

ANTI-MONEY LAUNDERING GUIDANCE



MALAYSIAN INSTITUTE OF ACCOUNTANTS

FOREWORD

This Guidance is issued by the Council of the Malaysian Institute of Accountants (the 'Institute') on **1 July 2004**.

This Guidance is designed to assist members and member firms who provide the relevant services as defined herein, to fulfill their new reporting obligations pursuant to the provisions of the Anti-Money Laundering Act 2001 with effect from 30 September 2004. This Guidance is based on the legislative framework and information as applicable at the date of issuance. As and when changes are made to the legislative framework and further information becomes available, the Council of the Institute will issue additional guidance or amend this Guidance accordingly.

Please note that this Guidance is advisory only and should be read in conjunction with the applicable provisions of the Anti-Money Laundering Act 2001 and subsidiary legislation made thereunder. Members are advised to assess for themselves, the extent and implications of the new reporting obligations under the Anti-Money Laundering Act 2001. Members are also advised to keep abreast with any amendments to the legislative framework and other international and national developments in respect of money laundering and terrorist financing. The Institute will endeavour to keep members updated from time to time on these issues. However, the ultimate responsibility to keep updated rests with members.

The Institute is not responsible or liable for any loss or damage occasioned to any persons acting or refraining from any action as a result of any information or material in this Guidance or any part thereof.

The updated version of this Guidance together with the supporting appendices can be downloaded from the Institute's website at www.mia.org.my on or after 30 September 2004. The Institute welcomes any comments on this Guidance which may be incorporated in future revisions of this Guidance. Comments can be e-mailed to regulatory@mia.org.my.

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1.0 INTRODUCTION

1.1 Background

1.1.1 In recent years, money laundering has become a growing problem in a number of jurisdictions particularly in many emerging financial services sectors. Whilst initially viewed within the context of traditional financial crimes, the fight against money laundering has now broadened to include terrorist financing subsequent to the events of September 11, 2001. Governments and intergovernmental organizations around the world have increased their focus and stepped up their efforts in combating money laundering, terrorist financing and related financial crimes.

1.1.2 As a result, governments and other authorities in various jurisdictions have accelerated their issuance of new or have sought to strengthen existing, legislation, regulations and pronouncements. There has also been an increase in law enforcement activities targeted at reducing or eliminating money laundering and terrorist financing activities.

1.2 International Initiatives

1.2.1 In response to mounting concerns over money laundering, the Financial Action Task Force on Money Laundering ('FATF') was established in 1989 by the Group of 7 Industrial Democracies (G-7). The FATF is a global money laundering watchdog organisation and has developed recommendations setting out the framework and measures that should be taken by governments around the world to combat money laundering and more recently, terrorist financing.

1.2.2 In 1990, the FATF issued a set of Forty Recommendations to guide the fight against money laundering. The FATF's mandate was expanded in October 2001 to deal with the issue of the financing of terrorism and it has now issued a set of Eight Special Recommendations on terrorist financing.

- 1.2.3 The FATF Forty Recommendations, which were recently revised in June 2003, together with the Eight Special Recommendations, are viewed as the leading international anti-money laundering standards that provide an enhanced, comprehensive and consistent framework of measures for combating money laundering and terrorist financing. This framework serves as the international benchmark for national governments to implement within their respective national jurisdictions, for the detection, prevention and suppression of money laundering and the financing of terrorism.
- 1.2.4 Pursuant to the latest revision to the FATF Forty Recommendations in June 2003, there has been an extension of the anti-money laundering obligations to accountants (as one of the categories of non-financial businesses or professionals). In undertaking the revision to the Forty Recommendations, particularly in respect of accountants, the FATF took into consideration the fact that in recent years, FATF typology reports indicated an increasing role played by non-financial businesses and professionals, including accountants, in money laundering schemes. The FATF typology reports indicated that professionals such as accountants and lawyers were increasingly used by organised crime and other criminal organisations to assist them to launder their funds by acting as financial intermediaries or providing expert advice or by providing other services useful to the money launderers such as the creation and management of companies and other legal entities or arrangements.
- 1.2.5 Hence, there has been an extension of anti-money laundering obligations to various professionals including accountants as well as company and trust service providers pursuant to the revised FATF Forty Recommendations. There has also been the consequent development around the world for the extension of national anti-money laundering obligations to the accountancy profession as well as to company and trust service providers (among others) within those national jurisdictions.

1.3 Anti-Money Laundering Measures in Malaysia

- 1.3.1 As part of its international obligations and commitments, Malaysia enacted its Anti-Money Laundering Act in 2001 (the 'AMLA') which came into force on 15 January 2002. The AMLA complies with nearly all of the FATF Forty Recommendations (original) and recent amendments have been enacted to the AMLA pursuant to the Anti-Money Laundering (Amendment) Act 2003¹ which extends its application to cover the offence of terrorist financing. The AMLA is therefore Malaysia's primary legislative framework on anti-money laundering and now anti-terrorist financing.
- 1.3.2 The AMLA makes it an offence for any person to engage in or abet the commission of money laundering and terrorist financing, and seeks among others, to implement measures for the prevention of money laundering and terrorism financing offences (new offences under the Penal Code²). Several of these measures include the imposition of obligations on reporting institutions (as described in the First Schedule of the AMLA) for reporting of cash transactions exceeding a specified threshold and reporting of suspicious transactions, as well as record keeping and customer due diligence for these reporting institutions.
- 1.3.3 The Central Bank of Malaysia ('Bank Negara Malaysia') as the competent authority charged with implementation of the provisions of the AMLA, has now extended the reporting requirements in the AMLA to accountants who are members in public practice of the Malaysian Institute of Accountants (the 'Institute') and who provide the relevant services as set out in paragraph (a) in **Appendix 1**, by deeming these accountants as reporting institutions with effect from 30 September 2004. In addition, Bank Negara Malaysia has also extended the reporting requirements in the AMLA to members of the Institute (whether or not in public practice) who by virtue of section 139A of the Companies Act 1965

¹ Date of Royal Assent: 17 December 2003; date of publication in the Gazette: 25 December 2003. Once in force, the long title of the AMLA will be the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

² See Penal Code (Amendment) Act 2003 - Date of Royal Assent: 17 December 2003; date of publication in the Gazette: 25 December 2003.

act as company secretaries, and who provide the relevant services as set out in paragraph (b) in **Appendix 1**.

1.3.4 Implementation of the reporting requirements in the AMLA will have implications for accountants who are either in public practice and who amongst others, act as financial intermediaries or who act as company secretaries. Non-practicing accountants, if employed within reporting institutions such as banks or insurance companies, already have obligations to report any suspicious transactions to the relevant officers within their respective organisations.

1.4 Scope & Purpose of this Guidance

1.4.1 This Guidance is issued by the Council of the Institute. This Guidance has been prepared for the members of the Institute who:

- (a) as members in public practice, provide the relevant services as set out in paragraph (a) in **Appendix 1** to their clients whether as sole practitioners or through firms that are registered as member firms of the Institute; or
- (b) as company secretaries prescribed pursuant to section 139A of the Companies Act 1965, provide the relevant services as set out in paragraph (b) in **Appendix 1** to their clients whether in person or through firms or companies.

1.4.2 The purpose of this Guidance is to assist these members in complying with their express reporting obligations under the AMLA.

1.4.3 It must be noted however, that this Guidance is specifically tailored for members in public practice who provide the relevant services set out in paragraph (a) and paragraph (b) in **Appendix 1** through member firms, although the Guidance may be modified for use by members of the Institute who provide the relevant services set out in paragraph (b) in **Appendix 1** through other entities.

- 1.4.4 This Guidance is also recommended for use by those members of the Institute who may be employed by member firms or other entities or who may control or manage these other entities, that provide or are engaged in the business of providing the relevant services.
- 1.4.5 By setting out the framework and principles for compliance, this Guidance is designed to assist members, member firms and their employees to:
- (a) recognize, detect and report, and thereby reduce the incidence of money laundering and terrorist financing; and
 - (b) minimize the risk of non-compliance with their obligations under the AMLA.
- 1.4.6 Members, member firms and their employees who provide the relevant services have a legal obligation to comply with the requirements of the AMLA and any subsidiary legislation made thereunder. The provisions of the AMLA that are required to be complied with and the time frame for implementation are set out in this Guidance.
- 1.4.7 Pursuant to the legislative framework for anti-money laundering in Malaysia, member firms who provide the relevant services are required to (in summary):
- Appoint a Compliance Officer or Anti-Money Laundering Reporting Officer (AMLRO) to receive money laundering reports or reports of suspicious transactions from colleagues and to make reports to the Financial Intelligence Unit (FIU) in Bank Negara Malaysia.
 - Provide training to the partners, principals and employees of the member firms on the requirements of the legislative framework in Malaysia, including how to recognise and deal with potential money laundering offences and how to report to the AMLRO.
 - Verify and keep records of the identity of clients.

- Establish appropriate internal policies based on the AMLA and subsidiary legislation made thereunder to guard against or reduce the incidence of money laundering.

1.4.8 This Guidance will apply equally to sole practitioners with any employees. Sole practitioners without employees will have slightly different requirements, as there would be no need to appoint an AMLRO, but in other respects are recommended to follow this Guidance.

1.4.9 This Guidance has been drawn up to reflect the provisions of the AMLA as at the date hereof and takes into account current national and international developments, so as to provide practical support to members and member firms who are required to comply with the obligations under the AMLA. However, this Guidance is advisory only. Full compliance with the Guidance may not necessarily guarantee full compliance with the provisions of the AMLA.

1.4.10 In any event, members are required to exercise sound professional judgment in all instances. Members are required to consider the range of services they provide, and apply their professional judgment both in terms of ascertaining whether their services fall within the range contemplated as relevant services, as well as how to comply with the provisions of the AMLA. An error in this regard and the consequential failure to comply with the provisions of the AMLA will result in the commission of an offence under the AMLA.

1.4.11 Members may wish to exercise their professional judgment to decide the extent to which the requirements under the AMLA should also be applied to activities or services other than the relevant services. Members may also wish to consider applying standard practices across the board for their entire range of services as consistency in approach may avoid difficulties in respect of services which may sometimes fall within the ambit of the relevant services and sometimes not.

2.0 DEFINITIONS

2.1 In this Guidance, unless the context otherwise requires -

- i. 'Act' means the Accountants Act 1967 as may be amended from time to time;
- ii. 'AMLA' means the Anti-Money Laundering Act 2001 as may be amended from time to time;
- iii. 'AMLRO' means the Anti-Money Laundering Reporting Officer;
- iv. 'Council' means the Council of the Institute established by Section 8 of the Accountants Act, 1967;
- v. 'FATF' means the Financial Action Task Force;
- vi. 'FIU' means the Financial Intelligence Unit in Bank Negara Malaysia;
- vii. 'Institute' means the Malaysian Institute of Accountants established under Section 3 of the Accountants Act 1967;
- viii. 'member' means a person who is registered with the Institute in accordance with the Accountants Act 1967 as a chartered accountant, a licensed accountant or an associate member;
- ix. 'member in public practice' means a chartered accountant or licensed accountant who, as a sole proprietor or in a partnership, provides or is engaged in public practice services in return for a fee or reward for such services otherwise than as an employee, and who holds a valid practicing certificate

issued pursuant to Rule 9 of the Malaysian Institute of Accountants (Membership and Council) Rules 2001;

- x. 'member firm' means a firm where the sole-proprietor or all the partners of the firm are members of the Institute;
- xi. 'relevant services' means those services set out in **Appendix 1**;

- 2.2 For the purposes of this Guidance, the term 'member' is used broadly to cover members in public practice as well as those members who are employees of member firms or other entities or who are in control or manage these other entities, that provide or are engaged in the business of providing, the relevant services.
- 2.3 For the purpose of this Guidance, references to the phrase 'anti-money laundering' include references to 'counter financing of terrorism' unless the context requires otherwise.
- 2.4 Save as provided above, references to any word, term or phrase from the AMLA shall have the meaning ascribed to that word, term or phrase in the AMLA.
- 2.5 Words importing the singular only shall also include the plural and vice versa where the context requires.
- 2.6 References to paragraphs and appendices herein are to paragraphs and appendices to this Guidance unless stated otherwise.
- 2.7 Words in italics in this Guidance indicate that such words are reproduced from the AMLA.

3.0 LEGISLATIVE FRAMEWORK

3.1 Anti-Money Laundering Act 2001

3.1.1 The Malaysian substantive law relating to money laundering is contained in the AMLA. The AMLA was gazetted on 5 July 2001 and came into force on 15 January 2002. As mentioned above, the AMLA seeks to establish and implement the FATF Forty Recommendations in Malaysia.

3.1.2 The AMLA covers the offence of money laundering, creates mechanisms for investigating and recovering proceeds of unlawful activities, introduces the power for the freezing, seizure and forfeiture of the proceeds of unlawful activities. The AMLA also consolidates the requirements on reporting institutions (as defined therein) to report knowledge or suspicion of, money laundering activities.

3.1.3 The following obligations in AMLA have been or will be invoked on members who provide the relevant services:

<u>Obligations</u>	<u>Date of Invocation</u>
a. the requirement to report suspicious transactions pursuant to section 14(b) of the AMLA, together with section 20 (overriding of secrecy obligations) and section 24 (protection of persons reporting);	30 September 2004
b. the requirements to identify and verify particulars of clients, maintain records for a minimum period of 6 years, implement internal policies, procedures and compliance programmes, pursuant to the other relevant sections in Part IV of the AMLA;	30 September 2005

- c. the requirement to report cash transactions exceeding a threshold that may be specified by Bank Negara Malaysia pursuant to section 14(a) of the AMLA.

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3.1.4 Subject to the requisite invocation and implementation dates of the relevant provisions of the AMLA, members or member firms would have to comply with the following broad obligations:

1. Pursuant to section 14(b) of the AMLA, promptly report to the FIU in Bank Negara Malaysia, any transaction -
 - (a) where the identity of the persons involved;
 - (b) the transaction itself; or
 - (c) any other circumstances concerning that transaction;gives any officer or employee of that member or member firm, reason to suspect that the transaction itself involves proceeds of an unlawful activity (Suspicious Transaction Reporting or STR);
2. Take reasonable measures to obtain and record information about the true identity of the person on whose behalf a transaction is conducted if there are any doubts that any person is not acting on his or her own behalf (Client Due Diligence (CDD) or Know Your Client (KYC) requirements);
3. Retention of documents and records in respect of any transaction which has been completed or terminated for a period of six (6) years from the date of completion or termination (Record Keeping requirements);
4. Adopt, develop and implement internal controls, policies and procedures to guard against and detect any offence under the AMLA including procedures for staff training and an independent compliance programme (Internal Control and Policies, and Compliance Programme);

5. Promptly report to the FIU in Bank Negara Malaysia, any transaction exceeding the amount specified by Bank Negara Malaysia (Cash Transactions Reporting or CTR).

3.2 Invocation Order

3.2.1 By way of an Order by the Minister of Finance which is to be gazetted on or before 30 September 2004, members of the Institute are deemed to be reporting institutions for the purposes of the AMLA if they –

- (a) as members in public practice, prepare for or carry out the following activities for their client
 - (i) buying or selling of immovable property;
 - (ii) managing of client 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;

- (b) as company secretaries prescribed to so act pursuant to section 139A of the Companies Act 1965, whether in person or through a firm or company, prepare for or carry out the following activities for their client:
 - (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 entity or arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

3.2.2 This Guidance hence applies to those members who are deemed to be reporting institutions by the Invocation Order and who provide the above relevant services.

3.2.3 The relevant services are also set out in **Appendix 1**. In the event there are inconsistencies between the relevant services described herein and in the Invocation Order, the Invocation Order prevails. Members are required to refer to the Invocation Order once this has been duly gazetted.

3.3 Guidance by the Institute

3.3.1 To assist members and member firms, the Council of the Institute has issued this Guidance. The Council of the Institute shall from time to time and whenever necessary, issue further guidance to its members or amend this Guidance.

3.3.2 This Guidance aims to give practical guidance to members in interpreting the applicable provisions of the AMLA and the implementation of these provisions in respect of the relevant services if provided by these members.

3.3.3 This Guidance reflects 'best practices' and may be taken into account when determining whether a member or member firm has complied with the applicable provisions of the AMLA.

3.3.4 In the event of any inconsistency between the contents of this Guidance and the provisions of the AMLA, the provisions of the AMLA will prevail.

3.3.5 Members are advised to keep abreast with any amendments to the AMLA or changes to the legislative framework as well as international developments on the issues of money laundering and terrorist financing. The Institute will endeavour to keep members updated from time to time on these issues. However, the ultimate responsibility to keep updated rests with members.

4.0 MONEY LAUNDERING

4.1 What is Money Laundering?

4.1.1 Money laundering is the process by which cash or other funds generated from illegal activities is funnelled through legitimate financial institutions and businesses to conceal the true source of the funds. If undertaken successfully, money laundering allows the owners of the 'dirty' funds to maintain control over these proceeds and ultimately, to make these funds appear 'clean'.

4.1.2 Money laundering is a global phenomenon that by its nature, is a hidden activity and therefore the scale and size of criminal funds being generated either locally or globally each year is difficult if not impossible to measure³. Failure to prevent the laundering of proceeds of crime permits criminals to benefit from their illegal activities and actions, and thus making crime a more attractive proposition. More significantly, if left unchecked, money launderers can manipulate financial systems across the globe to operate and expand their illegal activities, which in turn would undermine the stability and development of international financial systems and world trade.

4.1.3 The legal definition of money laundering is set out in the AMLA. Money laundering is defined in Section 3(1) of the AMLA as the act of a person who-

- (a) *engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;*
- (b) *acquires, receives, possesses, disguises, transfers, converts, 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, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;*

³ Conservative estimates of the size of the global annual 'gross money laundering product' range from US\$500 billion to US\$1.5 trillion.

where-

- (aa) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or*
- (bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.*

4.1.4 Under Section 4(1) of the AMLA:

Any person who-

- (a) engages in, or attempts to engage in; or*
- (b) abets the commission of,*

money laundering, commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

4.1.5 Further, Section 4(2) of the AMLA provides that:

A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.

4.1.6 As indicated by the above provisions, the offence of money laundering (which includes abetting the commission of or attempting to engage in, money laundering) is expressed in wide terms. This offence encompasses among others, the dealing in, concealing, disguising, converting, transferring or removing, acquiring, or using the proceeds of any unlawful activity, where there is:

- (i) knowledge or reason to believe that such proceeds are proceeds of an unlawful activity; or
- (ii) without reasonable excuse, a failure to take reasonable steps (if natural person) to ascertain whether or not such proceeds are proceeds of an unlawful activity.

4.1.7 'Proceeds of unlawful activity' is defined under Section 3(1) of the AMLA as any property derived or obtained, directly or indirectly by any person as a result of any unlawful activity. 'Unlawful activity' in the AMLA is defined as any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence.

4.1.8 'Serious offences' are described in the Second Schedule of the AMLA and include any *attempts to commit or the abetment of any of those offences*. The Second Schedule of the AMLA is annexed as **Appendix 2** A 'foreign serious offence' is one that is *against the law of a foreign State as certified by that State and that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a 'serious offence'*.

4.1.9 These definitions provide for a broad scope of what constitutes money laundering in Malaysia. Effectively, money laundering would arise from any dealings in the proceeds of unlawful activities, including those proceeds arising from predicate offences such as corruption; criminal breach of trust; unlawful deposit taking or investment schemes; manipulation of the capital markets or false trading; illegal gambling; unlawful dealing with or trafficking in children, drugs, arms, etc; infringement of copyright; waging war against the King or government; kidnapping; theft; grievous bodily injury or murder; and a host of other offences.

4.1.10 It should be noted that there are numerous criminal offences set out in the Second Schedule of the AMLA which if committed, are likely to result in a person benefiting or deriving proceeds from the offence. Members are required to refer to the predicate offences as set out in the Second Schedule of the AMLA which is annexed as **Appendix 2**.

4.1.11 Members are required to also take cognizance of the fact that although there would be no 'proceeds from any unlawful activity' if no predicate offence has been committed, a money laundering offence under the AMLA can still be committed if there is any attempt to commit or abet the commission of, any of those offences.

4.2 Stages of Money Laundering

4.2.1 There is no one method of laundering money. Methods can range from the purchase and resale of property such as cars, jewellery or houses, to passing money through a complex web of legitimate businesses and shell companies (those companies that exist only as named legal entities without any trading or business activities). Over the years, the methods of money laundering have become increasingly complex and ingenious as criminals attempt to stay one step ahead of legislative reforms.

4.2.2 Notwithstanding the variety of methods, the money laundering process is typically accomplished in three stages, which may comprise of numerous transactions by the money launderers that could raise suspicions of underlying criminal activity -

Placement – this is the physical disposal of the initial proceeds derived from illegal activity in such a way that financial institutions and government authorities are not able to detect such as the smuggling of currency in bulk, mixing illicit proceeds with legitimate funds, depositing cash in small amounts and subdividing financial or commercial transactions. Other placement techniques include the structuring of cash payments through legitimate banks and other financial institutions which may involve deposits or money transfers, or the purchase of money orders, cashiers' or travellers' cheques or other monetary instruments.

Layering – this is the process of separating illicit proceeds from their source by creating a series of complex layers of financial transactions designed to obscure audit trails and provide anonymity. Common layering techniques include multiple transfers of money, multiple transactions, payment of fake invoices, the purchase

or sale of the same goods, and withdrawals of already placed deposits in the form of highly liquid monetary instruments. Such transactions are usually channelled through shell companies or companies with nominee shareholders and/or nominee directors.

Integration – this final stage provides apparent legitimacy to illegally derived wealth. If the layering process has succeeded, integration schemes reinsert the successfully laundered proceeds back into an economy in such a way that such proceeds re-enter the financial system appearing as normal or legitimate business funds. This is accomplished by spending, investing, lending, along with cross-border, legitimate appearing transactions.

4.2.3 These three basic steps may occur as separate and distinct phases. They may occur independently, simultaneously or, more commonly, they may overlap. How these basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations.

4.3 Vulnerability of Accountants To Money Laundering

4.3.1 The Money Laundering Typology Reports by the FATF (the FATF typology reports) have identified the following money laundering vulnerabilities for accounting firms:

- (i) Creation of corporate vehicles or other complex legal arrangements (for example, trusts, shell companies, joint venture companies, managed investment schemes). Such arrangements may serve to confuse the links between the proceeds of a crime and the criminal perpetrator;
- (ii) Performing financial transactions, such as carrying out various financial operations on behalf of the client (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers);

- (iii) Financial and tax advice, in which a criminal with a large sum of money to invest may pose as an individual hoping to legitimately minimize tax obligations or seeking to place assets out of reach in order to avoid future liabilities; and
- (iv) Gaining introductions to financial institutions.

4.3.2 Accountants as providers of certain financial intermediary services are susceptible to being used not only in the layering and integration stages, but also as a means to disguise the origin of funds before placing them into the financial system. As professional advisers, accountants are viewed as 'financial gatekeepers' whose specialised skills and expertise need to be accessed by money launderers in order to create complex laundering schemes designed to minimise the possibilities of detection. These professionals are gateways through which the launderer passes to achieve his/her goals because of the types of services they provide rather than any criminal intention on their part.

4.3.3 Money launderers are often educated, plausible and seemingly respectable people and their business activities will often be difficult to distinguish from those of legitimate clients. Like legitimate clients, money launderers require professional services and a whole range of financial, tax and business advice. Money launderers may mislead these professionals by instructing them in relation to a number of legitimate transactions before they attempt to launder the illegitimate funds. These professionals provide the apparent sophistication and extra layer of respectability to the laundering operations.

4.3.4 Members and member firms should pay particular attention to the money laundering risks presented by the relevant services that they offer to avoid being manipulated by criminals seeking to launder illicit proceeds. Whilst the relevant services have been identified as posing the highest risks of money laundering, members and member firms should not regard other services provided by them as being immune from the risks of being utilized by criminals in furtherance of their money laundering activities.

5.0 KEY ELEMENTS OF AN ANTI-MONEY LAUNDERING FRAMEWORK

5.1 Introduction

5.1.1 The key elements of the Anti-Money Laundering Framework in Malaysia as set out below, are central to the compliance of the requirements under the AMLA.

5.1.2 This Guidance briefly sets out the key elements of the Anti-Money Laundering Framework which should be implemented by members or member firms, to guard against money laundering as well as to ensure compliance with the relevant requirements of the AMLA. This Guidance then builds on these key elements in the subsequent sections herein.

5.1.3 In order to comply with the requirement to report suspicious transactions under the AMLA which comes into effect from 30 September 2004, members or member firms need to consider implementing these key elements of the Anti-Money Laundering Framework at this stage. However, the legal requirement to implement these key elements will only arise once the relevant provisions in Part IV of the AMLA are invoked with effect from 30 September 2005.

5.2 Key Elements

5.2.1 The key elements identified in this Guidance are as follows:

1. Internal Controls, Policies and Accountabilities
2. Know Your Client
3. Education and Training
4. Monitoring and Detection
5. Reporting Obligations and Procedures
6. Record Keeping
7. Compliance Programme

5.2.2 Each of these key elements will be elaborated in the following sections of this Guidance.

6.0 INTERNAL CONTROL, POLICIES AND ACCOUNTABILITIES

6.1 Internal Controls, Policies and Procedures

6.1.1 Members who are deemed to be reporting institutions under the AMLA are required to establish and maintain policies, procedures and controls in line with the AMLA to prevent money laundering, and to ensure the reporting of any known money laundering activities or transactions which give rise to suspicions.

6.1.2 Under Section 19(1) of the AMLA, members in public practice or member firms are required to adopt, develop and implement internal programmes, policies, procedures and controls to guard against and detect any offence. Section 19(2) of the AMLA further provides that these programmes shall include –

- (a) the establishment of procedures to ensure high standards of integrity of the employees and a system to evaluate the personal, employment and financial history of these employees;
- (b) on-going employee training programmes such as 'know your client' programmes and instructing employees with regard to the responsibilities specified in Sections 13, 14, 15, 16 and 17 of the AMLA.

6.1.3 In seeking to implement the internal controls, policies and procedures required under the AMLA, members in public practice and member firms should firstly assess and review their existing internal standards and policies with a view of ascertaining whether these standards and policies meet the requirements in the AMLA.

6.1.4 Members in public practice and member firms will need to review existing internal control procedures to ensure that appropriate measures are included to forestall and prevent money laundering. Modifications should be made to existing procedures where necessary. It is difficult to provide guidance on a particular procedure, as the services offered by various member firms will result in differing risks and vulnerabilities.

- 6.1.5 However, it is recommended that member firms include consideration of the following:
- (i) Client acceptance procedures, including provisions as to identification and gathering 'Know Your Client' information;
 - (ii) Controls over client's money, and transactions passing through the client account with particular reference to the identity of the client, the commercial purpose of the transaction and the source and destination of funds;
 - (iii) Review other services to clients, with regard to the nature of services that could be of use to a money launderer;
 - (iv) The appropriateness of internal reporting lines;
 - (v) The role of the Compliance Officer/ AMLRO.
- 6.1.6 As good practice, member firms are recommended to make arrangements to verify, on a regular basis, compliance with the internal controls, policies and procedures relating to the obligations pursuant to the AMLA. Members in public practice need to satisfy themselves that the requirements in the AMLA to maintain and establish such internal controls, policies and procedures have been discharged.
- 6.1.7 It is important for the procedures and responsibilities for monitoring compliance with and effectiveness of money laundering policies and procedures are clearly set out by member firms.
- 6.1.8 Section 19(3) of the AMLA⁴ requires members in public practice and member firms who provide the relevant services, to implement the compliance programmes pursuant to Section 19(1) of the AMLA, on its branches within and outside Malaysia. In this regard, members in public practice and member firms are recommended to extend their firms' internal controls, policies and procedures

⁴ Section 19(3) of the AMLA would require members who provide the relevant services as set out in paragraph (b) in Appendix 1 through other entities, to implement the compliance programmes pursuant to section 19(1) of the AMLA on all their subsidiaries and branches, if any.

in a consistent manner through all associated firms and entities as well as branches of the member firms.

6.2 Responsibilities and Accountabilities

6.2.1 All member firms have a clear obligation to ensure:

- (a) That each relevant partner and member of staff knows to which person he or she should report suspicions;
- (b) That a clear reporting chain be established under which those suspicions will be passed without delay to the AMLRO;
- (c) That any report made or documents relating to such report to the AMLRO is kept confidential and in a secure place.

6.2.2 Member firms may wish to include in their client agreements or terms of engagement with clients, a paragraph which places clients on notice of the member firms' potential reporting obligations. While this could refer specifically to suspicions of money laundering, member firms may prefer a generalised form of wording which would extend to other matters where reporting to regulators is required or appropriate. The Institute's recommended sample terms of engagement in this respect is enclosed as **Appendix 3**.

6.2.3 Reporting lines should be as short as possible, with the minimum number of people between the person with the suspicion and the AMLRO. This is to ensure speed, confidentiality and accessibility to the AMLRO. Some member firms may choose to require that unusual or suspicious transactions be drawn initially to the attention of an appropriate partner to ensure that there are no known facts that will negate the suspicion before further reporting to the AMLRO.

6.2.4 Such partners should also be aware of their own legal obligations. An additional fact which the partner supplies may negate the suspicion in the mind of the person making the initial report but not in the mind of the partner. The member firm's procedures should then require the partner to report to the AMLRO. In addition, the partner should never attempt to prevent a member of staff who

remains suspicious from reporting direct to the AMLRO. Staff should be made aware that they have a direct route to the AMLRO.

- 6.2.5 All suspicions reported to the AMLRO should be documented. In some cases, it may be possible for the person with the suspicion to discuss it with the AMLRO and the report to be prepared jointly. In other cases, the initial report should be prepared by the reporting person and sent directly to the AMLRO. The report should provide full details of the client and as full a statement as possible of the information giving rise to suspicion.
- 6.2.6 The basis of suspicion and other required information that is relevant should be stated clearly in the report. However, member firms may not have available all the information requested, such as bank account details or records of individual transactions, in which case they may be omitted.
- 6.2.7 The AMLRO should acknowledge receipt of the report and at the same time provide a reminder of the obligation to do nothing that might prejudice enquiries, that is, to avoid 'tipping off'. All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to the FIU in Bank Negara Malaysia, should be documented.
- 6.2.8 Any reports made to the AMLRO or any related documents including the AMLRO's review of that report should be kept confidential by the AMLRO and kept in a secure and safe place. The AMLRO should ensure that the name of the reporting person is not disclosed to any person, at any time.

6.3 The AMLRO

- 6.3.1 Section 19(4) of the AMLA requires members in public practice or member firms to:

designate compliance officers at management level in each branch and subsidiary who will be in charge of the application of the internal programmes

and procedures, including proper maintenance of records and reporting of suspicious transactions.

6.3.2 This section of the AMLA requires member firms to appoint an AMLRO to receive any internal report of suspicious transactions. The AMLRO will vary in type according to the size of the member firm and the nature of its practice, but nevertheless the person should be sufficiently senior to command necessary authority. In most member firms, the partner or one of the partners would be a suitable person.

6.3.3 The main responsibilities of the AMLRO would be to:

- (a) Assist the partners, principals, and employees within the member firm to comply with all relevant AMLA requirements;
- (b) Monitor changes to the business practices and services to ensure that the money laundering compliance programme is adequate and appropriate;
- (c) Assist in the provision of training;
- (d) Act as the central point for the receipt and validation of Suspicious Transaction Reports (STR);
- (e) Review any suspicious transactions reported at the branches and advice on the next course of action;
- (f) Create awareness throughout the member firm and its branches on the AMLA responsibilities and the member firm's anti-money laundering obligations;
- (g) Assemble and distribute information and policies regarding compliance with the AMLA requirements, to the partners, principals and employees of the member firms;
- (i) Provide guidance on compliance with the AMLA requirements.

6.3.4 Member firms may wish to formalize the role and responsibilities of the AMLRO so as to ensure that these responsibilities are clearly defined within the organizational structure of the member firms. Member firms may also wish to appoint branch AMLROs depending on the size and structure of their firms.

- 6.3.5 Staff of member firms should make internal reports of suspicions of money laundering to the AMLRO. The AMLRO is then required to consider the internal report in the light of any relevant information.
- 6.3.6 The AMLRO is required to review whether the information and other matters contained in the report received, give rise to a suspicion that a person is engaged in money laundering.
- 6.3.7 In making this judgment, the AMLRO should consider all the relevant information available within the member firm concerning the person or business to whom the initial report relates. This may include making a review of other transaction patterns and volumes, the length of business relationship and referral to identification records held. If after completing this review, the AMLRO knows or suspects that any person is engaged in money laundering, then he/she should ensure that the information is disclosed to the FIU in Bank Negara Malaysia.
- 6.3.8 If the AMLRO is in doubt, an STR should be lodged with the FIU in Bank Negara Malaysia.
- 6.3.9 Nevertheless, care should be taken to guard against a report being submitted as a matter of routine to the FIU in Bank Negara Malaysia without undertaking reasonable internal enquiries to determine that all information has been taken into account.
- 6.3.10 Being able to demonstrate a reasonable process, diligently undertaken in good faith and in accordance with relevant guidance, may assist the AMLRO in being able to defend him/her against allegations of failing to disclose. Section 24(2) of the AMLA provides a valid defence against any prosecution for the offence of non-compliance with the reporting obligations, if a person can show that he/she took all reasonable steps and exercised all due diligence to avoid committing this offence.
- 6.3.11 The AMLRO can delegate these tasks to other individuals. However, AMLROs cannot relieve themselves of their responsibilities. The AMLRO needs to ensure

that he or she does not take a 'hands off' approach to his/her duties, and should seek to maintain control over the internal processes of the member firm.

7. KNOW YOUR CLIENT

7.1 Client Identification

7.1.1 Client identification is required under Section 16(2) of AMLA which states that:

A reporting institution shall-

- (a) *verify, by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, as well as other identifying information on that person, whether he be an occasional or usual client, through the use of documents such as identity card, passport, birth certificate, driver's license and constituent document, or any other official or private document, when establishing or conducting business relations, particularly when opening new accounts or passbooks, entering into any fiduciary transaction, renting of a safe deposit box, or performing any cash transaction exceeding such amount as the competent authority may specify; and*
- (b) *include such details in a record.*

7.1.2 Section 16(3) of the AMLA amongst others, imposes the requirement for members in public practice or member firms to take *reasonable measures to obtain and record information about the true identity of the person on whose behalf a transaction is conducted if there is any doubt that any person is not acting on his or her own behalf, particularly in the case of a person who is not conducting any commercial, financial, or industrial operations in the foreign State where it has its headquarters or domicile.*

7.1.3 In view of the above, member firms should establish their own policies and procedures to obtain sufficient reliable information to determine the true identity of all clients (both individuals and non-individuals) when establishing a relationship and providing any service to those clients.

7.1.4 Formal identification evidence for all clients should be obtained and recorded. It is recommended that the evidence be one or more of the following, preferably containing either a photograph or signature;

- Passport
- Driver's License
- Identification Card
- Land Title Document
- Credit Card or other bank identification
- Identification by employer from business records
- Group Certificate
- Identification by an acceptable referee

7.1.5 The minimum identification evidence that would need to be obtained for individuals is either the National Identification Card (for Malaysians) or Passport (for foreigners).

7.1.6 Basic identification procedures are required for individuals, companies and trusts. However, similar procedures might not be appropriate in all circumstances. A risk-based approach should be adopted, for example in cases of offshore companies.

7.1.7 Identification procedures for an individual would generally include the member firm seeing, and taking copies of, evidence establishing the client's full name and permanent address. An official document with a photograph would be an evidence of identity. Other separate documents might be useful to confirm the permanent address, such as a recent utility bill.

7.1.8 In most business relationships, the member firm would need to obtain a good working knowledge of the client's business and financial background in order to provide effective service. This would normally provide initial evidence of identity at an early stage in the relationship.

- 7.1.9 For companies, partnerships or sole traders, the member firm needs to establish the identity of the entity itself, its business activity, and where appropriate the identities of owners, principal directors, partners and sole traders. Suitable evidence of identity for the entity may include a copy of the certificate of incorporation, evidence of the company's registered address and a list of shareholders and directors.
- 7.1.10 For trusts, the key identification requirements will generally involve ascertaining the nature and purpose of the trust, and the original source of funding as well as the identities of the trustees/controllers, principal settlors and beneficiaries.
- 7.1.11 A member in public practice or member firm who is taking over a professional engagement replacing an existing member in public practice or member firm or other professional adviser, would need to communicate with that existing member in public practice or member firm or professional adviser in accordance with the By-Laws of the Institute (On Professional Conduct & Ethics). Such communication may provide evidence of both identity and integrity of the client, and is a valuable procedure in this context.
- 7.1.12 Where a partner, a trusted member of staff, a respected client of long standing or other reliable source such as the member firm's overseas affiliate or branch introduces a new client, the member firm may take the view that no further verification of identity should be required, so long as the introducer confirms in writing the identity of the prospective client. Nevertheless, member firms should not overlook the need for normal client identification and acceptance procedures.
- 7.1.13 If the member firm suspects that a prospective client is engaged in money laundering or where the information or instructions given by the prospective client presents unusual or unexplained features which could suggest money laundering activity, the member firm may well decline to act for that prospective client. If the member firm declines to act, the member firm may wish to consider lodging an STR.

7.1.14 Notwithstanding any initial suspicions, if the member firm decides to proceed to act for the prospective client, all the identification procedures must be followed if a business relationship is to be established. This is also the case whether the relationship contemplated is in respect of a one-off transaction or a series of transactions, and irrespective of the way in which the services are to be provided (for example, whether over the internet, telephone etc).

7.1.15 Records of the identification evidence must be maintained in accordance with the requirements of the AMLA (see below).

7.2 Handling Client's Money

7.2.1 Member firms need to verify the client's identity before agreeing to handle client's money on his, her or its behalf. This is of significance for member firms that hold any client money in their ordinary or designated client money bank accounts. Those with client money bank accounts denominated in foreign currencies should take particular care in order to avoid participating in any transaction involving money laundering.

7.2.2 Handling client's money may be considered to represent a higher than normal risk and so requires a higher level of client identification procedures.

7.2.3 Members in public practice and member firms are in any event requested to comply with the provisions of By-Law B-4 of the Institute's By-Laws (On Professional Conduct & Ethics) on 'Client Monies'.

8.0 EDUCATION AND TRAINING

8.1 Statutory Requirements

8.1.1 Member firms are required to take appropriate steps in ascertaining that relevant staff/employees are provided with training on the provisions of the AMLA, the main money laundering offences, its implications, preventive measures and handling suspicious transactions. Reference to 'staff' in this section should be read as including partners/principals of member firms.

8.1.2 Section 19(2) of the AMLA requires member firms to implement internal programmes which include:

- (a) *The establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of these employees;*
- (b) *On-going employee training programmes, such as "know your customer" programmes and instructing employees with regard to responsibilities specified in Section 13, 14, 15, 16 and 17 of the AMLA; and*
- (c) *An independent audit function to check compliance with such programmes.*

8.2 The Need for Awareness and Training

8.2.1 The effectiveness of the internal controls, policies, and procedures implemented by member firms as well as the requirements in the AMLA and in this Guidance, greatly depend on the extent to which staff in member firms appreciate the serious nature of the background against which the AMLA was enacted and the current international and national initiatives undertaken to combat money laundering and terrorist financing. Staff must be made aware of their own personal statutory obligations (depending on the staff level and responsibilities) as well as the possible offences that may be committed pursuant to the AMLA for

non-compliance with reporting obligations. All staff should be encouraged to co-operate fully and to provide a prompt report of any suspicious transactions to the AMLRO.

8.2.2 It is therefore crucial that all staff should be educated in the importance of the 'know your client' requirements as well as the other requirements in the AMLA. Member firms should also introduce comprehensive measures to ensure that all staff are made fully aware of their respective responsibilities as well as the member firm's responsibilities pursuant to the AMLA.

8.2.3 The level of training provided should be appropriate to each individual role and responsibility within the business. The training should cover the basic obligations under the AMLA, and on what the individual is expected to do to ensure that the member firm fulfills the required obligations.

8.3 Timing and Contents of Training

8.3.1 The timing and contents of training may differ according to the level and position of each staff. Training should be held at regular intervals and as and when there are updates or when new requirements are imposed. It is recommended that refresher training be also provided periodically to ensure that staff do not forget their responsibilities.

8.3.2 Member firms are recommended to include in their training modules the following:

- Definition and process of money laundering
- Reporting obligations
- Various risks involved
- 'Know Your Client' policy
- Examples of suspicious transactions and their possible sources
- Actions to be taken on suspicious transactions

8.3.3 Training should include the information on how to recognize and deal with activities that may be related to money laundering.

- 8.3.4 All new professional staff who will be dealing with clients or their affairs, irrespective of the level and seniority, should be provided with the background to money laundering and the procedures for reporting any suspicious transactions to the AMLRO. They should be made aware of the importance placed by the member firm on the reporting of suspicions and the reporting obligations under the AMLA.
- 8.3.5 Members of staff who deal directly with clients are likely to be the first point of contact with potential money launderers, and their efforts are therefore important to the member firm's reporting system. Training should be provided on areas that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed suspicious.
- 8.3.6 Members of staff who are in position to accept new clients must receive the training recommended for advisory staff above. In addition, the need to verify the identity of the client must be understood, and training should be given with respect to the member firm's client verification procedures. Such staff should be aware that the offer of suspicious funds or the request to undertake a suspicious transaction may need to be reported to the AMLRO, whether or not the funds are accepted or the transactions proceeded with.
- 8.3.7 A higher level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising and managing staff (partners, principals/managers). This will include, the offences and penalties arising from the AMLA for non-reporting and for assisting money launderers; internal reporting procedures, and the requirements for verification of identity and the retention of records.
- 8.3.8 The AMLRO in larger member firms or member firms with complex procedures, will be required to have in-depth training concerning all aspects of the AMLA and internal policies. The AMLRO will also require extensive initial and on-going instruction on the validation and reporting of suspicious transactions, on the feedback arrangements, and on new trends and patterns of criminal activity. For

small member firms, the AMLRO or sole practitioner should have at least the level of knowledge identified above for partners and principals/managers.

- 8.3.9 Nature and training methodologies should be tailored to meet the needs of the particular member firm, depending on its size and nature and the available time and resources. Among the methodologies are on-site based training, sessions facilitated by trainers, case studies, conferences and seminars. Please take note that common sense judgment would need to be used to determine the appropriateness of any course, seminar or conference.

9.0 MONITORING AND DETECTION

9.1 Monitoring

9.1.1 The AMLRO should ensure that there are adequate arrangements in place so that all relevant staff are aware:

- (a) that if they become suspicious of a particular client or transaction they must report the matter to their AMLRO immediately;
- (b) of the procedure for reporting;
- (c) that they do not have to be certain; only suspicious that the transaction(s) relate to criminal activity;
- (d) that if they have suspicions and fail to report them they may be committing a criminal offence and/or be liable to disciplinary action for gross misconduct;
- (e) that they should not inform the client of their suspicion or that an STR has been or will be lodged;
- (f) that, unless they are instructed otherwise, they should continue to deal with the client in the normal way.

9.2 Detection

9.2.1 Detection arises when an individual has the knowledge or suspects that a transaction may involve a certain degree of money laundering aspects.

9.2.2 Knowledge includes situations such as:

- Actual knowledge;
- Shutting one's mind to the obvious;
- Deliberately refraining from making enquiries, the results of which one might not care to have;
- Knowledge of circumstances which would indicate the facts to an honest and reasonable person;

- Knowledge of circumstances which would put an honest and reasonable person on enquiry, but not mere neglect to ascertain what could have been found out by making reasonable enquiries.

9.3 Suspicious Transactions

9.3.1 Suspicion is rather subjective and there is no specific definition in the AMLA. General principles of law suggest that suspicion arises if there is more than mere speculation but falls short of actual proof or knowledge. Suspicion is often built on some factual or objective foundation. Members and member firms are required to take note that there must be a degree of satisfaction of suspicion, even if it does not amount to belief.

9.3.2 Suspicion should be created in the mind of an alert member of staff by activities which are unusual conduct of a client.

9.3.3 A suspicious transaction will often be one, which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client. Therefore the first key to recognition is knowing enough about the client and the client's business to recognise that a transaction, or series of transactions, is unusual.

9.3.4 Warning signs which can indicate that a client's transactions might be suspicious and indicative of money laundering include:

- the size of the transaction (or transactions when aggregated) is inconsistent with the normal and legitimate activities or means of the client;
- the transaction is not rational in the context of the client's business or personal activities;
- the pattern of transactions conducted by the client has changed or there are unusual deviations from the normal account and transaction patterns of the client;
- situations where personal identity is difficult to determine;
- unauthorized or improperly recorded transactions;

- unconventionally large currency transactions, particularly in exchange for negotiable instruments;
- apparent structuring of transactions to avoid dealing with identification requirements or regulatory record-keeping and reporting thresholds;
- the transactions passed through intermediaries for no apparent business reason; and
- the transaction is international in nature and the client has no obvious reason for conducting business with the other country involved.

9.3.5 Other possible indications of money laundering and suspicious activity are set out in **Appendix 4**.

9.3.6 Sufficient training must be given to partners and staff to enable them to recognise suspicious transactions. The type of situations giving rise to suspicions will depend on a member firm's client base and range of services. Member firms might also consider monitoring the types of transactions and circumstances that have given rise to STRs, with a view of updating internal controls, instructions and procedures constantly where necessary.

10.0 REPORTING OBLIGATIONS AND PROCEDURES

10.1 Financial Intelligence Unit (FIU)

10.1.1 The FIU was established by the Bank Negara Malaysia to carry out the functions of the competent authority (namely Bank Negara Malaysia) under the AMLA.

10.1.2 The purpose of the FIU is to facilitate and co-ordinate the implementation and enforcement of the AMLA nationwide.

10.1.3 All Suspicious Transaction Reports should be forwarded to the FIU in Bank Negara Malaysia. The FIU has designed a standard Suspicious Transaction Report form for reporting STRs. This form is annexed as **Appendix 5**.

10.1.4 It is recommended that AMLROs use this standard reporting form when filing reports with the FIU.

10.2 Reporting of Suspicious Transactions

10.2.1 As mentioned above, Section 14(b) of the AMLA imposes a requirement on members and member firms who provide the relevant services to promptly report to the FIU in Bank Negara Malaysia, any transaction where the identity of the persons involved, the transaction itself, or any other circumstances concerning that transaction, gives any officer or employee of that member or member firm, reason to suspect that the transaction itself involves proceeds of an unlawful activity.

10.2.2 In this context, these members and member firms have a clear obligation to ensure:

- (a) That each relevant partner and member of staff knows how to identify suspicious transactions and how to address reports of such suspicions to the AMLRO; and

- (b) That the AMLRO has the knowledge and training to assess these reports and to lodge an STR to the FIU in Bank Negara Malaysia in the event that a transaction has been identified as being suspicious of money laundering.

10.2.3 A failure to comply with the obligation to report suspicious transactions is an offence pursuant to section 22(4) of the AMLA, and any member who is convicted shall be liable to a fine not exceeding one hundred thousand ringgit or to a term of imprisonment not exceeding six months or both. If there is a continuing offence, a further fine not exceeding one thousand ringgit for each day the offence continues after conviction, can be imposed.

10.3 Client Confidentiality

10.3.1 The making of a report based on knowledge or suspicion of money laundering activities takes precedence over client confidentiality considerations. Section 20 of the AMLA provides protection for any breach of any duty under any written law to keep confidential the information that gives rise to the knowledge or suspicion of, money laundering.

10.3.2 Hence, the fiduciary duty of confidence of members and member firms and their obligation to maintain confidentiality of client information as a result of ethical standards required by the Institute's By-Laws (on Professional Conduct & Ethics), would be subject to the overriding provision of Section 20 of the AMLA if there are suspicions as to money laundering activities. However, members are requested to ensure that this duty of confidentiality is maintained at all other times.

10.3.3 The AMLRO should disclose all information that is relevant to the suspicion and the type of report being made. There may well be many details that are not relevant that need not be disclosed.

10.3.4 Section 24 of the AMLA protects any person who lodges an STR, against civil, criminal or disciplinary proceedings unless the STR was lodged in bad faith.

10.4 Tipping Off

10.4.1 Care should be taken not to tip off a potential money launderer, as this will constitute an offence under the AMLA. The offence can be committed when there is knowledge or suspicion that a report has been or will be made. This includes internal reports made to the AMLRO. Similarly, if any disclosure is made which is likely to prejudice any investigation by the authorities, an offence may be committed.

10.4.2 Section 79 of the AMLA states that:

- (1) *Except for the purpose of performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.*
- (2) *No person who has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) shall disclose that information or matter to any other person.*
- (3) *Any person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.*

10.4.3 Members in public practice and member firms should exercise caution if disseminating knowledge that a money laundering suspicion has arisen, and that a report has been or will be made. To ensure that no inadvertent tipping off occurs, there should not be any disclosure of the suspicion or that an STR has been or will be lodged to any person, save for the limited circumstances set out in Section 79 of the AMLA above.

10.4.4 In addition, members in public practice and member firms, if aware that an investigation into the STR is likely to be commenced, should also exercise caution not to tip off the person or entity under investigation, as this is also an offence under the AMLA. Section 35(1) of the AMLA states that:

Any person who-

- (a) *knows or has reason to suspect that an investigating officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or any subsidiary legislation made under it and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or*
- (b) *knows or has reason to suspect that a disclosure has been made to an investigating officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,*

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.

11.0 RETENTION OF RECORDS

11.1 Record-Keeping

11.1.1 Section 17 of AMLA states that:

- (1) *Notwithstanding any provision of any written law pertaining to the retention of documents, a reporting institution shall maintain any record under this Part for a period of not less than six years from the date an account has been closed or the transaction has been completed or terminated.*
- (2) *A reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify, for a period of not less than six years from the date the transaction has been completed or terminated.*
- (3) *Subsection (1) and (2) shall not apply where a reporting institution has transmitted the record to the competent authority or an enforcement agency.*
- (4) *Any reporting institution which contravenes subsection (1) or (2) 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.*

11.1.2 Records are required to be kept in respect of client identification, transaction activities, internal policies and procedures as well as records on training and compliance programmes required pursuant to the AMLA. All records must be stored securely and be capable of being retrieved without undue delay.

11.1.3 Relevant records to be retained would include:

- Client account opening documentation;
- Copies of client identification documentation;

- Account ledger records and supporting documentation for all transactions carried out for clients;
- All internal reports to the AMLRO;
- All reports to the authorities and correspondence with them;
- All monitoring and review work carried out.

11.1.4 Adequate records should be maintained to enable the member firm to demonstrate that appropriate client identification procedures have been followed.

11.2 Time Frame for Retention of Records

11.2.1 The records required to be kept pursuant to the AMLA must be kept for at least 6 years since the date the transaction was completed or terminated.

11.2.2 Member firms of course have the discretion to retain these records for a period longer than the specified statutory minimum of 6 years.

12.0 COMPLIANCE PROGRAMME

- 12.1 Member firms are required to co-operate and work with Bank Negara Malaysia as the competent authority under the AMLA and other authorities with regard to all anti-money laundering and anti-terrorism financing measures.
- 12.2 Members and member firms who provide the relevant services have to comply with the AMLA. These members and member firms have also to be guided by this Guidance.
- 12.3 Internal policies with respect to anti-money laundering need to be established and implemented in every member firm. These policies are to be disseminated within the member firm and to all relevant levels of staff.
- 12.4 Section 19(5) of the AMLA 2001 requires each member and member firm to develop audit functions to evaluate policies, procedures and controls to test compliance with the measures taken to comply with the provisions of the AMLA and the effectiveness of such measures.
- 12.5 On-going review and updating of policies and practices are required by each member and member firm.
- 12.6 Section 22(1) of the AMLA imposes the obligation on officers of a member or member firm, to take all reasonable steps to ensure compliance with the obligations under Part IV of the AMLA. Non-compliance with any of the obligations under Part IV of the AMLA is an offence under section 22(4) of the AMLA and is punishable upon conviction, by a fine not exceeding one hundred thousand ringgit or by imprisonment for a term not exceeding six months or both. If there is a continuing offence, a further fine not exceeding one thousand ringgit for each day the offence continues after conviction, can be imposed.

APPENDICES

APPENDIX 1

RELEVANT SERVICES

Members of the Malaysian Institute of Accountants are deemed to be 'reporting institutions' for the purpose of the First Schedule of the AMLA if they –

- (a) as members in public practice, prepare for or carry out the following activities for their client:
 - (i) buying or selling of immovable property;
 - (ii) managing of client 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;

- (b) as company secretaries prescribed to so act pursuant to section 139A of the Companies Act 1965, whether in person or through a firm or company, prepare for or carry out the following activities for their client:
 - (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 entity or arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

APPENDIX 2

SECOND SCHEDULE OF THE ANTI MONEY LAUNDERING ACT 2001

[Section 3, definition of "serious offence"]

	<i>Offences</i>	<i>Description*</i>
1.	Subsection 4(1) of this Act	Offence of money laundering
Anti-Corruption Act 1997 [Act 575]		
2.	Section 10	Offence of accepting gratification
3.	Section 11	Offence in giving or accepting gratification by agent
4.	Section 12	Acceptor or giver of gratification to be guilty notwithstanding that purpose was not carried out or matter not in relation to principal's affairs or business
5.	Section 13	Corruptly procuring withdrawal of tender
6.	Section 14	Bribery of officer of public body
7.	Section 15	Misuse of position
8.	Section 18	Dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence
9.	Section 20	Attempts, preparations, abetments and criminal conspiracies punishable as offences
Banking and Financial Institutions Act 1989 [Act 372]		
9A	Section 4	Receiving, taking or acceptance of deposits prohibited except under and in accordance with a valid licence granted under subsection 6(4) [Subs. P.U.(A) 14/2003]
10	Section 25	Receiving,taking or acceptance of deposits prohibited except under and in accordance with a valid licence granted under subsection 6(4) [Subs. P.U.(A) 14/2003]
10A	Section 26	Unsolicited calls [Subs. P.U.(A) 14/2003]
10B	Section 27	Advertisements for deposits by person other than licensed institutions [Subs. P.U.(A) 14/2003]
10C	Section 28	Fraudulent inducement in relation to deposits [Subs. P.U.(A) 14/2003]
10D	Section 112	Attempts,preparations,abetments and conspiracies punishable as offences [Subs. P.U.(A) 14/2003]
10E	Section 115	Prohibition on receipt of gifts, commissions,etc. [Subs. P.U.(A) 14/2003]

Betting Act 1953 [Act 495]

- 11. Section 4 Common betting-houses and betting information centres
- 12. Subsection 6(3) Betting in a common betting-house, and book-making

Child Act 2001 [Act 611]

- 12A Section 43 Offences relating to selling,procuring, detention,etc .or any attempts thereto,of a child for prostitution
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 12B Section 48 Unlawful transfer of possession,custody or control of child
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 12C Section 49 Importation of child by false pretences
[\[Ins. P.U.\(A\) 14/2003\]](#)

Common Gaming Houses Act 1953 [Act 289]

- 13. Section 4 Common gaming houses
- 14. Section 4A Assisting in carrying on a public lottery, etc.

Companies Act 1965 [Act 125]

- 15. Section 27 Invitation to public by private companies
- 16. Section 38 Invitation to public to lend or deposit money with a corporation
- 17. Section 366 Inducing persons to invest money

Copyright Act 1987 [Act 332]

- 18. Section 41 Infringement of copyright

Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357]

- 19. Section 3 Possession of corrosive or explosive substance for the purpose of causing hurt

Customs Act 1967 [Act 235]

- 19 A Section 133 Making incorrect declarations and falsifying documents
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 20. Section 135 Smuggling offences

Dangerous Drugs Act 1952 [Act 234]

- 21. Section 4 Restriction on importation of raw opium, coca leaves, poppy-straw and cannabis
- 22. Section 5 Restriction on exportation of raw opium, coca leaves, poppy-straw and cannabis
- 23. Section 12 Restriction on import and export of certain dangerous drugs
- 24. Subsection 19(4) Export of dangerous drugs

- 25. Subsection 20(5) Import of dangerous drugs
- 26. Section 39B Trafficking in dangerous drugs

Dangerous Drugs (Forfeiture of Property) Act 1988 [Act 340]

- 27. Section 3 Use of property for activity constituting certain offences
- 28. Section 4 Dealing with, or using, holding, receiving or concealing illegal property
- 29. Section 56 Attempts, abetments and criminal conspiracies punishable as offences

Explosives Act 1957 [Act 207]

- 30. Subsection 4(2) Power to prohibit the manufacture, possession or importation of specially dangerous explosives
- 31. Section 5 Acts causing explosions or fire
- 32. Section 6 Causing explosion likely to endanger life or property
- 33. Section 7 Attempt to cause explosion, or making keeping explosive with intent to endanger life or property
- 34. Section 8 Making or possessing explosives under suspicious circumstances

Firearms (Increased Penalties) Act 1971 [Act 37]

- 34A Section 7 Trafficking in firearms
[\[Ins. P.U.\(A\) 14/2003\]](#)

Futures Industry Act 1993 [Act 499]

- 35. Section 3 Establishment of futures markets
- 36. Section 16 Futures brokers to be licensed
- 37. Section 16a Futures fund managers to be licensed
- 38. Section 79 False trading
- 39. Section 80 Bucketing
- 40. Section 82 Manipulation of price of futures contract and cornering
- 41. Section 83 Employment of devices, etc. , to defraud
- 42. Section 86 Prohibition or abuse of information obtained in official capacity

Insurance Act 1996 [Act 553]

- 42A Section 9 Carrying on insurance, insurance broking or adjusting business without a licence
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 42B Section 10 Holding out as an insurer, insurance broker or adjuster without a licence
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 42C Section 184 Acting as agent or insurance broker for an unlicensed person without the approval of the Bank
[\[Ins. P.U.\(A\) 14/2003\]](#)
- 42D Section 205 Falsifying, omitting, altering, etc .entries in documents with intent to deceive

			[Ins. P.U.(A) 14/2003]
42E	Section 212	Attempts, abetments and conspiracies	[Ins. P.U.(A) 14/2003]
		Internal Security Act 1960 [Act 82]	
42F	Section 5	Prohibition of quasimilitary organizations	[Ins. P.U.(A) 14/2003]
42G	Section 6	Illegal drilling	[Ins. P.U.(A) 14/2003]
		Kidnapping Act 1961 [Act 365]	
43.	Section 3	Abduction, wrongful restraint or wrongful confinement for ransom	
44.	Section 5	Knowingly receiving ransom	
45.	Section 6	Knowingly negotiating to obtain, or for payment of, ransom	
		Money-Changing Act 1998 [Act 577]	
45A	Section 4	Carrying on money-changing business without a licence	[Ins. P.U.(A) 14/2003]
		Optical Discs Act 2000 [Act 606]	
46.	Section 4	Manufacturing without a valid licence	
47.	Section 21	Applying false manufacturer's code	
		Penal Code [Act 574]	
47A.	Section 125	Waging war against any power in alliance with the Yang di-Pertuan Agong.	[Ins. P.U.(A) 18/2002]
47B.	Section 125A	Harbouring or attempting to harbour any person in Malaysia or person residing in a foreign State at war or in hostility against the Yang di-Pertuan Agong.	[Ins. P.U.(A) 18/2002]
47C	Section 121	Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri	[Ins. P.U.(A) 14/2003]
47D	Section 121A	Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri	[Ins. P.U.(A) 14/2003]
47E	Section 121B	Offences against the authority of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri	[Ins. P.U.(A) 14/2003]
47F	Section 121C	Abetting offences under section 121A or 121B	[Ins. P.U.(A) 14/2003]
48.	Section 161	Public servant taking a gratification, other than legal remuneration, in respect of an official act	
49.	Section 162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant	
50.	Section 163	Taking a gratification, for the exercise of personal influence with a public servant	

51.	Section 164	Abetment by public servant of the offences under section 163
52.	Section 165	Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant
53.	Section 207	Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree
54.	Section 213	Taking gifts, etc. , to screen an offender from punishment
55.	Section 214	Offering gift or restoration of property in consideration of screening offender
56.	Section 215	Taking gift to help to recover stolen property, etc.
57.	Section 216A	Harbouring robbers or gang-robbers, etc.
58.	Section 217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture
59.	Section 218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture
59A	Section 300	Murder <u>[Ins. P.U.(A) 14/2003]</u>
60.	Section 327	Voluntarily causing hurt to extort property or to constrain to an illegal act
61.	Section 329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act
62.	Section 330	Voluntarily causing hurt to extort confession or to compel restoration of property
63.	Section 331	Voluntarily causing grievous hurt to extort confession or to compel restoration of property
64.	Section 347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act
65.	Section 348	Wrongful confinement for the purpose of extorting confession or of compelling restoration of property
66.	Section 363	Kidnapping
67.	Section 364	Kidnapping or abducting in order to murder
68.	Section 365	Kidnapping or abducting with intent to secretly and wrongfully to confine a person
69.	Section 366	Kidnapping or abducting a woman to compel her marriage, etc.
70.	Section 367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.
71.	Section 368	Wrongfully concealing or keeping in confinement a kidnapped person
72.	Section 369	Kidnapping or abducting child under 10 years with intent to steal movable property from the person of such child
73.	Section 370	Buying or disposing of any person as a slave
74.	Section 371	Habitual dealing in slaves
75.	Section 372	Selling minor for purposes of prostitution, etc.

76.	Section 373	Buying minor for purposes of prostitution, etc.
77.	Section 373A	Importing for purpose of prostitution
77A.	Section 374	Unlawful compulsory labour [Ins. P.U.(A) 18/2002]
78.	Section 379	Theft
79.	Section 379A	Theft of a motor vehicle
80.	Section 380	Theft in dwelling house, etc.
81.	Section 381	Theft by clerk or servant of property in possession of master
82.	Section 382	Theft after preparation made for causing death or hurt in order to commit theft
83.	Section 384	Extortion
84.	Section 385	Putting person in fear of injury in order to commit extortion
85.	Section 386	Extortion by putting a person in fear of death or grievous hurt
86.	Section 387	Putting person in fear of death or of grievous hurt in order to commit extortion
87.	Section 389	Putting person in fear of accusation of offence, in order to commit extortion
88.	Section 392	Robbery
89.	Section 394	Voluntary causing hurt in committing robbery
90.	Section 395	Gang-robbery
91.	Section 396	Gang-robbery with murder
92.	Section 399	Making preparation to commit gang-robbery
93.	Section 400	Belonging to gang of robbers
94.	Section 402	Assembling for purpose of committing gang-robbery
95.	Section 403	Dishonest misappropriation of property
96.	Section 404	Dishonest misappropriation of property possessed by a deceased person at the time of his death
97.	Section 406	Criminal breach of trust
98.	Section 407	Criminal breach of trust by carrier, etc.
99.	Section 408	Criminal breach of trust by clerk or servant
100.	Section 409	Criminal breach of trust by public servant, or by banker, merchant or agent
101.	Section 411	Dishonestly receiving stolen property
102.	Section 412	Dishonestly receiving property stolen in the commission of a gang-robbery
103.	Section 413	Habitually dealing in stolen property
104.	Section 414	Assisting in concealment of stolen property
105.	Section 420	Cheating and dishonestly inducing delivery of property
106.	Section 421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

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107. Section 422 Dishonest or fraudulently preventing from being made available for his creditors a debt or demand due to the offender
108. Section 424 Dishonest or fraudulent removal or concealment of consideration
109. Section 465 Forgery
110. Section 468 Forgery for the purpose of cheating
111. Section 489A Forging or counterfeiting currency notes or bank notes
- 111A Section 489B Using as genuine, forged or counterfeit currency notes or bank notes
[\[Ins. P.U.\(A\) 14/2003\]](#)
112. Section 489C Possession of forged or counterfeit currency notes or bank notes
- 112 A Section 489D Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes
[\[Ins. P.U.\(A\) 14/2003\]](#)

Securities Industry Act 1983 [Act 280]

113. Section 7 Establishment of stock markets
114. Section 12 Dealer's licence
115. Section 15A Fund manager's licence
116. Section 84 Market rigging
117. Section 85 Market manipulation
118. Section 87A Use of manipulative and deceptive devices
119. Section 89E Insider trading

Takaful Act 1984 [Act 312]

120. Section 4 Carrying on business as takaful operator without a licence
[\[Ins. P.U.\(A\) 14/2003\]](#)
121. Section 35 Carrying on takaful business as an agent or broker for a person other than a licensed takaful operator
[\[Ins. P.U.\(A\) 14/2003\]](#)

APPENDIX 3

CONFIDENTIALITY AND NON-DISCLOSURE OF INFORMATION

General Term
(suggested to be used)

The conduct of the (insert nature or type) engagement as your professional (accountant / advisor / liquidator / tax agent / company secretary / financial planner) requires us to ensure that information acquired by us in the course of our engagement is subject to strict confidentiality requirements. Information will not be disclosed by us to any other party except as required by written law or by any regulatory authority or by professional standards and obligations.

Specific Term
(Optional only)

We wish to bring to your attention, our specific reporting obligations under section 14(b) of the Anti-Money Laundering Act 2001 (the 'AMLA 2001') read together with section 20 of the AMLA 2001, to report any transactions that we have reason to suspect, involves proceeds of any unlawful activity. In other words, we have a legal obligation to report suspicions of money laundering. If such circumstances arise, we are compelled by law to report our suspicions to the Financial Intelligence Unit in Bank Negara Malaysia without alerting you on the same. In such event, we shall not be liable to any civil, criminal or disciplinary proceedings for the disclosure of any information in any report of suspicious transactions made by us in good faith.

*****Note: Please modify to suit your own needs.**

APPENDIX 4

LIST OF INDICATORS OF POSSIBLE MONEY LAUNDERING

The enclosed list of indicators of possible money laundering or suspicious activities is extracted from Appendix II of the International Federation of Accountants (IFAC) Anti-Money Laundering Paper (2nd Edition) dated March 2004 and is reproduced herein, with the kind permission of the IFAC. The full text of the IFAC Anti-Money Laundering Paper (2nd Edition) dated March 2004 can be downloaded free of charge from the IFAC website at www.ifac.org.

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Appendix II
IFAC Paper on Anti-Money Laundering
March 2004 (2nd Edition)

Additional Indications of Possible Money Laundering

Supplementing the information provided under “Indications of Possible Money Laundering,” the following items are additional indications of unusual or suspicious activity:

1. Common Indicators

1.1 General

- Frequent address changes.
- Client does not want correspondence sent to home address.
- Client repeatedly uses an address but frequently changes the names involved.
- Client uses a post office box or general delivery address, or other type of mail drop address, instead of a street address when this is not the norm for that area.
- Client’s home or business telephone number has been disconnected or there is no such number when an attempt is made to contact client shortly after he/she has opened an account.
- Client is accompanied and watched.
- Client shows uncommon curiosity about internal systems, controls, policies and reporting; client has unusual knowledge of the law in relation to suspicious transaction reporting.
- Client has only vague knowledge of the amount of a deposit.
- Client gives unrealistic, confusing or inconsistent explanation for transaction or account activity.
- Defensive stance to questioning or over-justification of the transaction.
- Client is secretive and reluctant to meet in person.
- Unusual nervousness of the person conducting the transaction.
- Client is involved in transactions that are suspicious but seems blind to being involved in money laundering activities.
- Client insists on a transaction being done quickly.
- Client appears to have recently established a series of new relationships with different financial entities.
- Client attempts to develop close rapport with staff.

- Client offers money, gratuities or unusual favours for the provision of services that may appear unusual or suspicious.
- Client attempts to convince employee not to complete any documentation required for the transaction.
- Large contracts or transactions with apparently unrelated third parties, particularly from abroad.
- Large lump-sum payments to or from abroad, particularly with countries known or suspected to facilitate money laundering activities.
- Client is quick to volunteer that funds are “clean” or “not being laundered.”
- Client’s lack of business knowledge atypical of trade practitioners.
- Forming companies or trusts with no apparent business purpose.
- Unusual transference of negotiable instruments.
- Uncharacteristically premature redemption of investment vehicles, particularly with requests to remit proceeds to apparently unrelated third parties or with little regard to tax or other cancellation charges.
- Large or unusual currency settlements for investments or payment for investments made from an account that is not the client’s.
- Clients seeking investment management services where the source of funds is difficult to pinpoint or appears inconsistent with the client’s means or expected behaviour.
- Purchase of large cash value investments, soon followed by heavy borrowing against them.
- Buying or selling investments for no apparent reason, or in circumstances that appear unusual, e.g., losing money without the principals seeming concerned.
- Forming overseas subsidiaries or branches that do not seem necessary to the business and manipulating transfer prices with them.
- Extensive and unnecessary foreign travel.
- Purchasing at prices significantly below or above market.
- Excessive or unusual sales commissions or agents fees; large payments for unspecified services or loans to consultants, related parties, employees or government employees.

1.2 Cash Transactions

- Client frequently exchanges small bills for large ones.

- Deposit of bank notes with a suspect appearance (very old notes, notes covered in powder, etc).
- Use of unusually large amounts in traveller's checks.
- Frequent domestic and international ATM activity.
- Client asks to hold or transmit large sums of money or other assets when this type of activity is unusual for the client.
- Purchase or sale of gold, diamonds or other precious metals or stones in cash.
- Shared address for individuals involved in cash transactions, particularly when the address is also for a business location, or does not seem to correspond to the stated occupation (for example, student, unemployed, self-employed, etc.).

1.3 Transactions Involving Accounts

- Apparent use of personal account for business purposes.
- Opening accounts when the client's address is outside the local service area.
- Opening accounts with names very similar to other established business entities.
- Opening an account that is credited exclusively with cash deposits in foreign currencies.
- Use of nominees who act as holders of, or who hold power of attorney over, bank accounts.
- Account with a large number of small cash deposits and a small number of large cash withdrawals.
- Funds being deposited into several accounts, consolidated into one and transferred outside the country.
- Use of wire transfers and the Internet to move funds to/from high-risk countries and geographic locations.
- Accounts receiving frequent deposits of bearer instruments (e.g., bearer checks, money orders, bearer bonds) followed by wire transactions.
- Deposit at a variety of locations and times for no logical reason.
- Multiple transactions are carried out on the same day at the same branch but with an apparent attempt to use different tellers.
- Establishment of multiple accounts, some of which appear to remain dormant for extended periods.
- Account that was reactivated from inactive or dormant status suddenly sees significant activity.

- Cash advances from credit card accounts to purchase cashier's checks or to wire funds to foreign destinations.
- Large cash payments on small or zero-balance credit card accounts followed by "credit balance refund checks" sent to account holders.
- Attempting to open accounts for the sole purpose of obtaining online banking capabilities.

1.4 Transactions Related to Offshore Business Activity

- Loans secured by obligations from offshore banks.
- Loans to or from offshore companies.
- Offers of multimillion-dollar deposits from a confidential source to be sent from an offshore bank or somehow guaranteed by an offshore bank.
- Transactions involving an offshore "shell" bank whose name may be very similar to the name of a major legitimate institution.

2. Industry-Specific Indicators

2.1 Financial Entities

a) Personal Transactions

- Client makes one or more cash deposits to general account of foreign correspondent bank (i.e., flow-through account).
- Client runs large credit card balances.
- Client visits the safety deposit box area immediately before making cash deposits.
- Client wishes to have credit and debit cards sent to international or domestic destinations other than his or her address.
- Client has numerous accounts and deposits cash into each of them, with the total credits being a large amount.
- Client has frequent deposits identified as proceeds of asset sales but assets cannot be substantiated.
- Client acquires significant assets and liquidates them quickly with no explanation.
- Client acquires significant assets and encumbers them with security interests that do not make economic sense.

b) Corporate and Business Transactions

- Financial statements of the business differ noticeably from those of similar businesses.
- Representatives of the business avoid contact with the branch as much as possible, even when it would be more convenient for them to have such contact.
- Client makes a large volume of seemingly unrelated deposits to several accounts and frequently transfers a major portion of the balances to a single account at the same bank or elsewhere.
- Client makes a single and substantial cash deposit composed of many large bills.
- Asset acquisition is accompanied by unusual security arrangements.

2.2 Businesses that Provide Loans

- Client suddenly repays a problem loan unexpectedly.
- Client asks to borrow against assets held by another financial institution or a third party, when the origin of the assets is not known.
- Loan transactions are entered into in situations where the client has significant assets and the loan transaction does not make economic sense.
- Customer seems unconcerned with terms of credit or costs associated with completion of a loan transaction.

2.3 Life Insurance Companies, Brokers and Agents

- Atypical incidence of pre-payment of insurance premiums.
- Insurance policies with premiums that exceed the client's apparent means.
- Insurance policies with values that appear to be inconsistent with the client's insurance needs.
- Client requests an insurance product that has no discernible purpose and is reluctant to divulge the reason for the investment.
- Client conducts a transaction that results in a conspicuous increase in investment contributions.
- Client shows more interest in the cancellation or surrender than in the long-term results of investments.
- The duration of the life insurance contract is less than three years.
- The first (or single) premium is paid from a bank account outside the country.
- Client accepts very unfavourable conditions unrelated to his or her health or age.

- Transaction involves use and payment of a performance bond resulting in a cross border payment.
- Substitution, during the life of an insurance contract, of the ultimate beneficiary with a person without any apparent connection with the policyholder.

2.4 Securities Dealers

- Attempts to purchase investments with cash.
- Client makes large or unusual settlements of securities in cash.
- The entry of matching buying and selling of particular securities or futures contracts (called match trading), creating the illusion of trading.
- Large fund flows through non-resident accounts with brokerage firms.
- Transaction of very large dollar size.
- Unusually complex method of purchasing financial products.
- All principals of client are located outside of local jurisdiction.
- Third-party purchases of shares in other names (i.e., nominee accounts).

2.5 Foreign Exchange Dealers and Money Services Businesses

- Client exchanges currency and requests the largest possible denomination bills in a foreign currency.
- Client knows little about address and contact details for payee, is reluctant to disclose this information or requests a bearer instrument.
- Client wants a check issued in the same currency to replace the one being cashed.
- Client instructs that funds are to be picked up by a third party on behalf of the payee.
- Client requests numerous checks or postal money orders in small amounts and various names, which total the amount of the exchange.

2.6 Accountants

- Use of many different firms of auditors and advisers for connected companies and businesses.
- Client has a history of changing bookkeepers or accountants yearly.
- Client is uncertain about location of company records.

- Company records consistently reflect sales at less than cost, thus putting the company into a loss position, but the company continues without reasonable explanation of the continued loss.
- Company is invoiced by organizations located in a country that does not have adequate money laundering laws and is known as a highly secretive banking and corporate tax haven.

2.7 Real Estate Brokers or Sales Representatives

- Client arrives at a real estate closing with a significant amount of cash.
- Client purchases property in the name of a nominee such as an associate or a relative (other than a spouse).
- Client does not want to put his or her name on any document that would connect him or her with the property or uses different names on Offers to Purchase, closing documents and deposit receipts.
- Client inadequately explains the last minute substitution of the purchasing party's name.
- Client pays substantial down payment in cash and balance is financed by an unusual source or offshore bank.
- Client purchases property without inspecting it.
- Client purchases multiple properties in a short time period, and seems to have few concerns about the location, condition and anticipated repair costs, etc., of each property.
- Client pays rent or the amount of a lease in advance using a large amount of cash.
- Client is known to have paid large remodelling or home improvement invoices with cash, on a property for which property management services are provided.

2.8 Casinos and other Gaming/Betting Organizations

- Acquaintances bet against each other in even-money games and it appears that they are intentionally losing to one of the party.
- Client requests checks that are not for gaming winnings.
- Client purchases large volume of chips with cash, participates in limited gambling activity with the intention of creating a perception of significant gambling, and then cashes the chips for a casino check.

- Client exchanges small denomination bank notes for large denomination bank notes, chip purchase vouchers or checks.

APPENDIX 5

STR FORM

The STR Form is reproduced here for your easy reference. You may download additional copies of the STR Form from the Institute's website at www.mia.org.misc/aml/.

SECRET

FIU/STR/07/02



Please send completed form to:
FINANCIAL INTELLIGENCE UNIT
BANK NEGARA MALAYSIA
JALAN DATO' ONN, 50480 KUALA LUMPUR
Tel: 03- 26988044 ext 8071 / 7367 Fax: 03 - 26933625

REPORTING INSTITUTION'S REFERENCE NUMBER

SUSPICIOUS TRANSACTION REPORT

- a. This report is made pursuant to the requirement to report suspicious transactions under the Anti-Money Laundering Act 2001(AMLA).
- b. Under section 24 of the AMLA, no civil, criminal or disciplinary proceedings shall be brought against a person who makes a report unless it was made in bad faith.

PART A: INFORMATION OF PERSON / ENTITY BEING REPORTED ON

1. Name(s):
(Include all aliases / commonly used names, if available.)

2. NRIC No. / Passport No. / Business Reg. No.:
(NRIC number for Malaysian, passport number for foreigners, and business registration number for businesses.)

3. Occupation / Business:
(Where appropriate, principal activity of the person conducting the transaction, if known to the person making the report.)

4. Address:

5. Town: **6. Postcode:** **7. State:**

PART B: TRANSACTION DETAILS

8. Services rendered [Please mark (X) where relevant]:

Buying and selling of immovable property

Managing of client money, securities or other property

Managing of accounts including savings and securities accounts

Organising of contributions for the creation, operation or managements of companies

Creating, operating or managing of legal entities or arrangements, and buying and selling of business entities

Acting as a formation agent of legal entities

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;

Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal entities or arrangement;

Acting as (or arranging for another person to act as) a nominee shareholder for another person.

Acting as (or arranging for another person to act as) a trustee of an express trust;

Others.....
(Please specify.)

9. Total amount: M Y R

10. Amount of foreign currency involved:

If foreign currency involved, please specify:

PART C: DESCRIPTION OF SUSPICIOUS TRANSACTION

11. Grounds for suspicion [Please mark (X) where relevant]:

- | | |
|--|--|
| <input type="checkbox"/> Counterfeit / fraudulent / unauthorised transaction | <input type="checkbox"/> Formation of entities with no apparent business purpose |
| <input type="checkbox"/> Large / frequent / unusual cash or currency transaction | <input type="checkbox"/> Large / unusual inward / outward remittance |
| <input type="checkbox"/> Unusual purchase / sale of immovable or other property | <input type="checkbox"/> Activity inconsistent with client profile or business |
| <input type="checkbox"/> Client identity is difficult to obtain | <input type="checkbox"/> Others.....
<i>(Please specify.)</i> |

12. Give details of the nature and the circumstances surrounding the suspicious transaction:

(Please include attachments if space is insufficient.)

13. Date of transaction:
d d m m y y y y

14. Date of reporting:
d d m m y y y y

PART D: FOR BANK NEGARA MALAYSIA USE ONLY

Receiving officer:

Date received:
d d m m y y y y

APPENDIX 6

FREQUENTLY ASKED QUESTIONS

A. BASIC ISSUES

1. What is money laundering?

1.1 Money laundering is the process by which cash or other funds generated from illegal activities is funnelled through legitimate financial institutions and businesses to conceal the true source of the funds. If undertaken successfully, money laundering allows the owners of the 'dirty' funds to maintain control over these proceeds and ultimately, to make these funds appear 'clean'.

1.2 The legal definition of money laundering is set out in the AMLA. Money laundering is defined in Section 3(1) of the AMLA as the act of a person who-

(a) *engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;*

(b) *acquires, receives, possesses, disguises, transfers, converts, 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, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;*

where-

(aa) *as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or*

(bb) *in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.*

1.3 'Proceeds of unlawful activity' is defined under Section 3(1) of the AMLA as any property derived or obtained, directly or indirectly by any person as a result of any unlawful activity.

1.4 'Unlawful activity' in the AMLA is defined as any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence. 'Serious offences' are described in the Second Schedule of the AMLA and include any *attempts to commit or the abetment of any of those offences*. A 'foreign serious offence' is one that is *against the law of a foreign State as certified by that State and that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a 'serious offence'*.

1.5 It should be noted that there are numerous predicate offences set out in the Second Schedule of the AMLA (see **Appendix 2**) which if committed, are likely to result in a person benefiting or deriving proceeds from the offence.

1.6 Money laundering therefore encompasses among others, the dealing in, concealing, disguising, converting, transferring or removing, acquiring, or using the proceeds of any unlawful activity (as defined in the AMLA), where there is:

- (i) knowledge or reason to believe that such proceeds are proceeds of an unlawful activity; or
- (ii) a failure to take reasonable steps (if natural person) to ascertain whether or not such proceeds are proceeds of an unlawful activity.

2. What are unlawful activities pursuant to the AMLA?

2.1 As mentioned above, 'unlawful activity' in the AMLA is defined as any activity which is related, directly or indirectly, to any serious offence or any foreign

serious offence. 'Serious offences' are described in the Second Schedule of the AMLA and include any *attempts to commit or the abetment of any of those offences*. A 'foreign serious offence' is one that is *against the law of a foreign State as certified by that State and that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a 'serious offence'*.

2.2 Hence, an unlawful activity for the purposes of the AMLA would cover the serious offences committed in Malaysia which are set out in Schedule Two of the AMLA and the offence committed in a foreign country which would also constitute a serious offence in Malaysia.

2.3 The serious offences set out in Schedule Two of the AMLA cover offences including corruption; criminal breach of trust; unlawful deposit taking or investment schemes; manipulation of the capital markets or false trading; illegal gambling; unlawful dealing with or trafficking in children, drugs, arms, etc; infringement of copyright; waging war against the King or government; kidnapping; theft; grievous bodily injury or murder; and a host of other offences.

2.4 Whilst you are not required to have extensive knowledge of the serious offences listed in Schedule Two of the AMLA, you are required to have the knowledge that a reasonable person in your position would have about such offences. You are expected to recognise the major offences that are likely to generate proceeds, such as drug trafficking, theft, corruption etc. However you are not expected to be sure that a serious offence has been committed or whether or not something is actually an unlawful activity for the purposes of the AMLA. It is sufficient that you suspect that it is.

3. If a criminal offence does not generate money or other proceeds, can a money laundering offence still be committed?

3.1 'Proceeds of unlawful activity' is defined under section 3(1) of the AMLA as any property derived or obtained, directly or indirectly by any person as a result of any unlawful activity. 'Property' in turn is defined under section 3(1) of the AMLA as any movable or immovable property of every description, whether situated in

or outside Malaysia and whether tangible or intangible and includes an interest in any such movable or immovable property.

- 3.2 Certain criminal offences or unlawful activities may at first glance, not appear to generate funds or proceeds in the traditional sense. However, under the wide definition of 'property', these unlawful activities may give rise to some pecuniary benefit. Such benefit or interest, even if minor, may amount to 'property' and hence give rise to 'proceeds of unlawful activity' as defined in the AMLA.

4. What are the offences under the AMLA 2001?

- 4.1 *Primary offence of money laundering and the offence of attempting or abetting the commission of the offence of money laundering:*

- 4.1.1 Under Section 4(1) of the AMLA:

Any person who-

- (a) engages in, or attempts to engage in; or*
- (b) abets the commission of,*

money laundering, commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

- 4.1.2 Further, Section 4(2) of the AMLA provides that:

A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.

4.1.3 Hence, if you have provided any of the relevant services to your client which involves the proceeds of any unlawful activity, you may, if you have:

- (i) knowledge or reason to believe that such proceeds are proceeds of an unlawful activity; or
- (ii) failed to take reasonable steps (if natural person) to ascertain whether or not such proceeds are proceeds of an unlawful activity,

be guilty of the offence of engaging in or attempting to engage in money laundering, thereby committing an offence under section 4(1) of the AMLA. Alternatively, you may have committed the offence of abetting the commission of money laundering.

4.2 *Non-Compliance offences:*

4.2.1 You may also commit offences under the AMLA if you fail to comply with the reporting and other obligations that may be extended to you as a reporting institution.

4.2.2 If you fail to comply with the obligation to report suspicious transactions pursuant to section 14(b) of the AMLA or if you fail to comply with the other obligations imposed pursuant to section 13 (record-keeping), section 15 (centralisation of information), section 16 (client due diligence), section 19 (compliance programme), you may commit an offence under the AMLA which is punishable, upon conviction, by a fine not exceeding one hundred thousand ringgit or a term of imprisonment not exceeding six months or both pursuant to section 22(4) of the AMLA. You may also be subject to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

4.2.3 In addition, if you fail to maintain and retain records for a period of not less than 6 years in accordance with the requirements under section 17 of the AMLA, you may also commit an offence which is punishable, upon conviction, by a fine not exceeding one million ringgit or by a term of imprisonment not exceeding one year or both.

4.3 *Offence of Tipping Off:*

4.3.1 The offence of tipping off may be committed if you have knowledge or suspicion that a suspicious transaction report has been or will be made and you inform or 'tip off' the client or the person in respect of whom such report has been or will be made.

4.3.2 Section 79 of the AMLA states that:

(1) *Except for the purpose of performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.*

(2) *No person who has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) shall disclose that information or matter to any other person.*

(3) *Any person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.*

4.3.3 To ensure that no inadvertent tipping off occurs, there should not be any disclosure of your suspicion or that you have lodged a Suspicious Transaction Report (STR), to any person save for the limited circumstances set out in Section 79 of the AMLA above.

4.3.4 In addition, if you are aware that an investigation into the STR is likely to be commenced, you should also exercise caution not to tip off the person or entity under investigation, as this is also an offence under the AMLA. Section 35(1) of the AMLA states that:

Any person who-

- (c) *knows or has reason to suspect that an investigating officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or any subsidiary legislation made under it and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or*

- (d) *knows or has reason to suspect that a disclosure has been made to an investigating officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,*

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.

5. What are the reporting obligations under the AMLA 2001?

- 5.1 The primary reporting obligation on you as a 'reporting institution' with effect from 30 September 2004 is pursuant to section 14(b) of the AMLA whereby you are required to promptly report to the Financial Intelligence Unit in Bank Negara Malaysia, any transaction -
 - a. where the identity of the persons involved;
 - b. the transaction itself; or
 - c. any other circumstances concerning that transaction;gives you or your officer or employee, reason to suspect that the transaction itself involves proceeds of an unlawful activity.

- 5.2 Where you have suspicions that the transaction involves proceeds of an unlawful activity, you are required to lodge a Suspicious Transaction Report (STR) in the form as set out in **Appendix 5**, with the FIU in Bank Negara Malaysia.

6. What is suspicion?

- 6.1 Suspicion is rather subjective and there is no specific definition in the AMLA. General principles of law suggest that suspicion arises if there is more than mere speculation but falls short of actual proof or knowledge. However, suspicion must nevertheless be built on some factual or objective foundation. You should take note that there must be a degree of satisfaction of suspicion, even if it does not amount to belief.
- 6.2 Suspicion should be created in the mind of an alert member of your staff by activities which are unusual conduct of a client. If you or your staff are sceptical about a transaction, you may need to ask for explanations and consider carefully whether such explanations are plausible. If you believe that the evidence contradicts the explanation given, you may well form a suspicion that money laundering is involved. In this event, you will need to lodge an STR with the FIU in Bank Negara Malaysia.
- 6.3 If in doubt about any explanation obtained in respect of a transaction, you may wish to consider lodging an STR.

7. What are possible suspicious transactions?

- 7.1 A suspicious transaction will often be one, which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client. Therefore the first key to recognition is knowing enough about the client and the client's business to recognise that a transaction, or series of transactions, is unusual.
- 7.2 Warning signs which can indicate that a client's transactions might be suspicious and indicative of money laundering include:
- the size of the transaction (or transactions when aggregated) is inconsistent with the normal and legitimate activities or means of the client;

- the transaction is not rational in the context of the client's business or personal activities;
- the pattern of transactions conducted by the client has changed or there are unusual deviations from the normal account and transaction patterns of the client;
- situations where personal identity is difficult to determine;
- unauthorized or improperly recorded transactions;
- unconventionally large currency transactions, particularly in exchange for negotiable instruments;
- apparent structuring of transactions to avoid dealing with identification requirements or regulatory record-keeping and reporting thresholds;
- the transactions passed through intermediaries for no apparent business reason; and
- the transaction is international in nature and the client has no obvious reason for conducting business with the other country involved.

7.3 Other possible indications of money laundering and suspicious activity are set out in **Appendix 4**.

B. WHO DOES THE AMLA 2001 APPLY TO?

1. How does the Invocation Order affect accountants?

1.1 The Invocation Order, once gazetted, will amend the First Schedule of the AMLA to include the following as 'reporting institutions':

- (a) accountants who are members in public practice of the Institute (as defined in the Malaysian Institute of Accountants (Membership & Council) Rules 2001); and
- (b) persons who are prescribed pursuant to section 139A of the Companies Act 1965 to act as a secretary of a company – these persons include accountants who are members of the Institute.

- 1.2 The Invocation Order, which will come into effect on 30 September 2004, will set out the 'relevant services', which if provided by members in public practice (paragraph (a) in **Appendix 1**) or by members who are company secretaries (paragraph (b) in **Appendix 1**), will require these members to comply with the reporting obligations under the AMLA 2001.

2. Who is covered by the new requirements?

2.1 If you -

- (a) are a member in public practice, that is, you are a chartered accountant or licensed accountant who, as a sole proprietor or in a partnership, provides or is engaged in public practice services in return for a fee or reward for such services otherwise than as an employee, and you hold a valid practicing certificate issued pursuant to Rule 9 of the Malaysian Institute of Accountants (Membership and Council) Rules 2001; **and**
- (b) you act for or on behalf of your client to provide the 'relevant services' as set out in paragraph (a) or paragraph (b) in **Appendix 1**,

you will be covered by the new requirements.

- 2.2 You are also covered by the new requirements if you, as a member of the Institute, act as a secretary of a company to provide the 'relevant services' as set out in paragraph (b) in **Appendix 1**. This is because the Invocation Order extends to include persons who are prescribed pursuant to section 139A of the Companies Act 1965 to act as company secretaries, as 'reporting institutions' for the purposes of the First Schedule of the AMLA. Members of the Institute are prescribed persons who can act as a company secretary pursuant to section 139A of the Companies Act 1965.

3. What are the 'relevant services'?

- 3.1 The 'relevant services' are as follows:

- (a) As a member in public practice, you act for or on behalf of your client to prepare for or carry out the following activities for the client:
- (i) buying or selling of immovable property;
 - (ii) managing of client 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.
- (b) As a company secretary, you act for or on behalf of your client, whether in person or through a firm or company, to prepare for or carry out the following activities for the client:
- (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 entity or arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

3.2 Please also refer to **Appendix 1**.

3.3 Please note that if there are inconsistencies between the relevant services described herein and in the Invocation Order, the Invocation Order prevails. Members are required to refer to the Invocation Order once this has been duly gazetted.

4. What do I need to do to comply with the new requirements?

4.1 Firstly, you will have to report any suspicious transactions with effect from **30 September 2004**.

4.2 You will also need to comply with the client due diligence requirements and record keeping/retention requirements as well as establish and implement internal policies, procedures and compliance programmes in accordance with the provisions in Part IV of the AMLA with effect from **30 September 2005**.

4.3 In order to comply with the requirement to report suspicious transactions, it is recommended that the key elements of the anti-money laundering framework that are set out below are implemented within your firm at this stage. Early implementation is encouraged to guard against money laundering as well as to ensure compliance with the other relevant requirements of the AMLA once these are invoked. The key elements are:

1. Internal Controls, Policies and Accountabilities
2. Know Your Client
3. Education and Training
4. Monitoring and Detection
5. Reporting Obligations and Procedures
6. Record Keeping
7. Compliance Programme

4.4 Please refer to the Guidance on how you can best implement these key elements.

5. I am a member of the Institute who provides the 'relevant services' through an audit firm. What are my obligations under the AMLA?

5.1 Although audit services are not covered under the new requirements, you will still need to comply with the new obligations if you provide the relevant services through your audit firm.

- 5.2 See answer to question 4 above.
- 6. I am a member who is a director of a private limited company that provides secretarial services to clients. I am the company secretary for these clients. Am I required to report suspicious transactions?**
- 6.1 Yes, as you are a company secretary duly prescribed pursuant to section 139A of the Companies Act 1965.
- 7. My firm provides financial and book-keeping services to clients who outsource these functions to my firm. My partners and I make recommendations to the Board of Directors of these clients on how to organise their financial affairs and handle the day-to-day accounting records of the clients. Does my firm provide the 'relevant services'?**
- 7.1 If you in any way prepare for or carry out the managing of your client's bank accounts or the managing of your client's property or moneys, you would be providing the relevant services.
- 7.2 The term 'manage' is defined in Black's Law Dictionary as '*to control and direct, to administer, to take charge of. To conduct, to carry on the concern of a business or establishment. Generally applied to affairs that are somewhat complicated and involve skill and judgment.*'
- 7.3 Hence, if in the course of providing the above services to your client, you exercise control and direction or administer or take charge of your client's accounts, moneys and property, you would be providing the relevant services.
- 8. Do I need to report any suspicions if I do not provide the 'relevant services'?**
- 8.1 If the services provided by you clearly do not fall within the ambit of relevant services, you do not have any legal obligation to report any suspicions.

- 8.2 However, you should take note that the general provisions of the AMLA would continue apply, with the attached risk of criminal prosecution and sanctions, criminal or civil actions for confiscation or recovery of funds, and the Institute's investigation and/or disciplinary processes, if you are involved in any way with money launderers or terrorists, however unintentionally.

C. REPORTING SUSPICIOUS TRANSACTIONS

1. When do I make a Suspicious Transaction Report?

- 1.1 You need to lodge a Suspicious Transaction Report in connection with any transaction -
- (a) where the identity of the persons involved;
 - (b) the transaction itself; or
 - (c) any other circumstances concerning that transaction;
- gives you or your officer or employee, reason to suspect that the transaction itself involves proceeds of an unlawful activity.

2. Do I need to investigate the facts before forming a suspicion?

- 2.1 You do not need to carry out an investigation into a particular transaction before forming a suspicion. However, you or your Anti-Money Laundering Reporting Officer (AMLRO), would need to review the information available, obtain clarification or explanations if necessary, and then exercise your professional judgment or opinion on the information that you have, as to whether or not there is a basis for forming a suspicion.
- 2.2 If there is a basis, then a Suspicious Transaction Report (STR) would have to be made.

3. What if I believe that someone else has already made a report?

- 3.1 This is irrelevant. The reporting requirement under the AMLA is a personal one, specific to you as a reporting institution. If you have suspicions, you will need to lodge a report, even if you think or know that someone else has made a similar report.
- 4. I recently met with a potential client who subsequently decided not to engage my services. I however have a suspicion that the potential client has a business which involves proceeds from unlawful activities. Do I need to lodge a report?**
- 4.1 The new reporting requirements require you to lodge a Suspicious Transaction Report (STR) if you provide the relevant services for your client, and you have formed a suspicion in that respect.
- 4.2 If you are suspicious of a prospective client, you do not have a legal obligation to report this suspicion. You may nevertheless elect to do so if you have sufficient information to lodge such a report.
- 5. In addition to the relevant services, my firm also provides other types of services. Would my firm need to report suspicions of clients for whom the services provided by my firm are not the relevant services?**
- 5.1 If the suspicions do not arise in respect of the relevant services rendered, there is no legal obligation to report these suspicions.
- 5.2 However, you or your firm may wish to make a report in any event.
- 6. Do I discuss my suspicions with my client? Do I tell my client that I have lodged a Suspicious Transaction Report with the FIU in Bank Negara Malaysia?**
- 6.1 No, on both counts. Once a suspicion has been formed or once a report has been lodged, it is an offence for you to disclose any information about that suspicion or report, to any person.

- 6.2 If you do so, you are likely to commit the offence of tipping-off.
- 6.3 For safety reasons, it is advisable not to disclose to any other person (save for your AMLRO) that a Suspicious Transaction Report (STR) has been lodged.
- 7. One of my clients has decided to appoint another accountant/company secretary. I have already lodged an STR with the FIU in Bank Negara Malaysia. Do I tell the new accountant/company secretary?**
- 7.1 No. You should not provide any person including the incoming accountant or company secretary with information that could expose you to prosecution for tipping off. You should not share your suspicions of money laundering with the incoming accountant or company secretary as this could risk tipping of the client that an STR has or might have been made.
- 8. I have recently taken over several new clients from the former accountant/company secretary of those clients. Can I request for the identification documentation relating to these clients from the former accountant/company secretary so that I do not have to repeat these procedures?**
- 8.1 As the incoming accountant/company secretary, you cannot simply discharge your responsibilities under the AMLA to verify the identity of the new clients and to obtain documentation of such identification, by seeking assurances from the former accountant/company secretary. You will need to undertake the relevant steps yourself. However, you may obtain, with the consent of the client, certified copies of the client identification documentation previously undertaken by the former accountant/company secretary provided that you verify and update such documentation.
- 8.2 The former accountant/company secretary is not in a position to surrender the identification records obtained previously from these clients, as such records are required to be kept for at least six years. If faced with a request for such

documentation by the incoming accountant/company secretary, the former accountant/company secretary may provide the incoming accountant/company secretary with certified copies of such documentation.

- 8.3 If the former accountant/company secretary is unable to provide certified copies of the client identification documentation previously undertaken by him/her, the incoming accountant/company secretary will need to undertake the relevant steps to verify the identity of the client himself/herself.

9. I deal with clients that operate in industries known to be potentially at risk of money laundering. Should I be suspicious because of this?

- 9.1 You would need to consider whether you have any grounds for suspicion which has some factual or objective foundation or whether it is pure speculation. In the absence of any other information, the mere fact that your client operates in a risky industry is not a basis to conclude that there are grounds for your suspicions. You should in any event ensure that your client's identification documentation is up to date and verified.

- 9.2 You will need to review each client on its own merits and consider whether there are grounds for suspicion and not just speculation. You should not simply lodge an STR on a 'just in case' basis.

10. I have recently assisted my client with the restructuring of their group. In the course of my work, I have come to suspect money laundering. I would like to resign but this may tip-off the client. What should I do?

- 10.1 You are required to in the first instance, make a report to your AMLRO. The AMLRO should then make a report to the FIU in Bank Negara Malaysia.
- 10.2 If you do not wish to continue acting for your client, you will need to find a way of withdrawing from the engagement that does not tip-off the client.