLA
Part VI	Freezing, seizure and forfeiture	Amendments to section 44, 45, 47, 48, 49, 50, 51, 52, 53, 55, 56, 59, 61 of the AMLA and insertion of new Part VIA- Suppression of terrorism financing offences and freezing, seizure and forfeiture of terrorist property.
Part VII	Miscellaneous	Amendments of section 67 and 82 of the AMLA.
1st Schedule	Reporting Institutions	Anti Money Laundering (Amendment) of First Schedule) Order 2003. Insertion of additional reporting institutions.
2 <sup>nd</sup> Schedule	Serious Offences	Anti Money Laundering (Amendment) of Second Schedule Order 2003. Insertion of new predicate offences.

### **3.0 LEGAL PROVISIONS TO ADDRESS TERRORISM FINANCING**

The Amendment Act substitutes the long title by inserting the provision on terrorist financing. It includes 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 derived from money laundering and terrorism financing offences<sup>1</sup>.

The Amendment Act amended the name of the AMLA and renaming it as Anti-Money Laundering and Anti-Terrorism Financing Act 2001. All references to the AMLA 2001 in any written law or document shall be construed as Anti-Money Laundering and Anti-Terrorism Financing Act 2001<sup>2</sup>.

It also provides additional explanation on certain terms. The definition of "accounts" includes records of any financial transactions conducted by any reporting institution listed in the First Schedule. The term property also has been redefined to include assets of every kind moveable or immovable, electronic or digital, banking instruments such as cheques, shares, securities, bonds and terrorist property which has the same meaning as in section 130B of the Penal Code. The foreign serious offence also includes "terrorism financing offence" referred under section 130N, 130O, 130P or 130Q of the Penal Code<sup>3</sup>. The amendment generally inserts the words terrorism financing offence and terrorist property in the provisions throughout the AMLA<sup>4</sup>.

### **4.0 ANCILLARY AMLA AMENDMENTS TO CURRENT PROVISIONS**

#### **4.1 DISCLOSURE OF INFORMATION BETWEEN GOVERNMENTS**

The Amendment Act makes clear the circumstances under which the disclosure of information between the competent authority and any corresponding authority of a

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<sup>1</sup> Section 2 of the Amendment Act.

<sup>2</sup> Section 3 and 25 of the Amendment Act.

<sup>3</sup> Section 4 of the AMLA Amendment Act.

<sup>4</sup> Section 12, 44, 45, 47,49,50,51, 52, 53,55,56,59, 61, 67 and 50 of the Amendment Act.

foreign state or between governments would be permitted<sup>5</sup>. The Minister has the following power regarding with the exchange of information between governments:-

- (a) May enter into an agreement with the government of a foreign State;
- (b) May communicate any information to a corresponding authority of a foreign State; and
- (c) May enter into an agreement or arrangement with that foreign State under which the corresponding authority of the foreign State has agreed to communicate to the competent authority, upon the competent authority's request<sup>6</sup>.

In this circumstance the competent authority shall ensure that the corresponding authority has given appropriate undertakings for protecting the confidentiality of any thing communicated and for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any other proceedings<sup>7</sup>. The competent authority has to record in writing the reasons for all decisions made to communicate any information<sup>8</sup>.

## **4.2 THRESHOLDS REQUIREMENT FOR REPORTING**

Paragraph 14 (a) of the AMLA differentiates the threshold requirement for reporting from the threshold requirement for record keeping<sup>9</sup>. Section 14 of the AMLA is amended by providing paragraph (a), which states that “exceeding such amount as the competent authority may specify”. Here, the competent authority has the power to specify the threshold requirement to the reporting institution for reporting purpose.

## **4.3 REQUIREMENTS OF STATEMENT TO BE IN WRITING**

Section 8 of the Amendment Act amended section 32 (7) of the AMLA whereby it requires statements to be reduced into writing to facilitate prosecution. This will assist a

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<sup>5</sup> Section 5 of the Amendment Act.

<sup>6</sup> Section 5 (2) of the Amendment Act.

<sup>7</sup> Section 5 (3) (c) of the Amendment Act.

<sup>8</sup> Section 5 (4) of the Amendment Act.

<sup>9</sup> Section 7 of the Amendment Act.

prosecutor during the court proceedings. The requirements of statement to be documented is in line with the nature of the criminal proceedings on the AMLA .

#### **4.4 SUPPRESSION OF TERRORISM FINANCING OFFENCES AND FREEZING, SEIZURE AND FORFEITURE OF TERRORIST PROPERTY**

##### 4.4.1 Interpretation

The AMLA is amended by inserting Part VIA. Section 66A of the Amendment Act provides interpretation for terms of specified entity which means an entity in respect of which an order has been made and relevant regulatory or supervisory authority to include Bank Negara Malaysia, the Securities Commission and the Labuan Offshore Financial Services Authority.

##### 4.4.2 Declaration of specified entities

The Minister of Home Affairs is empowered to issue orders publish in the Gazette to declare an entity as a “specified entity”<sup>10</sup>. Every person shall disclose immediately to the Inspector General of Police the existence of property of a specified entity including information about a transaction or proposed transaction in respect of said property<sup>11</sup>. The sanction for those who fail to comply with section 66B (3) may be liable on conviction to a fine not exceeding Ringgit Malaysia one million or to imprisonment for a term not exceeding one year or to both.

A specified entity may, within sixty days of publication of the order in the *Gazette*<sup>12</sup>, make an application in writing to the Minister of Home Affairs for the revocation of the order and the Minister may decide to revoke the order or refuse the application<sup>13</sup>. It is important to note that the Minister’s decision shall be final<sup>14</sup>. The Minister’s Order shall

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<sup>10</sup> Section 66B (1) of the Amendment Act.

<sup>11</sup> Section 66B (4) of the Amendment Act.

<sup>12</sup> Section 66B (6) of the Amendment Act.

<sup>13</sup> Section 66B (7) of the Amendment Act.

<sup>14</sup> Section 66B (8) of the Amendment Act.

not apply to funds and other financial assets or economic resources that necessary for basic expenses or extraordinary expenses<sup>15</sup>.

#### 4.4.3 Implementation of measures of UN Security Council resolutions.

The Security Council of the United Nations may direct the Government of Malaysia to apply certain measures<sup>16</sup> in combating money laundering or terrorist financing and the Minister of Home Affairs may give an order to enable those measures to be effectively applied<sup>17</sup>. Malaysia may adopt those measures besides implementing 40 recommendation of the Financial Action Task Force. This will provide a comprehensive framework for combating money laundering and terrorist financing.

#### 4.4.4 Minister's power to obtain information.

The Minister of Home Affairs may require any person to determine whether they are in possession or control of terrorist property by reporting to the relevant authority including the number of persons, contracts or accounts involved, the total value of the property involved, the manner by which the property came to be in their possession and such other particulars as may be specified in the order<sup>18</sup>. The punishment for those who contravenes the above order may be liable to a fine not exceeding Ringgit Malaysia one million or to imprisonment for a term not exceeding one year or to both<sup>19</sup>.

This provision overrule the requirement of secrecy or other restriction on the disclosure of information imposed by any written law<sup>20</sup> such as in section 97 of Banking and Financial Institutions Act 1989 and Section 34 of the Islamic Banking Act 1983.

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<sup>15</sup> Section 66B (10) (a) and (b) of the Amendment Act.

<sup>16</sup> Article 41 of the Charter of the United Nations.

<sup>17</sup> Section 66C (1) of the Amendment Act.

<sup>18</sup> Section 66D (1) and (2) of the Amendment Act.

<sup>19</sup> Section 66D (5) of the Amendment Act.

<sup>20</sup> Section 66D (6) of the Amendment Act.

#### 4.4.5 Directions and guidelines to discharge Government's international obligations

This provision provides power of the relevant regulatory or supervisory authority to give directions in order to discharge any obligation binding on Malaysia subject to a decision of the Security Council of the United Nations<sup>21</sup> and they shall report to the Minister of Home Affairs and the Minister of Finance on the action taken<sup>22</sup>. There will be heavy penalty to any institution that fails or refuses to comply, contravenes or discloses a direction or guideline issued<sup>23</sup>. The punishment for those who contravenes this provision may be liable to a fine not exceeding Ringgit Malaysia one hundred thousand<sup>24</sup>.

#### 4.4.6. Savings for orders made under the Exchange Control Act 1953 and the Labuan Offshore Financial Services Authority Act 1996.

Section 66F states that the orders made under section 44 of the Exchange Control Act 1953 and subsection 4(5) of the Labuan Offshore Financial Services Authority Act 1996 shall be deemed to have been lawfully made under section 66C and shall remain in full force and effect until they are revoked or replaced. The purpose of this amendment is to implement counter-terrorism measures required by the Security Council of the United Nations. It will strengthen the legal mechanism in preventing terrorists from utilizing offshore financial institutions instruments.

### **4.5 ADDITIONAL GROUNDS ON EXTRA TERRITORIAL JURISDICTION**

The Amendment Act provides additional grounds on which extra-territorial jurisdiction may be exercised. Subsection 82(1) of the principal Act is amended and cover the following person:-

- (a) any person against a citizen of Malaysia;

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<sup>21</sup> Section 66E (1) of the Amendment Act.

<sup>22</sup> Section 66E (6) of the Amendment Act.

<sup>23</sup> Section 66E (5) of the Amendment Act.

<sup>24</sup> Ibid

- (b) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;
- (c) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;
- (d) by any stateless person who has his habitual residence in Malaysia;
- (e) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or
- (f) by any person who after the commission of the offence is present in Malaysia<sup>25</sup>.

This provision extends the territorial jurisdiction over a person in Malaysia and enhances the effectiveness of the implementation of the AMLA.

#### **4.6 ADDITIONAL REPORTING INSTITUTIONS**

Anti Money Laundering (Amendment) of First Schedule) Order 2003 provides the additional reporting institutions. The amendment adds another reporting institutions namely Development Financial Institutions, Lembaga Tabung Haji, postal financial services and gaming houses. By this amendment all these institutions have to report to the competent authority on any suspected transaction involving money laundering or terrorist financing.

#### **4.7 NEW PREDICATE OFFENCES**

Anti Money Laundering (Amendment) of Second Schedule Order 2003 provides the insertion of new predicate offences in Banking and Financial Institutions Act 1989, Betting Act 1953, Customs Act 1967, Explosives Act 1957, Futures Industry Act 1993, Kidnapping Act 1961, Penal Code and Securities Industry Act 1983<sup>26</sup>.

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<sup>25</sup> Section 24 of the Amendment Act.

<sup>26</sup> Section 2 (a) until (h) of Anti Money Laundering (Amendment) of Second Schedule Order 2003.

## **5.0 CONCLUSION**

The amendment of the AMLA by invoking the phrase of terrorist financing is in line with the UN Convention for the Suppression of the Financing of Terrorism. The amendment inserts new definitions and phrase of “terrorist property” and “terrorism financing offence”. It extends the anti-money laundering mechanism to include reporting of suspected terrorism financing activities, measures for the detection and prevention of terrorism financing and freeze, seize and forfeiture of terrorist property

The amendment provides new Part VIA (sections 66A to 66F) that enables a specified entity to be deemed as a terrorist where its properties can be frozen, seized and forfeited according to the provisions under the AMLA. The Minister of Home Affairs is empowered to issue orders publish in the Gazette to declare an entity as a “specified entity”, to implement measures required by the UNSC, to obtain information on terrorist property and to discharge Malaysia’s international obligations.

The Amendment Act required all reporting institutions including Lembaga Tabung Haji, Development financial institutions and gaming houses to comply strictly with all the provisions of the AMLA. This will further enhance the effectiveness of the legal mechanism for combating money laundering and terrorist financing particularly in Malaysia.