

GUIDELINES RELATING TO THE OBLIGATIONS OF COMPANY SECRETARY AS A REPORTING INSTITUTION UNDER THE ANTI-MONEY LAUNDERING, ANTI- TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT 2001 (AMLA)

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KEMENTERIAN PERDAGANGAN DALAM NEGERI
DAN KOS SARA HIDUP



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA



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AWAS

- ✗ Hindari laman web **PIHAK KETIGA** yang tidak sah.
- ✓ Daftar dan perbaharui perakuan pendaftaran perniagaan anda di laman web SSM yang sah:
ezbiz.ssm.com.my
- ✓ Kadar bayaran pendaftaran dan pembaharuan perakuan pendaftaran perniagaan

RM30 Nama Sendiri seperti kad pengenalan (Setahun) Milikan Tunggal	RM60 Nama Trad (Setahun) Milikan Tunggal / Perkongalan
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Maklumat perniagaan : **RM10** sahaja
Setiap cawangan : **RM5** sahaja

- Tiada sebarang lebih kos dikenakan
- Lindungi dan jangan kongsi data peribadi anda dengan pihak

- Companies Commission of Malaysia Act
- Companies Act 2016
- Interest Scheme Act
- Registration of Businesses Act 1956
- Limited Liability Partnerships Act
- Trust Companies Act
- Kootu Fund
- Companies Act 1965 (Repealed)
- Dataset
- Guidelines
- Public Consultation
- AML/CFT Joint Reference Note
- CLRC

INTRODUCTION



ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACT 2001 (ACT 613)



SSM & BNM Terms of Collaboration (TOC) – **22 August 2022**

Purpose :

To strengthen collaboration in the **regulation & supervision of anti-money laundering, counter-financing of terrorism (AML/CFT) and targeted financial sanctions (TFS) on company secretaries and trust companies in Malaysia**

BNM'S POLICY DOCUMENT



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for **Designated Non-Financial Businesses and Professions (DNFBPs)** & **Non-Bank Financial Institutions (NBFIs)**

(AML/CFT and TFS for DNFBPs and NBFIs)



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

Guidelines Relating to the Obligations of Company Secretary as a Reporting Institution Under the Anti-money Laundering, Anti-terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLA)

BNM's Policy Document

<https://amlcft.bnm.gov.my/>

SSM Guidelines for Company Secretary under AMLA

OBJECTIVES



Objectives of the SSM's Guidelines –

- To set out the requirements and obligations imposed on company secretaries under the AMLA in preventing and combating money laundering and terrorism financing
- To assist company secretaries in understanding the roles and responsibilities of company secretaries as Reporting Institutions in implementing a comprehensive risk-based approach in managing ML/TF risks

LEGAL PROVISION



- **Subsection 21(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)**
- **SSM's function as a supervisory authority**

**PART IV of
AMLA
(REPORTING
OBLIGATIONS)**

Obligations of
supervisory or licensing
authority.

21. (1) The relevant supervisory authority of a reporting institution or such other person as the relevant supervisory authority may deem fit may—

- (a) adopt the necessary measures to prevent or avoid having any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of the reporting institution;
- (b) examine and supervise reporting institutions, and regulate and verify, through regular examinations, that a reporting institution adopts and implements the compliance programmes in section 19;
- (c) issue guidelines to assist reporting institutions in detecting suspicious patterns of behaviour in their customers and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for reporting institutions' personnel; and
- (d) co-operate with other enforcement agencies and lend technical assistance in any investigation, prosecution or proceedings relating to any unlawful activity or offence under this Act.

(2) The licensing authority of a reporting institution may, upon the recommendation of the competent authority, revoke or suspend the reporting institution's licence if it has been convicted of an offence under this Act.

(3) The relevant supervisory authority shall report promptly to the competent authority any information received from any reporting institutions relating to transactions or activities that could be related to any unlawful activity or offence under this Act.

Prevention

Examine & supervise

Issuance of guidelines

Cooperation with other agencies

Revocation of license

Reporting to BNM

APPLICABILITY



- **Applicable to all company secretaries, who are whether in person or through a firm or company preparing or carrying out the activities as listed in **para 13 in the First Schedule of AMLA** and **para 3.3(i) in the BNM Policy Document****



Para 13 of AMLA

Act 777 13. Activities carried out by a person prescribed by the Minister or licensed by the Registrar of Companies to act as a secretary of a company pursuant to section 235 of the Companies Act 2016 [*Act 777*].

Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for DNFBCs and NBEIs (AML/CFT and TFS for DNFBCs and NBEIs) 2006 of

- (i) persons prescribed by the Minister or licensed by the Registrar of Companies to act as a company secretary of a company pursuant to section 235 of the Companies Act 2016 (referred to as “company secretaries” in this policy document), when they, whether in person or through a firm or company, prepare or carry out the following activities for their clients:
 - (i) act as formation agent of legal entities;
 - (ii) act as (or arrange 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) provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal entities or arrangement;
 - (iv) act as (or arrange for another person to act as) a trustee of an express trust; or
 - (v) act as (or arrange for another person to act as) a nominee shareholder for another person⁵.

Para 3.3(i) of BNM Policy Document

AML/CFT REQUIREMENT



AML/CFT Requirements	BNM Policy Doc	SSM Guidelines
Application of Risk-Based Approach	✓	✓
AML/CFT Compliance Programme	✓	✓
New Products and Business Practices	✓	✓
Customer Due Diligence (CDD)	✓	✓
Politically Exposed Persons (PEPs)	✓	✓
Reliance on Third Parties	✓	✓
Higher Risk Countries	✓	✓
Cash Threshold Report	✓	✗
Suspicious Transaction	✓	✓
Record Keeping	✓	✓
Management Information System	✓	✓
Targeted Financial Sanctions on TF, PF and Other UN- Sanctions Regimes	✓	✓
Other Reporting Obligations	✓	✓

TERMS AND DEFINITION



- All words used in the SSM's Guidelines shall have the same meaning as defined in the BNM Policy Document and other Acts administered by SSM.
- Sample of definitions under BNM Policy Documents excluded in SSM Guidelines :
 - ❌ “cash transaction”, “financial group”, “fund-in transaction”, “fund-out transaction”, “junkets”
- Additional definitions under SSM Guidelines:
 - ✍ “board of a secretarial firm”, “company secretary”, “secretarial firm”, “small-sized secretarial firm”

TERMS AND DEFINITION



“company secretary”

Refers to a **person** who is issued with a **practising certificate** under **section 241** of the CA 2016. For the purpose of these Guidelines, company secretary includes any company secretary practising through a firm or a company.

“secretarial firm”

Refers to an entity through which a company secretary offers secretarial services and is subject to reporting obligations under Part IV of the AMLA when a company secretary practising and the firm is engaged in activities that are designated as gazetted activities.

“small-sized secretarial firm”

Refers to secretarial firm having 5 members and/or company secretaries who have been issued with Practising Certificate under section 241 of the Companies Act 2016 by SSM.

EXEMPTION/ SIMPLIFICATION



In-house company secretaries

9.9. Application for Company Secretary Who is Employed by a Company to Handle Secretarial Functions of the Company/ Group of Companies

- (a) A company secretary who is employed by a company to handle the secretarial functions of the company/group of companies is deemed to be responsible for the duties of Compliance Officer.
- (b) Paragraph 9.1 to 9.7 do not apply to such company secretary. However, the company secretary shall at a minimum, adopt this policy document as his policies and procedures.
- (c) Notwithstanding of the above, the company secretary is required to comply with the AML/CFT Compliance Programme requirements as and when specified by the BNM or SSM.



APPLICATION OF RISK-BASED APPROACH



Risk Control and Mitigation

- A company secretary/secretarial firm must:
 - have policies, procedures, and controls to manage and mitigate ML/TF risks
 - monitor their implementation
 - take enhanced measures for higher risks specified by the BNM or SSM
 - conduct independent control testing.



AML/CFT COMPLIANCE PROGRAMME



Policies, Procedures and Controls

- A company secretary/secretarial firm is required to develop and implement internal AML/CFT programmes which correspond to his ML/TF risks and the size, nature and complexity of his business operations.

Responsibilities of Board, Senior Management

Compliance Management Arrangements

- Minimum requirement of Compliance Officer (CO)
- Duty of CO

Employee Screening Procedures

Employee Training And Awareness Programmes

Independent Audit Function

AML/CFT COMPLIANCE PROGRAMME



❑ Application for Small-sized Secretarial Firm

- Exemption or Simplification for Small-sized Secretarial Firm
(e.g. : At a minimum, adopt policy document as their policies and procedures without developing their own internal policies, Employee Screening Procedures shall apply upon initial hiring only), Employee Training and Awareness shall be simplified (on-job-training), Independent Audit Functions requirements shall be exempted.)

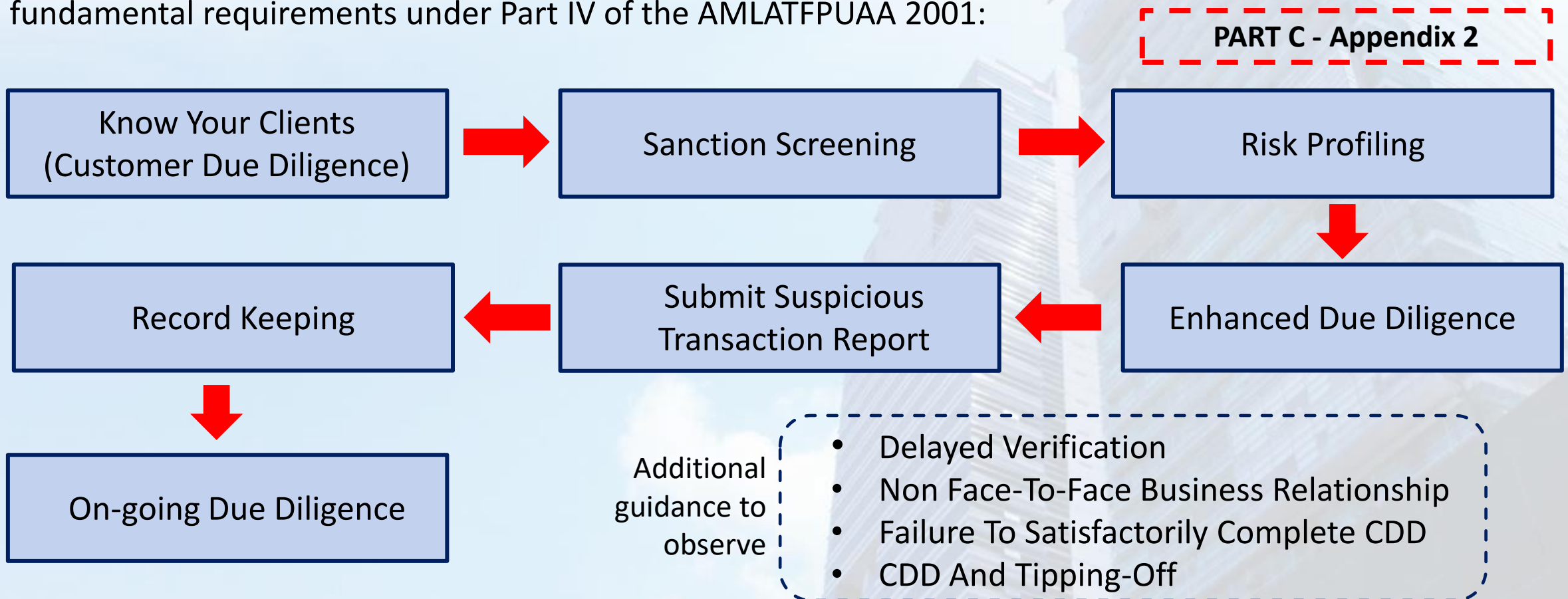
❑ Application for Company Secretary Who is Employed by a Company to Handle Secretarial Functions of the Company/ Group of Companies – **IN-HOUSE COMPANY SECRETARIES**

- An in-house company secretary is deemed to be responsible for the duties of Compliance Officer –
 - ✓ shall at a minimum, adopt the policy document as his policies and procedures.
 - ✓ properly implement the appropriate AML/CFT policies and procedures
 - ✓ establish and maintain relevant internal criteria (red-flags)
 - ✓ promptly report STR to the FIED of Bank Negara Malaysia.

AML/CFT COMPLIANCE PROGRAMME



In discharging his duties, a company secretary must comply with and put in place the following key and fundamental requirements under Part IV of the AMLATFPUAA 2001:



OTHER MATTERS RELATING TO CDD



In discharging his duties, a company secretary must comply with and put in place the following key and fundamental requirements under Part IV of the AMLATFPUAA 2001:

NEW SERVICES AND BUSINESS PRACTICES

- identify and assess the ML/TF risks that may arise

RELIANCE ON THIRD PARTIES

- Allowed except for on-going due diligence

POLITICALLY EXPOSED PERSON

- domestic PEP or a person entrusted with a prominent function by an international organisation

HIGHER RISK COUNTRIES

- apply appropriate countermeasures, proportionate to the risks

MANAGEMENT INFORMATION SYSTEM

- adequate manual or electronic management information system (MIS)

OTHER REPORTING OBLIGATION

- Data and Compliance Report issued by Bank Negara Malaysia, and SSM

APPENDIX



PART C GLOSSARY, TEMPLATES AND FORMS

Glossary, AML/CFT Guide, Forms
extracted from BNM Policy Documents

PART D GUIDANCE & INFOGRAPHICS

- Guidance on Application of Risk-Based Approach
- Compliance Officer's Role and Responsibilities
- Customer Due Diligence
- Targeted Financial Sanctions

PART E RED FLAGS

Examples of red flags for company secretaries'
guidance in complying with the AMLA
requirements

CONCLUSION



- A company secretary must be able to appreciate his obligations under the Companies Act 2016 (CA2016) and the AMLA to ensure that he fully understands the requirements under these two distinct sets of regulations.
- The understanding of AMLA will help company secretaries to mitigate risk more effectively to ensure that no entity or individual can exploit potential gaps in the system, prevent loopholes in the regulatory framework as well as to maintain integrity of the company secretarial profession.
- Company secretaries are strongly encouraged to enhance their competence by participating in certified AML/CFT courses offered by SSM, BNM, professional bodies and other relevant agencies. This will enable them to effectively fulfil their roles and responsibilities.



THANK YOU