

NATIONAL ANTI-FINANCIAL CRIME CENTRE
BILL 2019

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A BILL

i n t i t u l e d

An Act to provide for the establishment of the National Anti-Financial Crime Centre, the coordination of integrated operation relating to financial crime amongst Government Entities and enforcement agencies and the management of centralized data system, and for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the National Anti-Financial Crime Centre Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“enforcement agency” includes any department of any ministry, body or agency that is for the time being conferred with enforcement powers under any written laws relating to financial crime;

“document” has the same meaning assigned to it under the Evidence Act 1950 [*Act 56*];

“Government Entity” includes any ministry, department, office, agency, authority, commission, committee, board, council or other body, corporate or unincorporated, of the Federal Government, whether established under written law or otherwise;

“Executive Committee” means the Executive Committee established under subsection 10(1);

“financial crime” means the offences listed in the Schedule;

“Director General” and “Deputy Director General” means the Director General and Deputy Director General of the National Anti-Financial Crime Centre appointed under subsections 12(1) and (2) respectively;

“Advisory Board” means the Advisory Board established under subsection 5(1).

PART II**NATIONAL ANTI-FINANCIAL CRIME CENTRE****Establishment of the National Anti-Financial Crime Centre**

3. A centre by the name of the “National Anti-Financial Crime Centre” is established.

Functions of the National Anti-Financial Crime Centre

4. The National Anti-Financial Crime Centre shall have the following functions:

- (a) to coordinate and collaborate in integrated operation with the enforcement agencies in matters relating to financial crime and to advise the enforcement agencies in related matters;
- (b) to establish, administer and maintain a centralized data system relating to financial crime, in order to provide support for the integrated operation and to transmit information in the centralized data system to other Government Agency or enforcement agencies; and
- (c) to carry out activities relating to the prevention of financial crime.

PART III

ADVISORY BOARD

Advisory Board

5. (1) An Advisory Board is established for the purpose of this Act.

(2) The Advisory Board shall consist of the following members:

- (a) a Chairman;
- (b) the Director General; and
- (c) not more than five other members as appointed by the Yang di-Pertuan Agong, on the advice of the Prime Minister.

(3) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint the Chairman of the Advisory Board on such terms and conditions as may be specified in the instrument of appointment.

(4) The Chairman of the Advisory Board shall hold office for a term not exceeding three years after which he shall be eligible to be reappointed upon the expiry of his term of office.

(5) The other members of the Advisory Board appointed under paragraph (2)(c) shall hold office for a term not exceeding three years after which they shall be eligible to be reappointed upon the expiry of their term of office.

(6) In advising the Yang di-Pertuan Agong on the appointment of the Chairman of the Advisory Board and the other members under paragraph (2)(c), the Prime Minister shall have regard to—

- (a) the person's probity and standing;
- (b) the academic qualifications, knowledge, skill and experience of the person in banking, economic, finance, asset management, taxation, prosecution, investigation, law or other matters as the Prime Minister deems fit; and
- (c) the likelihood of any conflict between the interest of the National Anti-Financial Crime Centre and any interest which that person has or represents.

(7) The Advisory Board shall determine its own meeting procedure.

Revocation and resignation of members of the Advisory Board

6. (1) The appointment of the Chairman of the Advisory Board and the other members appointed under paragraph 5(2)(c) may, at any time, be revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister.

(2) The Chairman of the Advisory Board and the other members appointed under paragraph 5(2)(c) may, at any time, resign their office by giving a written notice addressed to the Yang di-Pertuan Agong.

Vacation of office

7. The office of a member of the Advisory Board shall be vacated if—

- (a) he has been convicted of a criminal offence involving dishonesty or of any criminal offence for which he has been sentenced to imprisonment;
- (b) he becomes a bankrupt;
- (c) he becomes involved in any activity which may interfere with his independence in discharging his duties; or
- (d) he is of unsound mind or is otherwise incapable of discharging his duties.

Disclosure of interest

8. (1) A member of the Advisory Board who has or acquires a direct or indirect interest by himself, through a member of his family or his associate in relation to any matter under discussion by the Advisory Board, shall disclose to the Advisory Board, the fact of his interest and the nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Advisory Board, in which the matter is discussed and, after the disclosure, the member—

- (a) shall not be present or take part in any discussion or decision of the Advisory Board, about the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Advisory Board, when the matter is discussed or decided upon.

(3) A member of the Advisory Board who fails to disclose his interest as provided under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(4) No act or decision of the Advisory Board shall be rendered invalid on the ground of the contravention by a member under subsection (3).

Functions of the Advisory Board

9. The Advisory Board shall have the following functions:

- (a) to advise the Prime Minister on any aspect relating to financial crime;
- (b) to advise the National Anti-Financial Crime Centre on its strategic direction and plan;
- (c) to deliberate and decide on the recommendation made by the Executive Committee on any matter relating to financial crime; and
- (d) to facilitate the cooperation between the National Anti-Financial Crime Centre, the Government Entities and enforcement agencies for the prevention of financial crime.

PART IV

EXECUTIVE COMMITTEE

Executive Committee

10. (1) A committee to be known as the Executive Committee is established for the purpose of this Act.

(2) The Executive Committee shall consist of the following members:

- (a) the Director General as Chairman;
- (b) the Deputy Director General as Deputy Chairman;
- (c) the Public Prosecutor or his representative; and

(d) any director of investigation or director of investigation of money laundering from an enforcement agency, or other officer of the similar position for any other Government Entity as appointed by the Director General.

(3) The appointment made under paragraph (2)(d) by the Director General shall be on such terms and conditions as may be specified in the instrument of appointment.

(4) The Executive Committee shall determine its own meeting procedure.

(5) The Executive Committee may invite any person to attend its meetings to advise the Executive Committee on any matter.

Functions of the Executive Committee

11. The Executive Committee shall have the following functions:

(a) to determine the direction of National Anti-Financial Crime Centre in preventing financial crimes;

(b) to approve and monitor any integrated operation;

(c) to make recommendations to the Advisory Board on matters relating to the prevention of financial crime;

(d) to determine the operational policies relating to integrated operation and the centralized data system and to provide consultation on the guidelines for the National Anti-Financial Crime Centre;

(e) to develop the strategic direction and plan of the National Anti-Financial Crime Centre;

(f) to ensure the implementation of the advice of the Advisory Board; and

(g) to execute any other function that is necessary or expedient to give full effect to or for carrying out the provisions of this Act.

PART V

APPOINTMENTS OF DIRECTOR GENERAL, DEPUTY DIRECTOR
GENERAL AND OTHER OFFICERS OF THE NATIONAL
ANTI-FINANCIAL CRIME CENTRE**Appointment of Director General and Deputy Director General**

12. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a Director General of the National Anti-Financial Crime Centre, who shall head the National Anti-Financial Crime Centre, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Prime Minister shall appoint a Deputy Director General of the National Anti-Financial Crime Centre on such terms and conditions as may be specified in the instrument of appointment.

(3) The Director General and Deputy Director General appointed under subsections (1) and (2), respectively, shall hold office for a period not exceeding three years and is eligible for reappointment for a period not exceeding three years—

(a) in the case of an appointment as the Director General, as the Yang di-Pertuan Agong, on the advice of the Prime Minister, considers necessary; or

(b) in the case of an appointment as the Deputy Director General, as the Prime Minister considers necessary.

(4) Notwithstanding subsection (3), where the Director General or Deputy Director General is appointed from among members of the public services, the period of appointment of the Director General or Deputy Director General shall not extend beyond the date of his compulsory retirement from the public service, but where he attains the age of such compulsory retirement he may be reappointed—

(a) in the case of an appointment as the Director General, by the Yang di-Pertuan Agong, on the advice of the Prime Minister; or

(b) in the case of an appointment as the Deputy Director General, by the Prime Minister,

on contract for such period and on such terms and conditions as may be specified in the instrument of appointment.

(5) For the purpose of subsection (4), the period for the reappointment of the Director General or Deputy Director General on contract shall not exceed the period in which he was appointed under subsection (3).

(6) The Director General shall be responsible for the direction, command and control of all matters relating to the National Anti-Financial Crime Centre.

(7) The Director General may, for giving full effect to any provision of this Act issue any direction, order or decision as the Director General thinks necessary or expedient subject to the provisions of this Act.

Appointment of other officers of the National Anti-Financial Crime Centre

13. (1) There shall be appointed such number of officers of the National Anti-Financial Crime Centre as may be necessary for the purpose of carrying into effect the provisions of this Act.

(2) An officer appointed under subsection (1) shall be subject to the direction, control and supervision of the Director General, and shall exercise his powers, perform his functions and discharge his duties in compliance with such direction or control as may be specified orally or in writing by the Director General.

PART VI

INTEGRATED OPERATION AND CENTRALIZED DATA SYSTEM

Integrated operation

14. (1) The National Anti-Financial Crime Centre may, subject to an approval by the Executive Committee, organize an integrated operation relating to financial crime and when the investigation involves the enforcement of not less than two enforcement agencies.

(2) For the purpose of subsection (1), the National Anti-Financial Crime Centre shall have the power to coordinate and collaborate with enforcement agencies on matters relating to integrated operation.

Centralized data system

15. (1) The National Anti-Financial Crime Centre shall establish, administer, maintain and manage a centralized data system which contain information received or gathered by the National Anti-Financial Crime Centre relating to financial crime.

(2) The information and analysed data in the centralized data system may be used for the planning and coordinating of an integrated operation and to prevent financial crime.

(3) For the purpose of the centralized data system, the National Anti-Financial Crime Centre may—

- (a) request on its own initiative or receive any relevant information and reports from any person, Government Entity or enforcement agency for the purpose of any integrated operation or prevention of financial crime;
- (b) subject to subsections (4) and (5), transmit any information in the centralized data system, or transmit any analysed data in the centralized data system, to any Government Entity or enforcement agency; and
- (c) develop operational policies and guidelines relating to the centralized data system.

(4) Any Government Entity or enforcement agency may, to the extent permitted under the applicable written laws, provide to the National Anti-Financial Crime Centre information that the National Anti-Financial Crime Centre considers necessary for the purpose of any integrated operation or for the prevention of financial crime.

(5) Any information received by the National Anti-Financial Crime Centre under subsection (4) may be transmitted to any other Government Entity or enforcement agency subject to the extent permitted under the applicable written laws which governs the disclosure of such information.

Power to gather information

16. (1) The National Anti-Financial Crime Centre may, by a written notice, order any person, who has any document that is relevant, or is capable of giving any information relating to financial crime which the National Anti-Financial Crime Centre has reasonable grounds to believe that the information is relevant, to the performance of its functions under this Act to—

- (a) give and produce to the National Anti-Financial Crime Centre, within the period and in the manner specified in the written notice, any such information or document;
- (b) make copies of any such documents and to produce those copies to the National Anti-Financial Crime Centre within the period and in the manner specified in the written notice; or
- (c) appear before an officer of the National Anti-Financial Crime Centre at a time and place specified in the written notice to give any information.

(2) Any person who receives a written notice under subsection (1), shall—

- (a) provide such information or documents as specified in the written notice;
- (b) ensure that the information or documents provided are true, accurate and complete; and
- (c) provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.

(3) A person referred to in subsection (1) may, to the extent permitted under the applicable written laws, provide to the National Anti-Financial Crime Centre any information that the National Anti-Financial Crime Centre considers necessary to exercise its functions under this Act.

(4) Where any person discloses any information or produces any documents in response to a written notice under this section, such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under any law, or to any proceedings or claim by any person under any law or under any contract, agreement or arrangement, or otherwise.

(5) Subsection (4) shall not bar, prevent or prohibit the institution of any prosecution for any offence as provided by this section or the disclosure or production of false information or document in relation to a written notice under this section furnished to the National Anti-Financial Crime Centre pursuant to this section.

(6) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

PART VII

GENERAL

Prosecution

17. No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the Public Prosecutor.

Obligation of secrecy

18. (1) Except for the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law or where otherwise authorized by the Director General—

- (a) no officer of the National Anti-Financial Crime Centre or members of the Advisory Board or Executive Committee, whether during or after his tenure of office or employment, shall disclose any information obtained by him in the course of his duties; and

- (b) no other person who has, by any means, access to any information or document relating to the affairs of the National Anti-Financial Crime Centre shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

Protection against suits and legal proceedings

19. No action, suit, prosecution or any other proceedings shall lie or be brought, instituted or maintained in any court against the National Anti-Financial Crime Centre, the Advisory Board, the Executive Committee, any officer of the National Anti-Financial Crime Centre, or any person lawfully acting in compliance with any direction, instruction or order of the Director General or officer of the National Anti-Financial Crime Centre, in respect of any act, neglect or default done or omitted by it or him in good faith, in such capacity.

Power to issue guidelines

20. The Director General may, upon consultation with the Executive Committee, issue guidelines on any matter relating to the functions of the National Anti-Financial Crime Centre.

Power to amend Schedule

21. The Minister may, by order published in the *Gazette*, amend the Schedule to this Act.

Service of notices

22. (1) Every notice or other document required by this Act to be served on any person may be served—

- (a) personally on that person;

(b) by sending such notice or other document to that person by registered post; or

(c) by electronic means.

(2) A notice or other document sent by registered post to a person shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the post if such notice or other document was addressed—

(a) in the case of a company, limited liability partnership, firm, society, an association or other body of persons—

(i) to its registered office;

(ii) to its last known address; or

(iii) to any person authorized by it to accept service of process; and

(b) in the case of an individual, to his last known address.

Public servant

23. Every officer of the National Anti-Financial Crime Centre, or member of the Advisory Board or Executive Committee, or officer of any Government Entity or enforcement agency, while discharging his duty or performing his functions under this Act in such capacity shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Public Authorities Protection Act 1948

24. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the National Anti-Financial Crime Centre, the Advisory Board, the Executive Committee or any officer of the National Anti-Financial Crime Centre, in respect of any act, neglect or default done or committed by it or him in good faith or any omission by it or him in good faith, in such capacity.

Things done in anticipation of the enactment of this Act

25. All things done by any person on behalf of the National Anti-Financial Crime Centre in the preparation of and towards the proper implementation of any of the provisions of this Act and any expenditure incurred in relation thereto, in anticipation of the enactment of this Act, shall be deemed to have been authorized by this Act, and all rights and obligations acquired or incurred on behalf of the National Anti-Financial Crime Centre from anything so done or any expenditure so incurred shall upon the coming into force of this Act be deemed to be the rights and obligations of the National Anti-Financial Crime Centre.

SCHEDULE

[Section 2]

OFFENCES LISTED AS FINANCIAL CRIME

Offences under the Second Schedule to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613].

EXPLANATORY STATEMENT

The proposed National Anti-Financial Crime Centre Act 2019 (“the proposed Act”) seeks to provide for the establishment of the National Anti-Financial Crime Centre, the coordination of integrated operations relating to financial crime amongst Government Entities and enforcement agencies and the management of a centralized data system, and for related matters.

PART I

2. Part I of the proposed Act deals with preliminary matters.
3. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.
4. *Clause 2* contains the definitions of words and expressions used in the proposed Act.

PART II

5. Part II of the proposed Act contains provisions relating to the establishment of the National Anti-Financial Crime Centre and its functions.
6. *Clause 3* seeks to provide for the establishment of the National Anti-Financial Crime Centre.
7. *Clause 4* seeks to provide for the functions of the National Anti-Financial Crime Centre.

PART III

8. Part III of the proposed Act contains provisions relating to the establishment of the Advisory Board and its functions.
9. *Clause 5* seeks to provide for the establishment of the Advisory Board, its membership and the consideration by the Prime Minister before advising the Yang di-Pertuan Agong on the appointment of the Chairman of the Advisory Board and not more than five other members appointed under *subclause 5(2)(c)*. The term of office for the Chairman of the Advisory Board and the other members appointed under *subclause 5(2)(c)* shall be for a term not exceeding three years and they are eligible for reappointment upon the expiry of their term of office. *Clause 5* also seeks to empower the Advisory Board to determine its own meeting procedure.
10. *Clause 6* seeks to provide for the provision relating to revocation and resignation of the Chairman of the Advisory Board and other members of the Advisory Board. Under the proposed *clause*, the Chairman of the Advisory Board and other members of the Advisory Board may, at any time, resign by giving a written notice to be addressed to the Yang di-Pertuan Agong.
11. *Clause 7* seeks to provide for the vacation of office by the Chairman of the Advisory Board and other members.
12. *Clause 8* contains the provision requiring a member of the Advisory Board to disclose his interest that conflicts with any matter under discussion by the Advisory Board. This *clause* also seeks to provide that any member of the Advisory Board who fails to disclose his interest, commits an offence.
13. *Clause 9* seeks to provide for the functions of the Advisory Board.

PART IV

14. Part IV of the proposed Act contains provisions relating to the establishment of the Executive Committee and its functions.

15. *Clause 10* seeks to provide for the establishment of the Executive Committee and the composition of its members. *Clause 10* also seeks to empower the Executive Committee to determine its own meeting procedure and to provide that the Executive Committee may invite any person to attend its meeting.

16. *Clause 11* seeks to provide for the functions of the Executive Committee.

PART V

17. Part V of the proposed Act contains provisions relating to the appointments of the Director General, Deputy Director General and other officers of the National Anti-Financial Crime Centre.

18. *Clause 12* seeks to empower the Yang di-Pertuan Agong, on the advice of the Prime Minister, to appoint the Director General of the National Anti-Financial Crime Centre and to empower the Prime Minister to appoint the Deputy Director General of the National Anti-Financial Crime Centre. *Clause 12* also seeks to provide that the Director General shall be responsible for the direction, command and control of all matters relating to the National Anti-Financial Crime Centre.

19. *Clause 13* seeks to appoint other officers of the National Anti-Financial Crime Centre for the purpose of carrying out the provisions of this proposed Act. This *clause* also subject the officers to the direction, control and supervision of the Director General.

PART VI

20. Part VI of the proposed Act contains provisions relating to integrated operations and the centralized data system.

21. *Clause 14* seeks to empower the National Anti-Financial Crime Centre to organize an integrated operation relating to financial crime and to coordinate and collaborate with the enforcement agencies.

22. *Clause 15* seeks to allow the National Anti-Financial Crime Centre to establish, administer, maintain and manage a centralized data system relating to financial crime and to analyse the data in the centralized data system. This *clause* also provides for the information and data in the centralized data system to be used for the purpose of any integrated operation relating to financial crime.

23. *Clause 16* seeks to empower the National Anti-Financial Crime Centre to gather information from any person according to the procedure provided in the *clause*. This *clause* also provides that the provision of information under this *clause* is subject to the extent permitted under the applicable written laws. This *clause* further seeks to protect any person who discloses any information from any prosecution for any offence, proceedings or claim by any person under any law or under any contract, agreement or arrangement.

PART VII

24. Part VII of the proposed Act deals with general provisions.
25. *Clause 17* seeks to provide that the institution of prosecution for offences under the proposed Act shall only be instituted with the written consent of the Public Prosecutor.
26. *Clause 18* seeks to deal with the provision relating to the duty to maintain secrecy of any information or document obtained by any officer of the National Anti-Financial Crime Centre, members of the Advisory Board or Executive Committee or other person who has access to any information or document relating to the affairs of the National Anti-Financial Crime Centre.
27. *Clause 19* seeks to provide for the protection of the National Anti-Financial Crime Centre, Advisory Board, Executive Committee, any officer of the National Anti-Financial Crime Centre, or any person lawfully acting in compliance with any direction, instruction or order of the Director General or officer of the National Anti-Financial Crime Centre, from any action, suit, prosecution or any other proceedings.
28. *Clause 20* seeks to empower the Director General to issue guidelines upon consultation with the Executive Committee on matters relating to the functions of the National Anti-Financial Crime Centre.
29. *Clause 21* seeks to empower the Minister to amend the Schedule by order published in the *Gazette*.
30. *Clause 22* seeks to provide for the service of notice or other documents required under the proposed Act.
31. *Clause 23* seeks to provide that the officers of the National Anti-Financial Crime Centre, the members of the Advisory Board, Executive Committee, or officer of any Government Entity or enforcement agency shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].
32. *Clause 24* seeks to confer the protection afforded in the Public Authorities Protection Act 1948 [*Act 198*] against any action, suit, prosecution or proceedings to the National Anti-Financial Crime Centre, Advisory Board, Executive Committee, or any officer of the National Anti-Financial Crime Centre.
33. *Clause 25* deals with the acts done in anticipation of the enactment of the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.