DECREE OF THE HEAD OF THE INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE
NUMBER: 2/1/KEP. PPATK/2003
CONCERNING
GENERAL GUIDELINES FOR FINANCIAL SERVICES PROVIDERS ON PREVENTION AND ERADICATION OF MONEY LAUNDERING

THE HEAD OF THE INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE,

Considering:

a. whereas of financial services providers have an extremely important role in the prevention and eradication of money laundering;

b. whereas it is therefore necessary to have a common understanding among financial services providers concerning the measures essential to prevention and eradication of money laundering;

c. now therefore it is deemed necessary to issue guidelines for financial services providers on the prevention and eradication of money laundering in a Decree of the Head of the Indonesian Financial Transaction Reports and Analysis Centre;

In view of:

1. Act Number 15 of 2002 concerning The Crime of Money Laundering (State Gazette of the Republic of Indonesia Number 30 of 2002, Supplement to the State Gazette of the Republic of Indonesia Number 4191);
2. Decree of the President of the Republic of Indonesia Number 201/M of 2002;

HAS DECREED …

HAS DECREED:

To enact: THE DECREE OF THE HEAD OF THE INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE CONCERNING GENERAL GUIDELINES FOR FINANCIAL SERVICES PROVIDERS ON PREVENTION AND ERADICATION OF MONEY LAUNDERING.

Article 1

(1) All Financial Services Providers shall conduct their business operations with reference to the General Guidelines as referred to in the Appendix to this Decree

(2) The General Guidelines for Financial Services Providers on Prevention and Eradication of Money Laundering constitute an integral part of this Decree.

Article 2

The General Guidelines for Financial Services Providers on Prevention and Eradication of Money Laundering are guidelines describing the key points of the anti-money laundering regime in Indonesia.

Article 3

This Decree shall come into force on the date of its enactment.

For the public to be informed, it is ordered that this Decree of the Head of the Indonesia Financial Trnsaction Reports and Analysis Centre be promulgated in the State Gazette of the Republic of Indonesia.

Enacted in: Jakarta

On May 9, 2003

HEAD OF THE INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE

(signed)

YUNUS HUSEIN

Appendix to Decree of the Head of the Indonesian Financial Transaction Reports and Analysis Centre Number: 2/1/KEP.PPATK/2003

Guidelines

FIRST EDITION

INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE (INTRAC)

General Guidelines for Financial Services Providers on Prevention and Eradication of Money Laundering

INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE

FIRST GUIDELINES

General Guidelines for Financial Services Providers on Prevention and Eradication of Money Laundering

First Edition

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Jakarta, 2003

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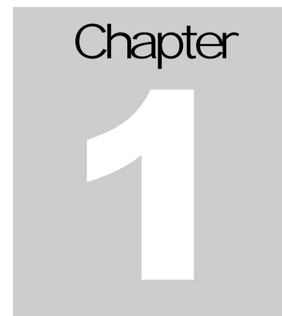


CHAPTER 1: GENERAL REVIEW

A. Introduction

Like other countries, Indonesia has devoted considerable attention to transnational organized crimes such as money laundering and terrorism. At the international level, the drive to combat money laundering was launched in the establishment the Financial Action Task Force (FATF) on Money Laundering by the G-7 group of nations at the G-7 Summit in France in July 1989. FATF members now number a total of 29 nations and territories and 2 regional organizations, the European Commission and the Gulf Cooperation Council representing major financial centers in America, Europe, and Asia. In the Asia-Pacific region, there is the Asia-Pacific Group on Money Laundering (APG), an agency for international cooperation in the development of the anti-money laundering regime and founded in 1997. Indonesia has been a member of APG since 2000 and the group now has a total of 26 members spread over South Asia, Southeast Asia, East Asia, and the South Pacific.

One of the roles of the FATF is to establish policies and necessary measures in the form of recommended actions for prevention and eradication of money laundering. To date, the FATF has issued 40 (forty) recommendations on prevention and eradication of money laundering and 8 (eight) specific recommendations for eradication of terrorist financing. These recommendations have been accepted by countries around the world as international standards and have become standard guidelines for eradication of money laundering. Countries that in the opinion of the FATF are not complying with these recommendations will be placed on the list of Non-Cooperative Countries and Territories (NCCTs). Countries on this list may be subject to countermeasures that could adversely impact their financial systems, for example, through increased charges for financial transactions in international trade and especially with developed countries, or rejection by other countries of letters of credit (L/Cs) issued by banks in the countries subject to these countermeasures.

Other serious consequences could be the cessation of correspondent relations between foreign and domestic banks, revocation of operating licenses for overseas branch offices or representative offices of domestic banks, and possible halt in foreign aid to the government. These sanctions would ultimately have direct impact on the public.

For these reasons, it is time for the government and all members of society to devote substantial attention to the problem of combating money laundering. One tangible product of Indonesia's concern over money laundering is the promulgation of Act No. 15 of 2002 concerning Money Laundering. Under this law, money laundering is officially established as a crime and must therefore be prevented and eradicated.

Money laundering is an effort to conceal or disguise the true origin of the proceeds of criminal activities committed within the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia.

To prevent and eradicate money laundering, including various crimes generating illegitimate proceeds, the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) has been established pursuant to the law with the principal task of assisting law enforcement agencies in prevention and eradication of money laundering and other serious crimes by providing intelligence generated from analysis of reports submitted to INTRAC. To perform this task, INTRAC is required among others to prepare guidelines for Financial Services Providers on detection of the behavior of users of financial services conducting suspicious transactions.

In these guidelines, Provider of Financial Services is defined as any person providing financial services, including but not limited to banks, finance companies, securities companies, mutual funds, custodian banks, moneychangers, pension funds, and insurance companies.

B. Purpose and Status of these Guidelines

The purpose of these guidelines is to provide an overview of the anti-money laundering regime that may be used by Financial Services Providers as a reference to assist in detection of money laundering. The guidelines also serve to provide a common understanding for Financial Services Providers and other concerned parties in action against money laundering. When putting these guidelines into practice, it will be necessary for each Provider of Financial Services to make adjustments taking into account the characteristics of their line of business and provisions issued by the supervisory agency of the particular Provider of Financial Services.

Added to this, to improve effectiveness in implementation, INTRAC will continually assess and make improvements to this handbook, with the results published on a regular basis. This will also allow for providing explanations of matters of importance that may arise during implementation.

INTRAC will also publish more detailed and technical guidelines that include the following:

1. Guidelines for Financial Services Providers on Recognition of Suspicious Transactions.

2. Guidelines for Financial Services Providers in Reporting of Suspicious Transactions.

3. Guidelines for Financial Services Providers on Reporting of Cash Transactions.

Chapter
2

CHAPTER 2: MONEY LAUNDERING

A. Definition

1. Money laundering is a process or act aimed at concealing or disguising the origins of proceeds of crime, which are then converted into assets apparently originating in legitimate activities. According to Article 2 of Act No. 15 of 2002, the underlying crimes in money laundering include corruption, bribery, smuggling of merchandise/human labor/immigrants, banking crimes, narcotics, psychotropic drugs, trafficking in slaves/women/children/illegal weapons, kidnapping, terrorism, theft, embezzlement, and fraud.

2. Money laundering has a serious impact on the stability of the financial system and of the economy as a whole. Money laundering may be a multi-dimensional, transactional crime frequently involving huge sums of money.

B. Processes

1. Despite the wide diversity of modus operandi employed in money laundering, money laundering processes can be grouped into three stages of activity as follows:

   a. Placement is physical disposal of funds generated by illegal activities into the financial system. The various forms of this activity include the following:

      i. Placing cash on deposit in banks. This activity is sometimes followed by application for loans or financing.
      ii. Deposit of money into a Provider of Financial Services as loan repayments to obscure the audit trail.
      iii. Cross-border smuggling of cash.

iv. Financing of a purportedly legitimate business or of business related to legitimate business through debt/financing, thus converting cash into debt/finance.

v. Purchase of high value goods for personal use, purchase of expensive presents to reward other parties, with payment executed through a Provider of Financial Services.

b. Layering is the separation of criminal proceeds of crime from their source by creating complex layers of financial transactions designed to conceal or disguise the origin of the funds. This activity involves the process of transferring funds comprising the proceeds of placement from a number of accounts or specific locations to other places through a complex series of transactions designed to conceal the source of the funds and provide anonymity. The various forms of this activity include the following:

i. Transfer of funds between banks and/or jurisdictions.

ii. Use of cash deposits as collateral security in support of legitimate transactions.

iii. Switching cash through a network of legitimate business and shell companies across several jurisdictions.

c. Integration is the use of apparently legitimate proceeds whether for direct benefit, investment in various forms of material and financial assets, use in financing of legitimate business activity, or for recycling into the financing of criminal activity.
When engaging in money laundering, perpetrators are less concerned about the size of the proceeds to be received and of the amount of costs expended, given that the overriding objective is to conceal or eliminate traces of the origin of the money so that the ultimate proceeds can be safely enjoyed or used.

The three activities may occur as separate or simultaneous phases, but commonly overlap.

2. The modus operandi of money laundering is constantly gaining complexity through the use of technology and sophisticated financial engineering. This takes place at the stages of placement, layering, and integration, and therefore eradication becomes ever increasingly difficult and requires systematic and sustained capacity building. The

selection of the modus operandi for money laundering depends on the needs of the perpetrators of crime.

C. Crucial Matters Requiring Attention from Financial Services Providers

1. Even though efforts to prevent the exploitation of the financial system as a vehicle or target for money laundering are most effective at the placement stage, serious attention must nevertheless be devoted to identification of money laundering activities at the layering and integration stages. This is understandable, given that money laundering that has escaped detection at the placement stage can still be caught at the stages of layering and integration. In fact, with recent advancements in technology, money laundering more often comes to light from recognition processes conducted at the layering stage.

2. Financial Services Providers usually ask a series of questions or request additional information when customers deposit or withdraw money. This has led criminals to react by seeking alternative techniques of placement, including the mixing of the proceeds of crime with legitimate funds before placement into the financial system. Criminals do this to make detection more difficult at the placement stage.

3. It must also be remembered that at a very sophisticated level, some money laundering does not involve cash.

D. Prevention of Money Laundering

1. There is now a growing recognition that action to prevent criminals from converting the proceeds of their crimes from “dirty” to “clean” and seizing the proceeds of these crimes is an effective means of combating crime itself. This is not only because proceeds of crimes are the lifeblood of crime, but are also the weakest link in the entire chain of processes involved in criminal activities.

2. The ability to launder the proceeds of criminal activity through the financial system is vital to the success of criminal operations, and thus any party involved in crime will take advantage of loopholes in the financial system. The use of the financial system as a vehicle for money laundering has potential to heighten risks for individual Financial Services Providers that could ultimately destroy the integrity and stability of the financial system as a whole. The increased integration of the world's financial systems, and the removal of barriers to the free movement of capital, will enhance the ease with

which criminal money can be laundered on a global scale and complicate the tracing process.

3. Individual financial sector businesses that become involved in money laundering will risk likely prosecution, the loss of their good market reputation, and damaging the reputation of Indonesia as a safe and reliable jurisdiction for investors.

4. Money laundering is often thought to be associated solely with banks, other credit institutions and moneychangers. Whilst the traditional banking processes of deposit taking, money transfer systems and lending do offer a laundering mechanism, it should be recognized that products and services offered by other types of financial and non-financial sector businesses are also attractive to the launderer. The sophisticated launderer often involves many other unwitting accomplices such as:

    a. Securities Companies operating as Stock Dealer-Brokers

    b. Insurance Companies and Insurance Brokers

    c. Money brokers

    d. Pension Funds and Finance Companies

    e. Accountants, Lawyers, and Notaries

    f. Surveyors and real estate agents

    g. Casinos and other facilities for gambling

    h. Dealers in precious metals and bullion

    i. Dealers in antique goods, car dealers, and others selling high value commodities and luxury goods.

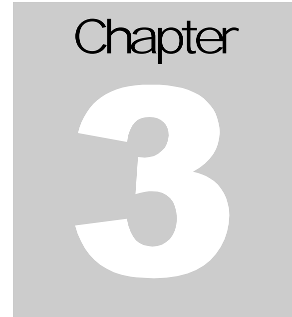
E. Vulnerability Points for Money Launders

Points of vulnerability in money laundering that are more susceptible to detection are:

1. Entry of cash into the financial system;

2. Crossborder flows of cash;

3. Transfer between financial systems;
4. Transfers from the financial system to outside the financial system;
5. Acquisition of shares or other assets;
6. Corporate mergers;
7. Formation of business groups.



CHAPTER 3: GUIDANCE FOR FINANCIAL SERVICES PROVIDERS

A. The Duty of Vigilance

1. Each Provider of Financial Services must be constantly on the alert for criminals exploiting the financial system as a vehicle for money laundering. The primary task of detecting this crime falls on law enforcement agencies and on Financial Services Providers on occasion or because of demands of due process of law to provide assistance to law enforcement agencies in this task. For this reason, vigilance is necessary to prevent the exploitation of the financial system as a vehicle for money laundering and to take the actions necessary for eradication of this crime. The duty of vigilance consists of five key elements as follows:

    a. Identification and verification of customers/users of financial services;

    b. Recognition of suspicious transactions and cash transactions above a certain amount;

    c. Reporting of transactions;

    d. Administration of documents;

    e. Training.

2. Vigilance can be maintained if each Provider of Financial Services has in place systems which enable them to:

    a. Determine the true identity of customers requesting their services;

    b. Recognize and report suspicious transactions to the INTRAC;

c. Recognize cash transactions above certain amounts and the reporting of these transactions to INTRAC;

d. Keep documents/data for the prescribed period of time;

e. Train key officers and staff;

f. Liaise closely with the INTRAC on matters concerning vigilance policy and systems;

g. Ensure that internal auditing and compliance departments regularly monitor the implementation and operation of the systems and internal policies of each institution.

3. Since Financial Services Providers encompass a wide range of organizations, from large institutions to small financial intermediaries, the nature and scope of the vigilance system appropriate to any particular institution or organization will vary depending on its size, structure and the nature of the business. However, irrespective of size and structure, all institutions should exercise a standard of vigilance as referred to in the above number 1 and number 2.

4. The vigilance system should enable authorized officers/staff to react effectively to suspicious occasions and circumstances by reporting them to the responsible officer. For this reason, constant training is necessary.

5. All Financial Services Providers must appoint an officer as the point of contact with the INTRAC in the handling of cases of suspicious customers and transactions. This is to expedite and facilitate follow up whether by INTRAC or by law enforcement officers.

B. Anti-Money Laundering Agency

1. Article 18 of Act No. 15 of 2002 concerning Money Laundering establishes INTRAC on the purpose of prevention and eradication of money laundering.

2. INTRAC is an independent agency in regard to performance of duties and exercise of its powers and is responsible to the President. INTRAC is domiciled in the capital city of the Republic of Indonesia. If necessary, INTRAC representative office may be opened in the regions.

3. Article 26 of Act No. 15 of 2002 states that the tasks of INTRAC are to:

a. Collect, store, analyze, and evaluate information received by INTRAC in accordance with the Act.

b. Monitor records in the exempt registry prepared by the Provider of Financial Services.

c. Prepare guidelines on procedures for reporting of suspicious transactions.

d. Provide advice and assistance to competent agencies on information obtained by INTRAC in accordance with legal provisions.

e. Issue guidelines and publications to Financial Services Providers on their obligations under laws and other legal provisions and assist in detection of suspicious customer behavior.

f. Provide recommendations to the Government on measures for prevention and eradication of money laundering.

g. Report the results of analysis of financial transactions with indications of money laundering to the National Police and Attorney General's Office.

h. Prepare and provide reports on results of analysis of transactions and other activities to the President, the Indonesian Parliament, and the agencies responsible for supervision of Financial Services Providers every 6 (six) months.

4. Article 27 of Act No. 15 of 2002 stipulates the powers of INTRAC as follows:

   a. Request and receive reports from Financial Services Providers.

   b. Request information on progress in investigation or prosecution of money laundering reported to the investigatory authorities or prosecutors.

   c. Audit Financial Services Providers in respect of compliance with obligations stipulated in this Act and of transaction reporting guidelines.

   d. Issue exemptions on reporting requirements for cash transactions as stipulated in Law.

5. The INTRAC analyzes reports received from Providers of Financial Services or other parties. Based on the results of this analysis, if there are indications of money laundering, the analysis shall be submitted to the

National Police and Attorney General's Office as financial intelligence for follow up. INTRAC may also play a role in assisting law enforcement agencies in combating other crimes by using the diverse range of information or analyses maintained by the center.

6. In performing its tasks, INTRAC requires cooperation and participation from all parties grouped within the anti-money laundering regime as follows:

   a. Financial Services Providers;

   b. Agencies responsible for supervision of Financial Services Providers, such as the Ministry of Finance, Bank Indonesia, and the Capital Market Supervisory Agency;

   c. Law enforcement agencies such as the Police, Attorney-General's Office, Courts, and the Directorate General of Customs and Excise;

   d. The public, including the media and observers.

C. Obligations for Financial Services Providers

Financial Services Providers are legally required to:

1. Institute procedures for proper identification of customers, commonly called "Know Your Customer Principles". This is essential. Every Provider of Financial Services must apply the know your customer principles in accordance with the regulations established by the supervisory agency for that institution.

2. Keep records and documents on customer identity until 5 (five) years after the end of the business relationship with the Provider of Financial Services. In this regard, identity includes name, address, sex, age, and occupation. These documents are separate from the financial documents stipulated in Act Number 8 of 1997 concerning Company Documents.

3. Submit reports to INTRAC on the following:

   a. Suspicious transactions;

   b. Cash transactions in cumulative amounts of Rp 500,000,000 (five hundred million rupiahs) or more or equivalent value, whether in a single transaction or multiple transactions within 1 (one) working day.

Reporting requirements for Financial Services Providers, to be elaborated in reporting guidelines that will be issued by INTRAC, will come into force in October 2003.

4. In the case of banks, the above reporting requirements are exempted from bank secrecy and thus the bank and its reporting officer is not in violation of bank secrecy provisions.

CHAPTER 4: FINANCIAL SERVICES PROVIDERS

A. Banks

1. As providers of a wide range of money transmission and lending services, banks are vulnerable to being used in the layering and integration stages of money laundering as well as the placement stage. Electronic funds transfer systems increase the vulnerability by enabling the cash deposits to be switched rapidly and inexpensively between accounts in different names and different jurisdictions.

2. Banks will additionally be susceptible to the attention of the more sophisticated criminal organizations. Such organizations, possibly under the disguise of front companies and nominees, will create large scale but false international trading activities in order to move their illicit monies from one country to another. The companies used to conceal these crimes commonly apply for credit/financing from banks to obscure their money laundering activities. The modus operandi includes the use of false/inflated invoices to generate apparently legitimate international wire transfers, and will use falsified/bogus letters of credit to confuse future investigations. Banks should therefore be on their guard against being exploited for money laundering.

3. Hence, vigilance should govern all the stages of the bank's dealings with its customers and prospective customers, including:

   a. Account opening

      In the absence of a satisfactory explanation, the following actions should be regarded as indicative of a suspicious customer:

      i. Reluctance to provide requested information.

      ii. Provides incomplete or unsatisfactory information.

iii. Provides false or misleading information.

iv. Creates difficulties for bank officers during verification of provided information.

v. Breaking off the business relationship with the bank.

b. Walk-in customers

Banks are required to apply the Know Your Customer principles to any walk-in customer undertaking transactions in excess of Rp 100,000,000 (one hundred million rupiahs) per transaction or equivalent.

c. Custodian and safe deposit box services

Particular security precautions need to be taken in relation to customers using custodian and safe deposit box services. Banks must also apply the Know Your Customer principles to walk-in customers using safe deposit boxes.

d. Deposits and withdrawals

Deposit taking and withdrawal transactions represent a common method used by criminals to legitimize their illegal proceeds through the banking system. Financial Services Providers must therefore ensure that all the necessary information regarding the identity of the customer is obtained at the outset in order to provide assurance of the genuine transaction. Complete customer information will ease the work of the bank in recognizing suspicious transactions.

e. Credit/financing

Vigilance is also necessary for credit/financing through credit cards, because this instrument can be used by money launderers to legitimize the proceeds of their crimes during the processes of layering or integration.

B. Non Bank Financial Institutions

1. Vigilance is also necessary for Financial Services Providers operating in insurance and other investment services to ensure that their products and services are not exploited for money laundering.

2. Insurance companies and other investment businesses dealing directly with the public may be exploited for money laundering during the placement and integration stages, especially if they use cash. For example, premiums on insurance policies may be paid in cash, with the policy subsequently being cancelled in order to get a return of premium, or an insured event may occur resulting in a claim being paid out.

3. Retail investment products are commonly used at the layering and integration stages. Retail investment products may attract money launderers since they allow money to be moved easily from one investment product to another. In this process, lawful funds are mixed with illicit proceeds and integrated into the legitimate economy.

4. Lump sum investments in liquid products are clearly most vulnerable to use by money launderers, particularly where they are of high value. These transactions normally take place in cash and for this reason it is necessary to gather sufficient evidence to facilitate future investigation, particularly in the case of a cash-based business.

C. Securities Companies, Fund Managers and Custodian Banks

1. Other Financial Services Providers in these guidelines, in addition to banks, insurance companies, and other investment services, are securities companies, fund managers, and custodian banks as referred to in Article 1 number 4 of Act No. 15 of 2002.

2. Securities companies, fund managers, and custodian banks are required to have adequate procedures to establish and verify the identity of customers/prospective customers, beneficial owners, or customer beneficiaries.

3. If a securities company, fund manager, or custodian bank is unable to ascertain and establish the identity of a customer/prospective customer, business dealings with that customer/prospective customer may be refused.

D. Other Financial Services Providers

Other Financial Services Providers, for example moneychangers and custodian and settlement institutions, are also required to report the following to INTRAC:

a. Suspicious transactions;

b. Cash transactions in cumulative amounts of Rp 500,000,000 (five hundred million rupiahs) or more or equivalent value, whether in a single transaction or multiple transactions within 1 (one) working day.

In accordance with the provisions of Article 13 paragraph (1) and Article 1 number 4 of Act No. 15 of 2002, Chapter 3 letter C number 3 of these guidelines, and other provisions stipulated by the relevant supervisory authority.

CHAPTER
5

CHAPTER 5: CUSTOMER IDENTIFICATION

A. Know Your Customer Principles

1. When entering into a business relationship with a prospective customer, a Provider of Financial Services must establish with certainty the identity of the customer and the purpose and the nature of the business that the customer expects to conduct with the financial institution. In this manner, the Provider of Financial Services will be able to ascertain at the outset to show what might be expected as normal activity and the profile of the customer, and thus be able to recognize whether a transaction undertaken by a customer is normal or inconsistent with the customer profile.

2. The provisions concerning Know Your Customer Principles/KYC issued by the relevant supervisory agencies are instruments for prevention of money laundering through Financial Services Providers. For Financial Services Providers, the KYC provisions cover customer policy and procedures in regard to customer acceptance and identification, monitoring of transactions, and risk management.

3. The application of KYC by Financial Services Providers is vital to prevent the institution from being exploited for money laundering and other related activities. If anyone provides false identity upon commencing a business relationship with a Provider of Financial Services, this reflects bad faith on the part of the prospective customer and is aimed at obstructing investigation by law enforcement agencies.

4. Although Financial Services Providers are subject to the KYC provisions established by the relevant agencies for supervision of financial services, under Article 45 of Act No. 15 of 2002, suspicious transaction reports must be submitted to INTRAC and the reporting procedure is guided by provisions issued by INTRAC.

B. Customer Identification

1. A Provider of Financial Services should establish to its satisfaction the identity of a customer, whether a real person or organization. It must also verify customer identity. If a customer is acting on behalf of another party, the identity of the third party must also be established and verified.

2. If a procedure requires a face-to-face meeting, this meeting should take place at the beginning of the business relationship. In this way, the Provider of Financial Services is able to verify customer identity against supporting documents (physical verification).

3. The verification procedures necessary to establish the identity of the prospective customer should basically be the same for every product offered by the Provider of Financial Services. In the case of supporting documents for customer identity, it is important to be alert to the validity and the competent agency for issuing these documents. A Provider of Financial Services must hold and duly administer copies of these documents.

4. Financial Services Providers must update customer data in regard to any changes in identity. The updating process is part of the procedure for application of Know Your Customer principles to protect the institution from being exploited as a vehicle for money laundering.

5. If the identification and verification procedure has been satisfactorily completed, the Provider of Financial Services will have no need to request additional information from any customer undertaking business dealings or other transactions with the same institution.

C. Evidence of Identity

Financial Services Providers must ascertain and check the authenticity of evidence of a prospective customer's identity at the time of entering into a business relationship. Unless satisfactory evidence of identity is obtained, the Provider of Financial Services must refuse to do business with the prospective customer.

CHAPTER
6

CHAPTER 6: RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

A. Recognition of Suspicious Transactions

1. As the types of transactions which may be used by a money launderer are almost unlimited, it is sometimes not easy to recognize a suspicious transaction. It is necessary to exercise judgment on the basis of substantiated facts and not merely on the absence of particular information from a customer. Appropriateness of judgment is determined by the completeness of information the customer and the customer transactions, and the training and experience of the employees/officers of the Provider of Financial Services.

2. Under Act No. 15 of 2002, now the applicable law, suspicious transactions are transactions inconsistent with the profile, characteristics, and customary pattern of transactions of a customer, including customer transactions that may be reasonably suspected of being conducted for the purpose of circumventing the reporting requirements for such transactions that are mandatory for Financial Services Providers.

3. Key questions for analyzing a transaction include the following:

    a. Is the size of the transaction and frequency of transactions consistent with the normal activities of the customer?

    b. Is the transaction rational in the context of the customer's business, activities or needs?

c. Is the pattern of the customer's transactions not in departure from the customary pattern of transactions for similar customers?

d. Where the transaction is international in nature, does the customer have any obvious reason for conducting business with overseas parties?

e. Is the customer conducting a transaction with a high-risk customer?

Financial Services Providers must prepare internal guidelines for reference in recognition of suspicious transactions for the reason that whether a transaction is suspect depends to a great extent on the customer profile and the form of products and services of each institution. Each institution should monitor cases of suspicious transactions as these cases can be used as material for continual updating of internal regulations and guidelines.

B. Examples of Suspicious Transactions

The following are some examples that may be used for recognition of suspicious transactions and the conditions under which money is often laundered.

In the absence of a satisfactory explanation the following should be regarded as suspicious transactions:

1. Substantial cash deposits, both in single or accumulation form, particularly when:

    a. The business in which the customer is engaged would normally be conducted not in cash, but by other means such as checks, bankers drafts, letters of credit, bills of exchange, or other instruments.

    b. Such a deposit appears to be credited to an account only for the purpose of supporting the customer's order for a banker's draft, money transfer or other negotiable or readily marketable money instrument.

2. The avoidance by the customer or its representatives of direct contact with the Provider of Financial Services.

3. The use of nominee accounts, trustee accounts, or client accounts that are not actually necessary for or inconsistent with the type of business carried on by the customer.

4. The use of numerous accounts for no clear reason.

5. Frequent insubstantial cash deposits which when taken together are substantial.

6. Frequent switches of funds between accounts in different jurisdictions;

7. Matching of payments out with credits paid in by cash on the same or previous day.

8. Substantial cash withdrawal from a previously dormant or inactive account.

9. Substantial cash withdrawal from an account that has just received an unexpected, uncharacteristic large credit from overseas.

10. The customer displays excessive caution particularly in concealing identity or business activity, or the customer prevaricates in the provision of information and supporting documents concerning his/her identity.

11. The customer is from or holds an account in a country known as a haven for money laundering or having extremely tight bank secrecy laws.

12. Sudden influx of incoming fund transfers at a very high frequency into a previously inactive account.

13. Payment made for purchases of shares by transfer from an account in the name of another party.

C. Reporting of Suspicious Transactions

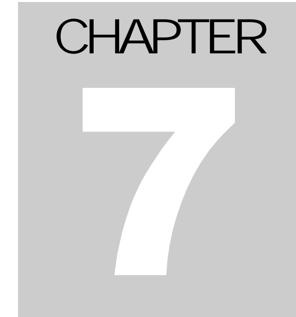
1. Under Act No. 15 of 2002, every Provider of Financial Services is required to report suspicious transactions to INTRAC, including explanations and grounds for suspicion, the identity of the party conducting the transaction, and information or conditions forming the background to the transaction and constituting grounds for suspicion.

2. INTRAC will issue regulations on the format and types of reports and procedure for submission of suspicious transaction reports.

3. Every Provider of Financial Services is required to:

    a. Have clear reporting procedures providing assurance that processes for all suspicious transactions are operating in accordance with procedure and handled by authorized officers.

    b. Ensure that every employee is informed of who is the authorized officer for handling suspicious transaction reports.



CHAPTER 7: MONEY LAUNDERING AND ITS PREVENTION

A. Money Laundering

Pursuant to Article 3 of Act No. 15 of 2002, any person who willfully places, transfers, pays out or expends, grants or donates, places for safekeeping, carries across national borders, exchanges, conceals, or disguises assets known to be or that may be reasonably presumed to be proceeds of crime may be guilty of the crime of money laundering. In addition to the parties mentioned above, any person who attempts, provides assistance, or engages in a conspiracy to commit money laundering may also be guilty of money laundering.

Pursuant to the above Article 6 of the Law, any person who receives or takes possession of placement, transfer, payment, grant, donation, safekeeping, and exchange of assets known to be or that may be reasonably presumed to be proceeds of crime is guilty of money laundering.

The criminal sanctions applicable to money laundering are imprisonment of at least 5 (five) years and no more than 15 (fifteen) years and a fine of no less than Rp 5,000,000,000 (five billion rupiahs) and no more than Rp 15,000,000,000 (fifteen billion rupiahs).

B. Anti Tipping-off Rule

1. The Board of Directors, officers, or employees of a Provider of Financial Services are prohibited from informing a customer or other party by any means, whether directly or indirectly, about a suspicious transaction report under preparation or submitted to INTRAC (anti tipping-off rule).

2. Initial enquiries by officer of a Provider of Financial Services for information from a customer to verify a transaction are not categorized as tipping off. Financial Services Providers are prohibited from tipping off

customers as to whether in the outcome of verification, the transactions are categorized and reported as suspicious transactions.

3. If a suspicious transaction has been reported to INTRAC, great care must be taken during the course of subsequent investigation so that the parties named in the report do not become suspicious as a result of the investigation.

4. The objectives of the anti-tipping off rule are:

   a. to prevent the parties named in the report (customer) from transferring their funds and/or absconding and thereby obstructing the work of law enforcement agencies in pursuing the case.

   b. to safeguard the effectiveness of investigation into money laundering.

C. Sanctions for Failure to Report

Any Provider of Financial Services who willfully fails to submit a report to INTRAC shall be liable to criminal sanctions stipulated in Article 8 of Act No. 15 of 2002, namely a fine of no less than Rp 250,000,000 (two hundred and fifty million rupiahs) and no more than Rp 1,000,000,000 (one billion rupiahs). Without prejudice to these criminal sanctions, the relevant supervisory authority of the Provider of Financial Services may also be liable to sanctions for failure to report.

D. Protection for Reporting Parties and Witnesses

1. Protection for Reporting Parties

   a. Reporting by a bank is exempt from the bank secrecy provisions stipulated in the Act concerning Banking.

   b. Reporting parties may not be held liable in a criminal or civil action for performing their duty as reporting parties.

   c. INTRAC, investigators, prosecutors, or magistrates are required to safeguard the anonymity of reporting parties.

   d. Any person reporting a suspected act of money laundering must be provided with special protection by the state from any threat to his/her person, life, and/or property, in addition to his/her family.

e. In court hearings, witnesses, prosecutors, magistrates, and other persons concerned with a money laundering crime under examination are prohibited from stating the names or addresses of reporting parties or other information that may disclose the identity of reporting parties.

2. Witness Protection

a. Any person providing testimony in examination of money laundering must be provided with special protection by the state from any threat to his/her person, life, and/or property, in addition to his/her family.

b. A witness may not be held liable in a criminal or civil action in respect of testimony given.

CHAPTER 8: RECORDS AND DOCUMENTS

1. Under Act No. 15 of 2002, every FSP is required to retain records and documents on identities of FSP customers up to a period of 5 (five) years after the end of business dealings with the FSP. These documents are customer identity documents that do not comprise financial documents as stipulated in Act Number 8 of 1997 concerning Company Documents.

2. These records and documents are extremely important to investigation as stipulated in law.

3. The records that must be prepared and maintained by any Provider of Financial Services on its customer transactions should be such that:

   a. Requirements of legislation are fully met;

   b. Competent authorities will be able to assess the compliance with the policies and procedures of the Financial Services Provider in prevention of money laundering;

   c. Any transactions effected via the Provider of Financial Services can be reconstructed;

   d. The institution can provide within a reasonable time any information required by investigators, prosecutors, or a Court.

4. For example, the following information may be expected to be sought as part of an investigation into money laundering:

   a. The beneficial owner of an account;

   b. The volume of funds flowing through an account;

   c. The origin of funds used in transactions;

d. The form in which the funds were offered or withdrawn (cash, checks, etc.);

e. The identity of the person undertaking the transaction;

f. The destination of the funds;

CHAPTER 9: EDUCATION AND TRAINING

1. Every Provider of Financial Services must have adequate, sustained programs of education and training to ensure that all employees are familiar with:

   a. Prevailing laws and regulations.

   b. Policies and procedures put into place for prevention and eradication of money laundering, including know your customer principles;

   c. How to recognize suspicious transactions and procedures for reporting of Suspicious Transactions and Cash Transactions.

2. Financial Services Providers must continually promote employee awareness of the importance of know your customer principles, as one of the available means for prevention of money laundering. This includes not only awareness of the importance of establishing true identity at account opening, but also the need to know enough about the type of business activities expected in relation to that customer at the outset to recognize transactions inconsistent with the profile and characteristics of that customer.

3. Although the board of directors or management of a Provider of Financial Services is not involved in the technical activities of daily operations, they must also be provided with education and training to ensure better understanding of their duties and responsibilities in prevention of money laundering.