



Anti-Money Laundering and Financial Crime Laws in Malaysia

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ANTI-MONEY LAUNDERING AND FINANCIAL CRIME LAWS IN MALAYSIA

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PREFACE

Every book has a reason why it ought to be published. This book is no exception. Malaysia, like many other countries, suffers a major hurdle with money laundering and corruption that is synonymous with financial crimes. Unfortunately, for many years, there were no stand-alone textbooks on these topics. In 2018, LexisNexis published a book entitled *Anti-Money Laundering and Counter Financing of Terrorism Law in Malaysia*. The book was the first book in Malaysia that comprehensively covers all main topics related to anti-money laundering and counter financing of terrorism law (AML/CFT) in Malaysia. Within 5 years from that publication, many new cases and noble legal issues have surfaced from various new angles; from a constitutional perspective, technicality issues, to the rationality and fairness of compound. In addition, the formation of the National Anti-Financial Crime Centre (NFCC) in 2019 has added a new perspective to the AML/CFT legal framework. This book was written by a law professor and a Deputy Public Prosecutor (DPP) to address the above lacuna. Hopefully, this book will not be too academic and will be practical and interesting to read.

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Despite the assistance, the authors assume full responsibility for the mistakes and errors that undoubtedly exist in this book. Despite the imperfections, we hope that this book will be useful and will pave the way for the writing of better books on the subject in the future.

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1. OVERVIEW

[1-1] Money laundering and terrorism financing (ML/TF) are financial crimes¹ with dangerous and deleterious socio-economic effects. These financial crimes, if left unopposed, will undermine social-security systems, and destabilise Malaysia’s politics, economy, and society. It will also threaten the safety of the financial system and lead to shadow economy.²

[1-2] Financial crime has become a multitrillion-dollar business for criminal syndicates. According to the United Nations Office on Drugs and Crime (UNODC), at least \$2 trillion of illicit funds are laundered through

1 Financial crime includes money laundering, terrorist financing, fraud, bribery and corruption, forgery, electronic crime, market abuse and insider dealing and scams.
 2 Shadow economy is also called the underground, informal, or parallel economy. The shadow economy includes not only illegal activities but also unreported income from the production of legal goods and services, either from monetary or barter transactions.

global financial networks every year, representing between two to five per cent of global GDP (and it is increasing each year).³

[1-3] These criminal syndicates, money launderers and terrorist financiers are very adaptive and are quick to exploit any gap or weak links within an increasingly borderless world to obscure detection of such unlawful proceeds.⁴ The globalisation of the financial services industry and rapid advancement in technology lead to the emergence of new players and innovative fintech products, and pose new challenges to regulators and law enforcement agencies alike in curbing criminal activities.⁵

[1-4] A report by the United States' think tank Global Financial Integrity (GFI) suggested that Malaysia might lose up to about RM158.5 billion/US\$33.7 billion in illicit outflow from 2006-2015.⁶ According to an International Monetary Fund (IMF) Working Paper, Malaysia's average ratio for illicit trade during the 1991-2015 period alone was 31.5 per cent – higher than Singapore (11.9 per cent), Australia (12.1 per cent), China (14.7 per cent), Hong Kong (14.7 per cent), Vietnam (18.7 per cent), India (23.9 per cent), Indonesia (24.1 per cent) and South Korea (25.7 per cent).⁷

[1-5] These financial crimes tarnished the reputation of Malaysia. In 2017, the U.S. attorney-general described the multibillion-dollar corruption scandal involving 1MDB as the worst form of kleptocracy.⁸

[1-6] Another Thompson Reuters report from 2018 revealed that nearly half of 2,000 plus large companies surveyed in Malaysia were victims of financial crimes within the previous year, losing an estimated 3.5 per cent of their turnover.⁹

3 'What is the Threat of Financial Crime?' via <https://www.dowjones.com/professional/risk/glossary/financial-crime/threats/>

4 Ibid.

5 Ibid.

6 Debra Chong, 'Malaysia lost up to US\$33.7b in illicit outflow from 2006-2015' (2019) Malay Mail, 29 January.

7 'Billions lost in illicit trade, funds vital for Covid-19 battle' (2020) New Strait Times, 2 April via <https://www.nst.com.my/business/2020/04/580595/billions-lost-illicit-trade-funds-vital-covid-19-battle>

8 'Jeff Sessions calls Malaysia's 1MDB scandal 'kleptocracy at its worst'' (2017) Reuters, 5 December via <https://www.reuters.com/article/us-malaysia-scandal-doj-idUSKBN1DZ0MX>

9 Governor's Speech at the 11th International Conference on Financial Crime and Terrorism Financing (IFCTF) 2019. Speaker: Datuk Nor Shamsiah Mohd Yunus, Venue: Shangri-La Hotel, Kuala Lumpur. Language: English. Speech/Interview Date: 5 November 2019.

[1-7] In 2018, during the BNM Governor’s Keynote Address at the 10th International Conference on Financial Crime and Terrorism Financing – ‘Reshaping Malaysia’s Future – Setting the goal for greater governance and transparency’, Datuk Nor Shamsiah Mohd Yunus reminds as follows:

Financial crime. Terrorism financing. Corruption and money laundering. These are heavy words that carry the feelings of outrage and displeasure, amongst others. The United Nations Office of Drugs and Crime estimates that every year globally, a staggering amount of USD2.6 trillion is stolen through corruption. Yet, I suspect, in reality, figures like these are so large that many may find it hard to relate to it. To put it in perspective, the figure is around eight times larger than the Malaysian economy. Let us also take the UN Sustainable Development Goals that aims to improve the lives of the poor, improve governance and address inequality. Some estimate that it will take around USD5-7 trillion to meet all the SDGs. This represents 2-3 years’ worth of money lost to corruption. In other words, the money lost through financial crimes is a devastating opportunity cost, draining the resources that could have been used to permanently uplift the lives of billions in this world. Thus, the human and societal cost is very real. It is pervasive and destructive, rippling across society, and if left unattended, will accumulate over time. Imagine the thousands of schools that could have been built, numerous hospitals with the best care and the strongest social safety nets that can help those most in need. The persistence of financial crimes will disproportionately impact the most vulnerable section of society. It erodes trust and leads to a breakdown in society.¹⁰

[1-8] According to analysts and experts, Malaysia has missed its target of being a developed economy by 2020 (under Vision 2020) due to its progress being hampered by financial crimes like graft.¹¹ In 1996, Malaysia’s position at the Transparency International Corruption Perception Index (CPI) was 26th. 25 years later, in 2021, Malaysia’s rank has dived from 26th to 62nd out of 180 countries in terms of public sector corruption. The ranking is not necessarily a good indicator of the performance of a country but the score card of Malaysia is also very low.¹² A survey conducted by

¹⁰ Governor’s Keynote Address at the 10th International Conference on Financial Crime and Terrorism Financing - “Reshaping Malaysia’s Future - Setting the goal for greater governance and transparency”. Speaker: Datuk Nor Shamsiah Mohd Yunus. Venue: Shangri-la Hotel, Kuala Lumpur. Language: English. Speech/Interview Date: 30 Oct 2018.

¹¹ Ram Anand, ‘Malaysia misses Vision 2020 targets in face of corruption, pandemic and inequality’ (2021) *The Straits Times*, 1 January via <https://www.straitstimes.com/asia/se-asia/malaysia-misses-vision-2020-targets-in-face-of-corruption-pandemic-and-inequality>

¹² In terms of score, Malaysia dropped to 48 out of 100 from 51 in 2020. In comparison, Singapore’s ranking was fifth in the world with a score of 85. With a CPI score of 48 for the first time since 2012, Malaysia is now grouped among two-thirds of the countries globally which have scores that are below 50.

Transparency International indicated that people saw political parties as the most corrupt bodies in Malaysia, closely followed by the police and civil servants.¹³

[1-9] On a more positive note, the national legal and regulatory framework has been revamped to ensure more holistic and effective actions can be taken against financial crimes and money launderers. The new legal framework has created a complex, globally interconnected system of laws and regulations. In addition, the Reporting Institutions, the Competent and Supervisory Authorities, the Law Enforcement Agencies and the judiciary have been working hard to eliminate money laundering and financial crimes.

[1-10] This book aims to explore the implementation of the AML/CFT legislation in Malaysia and the consequences thereof, and is primarily aimed at Reporting Institutions, policymakers, criminal lawyers, law students, and those with interest in the legal framework for financial crimes. A series of suggestions and recommendations on how to improve the legal and regulatory framework in Malaysia is also included.

2. HISTORY AND BACKGROUND

[1-11] Modern legislation against money laundering were created to be used against organised crime during the period of Prohibition in the United States during the 1930s. Organised crime, e.g. the Mafia received a major boost from the Prohibition and a large source of new funds that were obtained from unlawful proceeds, e.g. illegal sales of alcohol. The successful prosecution of the syndicate boss, Al Capone on tax evasion charges brought in a new emphasis by the State and law enforcement agencies to track and confiscate the proceeds of unlawful activities instead.

[1-12] The war on drugs in the 1980s led governments to resort to money laundering legislation to track and seize the proceeds of drug crimes. Targeting the money was easier as the burden of proof required is lower.

[1-13] Around two decades later, the United States was attacked. The September 11 attacks in 2001, which led to the Patriot Act in the U.S. and similar legislation worldwide, also led to a new narrative on money laundering laws to combat terrorism financing.

¹³ Cynthia Gabriel, 'Cleaning up corruption in Malaysia goes beyond Najib' (2019) Aljazeera, 22 May via <https://www.aljazeera.com/opinions/2019/5/22/cleaning-up-corruption-in-malaysia-goes-beyond-najib>

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