

**THE ANTI-MONEY LAUNDERING ACT 2001
AND THE
ACCOUNTANCY PROFESSION IN MALAYSIA**

MEMORANDUM TO BANK NEGARA MALAYSIA

5 DECEMBER 2003



MALAYSIAN INSTITUTE OF ACCOUNTANTS

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THE ANTI-MONEY LAUNDERING ACT 2001 AND THE ACCOUNTANCY PROFESSION IN MALAYSIA

1. INTRODUCTION

- 1.1 The Malaysian Institute of Accountants (the 'Institute') is pleased submit this Memorandum to the Financial Intelligence Unit ('FIU') of Bank Negara Malaysia ('BNM'), on the issue of the Anti-Money Laundering Act 2001¹ ('AMLA') and the accountancy profession in Malaysia.
- 1.2 The issues highlighted in this Memorandum are the result of discussions held during consultative meetings between the FIU of BNM and the Institute on 18 June 2003 and 20 November 2003.
- 1.3 In the course of the consultations at these meetings, it has been conveyed to the Institute that BNM, as the competent authority for the administration of the AMLA pursuant to an order published in the *Gazette* as PU(A) 19 of 2002, is seeking to recommend to the Minister of Finance, the invocation of several provisions in Part IV of the AMLA to apply to accountants in Malaysia who are members of the Institute. The invocation of these provisions in Part IV of the AMLA would be in respect of the accountant who as a member of the Institute, holds a practicing certificate and provides certain specified services to clients. Invocation would require an amendment to the First Schedule to the AMLA by an order of the Minister of Finance under section 8 of the AMLA, acting on the recommendation of BNM and after consultation with the relevant supervisory authority (in this case, the Institute), to include the accountant (as may be defined) as a reporting institution.

¹ As may be amended by the Anti-Money Laundering (Amendment) Act 2003 (recently passed by Dewan Rakyat and Dewan Negara but pending Royal Assent and due gazetting. The Amendment Act has yet to come into force).

- 1.4 Once duly invoked, BNM has indicated the following timeline for implementation of the provisions in AMLA to the accountant as a reporting institution:
- a. 15 January 2004 – the requirement to report cash transactions exceeding a threshold of RM15,000.00 pursuant to section 14(a) of the AMLA, together with section 20 (overriding of secrecy obligations) and section 24 (protection of persons reporting);
 - b. 15 January 2005 – 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);
 - c. 15 January 2005 or later – the requirements to identify and verify particulars of clients (customer due diligence) and maintain records for a minimum period of 6 years pursuant to the other relevant sections in Part IV of the AMLA.
- 1.5 During the consultation process, BNM has also indicated that it would be guided by the Forty Recommendations of the Financial Action Task Force ('FATF'), in particular, Recommendation 12, as to the extent of invocation of the AMLA to the accountancy profession in Malaysia.
- 1.6 At the outset, the Institute expresses its support for the initiatives of BNM and the Government in combating money laundering and terrorist financing. The Institute believes that all citizens of Malaysia, accountants included, have a role to play in supporting the Government's efforts to prevent money laundering and other financial crime. However, the Institute has reservations as to the efficacy and efficiency of any initiative to extend the provisions of the AMLA and other similar legislation in a broad manner to the accountancy profession as a whole or to selected classes therein. This is especially so since the accountancy profession in Malaysia is a diverse one whereby accountants can perform a wide range of activities and may be engaged in many different capacities.

1.7 In view of the above, the immediate issues of concern, which the Institute seeks to highlight and address in this Memorandum, are:

- a. the scope of coverage upon invocation of the relevant provisions of the AMLA to the accountant as a reporting institution in the First Schedule to the AMLA;
- b. the extent of the reporting obligations imposed on the accountant once duly gazetted as a reporting institution;
- c. the application of other provisions in Part IV of the AMLA to the accountant once duly gazetted as a reporting institution.

1.8 In order to properly address the above issues of concern, the Institute sets out the following matters in this Memorandum:

- (i) an outline of the accountancy profession in Malaysia and the Institute's role as a self-regulatory organization that regulates the accountancy profession;
- (ii) the diverse range of services that may be provided by accountants who are members of the Institute in public practice;
- (iii) the specific types of activities set out in Recommendation 12 of the FATF Forty Recommendations and the background thereto;
- (iv) the Institute's recommendations on how best to achieve the objectives of the AMLA and Recommendation 12 of the FATF Forty Recommendations by limiting the application of the relevant provisions in Part IV of the AMLA to those accountants (who are members in public practice) who have direct involvement in the specific types of activities as set out in Recommendation 12 of the FATF Forty Recommendations.

1.9 The Institute trusts that the information and recommendations in this Memorandum would be of assistance to BNM in fulfilling the objectives of the AMLA. The Institute would be pleased to engage in continuous dialogue with BNM to resolve any matters arising from this Memorandum.

2. THE ACCOUNTANCY PROFESSION IN MALAYSIA²

2.1 The accountancy profession in Malaysia is primarily governed by the Accountants Act 1967. The Accountants Act 1967 (the 'Act') established the Institute in 1967 as a statutory body which governs the accountancy profession and which comes under the ambit of the Ministry of Finance, Malaysia. The Act which was substantially amended in 2001, sets out the following:

- (i) the functions of the Institute;
- (ii) the composition and powers of its Council;
- (iii) the eligibility and admission criteria for registration of members as Chartered Accountants, Licensed Accountants and Associate Members;
- (iv) the recognised qualifications from local public universities and the recognised professional accountancy bodies;
- (v) the establishment of the Malaysian Institute of Accountants Qualifying Examination; and
- (vi) the establishment of statutory committees to conduct disciplinary proceedings against members for unprofessional conduct.

2.2 Under the Act, the Institute has the following statutory functions:

- (i) to determine the qualifications of persons for admission as members;

² The information in this part of the Memorandum was forwarded to the FIU of BNM on 9 July 2003.

- (ii) to provide for the training and education of persons practising or intending to practise the profession of accountancy;
- (iii) to regulate the practice of the accountancy profession in Malaysia;
- (iv) to promote, in any manner it thinks fit, the interests of the accountancy profession in Malaysia;
- (v) to render pecuniary or other assistance to members or their dependants;
- (vi) to approve, regulate and supervise the conduct of the Malaysian Institute of Accountants Qualifying Examination.

2.3 Essentially, the Institute is a statutory body charged with the responsibility to regulate and develop the accountancy profession in Malaysia. The word 'accountant' is protected under the Act. No person is allowed to hold himself or herself out or practice as an 'accountant' in Malaysia or to use the terms 'chartered accountant', 'licensed accountant', 'auditor', 'tax consultant' or terms of like description so as to indicate or lead the public to infer that, that person is an accountant or qualified to practice as an accountant in Malaysia, unless that person is registered as a member of the Institute and is resident in Malaysia. Any person who is in breach of this provision in the Act can be found guilty of a criminal offence and can be liable to a fine of not more than RM10,000.00 or a jail term of not more than one year.

2.4 Hence, to practise as an accountant in Malaysia, a person must be registered with the Institute. As at 30 November 2003, the Institute has 19,761 individual members, of whom 11% are members in public practice (with practising certificates), 13% are members employed in member firms (without practising certificates), 70% are members in commerce and industry (non-practising members) and 6% are members in the public/government sector (non-practising members).

- 2.5 As a result of the amendments to the Act in 2001, the Council of the Institute which is the decision making body for the Institute, has been enlarged from 15 members to encompass 30 members who represent a wide cross section of the accountancy profession in Malaysia. The members of the Council comprise elected members and other members appointed by the Minister of Finance from academia, the Government, the various regulatory authorities and other stakeholders who have significant roles to play in developing and strengthening the accountancy profession in Malaysia.
- 2.6 The Council is empowered to carry out the statutory functions of the Institute in accordance with the Act and is also entrusted with the task of making By-Laws to regulate the professional conduct and ethics of the profession. The members of the Institute are empowered to make Rules for the profession and to elect several representatives to the Council of the Institute. In short, the Act provides the broad legal framework for the operation of the Institute, the Council and its members; detailed Rules are made by the members to regulate the various aspects of the profession; and By-Laws are made by the Council to regulate the professional conduct and ethics of the profession.
- 2.7 There are three classes of membership to the Institute, namely Chartered Accountants, Licensed Accountants and Associate Members. Licensed Accountants are those accountants who were in practice prior to 1967 and who are recognised by the Act as being qualified to provide audit services with conditions, whereas Associate Members are mainly academicians who may have the necessary academic qualifications but have insufficient work experience in the practice of accountancy. These two classes of members are very small³. The majority of the members of the Institute are Chartered Accountants⁴. Qualified accountants who are admitted under this class are entitled to carry the designation 'Chartered Accountant' and the designatory letters 'C.A. (M)'.

³ There are 32 members who are Licensed Accountants and 30 members who are Associate Members as at 30 November 2003.

⁴ There are 19,699 members who are Chartered Accountants as at 30 November 2003.

2.8 Within the class of Chartered Accountants, there are two further categories - those Chartered Accountants who are in public practice and who are required to have a valid practising certificate and those Chartered Accountants who work in commerce and industry, the public/government sector or in academia, or who work for Chartered Accountants in public practice. To be registered as a Chartered Accountant in public practice and to be issued with a valid practising certificate, a member must:

- (i) have obtained at least three (3) years of his/her prerequisite practical accounting experience in the office of a Chartered Accountant in Malaysia or if in the office of a non-resident practice, the partners of that non-resident practice should be members of one of the recognised professional bodies set out in the Act;
- (ii) be in full time practice; and
- (iii) practice as a sole proprietorship or in a partnership firm with other Chartered Accountants in public practice.

2.9 Only members registered as Chartered Accountants with a valid practising certificate can describe and hold themselves out as Chartered Accountants in public practice ('members in public practice'), and can set up firms providing public practice services in Malaysia ('member firms')⁵. Under the Act, members also have to have their principal or only place of residence in Malaysia to be in public practice in Malaysia. Members in public practice and member firms may provide public practice services⁶.

2.10 The practice of audit, liquidation (insolvency) and taxation require additional licences under other legislation.

⁵ There are 2,113 members with practicing certificates as at 30 November 2003.

⁶ 'Public Practice Services' is defined in the Malaysian Institute of Accountants (Membership and Council) Rules 2001. See below.

- 2.11 Under the Act and the Malaysian Institute of Accountants (Membership & Council Rules) 2001, members in public practice are allowed to be engaged in public practice only as a sole practitioner or in partnership with another member in public practice or other members as a firm. Members in public practice are prohibited from engaging in public practice through a body corporate save where this is allowed by other statutes for limited areas of public practice, namely taxation. In addition, the By-Laws of the Institute prohibit the sharing of profits with non-members (except in the limited case of taxation).
- 2.12 Hence, a member in public practice may practice as a sole practitioner or in a partnership firm with other members in public practice. Whether as a sole practitioner or in a partnership, the member firm may be classified as an audit firm if the sole practitioner is an audit licence holder or if all the partners are audit licence holders. To establish an audit firm, the practice must be registered with the Institute and with the Companies Commission of Malaysia as an audit firm. The audit firm is entitled to provide audit services as well as all other public practice services.
- 2.13 A firm can also be classified as a non-audit firm if the sole practitioner or the partners are not audit licence holders. Such a firm cannot provide audit and liquidation services (taxation services may be provided if the firm is a licensed tax agent pursuant to the Income Tax Act 1967), but can provide all other public practice services such as accounting and bookkeeping services, accounting related consultancy and company secretarial services. A non-audit firm is also required to be registered with the Institute although it does not need to be registered with the Companies Commission of Malaysia.
- 2.14 As at 30 November 2003, there are 1,257 audit firms and 371 non-audit firms in Malaysia. These firms are entitled to establish branches in other areas in Malaysia provided that the branches are controlled and managed by members of the Institute. Of these firms, over 93% are small firms comprising sole proprietorships and 2 partner firms, with the rest being medium and large firms.

2.15 The practice of taxation may be carried out under a body corporate. The body corporate cannot be described as Chartered Accountants or tax advisor. Where the majority shareholders or directors of the body corporate providing taxation services are members of the Institute, these members have to ensure that the body corporate complies with the By-Laws of the Institute.

2.16 In view of the above, only the audit and non-audit firms, as well as those body corporates which provide taxation services and whose majority shareholders or directors are members of the Institute, are regulated by the Institute. **There are a number of unregulated body corporates and other entities which provide accountancy related services to the public such as bookkeeping, secretarial services, financial planning etc, which do not fall within the jurisdiction of the Institute.**

3. SERVICES PROVIDED BY ACCOUNTANTS IN PUBLIC PRACTICE

3.1 The broad categories of 'public practice services' that can be provided by members in public practice are set out in the Malaysian Institute of Accountants (Membership and Council) Rules 2001, and include the following:

- (a) auditing (including internal auditing);
- (b) accounting and all forms of accounting related consultancy;
- (c) accounting related investigations or due diligence;
- (d) forensic accounting;
- (e) taxation, tax advice and consultancy;
- (f) bookkeeping;
- (g) costing and management accounting;
- (h) insolvency, liquidation and receiverships;

- (i) provision of management information systems and internal controls;
 - (j) provision of secretarial services under the Companies Act, 1965; or
 - (k) such other services as the Council may from time to time prescribe.
- 3.2 In addition to these broad categories, a number of other services are provided by audit and non-audit firms. A list of the types of services that may be provided by audit and non-audit firms is annexed as **Appendix I**.
- 3.3 The list of services set out in **Appendix I** is not exhaustive. As such, the list is but only a general indication of the nature and types of services that are provided by the Institute's members in public practice through audit and non-audit firms as well as through tax companies regulated by the Institute. The list contains various services that may be described or referred to differently from firm to firm. There is also a degree of overlap between some of these services.
- 3.4 It must be borne in mind that most of the services set out in **Appendix I** are provided by the medium and large member firms, whereby the small member firms comprising sole proprietorships and 2 partner firms mainly provide core services such as audit, accounting services, company secretarial services, insolvency and tax services. Some of the small member firms provide niche services such as zakat collection and financial planning.
- 3.5 A number of the core services provided by members in public practice, are regulated by authorities such as the Companies Commission of Malaysia, Securities Commission, Inland Revenue Department, BNM and the Ministry of Finance (Treasury), through various legislation. These legislation impose obligations on these members in public practice, to report contraventions or wrong-doings by their clients if they have knowledge of such contraventions or wrong-doings.

- 3.6 Further and as mentioned above, there is also a considerable overlap between the services set out in **Appendix I**, which are provided by the Institute's members in practice, with similar services provided by other unregulated individuals and corporate entities. Whilst there is no concrete data as to the size of these unregulated activities, the Institute believes it to be significant.
- 3.7 The range of services provided by the Institute's members in public practice as set out in **Appendix I** reflects the diversity of the practice of accountancy in Malaysia. The types of services provided are also constantly changing and growing with the changes and developments in the business and commercial environment in Malaysia.

4. THE FATF FORTY RECOMMENDATIONS AND ACCOUNTANTS

- 4.1 The FATF was established as a global money laundering watchdog organisation by the G-7 Industrial Democracies in 1989 in response to mounting international concerns over money laundering. Subsequent to its establishment, the FATF developed recommendations setting out the framework and measures that should be taken by governments around the world to combat money laundering and later, terrorist financing. As a result, the FATF Forty Recommendations were issued in 1990 and subsequently revised in 1996 and 2003.
- 4.2 The framework of the FATF Forty Recommendations is viewed as the leading international anti-money laundering standard that serves as a benchmark for national governments to implement within their respective national jurisdictions. However, with the constant changes in money laundering techniques and trends, and the sophistication and complexity of devices set up by criminal organisations, the FATF undertook an extensive review of the Forty Recommendations in 2002 which led to the issuance of the revised FATF Forty Recommendations in June 2003.

- 4.3 Pursuant to the latest revision to the FATF Forty Recommendations, there has been an extension of 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.
- 4.4 The revision of the FATF Forty Recommendations also took into account recent international developments. On 28 December 2001, the European Council Directive 2001/97/EC on prevention of the use of the financial system for money laundering ('the 2001 Directive') was issued. The principle changes encompassed in the 2001 Directive extend the obligations concerning customer identification, record keeping and the reporting of suspicious transactions to a limited number of activities and professions including accountants which have been shown to be vulnerable to the activities of money launderers.
- 4.5 At the proposal stage, the FATF Consultation Paper for revision of the Forty Recommendations (the 'FATF Consultation Paper'), considered the scope of extension of the anti-money laundering obligations to the accountancy profession. Several options for implementation were considered, namely that all external accountants would be covered (including external auditors) or only external accountants who acted as financial intermediaries (including giving advice as financial intermediaries). However, these obligations were eventually not extended to external auditors in the revised FATF Forty Recommendations for a number of reasons, including the purposes for which audits are conducted, the nature and timing of audits and the fact that auditors already have many

reporting obligations in the exercise of their responsibilities when carrying out audits of financial statements.

4.6 Another area dealt with in the FATF Consultation Paper was the provision of trust and company services by professional service providers, accountants included. These professional service providers have been identified as 'gatekeepers' who create and administer trusts, companies or other legal structures designed to conceal the identity of the beneficial owner and who often act as the intermediary between the client and the authorities in the jurisdiction of incorporation. Hence, the anti money laundering obligations have been extended to trust and company service providers who provided services to clients relating to the creation, management, administration or operation of companies, trusts or similar legal structures, where the service provider is involved in financial transactions with the client.

4.7 As a result, there has been an extension of anti-money laundering obligations to various professionals including accountants, who provide certain specific types of services to their clients pursuant to the revised FATF Forty Recommendations recently issued in June 2003. The salient Recommendations affecting accountants are stated below.

4.8 Recommendation 12 requires the following categories of persons to comply with Recommendations 5 and 6 (customer due diligence requirements), and 8 to 11 (record keeping and monitoring of methods and nature of transactions), if they provide the following services⁷:

- (a) ...
- (b) ...
- (c) ...

⁷ Sub-paragraphs (a), (b) and (c) are not applicable to accountants.

(d) Lawyers, etc and accountants when they prepare for or carry out transactions for their client concerning the following activities:

- buying or selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements and buying or selling of business entities.

(e) Trust and company service providers who are persons or businesses, which as a business, prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- 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 persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

4.9 In addition, Recommendation 16 requires the following categories of persons to comply with Recommendations 13 to 15 (reporting of suspicious transactions and development of programs against money laundering) and Recommendation 21 (measures when dealing with persons in countries which do not sufficiently apply the FATF Forty Recommendations):

- (a) Lawyers, etc ... and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants including auditing;
- (b) ...
- (c) Trust and company service providers should be required to report suspicious transactions for a client, when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in Recommendation 12(e).

4.10 Recommendation 16 provides an exception whereby lawyers, etc and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

4.11 The other Recommendations that will have a direct impact on accountants are as follows:

- (i) Recommendation 5 which requires an accountant to undertake due diligence in identifying and verifying the identity of the client and any principal who may be represented by the client and in the case of a client which is a legal body, entity or group and not an individual ('legal person' or 'arrangement'), the identity of its beneficial owner and its ownership and control structure;
- (ii) Recommendation 6 which requires additional due diligence measures where the client is a 'politically exposed person', meaning an individual entrusted with prominent public functions in a foreign country, such as a Head of State, a high ranking politician or official or family member or close associate of such person;

- (iii) Recommendations 8 to 11 which require record keeping and monitoring of the methods and nature of transactions handled by the accountant;
- (iv) Recommendations 13 to 15 which require reporting of suspicious transactions and the setting up and maintenance of internal structures and procedures in this connection;
- (v) Recommendation 21 which requires giving special attention when dealing with persons in countries which do not sufficiently apply the FATF Forty Recommendations.

5. AMLA AND THE INSTITUTE'S RECOMMENDATIONS

5.1 In view of the above information, and given BNM's intention to recommend the invocation of several provisions in Part IV of the AMLA to apply to accountants, the Institute makes the following recommendations to address the issues as set out below. These recommendations relate to the scope and extent of implementation of the anti-money laundering obligations to accountants, and seek to meet the objectives of the AMLA and the FATF Forty Recommendations, whilst safeguarding the interests of the members of the Institute.

5.2 Scope of Coverage

5.2.1 There should not be any blanket implementation of the relevant provisions of the AMLA to the accountancy profession as a whole (i.e. all members of the Institute). Nor should there be such implementation for all members of the Institute who are in public practice.

5.2.2 In keeping with the intention of Recommendation 12 of the FATF Forty Recommendations, the scope of coverage should be only for those members in public practice (i.e. members of the Institute with practicing certificates) who act as intermediaries for or on behalf of their clients, and carry out the specific activities as set out in Recommendation 12(d) and (e).

5.2.3 More particularly, there should not be any extension of the scope of coverage to include auditors, since auditors are in any event prohibited from acting as intermediaries or from engaging in transactions on behalf of their audit clients, pursuant to the auditor independence requirements set out in the Institute's By-Laws (On Professional Conduct and Ethics)⁸.

5.2.4 Likewise, there is no necessity for extension of the scope of coverage to members in public practice who provide other types of services (other than those set out in Recommendation 12(d) and (e)), since these members would not be acting as intermediaries or engaging in transactions on behalf of their clients.

5.2.5 The Institute therefore recommends that the invocation of the relevant provisions of the AMLA should be limited to those members in public practice who engage in specific types of activities (the 'affected accountants'), by incorporating the following as a 'reporting institution' in the First Schedule to the AMLA:

"Members of the Malaysian Institute of Accountants with practicing certificates (i.e. 'members in public practice') who act for or on behalf of their clients, when they:

- (a) prepare for or carry out transactions for the client concerning the following activities:**
 - (i) buying or selling of real estate;**
 - (ii) managing of client money, securities or other assets;**

⁸ By-Law B-1.4 Explanatory Note (ii)(b) of the Institute's By-Laws (On Professional Conduct and Ethics).

- (iii) management of bank, savings or securities accounts;**
 - (iv) organisation of contributions for the creation, operation or management of companies;**
 - (v) creation, operation or management of legal persons or arrangements and buying or selling of business entities.**

- (b) as trust and company service providers, whether in person or through a business, prepare for or carry out transactions for the client concerning the following activities:**
 - (i) acting as a formation agent of legal persons;**
 - (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 persons;**
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;**
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust;**
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.”**

5.3 Extent of Obligations under the AMLA

5.3.1 Whilst the initial obligation under AMLA is expected to be in respect of reporting of transactions which exceed a specified cash threshold pursuant to section 14(a) of the AMLA, it is anticipated that the obligations to report suspicious transactions (section 14(b)) and to comply with customer due diligence and record keeping requirements (sections 15, 16, 17, 18 and 19 of the AMLA) will be extended in future.

- 5.3.2 Again, the Institute recommends that the extent of obligations under the AMLA should be limited to the affected accountants, namely, those members in public practice (i.e. members of the Institute with practicing certificates) who act for or on behalf of their clients, and carry out the specific activities as set out above.**
- 5.3.3 The provisions in section 14(a) and section 14(b) as well as sections 15, 16, 17, 18 and 19 of the AMLA have been framed in the context of financial institutions as 'reporting institutions'. There is uncertainty as to the appropriateness of the language used in these sections in the context of affected accountants as a reporting institution. Particularly, references to the word 'transaction' in these sections should be clarified – especially since the definition of the word 'transaction' in the AMLA includes the 'arrangement to open an account involving two or more persons and any related transaction between any of the persons concerned and another'.
- 5.3.4 The extent of obligations under the AMLA should be restricted to those transactions in which the affected accountant is engaged on behalf of the client, and should not include transactions involving the clients and third parties. Without such a restriction, the extent of obligations under the AMLA would impose an undue responsibility on the affected accountants as well as lead to an increase in the cost of doing business in the country.
- 5.3.5 The Institute therefore recommends that to ensure consistency between the scope of coverage set out above for affected accountants as a reporting institution and the terminology in the AMLA, clarification should be made to the definition of 'transaction' in the AMLA so that the obligations under AMLA would only arise in respect of those transactions in which the affected accountant is engaged on behalf of the client in connection with the specific activities as set out above.**

5.4 Definitions

- 5.4.1 The scope of coverage recommended above should be clear and not give rise to any uncertainty upon implementation. To this end, the Institute believes that certain words require definition or clarification, particularly, the words ‘managing’ and ‘management’.
- 5.4.2 The industry definition of ‘management’ or ‘managing’ means the process of planning, organizing, leading and controlling the work of the entity’s members and of using the entity’s available resources to reach stated goals⁹. The Institute has incorporated a definition of ‘key management personnel’ in its By-Laws (On Professional Conduct and Ethics) which is adopted from MASB 8 on Related Party Disclosures¹⁰, that may also be useful in arriving at a definition of the word ‘management’. The definition of ‘key management personnel’ is a person having authority and responsibility for planning, directing and controlling the activities of the entity.
- 5.4.3 An appropriate definition of ‘management’ or ‘managing’ in the context of the scope of coverage set out above, would be where the affected accountant has, on behalf of the client, the authority and responsibility for planning, organizing and controlling client money, securities or other assets; or bank, savings and securities accounts; etc.
- 5.4.4 The Institute recommends that the word ‘management’ or ‘managing’ in the context of the scope of coverage set out above, should be defined or clarified as arising where the affected accountant has, on behalf of the client, the authority and responsibility for planning, organizing and controlling the activities of the client as specified in the scope of coverage set out above.**

⁹ James A.F. Stoner, R. Edward Freeman, Daniel R. Gilbert Jr, **Management**, 6th Edition, Prentice Hall International, 1995.

¹⁰ Malaysian Accounting Standards Board – Standard on Related Party Disclosures (MASB 8) – paragraph 4(f).

5.5 Duty of Confidentiality

5.5.1 All members of the Institute in public practice have a duty of confidentiality arising both as a result of their fiduciary duties to their clients and the ethical obligations in the Institute's By-Laws (On Professional Conduct and Ethics). This duty of confidentiality requires members in public practice to keep confidential, all information of clients which are acquired or received by them in the course of their professional work. This duty also prohibits disclosure of confidential information except where:

- (a) consent to disclose has been obtained from the client;
- (b) there is a legal right or duty to disclose; or
- (c) disclosure is compelled by process of law.

5.5.2 The duty of confidentiality lends confidence and integrity to the services provided by members in public practice, without which, there would be a breakdown of the relationship and loss of trust between the client and the member in public practice as a professional service provider. This duty of confidentiality is one of the cornerstones of the accountancy profession and supports and augments the value of the services provided by members in public practice.

5.5.3 Section 20 of the AMLA, once invoked, would operate to override the affected accountant's duty of confidentiality to the client. The operation of section 20 of the AMLA may give rise to a loss of confidence in the services provided by the affected accountants, given that clients may fear the disclosure of their confidential information even if not relating to any transaction involving money laundering.

5.5.4 The Institute recommends that the duty of confidentiality of affected accountants should not be compromised and that guidance be issued on the extent and amount of disclosure that may be required to be made by the affected accountants in complying with the reporting requirements in the AMLA.

5.6 Protection for Affected Accountants

5.6.1 Section 24 of the AMLA, if invoked for affected accountants, would confer limited protection against civil, criminal and disciplinary proceedings if reports are made by the affected accountants under Part IV of the AMLA in good faith. This protection does not extend to the protection of the affected accountants from physical harm or danger.

5.6.2 In some instances, the affected accountants may be the only persons who are likely to know about a client's cash transaction or suspicious transaction which involves money laundering. If a report is made pursuant to the AMLA that results in an investigation of the client, this could endanger the lives of the affected accountants or put their physical safety at risk.

5.6.3 The Institute recommends that there should be adequate protection conferred to affected accountants whose lives or physical safety may be at risk as a result of due compliance with their obligations under the AMLA.

5.7 Cash Threshold

5.7.1 BNM intends to invoke section 14(a) of the AMLA on the affected accountants to report cash transactions above RM15,000.00 with effect from 15 January 2004. These affected accountants would have to lodge a Cash Transaction Report (CTR) if the threshold is triggered, irrespective of the nature or circumstances of the transaction.

5.7.2 The Institute believes that the cash threshold of RM15,000.00 is too low. Further, given the short timeframe for implementation and raising of awareness amongst affected accountants, this threshold and reporting obligation may result in the lodgment of irrelevant CTRs which are lodged by affected accountants due to an over abundance of caution.

5.7.3 The Institute therefore recommends that the cash threshold for section 14(a) of the AMLA be specified at RM30,000.00.

5.8 Timeline for Implementation

5.8.1 As mentioned above, BNM has indicated the following timelines for implementation of the relevant provisions of the AMLA on affected accountants:

- (a) 15 January 2004 – the requirement to report cash transactions exceeding a specified threshold (CTR) pursuant to section 14(a) of the AMLA, together with section 20 (overriding of secrecy obligations) and section 24 (protection of persons reporting);
- (b) 15 January 2005 – the requirement to report suspicious transactions (STR) pursuant to section 14(b) of the AMLA, together with section 20 (overriding of secrecy obligations) and section 24 (protection of person reporting);
- (c) 15 January 2005 or later – the requirements to identify and verify particulars of clients (customer due diligence) and maintain records for a minimum period of 6 years pursuant to the other relevant sections in Part IV of the AMLA.

5.8.2 The Institute is concerned that the proposed timeline for implementation would not provide affected accountants, who will be required to comply with the relevant provisions of the AMLA for the first time, with a realistic timeframe firstly, to understand the relevant provisions, secondly, to ascertain whether they are in fact affected accountants, and then to introduce mechanisms within their firms to enable due compliance with the relevant provisions. Further, given the various types of services provided by members in public practice as set out in **Appendix I**, the identification of affected accountants would not be a straightforward process.

- 5.8.3 For the implementation of CTR, the Institute notes that section 14(a) of the AMLA will be subject to a material amendment pursuant to the Anti-Money Laundering (Amendment) Act 2003 which has yet to come into force. The transitional period between the implementation of CTR under the existing section 14(a) and the coming into operation of the new section 14(a), may give rise to some uncertainty and confusion.
- 5.8.4 Since the requirements in the AMLA relating to CTR, STR, record keeping and customer due diligence are all new requirements in the Malaysian jurisdiction, proper study, processes and training would need to be undertaken and implemented to assist affected accountants to comply with these requirements. The format for the CTR would need to be discussed and finalized prior to implementation of section 14(a) of the AMLA on affected accountants. Likewise, the format for the STR would need to be discussed and finalized prior to implementation of section 14(b) of the AMLA.
- 5.8.5 Guidance would need to be discussed, drafted and issued to assist affected accountants to comply with the CTR, STR and other requirements pursuant to the relevant provisions in the AMLA.
- 5.8.6 The Institute, with the assistance of Bank Negara, would need to conduct road shows and seminars for the Institute's members in public practice to facilitate the interpretation, application and implementation of the obligations in the AMLA. Awareness would need to be raised amongst the Institute's members in public practice as to the requirements in the AMLA and as to whether they are in fact affected accountants. Such road shows and seminars would assist in getting the 'buy in' of affected accountants and also reduce uncertainty upon implementation. A suitable timetable (over a six month period) for these road shows and seminars would need to be drawn up to ensure maximum participation of the Institute's members in public practice and hence, these road shows should be held after the peak period of January - March 2004.

5.8.7 The Institute notes that Recommendation 12 of the FATF Forty Recommendations, which is the precursor to invocation of the provisions of the AMLA on affected accountants, is a relatively new Recommendation, having come into existence in June 2003. Some time would be required to fully study the implementation of Recommendation 12 in other jurisdictions (in so far as applicable to accountants) and assess the implications arising therefrom, before implementing the same within the Malaysian jurisdiction.

5.8.8 In view of the above, the Institute recommends the following:

- (a) the implementation of the CTR be deferred to at least 1 October 2004; alternatively, if the CTR is to be invoked by 15 January 2004, a grace period until 1 October 2004 should be given to affected accountants for compliance;**
- (b) the implementation of the STR as well as the other obligations in the AMLA be deferred to at least 1 January 2006.**

5.9 Guidance and Training

5.9.1 As mentioned above, the requirements in the AMLA relating to the CTR, the STR, record keeping and customer due diligence are all new requirements in the Malaysian jurisdiction. Affected accountants, who have to comply with the relevant provisions of the AMLA for the first time, will require guidance and assistance in the form of training and education, on the interpretation, application and implementation of the obligations in the AMLA. Such training, preferably through road shows and seminars, has to target all members of the Institute who are in public practice, due to the diverse services provided so that they are able to ascertain whether they are affected accountants.

5.9.2 The Institute recommends that such guidance and training should be undertaken prior to the implementation of the relevant provisions of the AMLA.

5.9.3 The Institute would be pleased to work with BNM on the drafting and issuance of such guidance and on the framework and structure of appropriate training for affected accountants.

6. CONCLUSION

6.1 The Institute believes that the objectives and intention of the AMLA and the FATF Forty Recommendations can best be achieved through the resolution of the above issues in the manner as recommended above.

6.2 The Institute would be pleased to discuss any matters arising from this Memorandum with BNM. The Institute looks forward to co-operating with BNM to resolve the above issues to the mutual satisfaction of all parties.

Assurance and Business Advisory Services

Type of Service	Brief Description of Service
Assurance	<ul style="list-style-type: none"> - Statutory and non-statutory audit of financial statements - Special investigations - Special review and certification - Other attest and attest related services
Accountancy and Bookkeeping services	<p>Outsourcing of accountancy and bookkeeping services:</p> <ul style="list-style-type: none"> - Financial management - Preparation of financial statements, periodic tax returns, payroll services and management accounts - Business advisory services, preparation of budgets, forecasts and business plans - Corporate training
Internal audit	Provision of internal audit services
Business risk and enterprise risk management	<ul style="list-style-type: none"> - Strategic risk assessment - Risk management infrastructure development - Enterprise risk management transformation
Corporate governance services	<ul style="list-style-type: none"> - Corporate governance reviews - State of internal control readiness assessments
Fraud and forensics services	<ul style="list-style-type: none"> - Special fraud investigations - Dispute advisory services - Data mining with analytical tools - Expert witness testimony - Forensic accounting and analysis
Technology and security risk services	<ul style="list-style-type: none"> - Information technology (“IT”) risk management and assurance - IT internal audit - Systems integrity solutions - E-security solutions - E-commerce enablement - Business continuity planning
Specialty practice	<ul style="list-style-type: none"> - Strategy reviews - Market and industry reviews - Corporatisation/Privatisation - Business operations reviews - Finance function reviews - Cost management - Performance management - Human resource and knowledge management - Executive search and selection
Company secretarial services	<ul style="list-style-type: none"> - Attendance at directors/shareholders meetings - Preparation of minutes and filing of statutory documents - Maintenance of statutory registers and secretarial records - Provision for registered office address - Secretarial services consultancy and advice

Tax Services

Type of Service	Brief Description of Service
Corporate tax services	<ul style="list-style-type: none"> - Tax compliance - Tax advisory - Tax planning and consulting - Tax outsourcing - Tax investigations and back duty - Transfer pricing - Investment regulatory and incentives strategy - Exchange control
International tax services	Advisory work for companies operating regionally or globally
Global Employment Solutions	<ul style="list-style-type: none"> - Expatriate tax compliance and advisory - Business immigration and assignment services
Indirect tax consulting and services	Deals with customs duties, sales tax, service tax and excise duties
Private client services	<p>Tax advisory for individuals, families, entrepreneurs and family-held enterprises, including:</p> <ul style="list-style-type: none"> - Family wealth and business succession planning - Retirement planning - Business succession/continuity planning - Education planning - Estate planning - Risk management and insurance planning - Investment planning - Income tax planning - Islamic financial planning - Employee retirement scheme
Dispute resolution, tax appeals and rulings	Tax advisory in relation to finalisation of long outstanding tax issues, as well as advisory work on tax appeals and rulings.

Corporate Finance & Advisory Services

Type of Service	Brief Description of Service
Mergers and acquisitions	<p>Services include:</p> <ul style="list-style-type: none"> - deal and transaction structuring - advisory services on acquisitions and disposals, and project finance - due diligence (investigation and confirmation of historical and projected financial results)
Initial public offerings (IPO)	Advisory services to corporations involved in the public offering of securities, including strategic advisory, selection and negotiation with underwriters, preparation of financial statements and offering materials, and managing the IPO process
Fairness opinions	Reporting on the fairness of purchase consideration for foreign assets or securities to be acquired
Independent advisory	Providing independent financial advice and confirmation to debtors, creditors, shareholders or third parties on business activities, prospective corporate transactions and financial changes to business/entities
Reporting accountants' services and preparation of prospectus reports	<p>Services include:</p> <ul style="list-style-type: none"> - issuance of letters on profit/cashflow forecasts and projection review - proforma balance sheets - long form/accountants reports for submission to regulators or circular to shareholders - bond market information memorandums
Matters relating to the Malaysian Code on take-overs and Mergers, 1998	Provide independent advice to minority shareholders in the independent evaluation of the financial terms of a general offer.
Privatisation	Advisory services relating to privatizations of state-owned enterprises, including approvals, structure, valuation and review of financial information
Multimedia Super Corridor	General advisory work relating to MSC status and applications and related concerns
Valuations	Valuations of businesses and securities for purposes such as mergers, acquisitions, divestitures, corporate restructuring, financial reporting, tax planning and compliance, management buy-outs/buy-ins

Type of Service	Brief Description of Service
Financial modelling and analysis	Strategic financial solutions including: <ul style="list-style-type: none"> - financial analysis and modelling - value framework for performance management - capital markets communication - valuation of growth options - risk optimization tools - decision support architectures - e-finance solutions - shareholder value analysis
Financial and business monitoring	Services include: <ul style="list-style-type: none"> - review of business activities - credit worthiness and evaluation - loans review and monitoring - ascertain at short notice the financial position of a company and review of its trading forecasts and projections - project management/mentoring
New/Existing investments and business incentives	Advisory services to corporations related to capital structure issues, including private placements of debt, equity and/or other financial instruments. These include making applications to the regulatory authorities for the requisite approvals, customs duty exemptions, expatriate application, work permits, trademark registration and licensing, employee share option schemes.
Viability and feasibility studies	Preparation of plans, examine and review of viability of business in the short term and long term prospect, to review its operational and management structure and to formulate appropriate strategies to provide solutions to the company.

Corporate and Business Recovery Services

Type of Service	Brief Description of Service
Equity and corporate restructurings	Advisory services to debtors, creditors, owners and other constituents in distressed company situations, including financial and operational restructuring and reorganization, negotiations and monitoring of workouts and formal court and commercial insolvency appointments.
Schemes of arrangements	Developing schemes of arrangement to enable a company to strengthen its financial position and capitalize on its future growth potential.
Court and private receiverships	Taking control over the charged property/assets of a company, collecting income on the property/assets with a view to protecting the property for those entitled to it. May also include taking over the day to day management of a company, realizing the property/assets taken over and to distribute the proceeds according to written statutes.
Court, private and voluntary liquidations	Provides shareholder or holding companies with services to liquidate and wind up solvent companies which have outlived their usefulness or when members desire the assets to be sold or distributed.
Orderly winding up / Divestment services	Providing advisory and assisting in intentionally ceasing of business operations in an orderly and expeditious process to avoid unnecessary negative and legal complications. This may include retrenchment/relocations exercises, realization of assets, settlement of outstanding creditors, reporting to the various regulatory agencies and government departments, etc.