



Extension of Part IV of AMLA to IEOs, Digital Custodians and Digital Asset Advisors, and Explicit Broadening to Equity Crowdfunding, Crowdfunding, P2P and other Recognised Market Operator Platforms

On 24 December 2021, the [Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities \(Invocation of Part IV\) Order 2021](#) ("**2021 Invocation Order**") and the [Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities \(Amendment Of First And Second Schedules\) Order 2021](#) ("**2021 Amendment Order**") extended the application of Part IV of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") to digital asset custodians, intermediaries, and those involved in the provision of advisory services relating to the offer or sale of digital currencies or digital tokens. Part IV of AMLA deals with reporting obligations of reporting institutions, including the duties for record-keeping, customer due diligence, having and maintaining a compliance programme, and other requirements relating to disclosure, tip-off, and investigation or protection of reporting persons and institutions.

The Amendments

The 2021 Amendment Order amends the definition of a "reporting institution" under Schedule 1 of AMLA, effectively extending AMLA to recognised market operators ("**RMOs**"). This affects equity crowdfunding, peer-to-peer ("**P2P**"), property crowdfunding, as well as e-services platforms. The amendments also capture operators dealing with digital tokens, such as initial exchange offering operators ("**IEO Operators**").

Although prior guidelines issued by the Securities Commission ("SC") already made most provisions of AMLA (including Part IV) binding, this 2021 Amendment Order explicitly makes clear that RMOs, IEO Operators, and digital asset custodians are now also bound by Part IV of AMLA.

Specifically, the 2021 Amendment Order:

- (a) substitutes paragraph 25 of AMLA's Schedule 1 on reporting institutions (which [formerly described](#) persons who carried out activities involving the exchange of digital currency for money and vice-versa, or exchanged digital currencies as reporting institutions) – to cover all RMOs under the Capital Markets and Services Act 2007; and
- (b) adds an additional paragraph 26 to AMLA's Schedule 1 to capture digital asset custodians, and providers of intermediation and advisory services relating to the offer or sale of digital currencies or digital tokens.

The new paragraph 26 also extends the application of the old paragraph 25, which formerly only dealt with digital currencies defined under the [Capital Market and Services \(Prescription of Securities\) \(Digital Currency and Digital Token\) Order 2019](#) , to now include digital tokens.

Impact on Operators

Given that the SC's [Guidelines on Recognized Markets](#) and [Guidelines on Digital Assets](#) (which apply to all RMOs, IEO Operators, and digital asset custodians) required compliance with AMLA, and that most operators would have had to demonstrate an ability to comply with anti-money laundering standards during their licence application process to the SC, operationally, the 2021 Amendment Order should not pose additional burdens on existing operators. For example, RMOs were previously already required to comply with the SC's [Guidelines on Prevention Of Money Laundering And Terrorism Financing For Reporting Institutions In The Capital Market](#), and in the case of digital asset exchanges purely dealing in digital currencies, the [Anti-Money Laundering and Counter Financing of Terrorism \(AML/CFT\) – Digital Currencies \(Sector 6\)](#) guidelines ("**Sector 6 Guidelines**") issued by Bank Negara Malaysia ("**BNM**"), the central bank. Both of these guidelines imposed many of the obligations already set out under Part IV of AMLA. However and notably, the Sector 6 Guidelines which were based on the original paragraph 25 of AMLA's Schedule 1 would have left IEO Operators (which deal with digital tokens, not digital currencies) conspicuously out of scope. Notwithstanding that the SC has always ensured that operators are nevertheless bound to comply with AMLA via its guidelines, the amendments update the law and introduce direct applicability and clarity.

Consequences of Non-compliance

Whilst specific sections of Part IV of AMLA carry their own respective penalties (which generally range up to RM3,000,000 (where USD\$1.00 = RM4.15, approximately) in fines and carry jail sentences of up to five years), any officer of a reporting institution who fails to take all reasonable steps to ensure the reporting institution's compliance with obligations under Part IV commits an offence and shall on

conviction be liable to a fine of up to RM1,000,000, to imprisonment of up to three years, or both. There is therefore severe personal liability for officers of defaulting companies, which include directors and senior management. The same penalty applies for a reporting institution's failure to comply with a directive of a competent authority that has applied for an order under section 22(2) of AMLA.

An enforcement action under AMLA also potentially carries serious reputational repercussions. Recent regulations and guidelines issued by Bursa Malaysia Berhad (Malaysia's stock exchange), the SC and BNM trend towards moving operators to a system where environmental, social and governance ("ESG") reporting is becoming the norm. A clean sheet on anti-money laundering compliance has become a 'must' for serious players in capital markets, and those seeking debt finance funding¹.

Resources

Related articles and guides by CLO and the Rajah & Tann Asia network on sustainable financing, ESG, and anti-money laundering can be found at the links below.

- [A Quick Guide on Anti-Corruption](#)
- [Whistleblower Protection Act 2010: Sustainable a Decade on?](#)
- [First Corporate Liability Charge under the Malaysian Anti-Corruption Commission Act 2009 – What Directors Need to Know](#)
- [Corporate Liability is not Shelved – Adequate Procedures More Crucial Than Ever in the Face of COVID-19 Corruption and Fraud Risks](#)
- [The Enforcement of Accounting Fraud under the Capital Markets and Services Act 2007](#)
- [A Guide to Sustainable Financing in Southeast Asia](#)
- [Compliance with Environmental Laws: Road Towards Achieving a Healthy and Sustainable Triple Bottom Line](#)

Please do not hesitate to contact any member of our team should you have questions on, or require assistance with, anti-money laundering, anti-bribery, prevention of white collar crime, compliance programmes, ESG-led initiatives, or regulatory investigations.

¹ See statement by Bursa Malaysia Berhad Chairman, Tan Sri Abdul Wahid Omar on 17 February 2022 in [The Edge: Bursa chairman: Companies that ignore ESG will be deprived of equity, debit financing](#)

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