

AMLA: An extremely powerful legislation

By *SALLEH BUANG* July 26, 2018 @ 9:28am

BEFORE Parliament enacted anti-money laundering legislation, the authorities fought financial crimes under the Penal Code, the Companies Act 1965, and the Dangerous Drugs (Forfeiture of Property) Act 1988 and the Anti Corruption Act 1997.

The Anti-Money Laundering Act 2001 (AMLA) came into force on Jan 15, 2002. In March 2007, it was amended to include provisions to combat terrorism financing after the 9/11 tragedy in the United States, and the original title was expanded to become Anti-Money Laundering and Anti-Terrorism Financing Act (AMLATFA). For reasons of convenience, this article will refer to it shortly as AMLA.

What is usually overlooked is that apart from conferring wide powers on enforcement agencies (such as the police, MACC and Bank Negara Malaysia) to fight money laundering and terrorism financing, the law also imposes obligations on various industries and professions to monitor the activities of their clients and report suspicious transactions.

Section 3 of AMLA defines “money laundering” as the act of a person who:

Engages, directly or indirectly, in a transaction that involves “proceeds of any unlawful activity”;

Acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia “proceeds of any unlawful activity”; or

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”.

In 2013, Parliament passed another amendment, resulting in further lengthening the already long title. It now reads the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA). This new amendment is intended to deal with “the proceeds of an unlawful activity” in addition to property involved in or derived from money laundering and terrorism financing offences.

The phrase “proceeds of unlawful activity” is defined to mean “any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity”, whilst the term “unlawful activity” is defined as “any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence”. The term “serious offence” means any offences specified in the Second Schedule of AMLA and any attempt or abetment of those offences.

In the past, many thought of money laundering as the act of dealing with (“cleaning”) dirty money or black money. That perception is no longer correct, as the present scope of the law (after its 2007 and 2013 amendments) is indeed extremely wide.

The present situation is explained in Bank Negara Malaysia’s official portal as follows: “The enforcement of the AMLA is undertaken by various ministries/agencies based on the predicate offences under their respective purview which is listed under the Second Schedule of the AMLA. As at November 2014, there were 356 offences under 42 pieces of legislations listed under the Second Schedule of the AMLA.”

Some of these statutes setting out the “serious offences” envisaged under AMLA may be familiar to the general public, some may not — Penal Code (Act 574), Malaysian Anti-Corruption Commission Act 2009, Dangerous Drugs Act 1952, Child Act 2001, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Customs Act 1967, Income Tax Act 1967, Capital Market and Services Act 2007, and the Financial Services Act 2013.

Against the backdrop of these various statutes, any person may be prosecuted under AMLA if he commits any one of these offences — such as criminal breach of trust, theft, accepting gratification, illegal deposit taking, carrying on unlicensed financial services, insider trading, falsifying documents, smuggling, offering and receiving bribes, and tax evasion.

In 2012, a medical practitioner falsified financial documents, resulting in RM42 million being transferred into her account. She was convicted under AMLA and sentenced to 38 years’ imprisonment and a RM639 million fine.

In the 2016 “Sabah watergate” case, MACC seized RM114 million from the homes of a Sabah Water Department director and his deputy. The money was stashed in their homes and the boot of a car. MACC investigators also seized jewellery and 127 land titles valued at RM30 million. The suspects’ bank accounts were also frozen.

It is generally understood that in criminal cases, the onus is on the prosecution to prove its case beyond reasonable doubt. Under Section 70(2) AMLA, the prosecution remains bound to discharge this heavy duty insofar as it has to prove an offence has been committed.

However, in relation to any other facts, Section 70(1) states that they be decided on the balance of probabilities (which is the standard of proof applicable to civil cases).

Section 4(2) AMLA is an extremely powerful provision. It states that a person may be convicted of an offence of money laundering “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.”

This means that a person who is alleged to have committed a serious offence (such as tax evasion or smuggling under the applicable laws) may be convicted for money laundering (under AMLA) even if he has not been prosecuted or convicted for tax evasion or smuggling. The authorities may commence investigations under any of the statutes mentioned in the Second Schedule but may subsequently decide to prosecute the accused under AMLA.

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