



Towards Better Governance of Non Profit Organizations (NPOs) in Malaysia

New Development of Anti Money Laundering & Counter Financing of Terrorism (AML/CFT): *Understanding the Roles of NPO*

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Presentation Snapshot

- Ø Money Laundering & Terrorist Financing overview
- Ø Global & Domestic Efforts to Combat ML / TF
- Ø The FATF & its Recommendations
- Ø Role of Asia/Pacific Group on Money Laundering (APG)
- Ø Non-Profit Organization (Global & Malaysia)
- Ø What influences NPOs Vulnerability to ML/TF?
- Ø NPO vulnerabilities & Mitigation actions
- Ø Impact of Non-compliance to FATF Standards
- Ø Case study & lesson learned

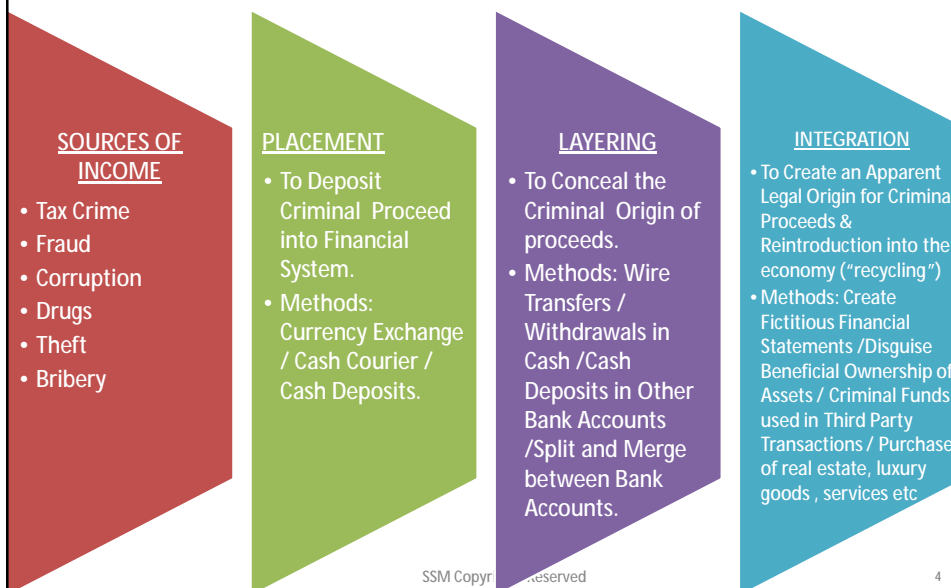
What is Money Laundering?



- **Section 3 of AMLATFA 2001:**
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, (...) **proceeds of any unlawfully activity**; or
 - c) conceals, disguises or impedes the establishment of **the true nature, origin, (...) with respect to, or ownership of, proceeds of any unlawfully activity**.
- **In effect, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.**

• **Illegal money put through a cycle of transactions so it comes out the other end as legal.**

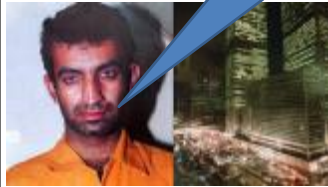
Conceptual Money Laundering



What is Terrorist Financing?

“When the FBI transported Ramzi Yousef by helicopter over Manhattan following his capture for the 1995 bombing of the World Trade Center’s Twin Towers, an FBI agent pulled up Yousef’s blindfold and pointed out that the lights of the World Trade Center were still glowing. “They’re still standing,” the FBI agent stated. Yousef is reported to have responded..... (Dickey, 2009)”

“They wouldn’t be if I had enough **money** and explosives!”



UNCSTF...



TF occurs when a person by any means, directly or indirectly, unlawfully and willfully provides or collects funds with **the intention that such funds will be used or in the knowledge that the funds will be used in full or in part, in order to carry out a terrorist act.**

FATF.... On Terrorist Act

Any act intended to cause death or serious bodily injury to a civilian or any other person not taking an active part in the hostilities. Usually, the purpose is to intimidate a population or to compel a government to do or abstain from doing any act

Difference Between ML and TF

“The Evil Twins”

Factors	Money Laundering	Terrorism Financing
		
Motivation	Profit	Ideological
Source of Fund	Internally from within criminal organizations	Internally from self-funding cells (increasingly centered into criminal activities) Externally from benefactors and fundraisers
Conduit	Favors formal financial systems	Favors cash courier or informal financial system such as ‘hawala’ and currency exchange firm



Difference Between ML and TF

Factors	Money Laundering	Terrorism Financing
Detection Focus	Suspicious transactions, such as deposits uncharacteristic of customer's wealth or the expected activity, which lead to relational links.	Suspicious relationship such as wire transfers between seemingly unrelated parties which lead to transactional links.
Transactions Amount	Large amounts often structured to avoid system requirements	Small amount usually below reporting thresholds
Financial Activity	Complex web of transactions often involving shell or front companies, bearer shares, and offshore secrecy haven	No workable financial profile of professional terrorist exist according to U.S 9/11 Commission
Money Trail	Circular – money eventually ends up with persons who generated it	Linear – money generated is used to propagate terrorist group and activities

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Global Efforts To Combat ML & TF

UN Conventions & Resolutions

- Security Council Resolution 1373
- International Convention for the Suppression of the Financing of Terrorism
- Security Council Resolution 1267 and its Successors
- The Palermo Convention
- The Vienna Convention

Implementing Groups for AML/CFT:

- **Financial Action Task Force (FATF)**
 - International standard setter for AML/CFT
 - Conduct Mutual Evaluation
- **Asia/Pacific Group on Money Laundering**
 - Conduct Mutual Evaluation
 - Typology Research
 - Technical Assistance
- **Egmont Group of FIU**
 - International cooperation
 - Exchange of financial intelligence, best practices

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Domestic Efforts To Combat ML & TF

Overview of AML/CFT Regime in Malaysia

- The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA)
 - 288 from 42 legislations (predicate offences)
 - More than 38,000 entities reporting institutions
- Bank Negara Malaysia as the authority under AMLATFA & Secretariat to the National Coordination Committee to Counter Money Laundering (NCC). AML/CFT initiatives are coordinated through the NCC.
- NCC's objectives:
 - Develop national policy measures to counter money laundering / terrorist financing (ML/TF)
 - Develop and ensure proper implementation of measures to counter ML/TF based on internationally accepted standards.

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Domestic Efforts To Combat ML & TF

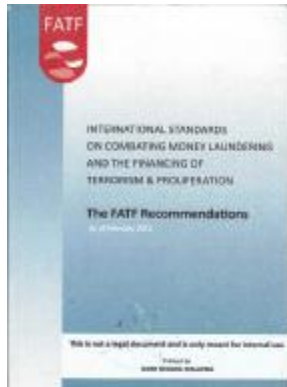
Overview of NCC Agencies:

Regulatory	Enforcement	Policy
<ul style="list-style-type: none">• Companies Commission of Malaysia• Registrar of Societies• Bank Negara Malaysia• Securities Commission• Labuan Financial Services Authority	<ul style="list-style-type: none">• Inland Revenue Board• Immigration Department of Malaysia• Malaysia Anti-Corruption Commission• Royal Malaysian Customs• Royal Malaysia Police	<ul style="list-style-type: none">• Ministry of Finance• Ministry of Foreign Affairs• Home Ministry• KPDNKK• Attorney-General's Chambers• Ministry of International Trade and Industry

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What is FATF?



FATF Recommendations

A comprehensive & consistent framework of measures to combat money laundering and terrorist financing.

- **Financial Action Task Force (FATF)**
- **An inter-governmental body.**
- **Established in 1989 by the Ministers of its Members jurisdictions.**
- **Composition: 32 Countries + European Com. & Gulf Cooperation Council + Observer.**
- **Chairmanship: June 2013/2014, Federation of Russia.**
- **Over 180 jurisdictions have joined the FATF or an FATF-style regional body, and committed at the ministerial level to implementing the FATF standards.**

FATF Functions

- To set standards and to promote effective implementation of legal, regulatory and operational measures **for combating money laundering, terrorist financing** and the financing of proliferation, and other related threats to the integrity of the international financial system.
- To identify national-level vulnerabilities with the aim of **protecting the international financial system from misuse.**
- Assess and monitor **compliance** with the FATF standards.
- Develop the International Cooperation Review Group (ICRG) process as a means to ensure countries' compliance with the FATF Standards.
- **Conducts typologies studies** of ML/TF methods, trends and techniques.
- Responds to new and emerging threats, such as proliferation financing.

ACTIONS:

- Conduct Mutual Evaluation Exercise on its member countries.
- Partners with FATF Regional Style Bodies (e.g. APG) to conduct the ICRG process on countries with deficiencies in AML/CFT measures.
- Issue FATF Public Statements to highlight countries with AML/CFT deficiencies.



Elements in FATF Recommendations?

- A. AML/ CFT Policies and Coordination
- B. Money Laundering and Confiscation
- C. Terrorist Financing and Financing of Proliferation**
- D. Preventive Measures
- E. Transparency and Beneficial Ownership of Legal Persons and Arrangements
- F. Powers and Responsibilities of Competent Authorities and Other Institutional Measures
- G. International Cooperation

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FATF Recommendation 8

C – TERRORIST FINANCING AND FINANCING OF PROLIFERATION

8. Non-Profit Organisations:

Countries should **review the adequacy of laws and regulations** that relate to entities **that can be abused for the financing of terrorism**.

Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (a) by terrorist organizations posing as legitimate entities;
- (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorists

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FATF Recommendation 8 Review & Assessment

- 8.1**
 - Review adequacy of laws
 - Undertake domestic review
 - Assess the NPO sectors' vulnerabilities
- 8.2**
 - Outreach to the sector
- 8.3**
 - Policies on transparency, integrity and promotion of public confidence
- 8.4**
 - Standards for
 - (i) significant portion of the financial resources under control of sector;
 - (ii) substantial shares of sector's international activities
- 8.5**
 - Supervision and Monitor compliance 8.4
- 8.6**
 - Effective investigation and information gathering on NPO
- 8.7**
 - Effective mechanisms for international cooperation

- q Maintain information
- q Financial statement reporting
- q Funds spent consistent with purpose and objective
- q Be licensed and registered
- q "know your beneficiaries " and associated NPO
- q Maintain records for 5 years

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What is APG?

Asia/Pacific Group on Money Laundering:

- Collaborative international organisation founded in Bangkok, Thailand under the FATF umbrella in 1997.
- Comprised of 41 member countries from the Asia Pacific regions and observers.
- Members provide commitment to implement the FATF standards via the Ministerial mandate.

Functions:

- Assesses and monitor compliance of member countries with the FATF standards through a Mutual Evaluation Exercise.
- Coordinate bi-lateral and donor-agency technical assistance and training in the Asia/Pacific region in order to improve compliance by APG members with the global AML/CFT standards.
- Conduct research and analysis into ML/TF trends and methods to better inform APG members of systemic and other associated risks and vulnerabilities.

APG ACTIONS:

- Conduct Mutual Evaluation Exercise on its member countries.
- Participate in the International Cooperation Review Group (ICRG) process.
- Recommend member country with strategic AML/CFT deficiencies to be placed under the ICRG process.

Global NPO



The Global NPO is enormous

- Operating expenditure is about \$1.3 trillion;
- Its employment exceed that of the world's largest 50 corporations combined;
- Annual volume of money channeled as economic development assistance as at 2006 was \$20 billion
- **John Hopkins University comparative Non Profit sector estimate of staff in 36 countries.**
- NPOs enjoy robust public trust, extensive cross border operations & have little or no reporting obligations in many jurisdictions.



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NPO Sector in Malaysia

- NPO - societies, associations, clubs, organizations, companies and foundations.
- Statutes & regulations of NPO: Societies Act 1966, Companies Act 1965 & Income Tax Act 1967.
- Constitutional basis of an NPO - a society or a company.
- Registration with ROS and SSM is mandatory.
- ROS, under Ministry of Home Affairs, enforces the Societies Act 1966 – Maintain records pertaining to registered societies.
- Charitable corporation formation (Company Limited by Guarantees) is under Companies Act 1965 which SSM is responsible in registering, supervising and controlling activities of these charitable corporations.

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NPO Sector in Malaysia

- NPO – diverse in structure and modes of work and financing
- Common characteristics of an NPO:
 - ✓ Voluntary & self-help
 - ✓ Independent and controlled by those who formed or by its governing bodies
 - ✓ Essentially non-profit or non-trading organization (May be involved in profit generating but profit/surplus must not be distributed to members by way of dividends)
 - ✓ Noble in character and set-up for specific objective.
 - ✓ Membership basis (open to public)
 - ✓ Funding source from members, subscriptions, public donations, grants and investment.

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NPO Sector Vulnerabilities

Vulnerability Factors

- Cash based economy
- Lack of reliable identification database
- Weak in legal, regulatory and supervisory framework for combating ML & TF - Countries identified by FATF as Non cooperative Countries and Territories (NCCT)
- Prevalence of other criminal activities
- Extent of existing regulatory within the sector is low
- Exposure to underground economy – some being referred to as portfolio NPOs
- Exposure to high volume of cross border transactions
- High level of public trust

Form & Areas of Abuse

- complicit
- non-complicit (exploited)
- some complicit official(s)
- to its finances
- to its operations
- provision of material resources
- to its personnel

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How NPO Can Mitigate ML/TF Vulnerabilities

- 1) **Compliance with laws, regulation and guidance relating to AML/CFT.**
- 2) **Management unwavering support**
- 3) **Continuous review of risk & compliance policy**
- 4) **Independent and well resourced compliance function**
- 5) **Robust internal audit mechanism**



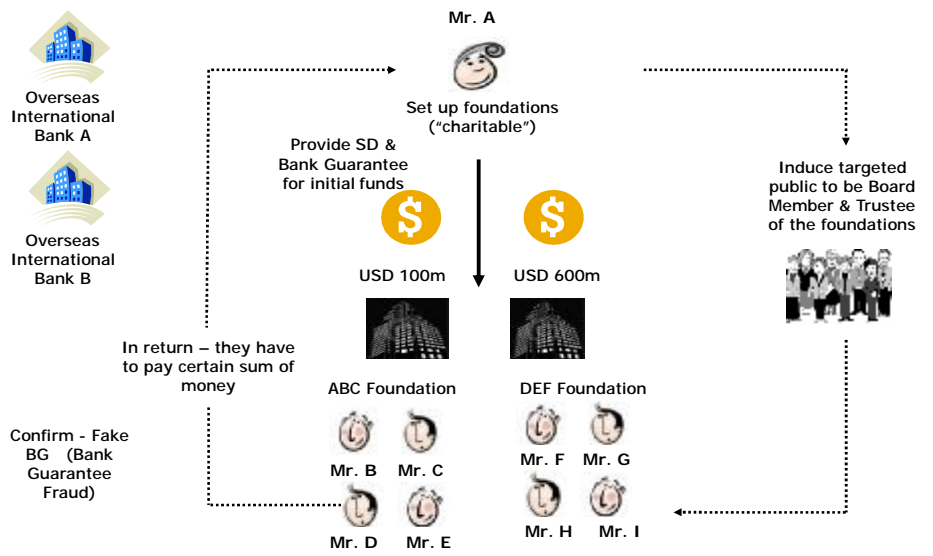
Non-compliance to FATF Standards: Impact



- Malaysia could be placed under International Cooperation Review Group (ICRG) process resulting to more efforts, resources and time required to exit the process which has put Malaysia under close scrutiny.
- Possibility of being listed in FATF's Public Statement.
- Negative perceptions as being providing for criminals
- Impact on integrity of Malaysian financial system which perceived as vulnerable to infiltration / abused by criminals
- Impact on productivity in real sector due to diversion of resources to underground business
- Corruption, crimes rate and unemployment on the increasing trend
- Impact on international trade and capital flows (external economic factors that detrimental on long term economic development)

CASE STUDY

SSM Case Study



SSM Case Study (con't)

FINDINGS:

- Suspect was never appointed as a member of the Board for the foundations.
- The proof of fund issued was false and invalid
- Suspect induced few selected individuals to be appointed as the Board Members of the foundations whereby they were promised with lavish benefits.
- In return, the selected Board Members had to pay suspect certain amount of money
- Suspect intended to use the Foundations as a vehicle for his advance fees scheme (bank guarantee fraud)

ACTION TAKEN:

- ☐ Due diligent conducted reveal that suspect has previous convictions under Penal Code and Securities Act.
- ☐ Apparently, SSM rejected the applications to incorporate ABC Foundation & DEF Foundation
- ☐ Suspect was prosecuted under Section 364(2) Companies Act 1965 for giving false and misleading statements.
(Penalty: Imprisonment for 10 years or fine of RM 250,000 or both)

The National Kidney Foundation (Singapore) Financial Scandal



BACKGROUND:

- July 2005 - NKF scandal, also known as NKF Saga / NKF Controversy
- Following the collapse of a defamation trial which it brought against Susan Long and Singapore Press Holding.
- Allegations surrounding the scandal include the false declarations on how long NKF's reserves could last, its number of patients, installation of golden tap in Durai's (CEO) private office suite, his salary (S\$600,000 a year), use of company cars and first class air travel.
- April 2006, Durai was arrested and charged under Prevention of Corruptions Act.
- Durai also faced S\$12 million civil suit by NKF's new BOD – to recover fund



The National Kidney Foundation (Singapore) Financial Scandal

Date	Chronological events
23 April 2004	NKF sued SPH and Susan Long after the publication of the article "The NKF: Controversially ahead of its time?" in <i>The Straits Times</i>
12 July 2005	Trial between NKF and SPH begins.
13 July 2005	Durai drops the defamation suit against SPH after making several confessions.
14 July 2005	Durai and the entire NKF board resign.
21 July 2005	New NKF board takes over with Gerard Ee as chairman.
19 July 2006	A criminal suit is launched against Durai, former treasurer Loo Say San, board member Matilda Chua and former chairman Richard Yong.
8 January 2007	A civil suit launched by NKF against former board begins.
16 May 2007	Loo, Chua and Yong are declared bankrupt due to their inability to pay for the damages and legal costs of the NKF civil suit. Loo and Yong are fined S\$5,000 for failing in their duties as directors, while Chua is fined S\$10,000 for falsifying accounts.
Jun–Aug 2008	Durai serves a jail term for deceiving the NKF into paying S\$20,000 to his interior designer friend David Tan between December 2003 and January 2004.
July 2011	Durai repays the entirety of the S\$4.05 million he owed NKF.

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The National Kidney Foundation (Singapore) Financial Scandal



- 1) **Strong independent chairman**
- 2) **Effective BOD**
- 3) **Questions, fully investigated**
- 4) **Directors act with reasonable diligence**
- 5) **Conflicts of interest are properly disclosed**
- 6) **Payments to directors and officers should be proper**
- 7) **Adequate internal controls**
- 8) **Audit committee should be knowledgeable, independent, and empowered to act effectively**
- 9) **Whistleblowing system**
- 10) **Risk of Having Too Much Power Concentrated in One Person.**

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