

FAQs ON GUIDELINES RELATING TO THE OBLIGATIONS OF COMPANY SECRETARY AS A REPORTING INSTITUTION UNDER THE AMLA

1. Are all activities carried out by company secretaries subject to Part IV of the AMLA 2001?

Answer:

Part IV of the AMLA is applicable to those carrying on Gazetted Activities as published in P.U.(A) 340/2004 and P.U.(A) 293/2006. For company secretaries, the activities are outlined under paragraph 4.. of SSM's guidelines, i.e. all company secretaries who are whether in person or through a firm or company prepares or carries out the following activities –

- (a) act as a formation agent of legal entities;
- (b) 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;
- (c) provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal entities or arrangement;
- (d) act as or arrange for another person to act as a trustee of an express trust; or
- (e) act as or arrange for another person to act as a nominee shareholder for another person.

2. Are company secretaries required to submit their AML/CFT assessment information to Bank Negara Malaysia and SSM?

Answer:

Company secretaries are generally not required to submit the AML/CFT risk assessment information to Bank Negara Malaysia and SSM. However, such report may be required to be submitted to Bank Negara Malaysia or SSM during supervisory visits or as and when required as part of supervisory or risk assessment.

3. What is the expectation for company secretaries in conducting their institutional risk assessment (IRA)? Can the IRA be thematic and how frequent must it be conducted?

Answer:

Paragraph 8 of the SSM's guidelines require company secretaries to identify, assess and understand their ML/TF risk in relation to the following parameters:

- (i) customers;
- (ii) countries or geographical areas;
- (iii) products, services, transactions or delivery channels; and
- (iv) other relevant risk factors.

Company secretaries' first IRA must be comprehensive, covering all the above-mentioned parameters i.e. customers, countries/geographical areas and products/services/ transactions and delivery channel, at minimum. Company secretaries may choose to update the IRA on a thematic basis.

Company secretaries may consider to set the frequency of the IRA on a specific period e.g. every 1 to 2 years or where circumstances have changed that may warrant a refresh of the IRA, e.g. material changes in risk profile, significant internal audit finding, changes in business direction, new typologies suggested by authorities or the Financial Action Task Force (FATF), or when embarking in new technologies, etc.

Company secretaries may also refer to the guidance documents on risk-based approach available in Appendix 7 of the SSM's guidelines and guidance issued by the BNM which are available on its website at: www.amlcft.bnm.gov.my.

4. Are company secretaries required to assess the ML/TF risks based on all criteria specified in the SSM's guidelines?

Answer:

In profiling the customers, company secretaries are required to take appropriate steps to identify, assess and understand risks by considering the relevant factors. In cases where some of the criteria are irrelevant to the company secretary's business, those criteria may not be considered in profiling and assessing the risks of the customers.

5. Is there a specific template to conduct the IRA?

Answer:

There is no standard template to conduct the IRA. Reporting institutions may refer to Appendix 8 of the SSM's guidelines as a guidance to assist the conduct of ML/TF risk assessment collectively at the institutional level.

While Appendix 8 has generally covered the basic requirements, it should not be treated as the sole reference in conducting the risk assessment as the list of factors or examples or criteria are not exhaustive.

6. What sources of documents, data or information are deemed as reliable? Can a company secretary seek SSM's or BNM's confirmation to determine the level of reliability?

Answer:

Verification can be a combination of various data points that the financial institution deems to be "reliable and independent" which could cumulatively ensure the veracity of customer and beneficial owner's identification data. Any measures adopted should be subjected to the company secretary's internal governance process.

Generally, company secretaries would verify the identity through acceptable government issued documents with or without photograph (e.g. MyKad, MyKid, MyPR, OKU card, driving licence, birth certificate, marriage certificate), foreign passport, employee identification documents, etc.

Alternatively, subject to the company secretary's assessment whether it is appropriate to mitigate the risks, company secretaries may accept scanned or copy documentation and apply additional measures which include:

- (i) third party verification of identity from the client's primary bank account provider, lawyer or accountant;
- (ii) corroborative evidence from Jabatan Pendaftaran Negara, SSM and Central Credit Reference Information System (CCRIS) databases;
- (iii) use of commercial providers who triangulate data sources to verify documentation provided;
- (iv) use of new and robust technology solutions including but not limited to, biometric technologies which should be linked incontrovertibly to the customer;
- (v) through non face-to-face mechanisms e.g. video conference with customers and submission of selfies to compare the physical identity of a customer with scanned or photographed copies of identification documents; and/or
- (vi) other reliable and independent source.

Company secretaries are expected to undertake adequate and reasonable measures to mitigate risks arising from the adoption of any non face-to-face mechanisms.

7. For verification purpose, are company secretaries required to make a copy of the customer's NRIC, or is it sufficient to document or make a record of the customer's NRIC number?

Answer:

Yes, any documents requested or obtained during the CDD process should be kept and recorded to meet the record keeping requirement.

The record keeping of these documents may be in the form of a photocopy or soft copy (scanned copy or snapped picture).

8. What are the acceptable documents for verification of legal persons?

Answer:

The company secretary is required to take adequate measures to confirm the identity of its customers which may include constituent documents, such as certificate of incorporation, and other searches available in the public registrar databases.

9. What is the expectation if a public listed company is identified to be wholly owned by a GLC or a SOC company?

Answer:

Under such circumstance, the exemption on verification of the identity of directors and shareholders of that legal person applies. Company secretaries are required to identify and maintain information relating to the identity of the directors and shareholders of the public listed company using reliable sources.

10. What is the expectation for company secretaries in dealing with authorized persons?

Answer:

A person authorised must be represented with a letter of authority or director's resolution from the legal person.

Where it involves an authorised signatory, i.e. when establishes business relations and authorises another person to conduct transactions on its behalf, the company secretary must obtain documentary evidence on the appointment of such person and the specimen signatories of the person appointed.

Company secretaries must be guided by their risk assessment on what documentary evidence would suffice for the purposes of identifying and verifying the person authorised.

11. Do company secretaries need to establish source of fund or source of wealth for every customer?

Answer:

No. The requirement to obtain information on source of funds **and/or** source of wealth applies when overall ML/TF risks are assessed as higher risk. Company secretaries are not expected to establish source of wealth for each and every customer or transaction.

Generally, company secretaries are required to enquire on source of funds and/or source of wealth, as part of the enhanced CDD under the following scenarios:

- (i) subsequent to the conduct of customer risk profiling, when a customer is assessed as having higher ML/T risks, regardless of any amount of transaction;
- (ii) for all foreign politically exposed persons (PEPs) or when a domestic PEP is assessed as having higher ML/TF risks, in which case, both source of fund and wealth must be obtained; or
- (iii) when providing nominee services to the clients, i.e. nominee shareholding, directorship or partnership services.

12. What is the difference between "source of wealth" and "source of funds"?

Answer:

Information on the source of wealth and source of funds are good sources of monitoring for the company secretaries.

"*Source of wealth*" refers to the source of a person's total assets. Documents and information that may reflect the source of wealth of a person include inheritance document, property title, copies of trust deeds, audited accounts, salary details, tax returns and bank statements. It may be possible to gather general information from commercial databases or other open sources.

"*Source of funds*", on the other hand, refers to the origin of a specific asset used in connection to the business relations with the company secretary, including amount invested, deposited or wired. Source of funds may be determined through enquiry on the customer, complemented by documents such as record of salary payments or receipt of sale proceeds, etc.

In the case of PEPs, both information on the source of wealth and source of funds are to be obtained.

Understanding both the source of wealth and source of funds of a PEP is also necessary for on-going due diligence purposes where the aim is to ensure that the reason for the business relationship between company secretaries, and the PEP and the transactions undertaken on the PEP's behalf, are commensurate with what one could reasonably expect from that PEP, given his/her particular circumstances.

13. Can company secretaries continue business relationship with its customer in the event of a failure to obtain the complete CDD information?

Answer:

Company secretaries must obtain all CDD information before continuing any business relationship. In the event of a failure to obtain the complete information, company secretaries must not continue the business relationship or transaction with the customer and must consider lodging a suspicious transaction report.

However, where a company secretary form suspicion of ML/TF and reasonably believe that performing CDD may tip-off the customer, the company secretaries are permitted to proceed to establish business relation or transaction without completing the CDD process, document the basis of not completing the CDD process and immediately lodge a suspicious transaction report.

14. Can a senior management of the company secretary, who is not the appointed compliance officer evaluate and report suspicious transaction to FIED, BNM?

Answer:

Only the appointed compliance officer has the sole discretion and independence to evaluate and report suspicious transactions to FIED, BNM.

In this regard, the company secretary must ensure that the appointed compliance officer has the sufficient stature, authority and seniority within the firm to be able to make effective AML/CFT related decisions, including STR submission.

15. What is the threshold for reporting of suspicious transaction?

Answer:

There is no threshold for reporting of suspicious transaction. It is based on any suspicion that arises when establishing business relationship or conducting a transaction regardless of any amount. However, a company secretary may set an internal threshold based on the company secretary's own risk assessment.

16. Should company secretaries continue to submit STRs for the same customer or should company secretaries update the details in the previous STR case filed?

Answer:

Where an STR has been lodged, company secretaries may opt to update or make a fresh STR as and when a new suspicion arises.

Company secretaries are encouraged to submit a new STR if there is new critical information. Where a new STR is submitted, company secretaries should include the previous reference number as part of the reporting description.

17. What is the duration that company secretaries are to maintain the internally generated reports and supporting documents?

Answer:

These reports and supporting documents are to be kept for at least 7 years.

18. Can company secretaries maintain supporting documents or records in soft copy?

Answer:

Company secretary must ensure that all supporting documents or records be made available to the relevant supervisory authorities upon request. The information must be maintained in a form that is admissible as evidence in court pursuant to the Evidence Act 1950.

19. For classification of higher risk customers, is there a limit on the indicators to be relied on when assessing a customer's risk profile? Can company secretaries rely on two or more indicators for deciding to rate the customer as having higher risk?

Answer:

Company secretaries can rely on various indicators in deciding to rate a customer as having higher risk. Company secretaries are expected to consider all risk factors applicable based on type of customer, geographical location, products, services, transactions or delivery channels and may include other relevant factors such as patterns of transactions or activity throughout the business relationship.

However, there are instances where a customer is classified as having higher risk based on only one higher risk indicator regardless of the level of risk posed by the other factors. For example, a customer must be classified as having higher risk if the customer is a foreign politically exposed person (PEP); or is from higher risk countries that are called for by the FATF. In both examples above, enhanced CDD shall apply.

20. Application for small-sized Company secretary

Answer:

If a company secretarial firm meets the small-sized definition, the secretarial firm can apply the simplifications and exemptions in relation to the AML/CFT Compliance Programme.

Please note that the simplification or exemption does not apply to the substantive AML/CFT requirements, such as customer due diligence, suspicious transaction report, record keeping etc.

Bank Negara Malaysia's approval prior to the application of the simplifications or exemptions is not required. Notwithstanding, Bank Negara Malaysia, may at any time, specify that a company secretary is required to comply with any of the AML/CFT Compliance Programme.

21. What is the expectation when a firm meets the criteria for small-sized secretarial firm in one year, but not in the subsequent year?

Answer:

The determination of whether the secretarial firm meets the small-sized secretarial firm criteria shall be based on the figures at the end of the preceding calendar year, i.e. January to December. Hence, where the secretarial firm does not meet the criteria, the secretarial firm must comply with the complete AML/CFT Compliance Programme.

22. For a small-sized secretarial firm, can the Director or Manager act as the compliance officer?

Answer:

Yes, the secretarial firm may appoint any individual with management responsibilities within the company secretary to be the compliance officer. The person appointed must satisfy the criteria provided under the SSM's guidelines. He or she must have the sole discretion and independence to evaluate and report suspicious transactions.

The appointed compliance officer may also be carrying on other functions within the firm.

While the guidelines does not provide a definition of "management" per se, the appointed compliance officer must have sufficient stature, authority and seniority within the firm to participate and be able to effectively influence decisions relating to AML/CFT matters.

23. Must the appointed compliance officer be based within the secretarial firm or can be from other subsidiaries within the Group?

Answer:

A secretarial firm may appoint compliance officer from other subsidiaries within the Group provided that he or she fulfils the criteria provided under the guidelines.

Regardless whether the compliance officer is internally or externally appointed, the company secretary remains responsible and accountable to ensure the effectiveness of the compliance functions.

24. For a company secretary with branches, can the compliance officer be centralised at head office?

Answer:

Section 19(4) of the AMLA require company secretaries/ secretarial firm to designate compliance officers at management level in each branch, for the purpose of application of AML/CFT compliance programme as well as reporting of suspicious transactions.

However, the firm is only required to notify Bank Negara Malaysia on the compliance officer appointed at the Head Office.

If branch offices operate independently, each branch is required to notify Bank Negara Malaysia on the appointment of the compliance officer.

25. Must the appointed compliance officer be certified?

Answer:

No, AML/CFT certification is not compulsory for compliance officers, but highly encouraged to enable effective discharge of their responsibilities.

26. What is the reliable source of reference to assess whether the compliance officer is "fit and proper"?

Answer:

A secretarial firm may be guided by the examples provided under paragraphs 9.4 of the guidelines when assessing the fitness and propriety of an individual to be appointed as a compliance officer.

27. Is there a due date for the appointment of a compliance officer?

Answer:

No, there is no specific due date for the appointment of a compliance officer. However, secretarial firms are required to appoint a compliance officer and notify Bank Negara Malaysia within 10 working days from the appointment, or for any change in the appointment.

28. Can screening be differentiated for different employees?

Answer:

Yes, the screening of employees can be differentiated on a risk-based basis, depending on the position, job scope or other relevant factors related to the employee.

Secretarial firms are expected to assess their employees' vulnerability to money laundering, terrorism financing, fraud and bribery risks, and use various sources of information to assist in the screening process to ensure that employees do not abuse their position or be vulnerable or used as a conduit to facilitate ML/TF activities.

29. What are the methods to conduct employee screening?

Answer:

Secretarial firms may choose any suitable method to conduct employee screening and be guided by the requirements in the guidelines.

Examples of methods for the conduct of employee screening may include face-to-face meeting, phone or video interviews, online checks, skills test, submission of documents or statutory declarations, criminal checks with relevant authorities, consumer credit reports, transaction monitoring, obtaining employment reference, etc.

30. Would trigger events such as transaction monitoring, periodic negative news screening suffices as the parameter for rescreening?

Answer:

The parameters and triggers for re-screening are to be determined by secretarial firm.

Examples of best practices would include consideration of global watch list (including negative news screening), criminal checks with relevant authorities, transaction monitoring as well as credit reports and also changes in circumstances, either professionally or personally e.g. promotion, secondment to another division function, financial hardships, or staying in the same position for a long period of time, etc.

31. What forms of employee training are acceptable?

Answer:

Training should be continuous. Any form of training, e.g. classroom, online or webinar, are acceptable depending on the needs of the employee, the job function and responsibilities undertaken by the employee.

Secretarial firms should have clear and comprehensive training contents. The training materials should be frequently reviewed to include any latest changes to the AML/CFT or other regulatory requirements. In addition, tests or examinations are highly encouraged to demonstrate higher levels of effectiveness.

Secretarial firms are to ensure that the training provided to their employees is properly documented.

32. Can the Board level function be delegated to other Board level committees (i.e. audit or risk)?

Answer:

Yes, the function may be delegated to other Board level committees (i.e. audit or risk) so long as the committee is independent and the AML/CFT findings or issues relating to the adequacy and implementation of the AML/CFT policies and procedures are ultimately tabled to the Board.

For example, the decision on frequency and scope of the audit can be delegated to the Board Audit Committee.

33. Who can undertake the independent audit function?

Answer:

The role of AML/CFT independent audit function can be undertaken internally by any officer, with relevant knowledge and expertise to carry out the function, who is independent of the compliance function (i.e. Compliance Officer). Alternatively, the secretarial firms may also appoint external auditors to carry out the function. The appointment of an independent auditor, internal or external and its roles and responsibilities shall be determined by the Board or Senior Partners.

In carrying out the independent audit review, the auditors must, at a minimum, check and test the firm's compliance with AML/CFT policies, procedures and controls and the effectiveness or extent of its implementation when dealing with clients or on the necessary approvals by Board or Senior Partners, as well as assess whether the firm's current measures are in line with requirements under AMLA, BNM's Policy Document and SSM's guidelines.

34. When should the secretarial firm conduct independent audit? Are secretarial firm required to conduct an annual audit? What is the scope?

Answer:

The frequency of the independent audit depends on the firm's assessment of its ML/TF risk exposure and is determined by the Board or Senior Partners.

Further, secretarial firms must also consider whether there were previous non-compliances under the AMLA which resulted in enforcement actions taken against the company secretary.

35. Are secretarial firms no longer required to prepare an audit report and submit to the Financial Intelligence & Enforcement Department, Bank Negara (FIED, BNM)?

Answer:

Yes, except for licensed casino and non-bank financial institutions, all other secretarial firms are no longer required to submit an annual audit report to FIED, BNM.

However, secretarial firms must ensure that the audit report and necessary corrective measures undertaken are made available to FIED, BNM and SSM upon request.