Risk Assessment on Legal Persons

November 2017

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Abbreviations

Reference	Description
ACWG	G20 Anti-Corruption Working Group
AHU	*Administrasi Hukum Umum* General Law Administration
AML	Anti-Money Laundering
APG	Asia Pacific Group on Money Laundering
BAPPENAS	*Badan Perencanaan Pembangunan Nasional* National Development Planning Agency
BBM	*Bahan Bakar Minyak* Fuel Oil
BI	*Bank Indonesia* Central Bank of Indonesia
BKPM	*Badan Koordinasi Penanaman Modal* Indonesia Investment Coordinating Board
BO	Beneficial Ownership or Beneficial Owner
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CIF	Customer Information File
CTR	Cash Transaction Report
CV	*Commanditaire Vennootschap* Limited Liability Partnership
DNFBP	Designated Non Financial Business and Profession
DPR RI	*Dewan Perwakilan Rakyat Republik Indonesia* House of Representatives of Republic of Indonesia
FATF	Financial Action Task Force
FGD	Focus Group Discussion
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
ICIJ	International Consortium of Investigative Journalists
IDX	Indonesia Stock Exchange
IMF	International Monetary Fund
IO	Immediate Outcome
KPK	*Komisi Pemberantasan Korupsi* Indonesian Corruption Eradication Commission
KUHD	*Kitab Undang-Undang Hukum Dagang* Commercial Code
KYC	Know Your Customer
LEA	Law Enforcement Agencies

Abbreviations

Reference	Description
LT PBJ	*Laporan Transaksi Penyedia Barang dan Jasa* Transaction Report of Goods and Services Provider
MCSME	Ministry of Cooperatives and Small and Medium Enterprises
ML	Money Laundering
MLA	Mutual Legal Assistance
MLHR	Ministry of Law and Human Rights
MoF	Ministry of Finance
MoT	Ministry of Trade
NPWP	*Nomor Pokok Wajib Pajak* Taxpayer Identification Number
NRA	National Risk Assessment
OJK	*Otoritas Jasa Keuangan* Indonesian Financial Services Authority
Ormas	*Organisasi Kemasyarakatan* Civil Society Organization
PD/UD	*Perusahaan Dagang/Usaha Dagang* Trading Company
PEP	Politically Exposed Persons
POC	Point of Concern
POJK	*Peraturan Otoritas Jasa Keuangan* Regulation of Indonesian Financial Services Authority
PPATK	*Pusat Pelaporan dan Analisis Transaksi Keuangan* Indonesian Financial Transactions Reports and Analysis Center
PT	*Perseroan Terbatas* Limited Liability Company
SIN	Single Identity Number
SIORMAS	*Sistem Informasi Organisasi Kemasyarakatan* Ormas Information System
SIUP	*Surat Izin Usaha Perdagangan* Trading Business License
SKDP	*Surat Keterangan Domisili Perusahaan* Certificate of Business Domicile
SKT	*Surat Keterangan Terdaftar* Certificate of Registration
SRA	Sectoral Risk Assessment
STR	Suspicious Transaction Report
TDP	*Tanda Daftar Perusahaan* Company Registration Certificate
TF	Terrorist Financing

Executive Summary

Disguising money resulted from crime through legal person may have been perceived as "safer" by financial criminals. Corrupt government officials and drug dealers can easily hide their illicit gain behind the complex web of corporate transactions. In many cases, this was made possible by our lack of governance in beneficial ownership. Criminals can appoint nominee to gate-keep their assets while leaving no trails anywhere in the corporate legal documents.

The government has taken a number of breakthrough to deal with this challenge. Industries and professions have been requested by their respective regulators to identify and administer their client's beneficial owners ("BO"). Furthermore, the government has also started the initiative to reform the corporate registration process by enabling online registration system. However, needless to say that the transformation is not going to happen overnight. Our risk assessment on legal persons has identified a number of high risk areas that need to be addressed.

Below is the summary of our observations.

- ▸ Indonesia's "Perseroan Terbatas ("PT" - i.e. limited liability companies) are exposed to a higher money laundering ("ML") risk, while "Yayasan" (i.e. foundations) are exposed to higher risk for terrorist financing ("TF").
- ▸ Companies that operate trading business are prone to ML more than other types of business, while social foundations and religious institutions remain the most vulnerable to TF.
- ▸ From delivery channels perspective, fund transfers are most frequently used for in both ML and TF scheme.
- ▸ Despite of the stringent regulations, banking remains the reporting party with the highest ML risk.
- ▸ We specifically covered international transactions in the assessment and noted that some jurisdictions with perceived low ML risk appear to have been used by Indonesian-based corporations to keep their money.

We also noted a number of vulnerabilities in our industry anti-money laundering/combating financing of terrorism ("AML/CFT") practices and regulatory framework.

To mitigate the above risks, the industry needs to enhance their controls related to AML/CTF. On the other hand, the Government and the regulators will need to support the industry's effort in combating ML/TF by providing them with a robust regulatory framework on BO and access to beneficial ownership database.

1 Introduction

Introduction

As a member of the Asia Pacific Group on Money Laundering ("APG"), Indonesia is subject to Financial Action Task Force ("FATF") recommendations. This includes compliance to the Recommendations No. 24 on Transparency on Legal Persons and No. 25 on Transparency on Legal Arrangements.

As requested by G20 Anti-Corruption Working Group ("ACWG"), Indonesia has to submit a written implementation plan to shows its serious commitment in implementing BO transparency. This action plan includes activities and measures to assess the current situation and risk, undertake study on BO in Indonesia, improve national regulations with a view towards the establishment of comprehensive legislation on BO, enhance compliance, integrate database, collect data, facilitate exchange of information and international cooperation.

In most cases, the legal and beneficial owner of an entity is the same. However, there are cases where, for legitimate or not-so-legitimate reasons, the BO wishes to remain anonymous. How foreigners are trying to conceal their ownership in palm estates in Kalimantan is an example. In the context of ML/TF, BOs need to stay hidden because they do not want to be associated with their asset, which may have been derived from illegal activities.

This risk assessment aims to assist *Komisi Pemberantasan Korupsi* ("KPK" – Indonesia Corruption Eradication Commission) and *Pusat Pelaporan dan Analisis Transaksi Keuangan* ("PPATK" – Indonesian Financial Transaction Reports and Analysis Center) in identifying ML/TF risks of legal persons. Risk assessment for legal person is a mandatory requirement according to FATF Recommendation 24.2.

We would like to express our sincere gratitude for KPK, PPATK, and *Otoritas Jasa Keuangan* ("OJK" – Financial Services Authority) for their continuous support and to all stakeholders for their cooperation and contribution during the assessment.

2 Procedures Performed

Procedures Performed

The assessment was launched in a Focus Group Discussion ("FGD") held on 26 April 2017 and was completed on 27 October 2017.

The risk assessment process was conducted through focus group discussions, one-to-one meeting with relevant stakeholders, questionnaires, and discussion with Law Enforcement Agencies ("LEAs") and the industry in the selected regions.

The risk assessment methodology is based on FATF's Guidance on National Money Laundering and Terrorist Financing Risk Assessment.

2.1 One to one meeting

The risk assessment was performed by, inter alia, conducting one to one discussions with relevant parties. In total, there were 88 one-to-one discussions performed in 15 capital cities, which involved 514 meeting participants. The discussion addressed general vulnerabilities to ML and TF related to legal person. The one-to-one meeting also discussed the output of the questionnaires that had been sent to the participants earlier.

76 Entities

65 Law enforcement officials

88 Meetings

514 Participants

Figure 2.1.1 Meetings summary

2.2. Off-site FGDs

Off-site FGDs were performed in 15 capital cities with highest risk of ML and TF from 26 July to 6 September 2017. The selection of the regions are based on PPATK's National Risk Assessment ("NRA") data.

2.3. Final Focus Group Discussions

Final FGD was performed on 15 September 2017 and was attended by representatives from the regulators, ministries, LEA, and industry associations.

Figure 2.2.1 ML/TF Risk – FGDs in Remote Regions

📍 **ML Coverage Areas**	📍 **ML & TF Coverage Areas**	📍 **TF Coverage Areas**
‣ Riau	‣ DKI Jakarta	‣ West Nusa Tenggara
‣ Bengkulu	‣ East Java	‣ Central Sulawesi
‣ West Kalimantan	‣ West Java	‣ Central Java
‣ Bali	‣ North Sumatra	‣ Banten
‣ Papua	‣ South Sulawesi	‣ Nanggroe Aceh Darussalam

2.4. Methodology

The risk assessment is performed based on FATF's National Money Laundering and Terrorist Financing Risk Assessment guidance. The assessment is divided into several Point of Concern ("POC") related to ML and TF risk.

The risk rating is derived from three factors, i.e. **threat**, **vulnerability** and **consequence**, and involves both quantitative and qualitative approach. The risk assessment also involves assessor's judgments on threats, vulnerabilities and consequences.

Threat is derived from a person or group of people, object or activity with the potential to cause harm to. In this assessment's context we use ML/TF historical cases taken from PPATK's, law enforcement's and court's data.

Vulnerabilities comprises matters that can be exploited by the threat or that may support or facilitate its activities.

Consequence refers to the impact or harm that ML or TF may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions. The consequences of ML or TF can be short or long term in nature and also relate to populations, specific communities, the business

environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector.

The process of the risk assessment is divided into three stages:

‣ **Identification**, starts by developing an initial list of potential risks or risk factors. Such risks are drawn from known ML cases and suspicious activities reports.

‣ **Analysis**, which involves consideration of the nature, sources, likelihood and consequences of the identified risks or risk factors. The aim of this stage is to gain a holistic understanding of each of the risks

‣ **Evaluation** involves taking the risks analyzed during the previous stage to determine priorities for addressing them, taking into account the purpose established at the beginning of the assessment process. These priorities aims to contribute to the development of a strategy for mitigation.
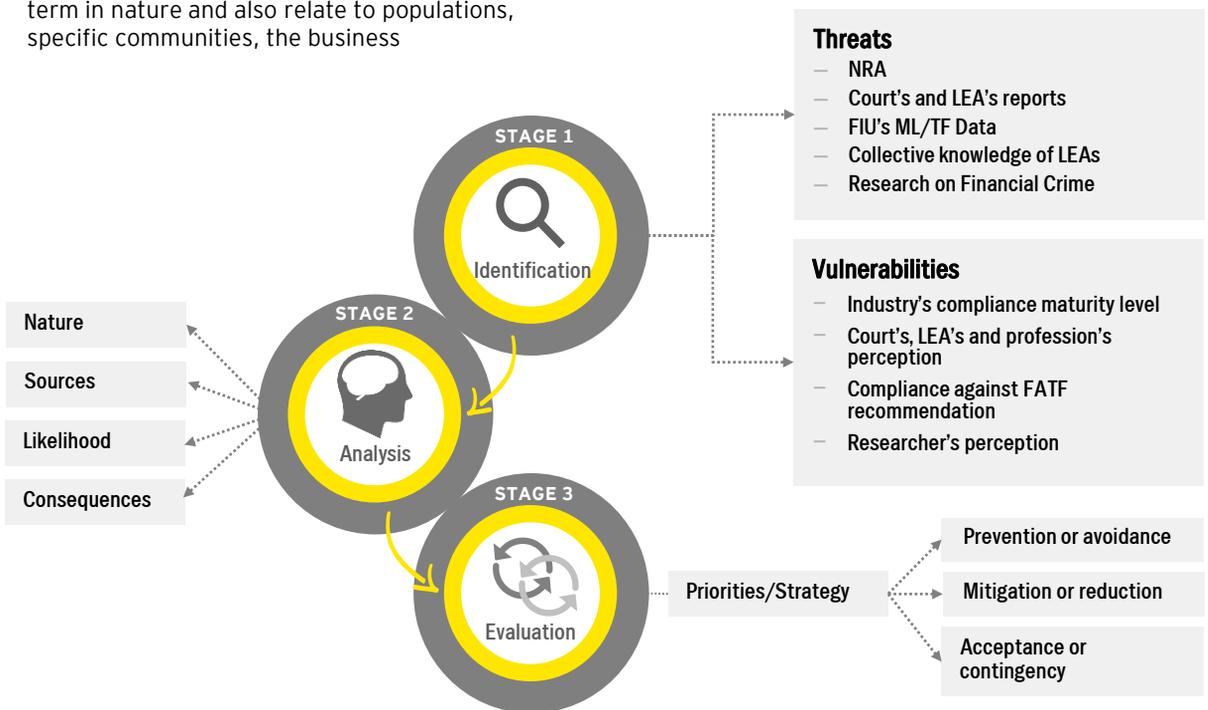

Figure 2.4.1. Overview of the ML/TF Risk Assessment Process

2.5. Point of Concerns

The risk assessment focuses on 6 (six) POCs for ML and 4 (four) POCs for TF as follows:

ML:
- Type of legal persons;
- Type of business;
- Delivery channel;
- Reporting parties; and
- Incoming international transactions
- Outgoing international transactions

TF:
- Type of legal persons;
- Type of business;
- Delivery channel; and
- Reporting parties

2.6. Risk Rating

The risk assessment uses 9 level to scale the risk rating, i.e. from 1 being the lowest to 9 the highest. Each variable of the POC is rated using the following formula:

value	Dmin	y	Dmax
score		x	

$$x = \frac{8(y - Dmin)}{Dmax - Dmin}$$

Notes

x = Risk rating
y = value/rating assigned to the respective variable
Dmin = Minimum value ("floor")
Dmax = Maximum value ("ceiling")

Based on International Monetary Fund ("IMF") guidelines on "The Fund Staff's Approach to Conducting National Money Laundering or Financing of Terrorism Risk Assessment", Chapter 7, it was stated that

"Risk can be represented as **R=f[(T),(V)] x C**, whereas "T" represents threat, "V" represents vulnerability, and "C" represents Consequence".

$$Risk = [(Threat),(Vulnerability)] \times Consequence$$

Risk Level

Using the above formulation, the lowest risk is rated as 1 (1x1) and the biggest risk 81 (9x9). The risk value is then scaled into 1-9 by calculating the square root of the risk rating. The risk level is then categorized into low, medium, and high.

Risk Level	Likelihood Interval	Consequence Interval
Low	$1.00 \le x < 3.67$	$1.00 \le y < 3.67$
Medium	$3.67 \le x < 6.33$	$3.67 \le y < 6.33$
High	$6.33 \le x \le 9.00$	$6.33 \le y \le 9.00$

Higher level risk might require immediate mitigating action compared to the lower level risk. Higher level risk may also indicate systemic issues.

2.7. Contributors

The contributors for the risk assessment includes the following agencies/institutions:

- Policy making bodies;
- Law Enforcement Agencies;
- Prosecutorial authorities;
- Financial intelligence units;
- Supervisory authorities;
- Ministries;
- Financial institutions;
- Designated Non Financial Business and Profession ("DNFBPs"); and
- Industry associations.

3 Types of Entities
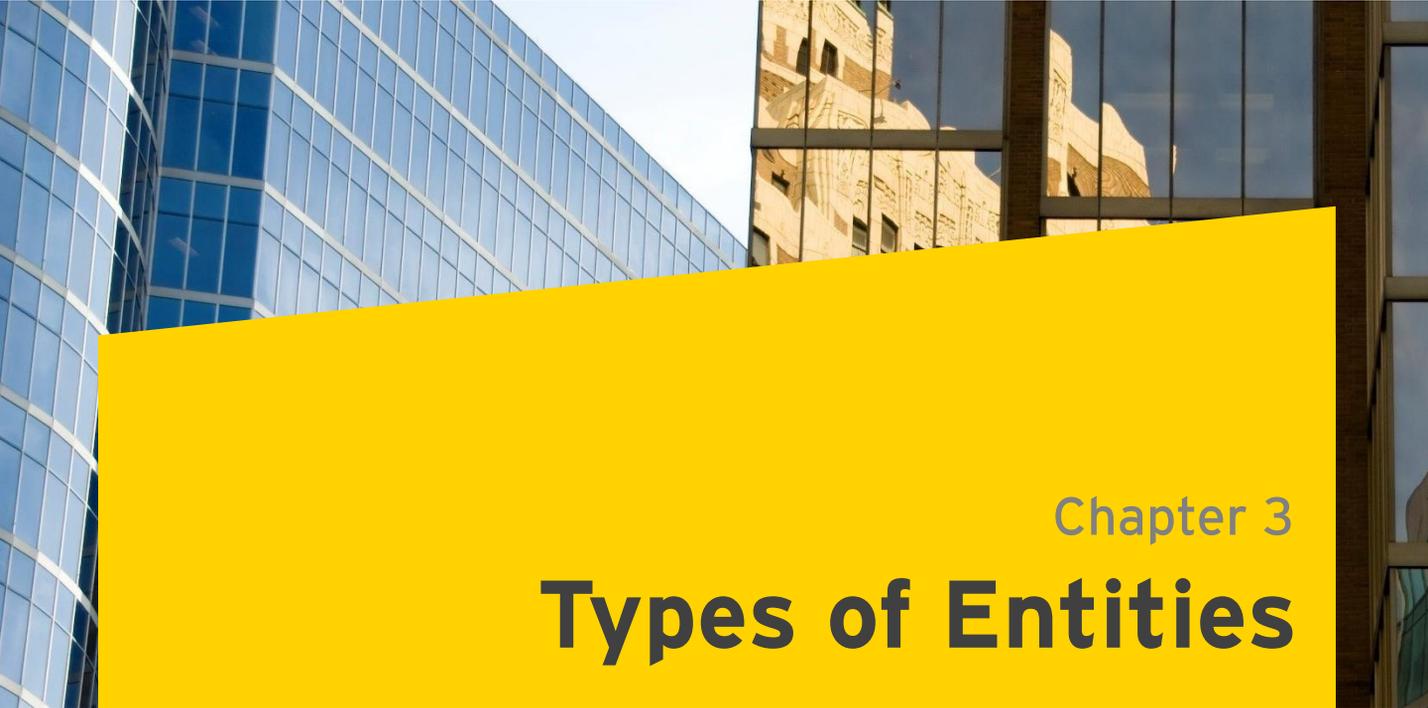
Chapter 3
Types of Entities

In the last 17 years, Indonesia's economy has grown at 82.29% with GDP (Gross Domestic Product) Annual Growth Rate averaged at 5.29% from year 2000 until 2017. BAPPENAS has projected in VISI Indonesia 2045 that the country's economy will grow at the average of 6.5% annually until 2045. It is forecasted that Indonesia will be the 4th largest economy in the world, overtaking well developed countries such as Japan, Germany, or United Kingdom at that time.

3.1 Types of Legal Persons in Indonesia

By the way the entity conducts its business, entities in Indonesia are classified into 2 (two) broad categories: legal entity and non-legal entity.
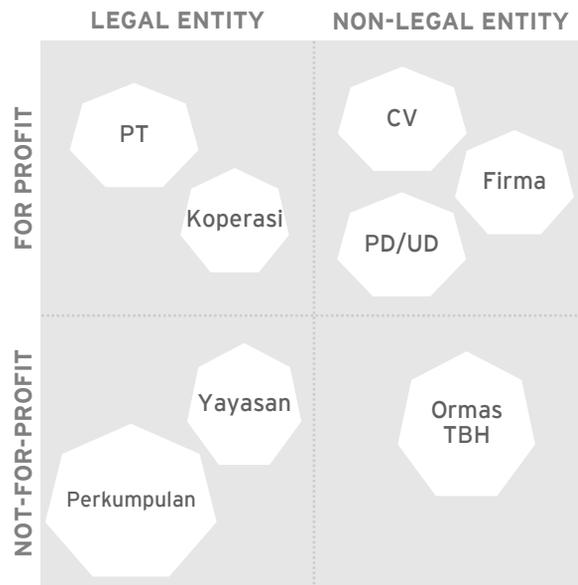

Figure 3.1.1 Classification of Entities in Indonesia

Profit Entities

Below is the breakdown of For-Profit Entities.

For-Profit Legal Entities

3.1.1. **Perseroan Terbatas** ("PT" – Limited Liability Company)

PT is a legal entity that constitutes a capital alliance and is established based on an agreement, with the objective to conduct business activities. PT's authorized capital is divided into shares and shall meet the requirements in the Law No. 40 of 2007.

The company shall be established by 2 (two) or more persons where each founder is obliged to subscribe shares upon the establishment.

Under the Indonesian Law, foreign citizens, corporations and/or government can only invest in Indonesia in the form of PT. The PT shall reside in the Indonesian territory, as required by the Law No. 25 of 2007 on Capital Investment. Foreign Investment Company is called PT Penanaman Modal Asing ("PT PMA" – Foreign Capital Investment PT). Prior to establishing a PT PMA, one should apply for Basic License through Badan Koordinasi Penanaman Modal ("BKPM" – Indonesia Investment Coordinating Board).

According to the data provided by Ministry of Law and Human Rights ("MLHR"), the total numbers of submitted applications for PT in 2016 is estimated at 58,424.

Basic requirements in establishing a PT is governed under the Law No. 40 of 2007, which include:

- Create a Deed of Establishment in notary.
- Obtain a Letter of Approval of Deed of Establishment from MLHR.
- Obtain a Certificate of Business Domicile ("SKDKP").
- Create a Taxpayer Identification Number ("NPWP").
- Create a Trading Business License ("SIUP").
- Create a Company Registration Certificate ("TDP").

3.1.2 **Koperasi** (Cooperative)

Koperasi is a business entity established by an individual or a Koperasi, with activities based on principles of Koperasi as well as economic movement for the people based on kinship, as defined in Article 1, Law No. 25 of 1992.

The total numbers of koperasi in 2016 is estimated at 212,135.

The establishment of Koperasi is governed under Ministerial Regulation issued by Ministry of Koperasi and SMEs ("MCSME") No. 10/Per/M.KUKM/IX/2015 of 2015 concerning *Kelembagaan Koperasi* – the institution of Koperasi.

Basic requirements in establishing a Koperasi include:

- Create a Deed of Establishment in notary.
- Obtain a Letter of Approval of Deed of Establishment from MCSME.
- Create a SKDKP.
- Create a NPWP.
- Create a SIUP.
- Create a TDP.

For-Profit Non-Legal Entities

3.1.3 **Commanditaire Vennootschap** ("CV – Limited Liability Partnership)

CV is an entity established by individual(s) who are jointly responsible for the entire entity, with one or more persons act as money lenders, as defined in Article 19 of *Kitab Undang-Undang Hukum Dagang* – Commercial Code ("KUHD").

Ministry of Trade ("MoT") has provided data for 2014-2016 period based on the records from the Capital Investment and One Stop Service Unit in which their data processing system is integrated with MoT's system. The record says MoT has issued about 36,988 TDPs to CVs.

CV's establishment is regulated under KUHD. Basic requirements in establishing a CV include:

- Create a Deed of Establishment in notary.
- Create a SKDP.
- Create a NPWP.
- Register the deed of establishment at the Registrar of the local District Court.
- Create a SIUP.
- Create a TDP.

3.1.4 **Firma** (Firm)

Firma is an entity established to undertake a business under a common name, as defined in Article 16 and 18 of KUHD.

MoT has provided data for 2014-2016 period based on the records from the Capital Investment and One Stop Service Unit in which their data processing system is integrated with MoT's system.

The record says MoT has issued about 243 TDPs to Firmas.

The basic regulation in establishing Firma is regulated in KUHD. Basic requirements establishing Firma include:

▸ Create a Deed of Establishment in notary.
▸ Create a SKDP.
▸ Create a NPWP.
▸ Register the deed of establishment at the Registrar of the local District Court.
▸ Create a SIUP.
▸ Create a TDP.

3.1.5 **Perusahaan Dagang/Usaha Dagang ("PD/UD" - Trading Company)**

PD/UD is a business entity run independently by an individual and does not require any partner.

The establishment of PD/UD is regulated in KUHD. Basic requirements establishing PD/UD include:

▸ Create a SKDP.
▸ Create a NPWP.
▸ Create a SIUP.
▸ Create a TDP.

Not-for-Profit Entities

Organisasi Kemasyarakatan ("Ormas" – Civil Society Organization), is an organization founded and formed voluntarily by the community based on common aspirations, wills, needs, interests, activities, and objectives to participate in the development in order to achieve the objective of Negara Kesatuan Republik Indonesia based on Pancasila, as defined in Article 1 of Law No. 17 of 2013 concerning Ormas.

Law No. 17 of 2013 states that an Ormas may be established by 3 (three) Indonesian citizens or more, except for Yayasan (Foundation). Ormas may be in the form of legal entity or without legal entity. Ormas with legal entity can either be in the form of Yayasan or Perkumpulan (Association).

Each types of Ormas are elaborated below.

Not-for-profit Legal Entities

3.1.6 **Yayasan (Foundation)**

Yayasan is a legal entity consisting of assets that are separated and specifically allocated to achieve certain social, religious, or humanitarian objectives, which has no members, as defined in Article 1 of Law No. 16 of 2001 concerning Yayasan. Yayasan may be established by 1 (one) or more persons, or under wills.

Foreign citizen, either by themselves or together with Indonesian citizen, may establish a Yayasan in accordance with Government Regulation No. 63/2008 as well as other related laws and regulations. However, one of the yayasan's board members (i.e. chairman, secretary, or treasure) must be an Indonesian citizen.

Based on data provided by MLHR, the total number of applications to establish Yayasan in 2016 is estimated at 52,256.

The establishment of a *Yayasan* is regulated under the Law No. 28 of 2004 (amending the Law No. 16 of 2001), and Government Regulation No. 63 of 2008. The basic requirements in establishing a Yayasan include:

▸ Create a Deed of Establishment before a notary.
▸ Obtain a Letter of Approval of Deed of Establishment from MLHR.
▸ Obtain a SKDKP.
▸ Create a NPWP.
▸ Obtain other relevant licenses from related ministries (e.g. Ministry of Religion or Ministry of Social Affairs)

Further, through Government Regulation No. 59 of 2016, Ormas with Foreign Yayasan legal entity are required to have Central Government Licenses, which comprise of:
i. Basic License
ii. Operational License

3.1.7 **Perkumpulan (Association)**

Perkumpulan is a legal entity consisting of a group of people which is established to achieve the common purpose and intention in social, religious, or humanitarian fields and is not intended for profit, as defined in Article 1 of MLHR Decree No. 6 of 2014.

Based on data provided by MLHR, the total number of applications to establish Perkumpulan in 2016 is estimated at 82,571.

The establishment of Perkumpulan is regulated under Government Regulation No. 58 of 2016 concerning Ormas. The basic requirements in establishing a Perkumpulan include:

▸ Create a Deed of Establishment in notary.
▸ Obtain a Letter of Approval of Deed of Establishment from MLHR (only if the Association is intended to be an Association with Legal Entity).
▸ Create a Certificate of Domicile.
▸ Create a NPWP.
▸ Create a Certificate of Registered Community Organization (SKT Ormas).

Not-for-Profit Non-Legal Entities

3.1.8 **Ormas tidak berbadan hukum (**Ormas without legal entity**)**

Ormas tidak berbadan hukum may be established under Indonesian Law and registration can be made with the respective government officials, as defined in Article 16, Law No. 17 of 2013. Registration is encouraged but is not viewed as mandatory due to the principle of the freedom of association and assembly. However, unregistered Ormas may not receive any facilities from the state.
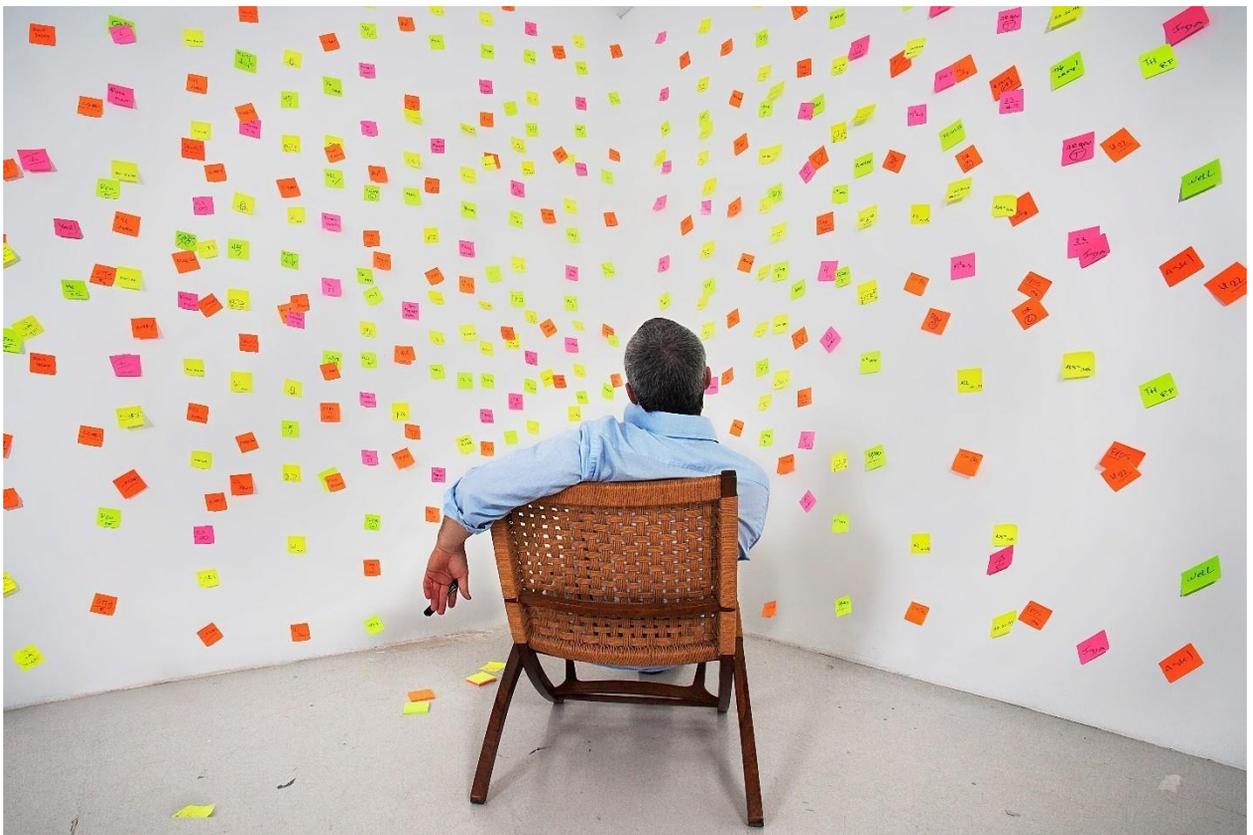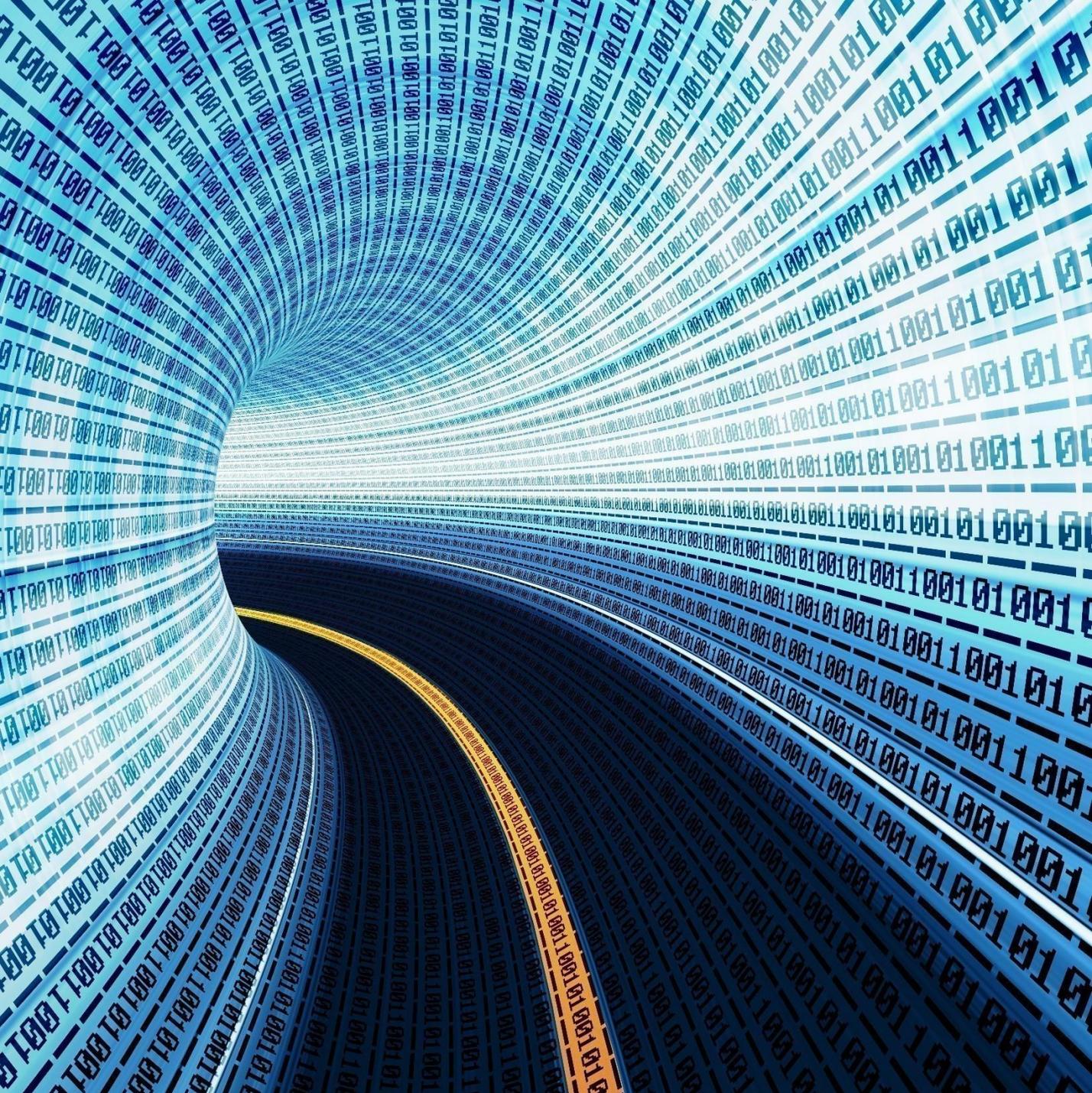
4   Point of Concerns

Point of Concerns

Why Legal Persons?

Corporate vehicles are attractive to those seeking to launder money, conceal the origins of criminal funds and/or move criminal proceeds overseas because it is easier for larger sums of money to be moved between legal entities without attracting attention. Corporate vehicles can also obscure the beneficial ownership of companies and assets, including property, making it harder to ascertain whether such companies or assets are linked to criminality.

Introduction

Sectoral Risk Assessment ("SRA") on Legal Persons aims to provide the users with the outlook on threat, vulnerabilities and impacts of ML/TF that is performed through Legal Persons. The main objective of the assessment is to equip the users, particularly the regulators, with capability to implement controls and allocate resources in a more efficient and effective manners, by considering the relevant ML/TF risks.

The methodology used in the assessment is adopted from best practices promoted by FATF. This SRA serves the specific purposes as follows:

1. Analyzing the ML/TF risk per type of legal person, type of business, reporting party, delivery channel, and international transaction.
2. Analyzing trends of ML/TF cases in the last three-year period (2014-2016).
3. Identifying and addressing vulnerabilities in Indonesia's AML/CFT regime.

Corporate Landscape

The term of "Legal person" in Indonesia is equivalent to "Korporasi", a type of entity which is divided into two categories, i.e. one with identity that is separated from those who owns/controls it and whose member's liability is limited (known as "Badan Hukum") and one where there is no limit to the liability of a member or known as "Badan Usaha tidak Berbadan Hukum".

Point of Concerns (continued)

Corporate vehicles – such as companies, foundations, partnerships, and other types of legal persons–conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate vehicles play in the global economy, under certain conditions, they have been misused for illicit purposes, including ML, bribery and corruption, insider dealings, tax fraud, TF, and other illegal activities.

The first category of legal entity has 4 (four) forms, which includes:
- Perseroan Terbatas
- Koperasi
- Yayasan
- Perkumpulan

The second category of non-legal entity has 4 (four) forms, which includes:
- CV
- Firma
- PD/UD
- Ormas tidak Berbadan Hukum

Of eight types of entity above, three take a not-for-profit form, i.e. Yayasan, Perkumpulan, and Ormas tidak Berbadan Hukum.

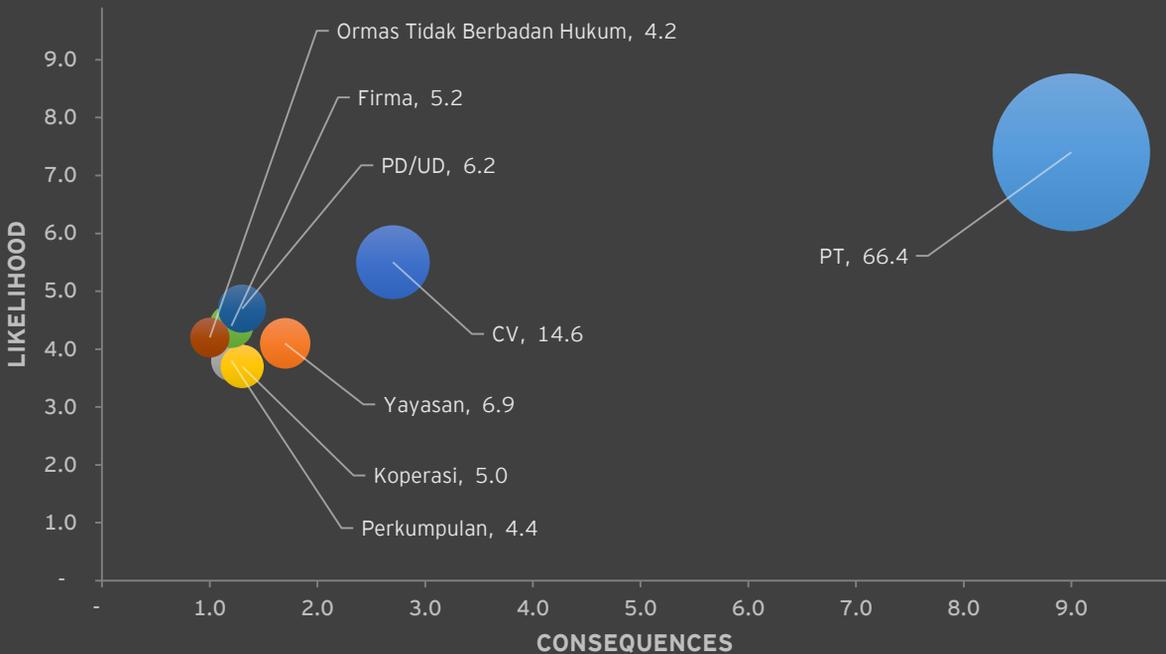## 4.1. Risk of Money Laundering based on Type of Legal Person

Figure 4.1.1 – AML – POC Type of Legal Person

PT is the most commonly used legal persons in ML cases that were analysed during the review. This finding is also consistent with our observation on STRs statistics, in which majority of the reported entities are PTs. We do not see that money launderers have specific preferences toward any type of legal person. However, PTs may have been frequently used as it provides more liniency. The obligation of PT's shareholders is limited to the capital that they paid in. Further, government's or state-owned enterprise's procurement process generally requires the tender participant to be in the form of PT.

Recommendations

▸ Expedite the implementation of Single Identity Number (SIN).

▸ Integrate the process of administering the main data of the corporation and the provision of access for the users through a "single door". The system can be hosted and managed by Directorate General of General Law Administration ("AHU") MLHR. AHU may also be granted with authority to regulate data update, data exchange and enforcement for related parties (R24.1 & R24.3).

▸ Create a digital-based corporate registration system that is capable of processing and issuing corporate deeds and other legal documents through "single door". This system should also embed information technology-based controls. (R24.1 & R24.3).

▸ Issue specific regulation (with sanction elements) to require companies to put registered address and additional address as location of stored basic and BO information, including shareholders information (members, number of shares, categories of shares) (R24.4, R24.6, & R24.13).

▸ Require companies and their beneficial owners to proactively update company registry (including BO information) within a specified period of time. The regulator needs to devise dissuasive sanction for failure to do so. (R24.4, R24.5, R24.6, R24.7, & R24.13).

▸ Issue a requirement for DNFBP to cooperate with Law Enforcement Agency in determining BO information (R24.8).

4.1. Risk of Money Laundering based on Type of Legal Person (continued)

Recommendations (continued)

▸ Require companies including non legal person to maintain the information and records related to ownership for at least 5 (five) years after the date on which the company is dissolved or otherwise ceases to exist; or ceases to be a customer of the professional intermediary; or the financial institution (R24.9).

▸ Prohibit the use of bearer shares (which is governed by Company Law 1995) in capital market transactions and ensure complete conversion of the existing bearer shares into script less shares (R24.11).

▸ Create Law or related regulation (including dissuasive sanction) to measure prevention of nominee directors (24.12).

▸ Establish a case management system to control requests from and addressed to law enforcement and other relevant agencies. The system should be capable of issuing alerts in the case an incoming/outgoing data request is not progressing. There should also be a mechanism that governs a follow-up to the specified agencies or countries (R 24.14 & R24.15).

▸ Implement an effective beneficial ownership regime (for details, please refer to the recommendation related to BO in "Gap Analysis" report).

▸ Enhance the industry's transaction monitoring and customer screening process for legal person, particularly by implementing a more effective detection scenarios for legal person.

▸ Enhance the industry's staff awareness of legal person-related crimes, e.g. Tax fraud/evasion, marine/fishery fraud, customs fraud etc.

▸ Provide the industry with a comprehensive and current PEP list and require a sound screening process during customer onboarding and periodic review.

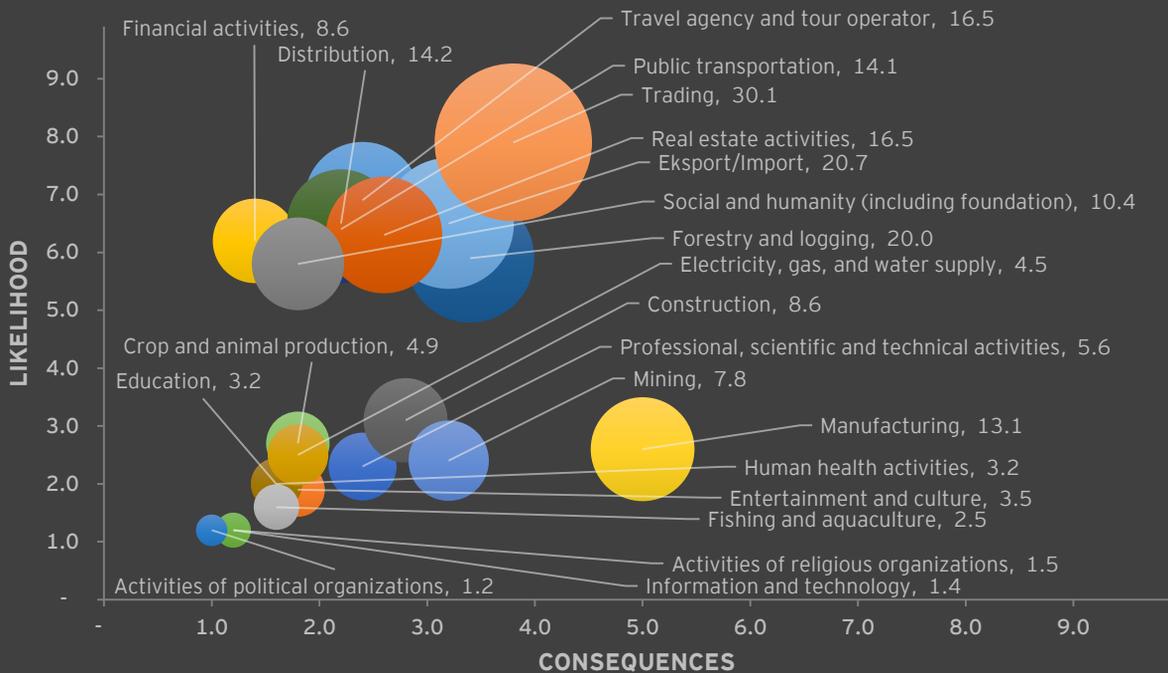## 4.2. Risk of Money Laundering based on Type of Business

Figure 5.2.1 – AML – POC Type of Business

We noted that there is no specific type of business that shows a strong indication to be more preferable by money launderers. However, the historical data shows that trading has been more frequently used in ML cases. This may be due to its ease to establish and its coverage to both domestic and cross border activities.

Recommendations

‣ Enhance industry's detection capability on cross-border transactions through the following mechanism:
  – Implement an effective trade-based AML system in banking industry.
  – Strengthen the asset-side AML detection, particularly the monitoring of the use of cash collateral in trade financing.
  – Implement a robust screening process on cross-border payments in banking industry.
‣ Strengthen international cooperation with other jurisdictions' FIUs.

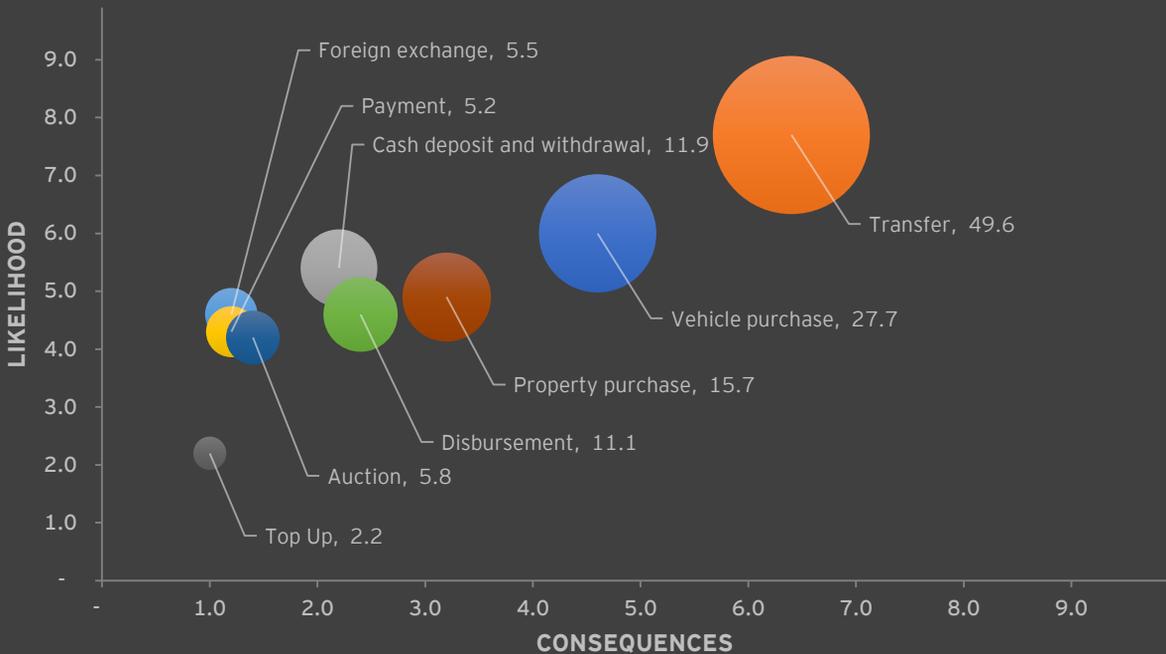## 4.3. Risk of Money Laundering based on Delivery Channel

Figure 4.3.1 – AML – POC Delivery Channel

From the delivery channel point of view, transfer has been traditionally used in ML schemes due to its flexibility and fast-movement of the money. Such use of transfers may become more frequent as we now have a better IT infrastructure and the newly developed financial technology (fintech), which enable account holders to conduct fund transfers practically from anywhere and at anytime.

The use of vehicle dealers is not a new trend in ML but may be a common typology. This may be due to lack of regulation and supervision in vehicle dealership industry.

Recommendations

‣ Enhance industry's capability in identifying red-flags of ML, both at the front-line side (whereby the instructions for payment transaction are received) and operation side (whereby the instruction is executed).

‣ Enhance the AML detection capability in real estate and car trading industry. This can be accomplished through the following means:

   – Enhance the regulatory requirements in detecting suspicious transactions.

   – Strengthen the regulatory monitoring to create deterrence effect.

   – Disseminate the AML/CFT requirements through industry's respective association.

‣ Consider restricting the use of cash for large amount transactions.

‣ Ensure the effectiveness of the AML/CFT regulation for fintech 3.0 industry (startup-fintech companies). This is to secure new alternative payment methods which may be prone to ML.

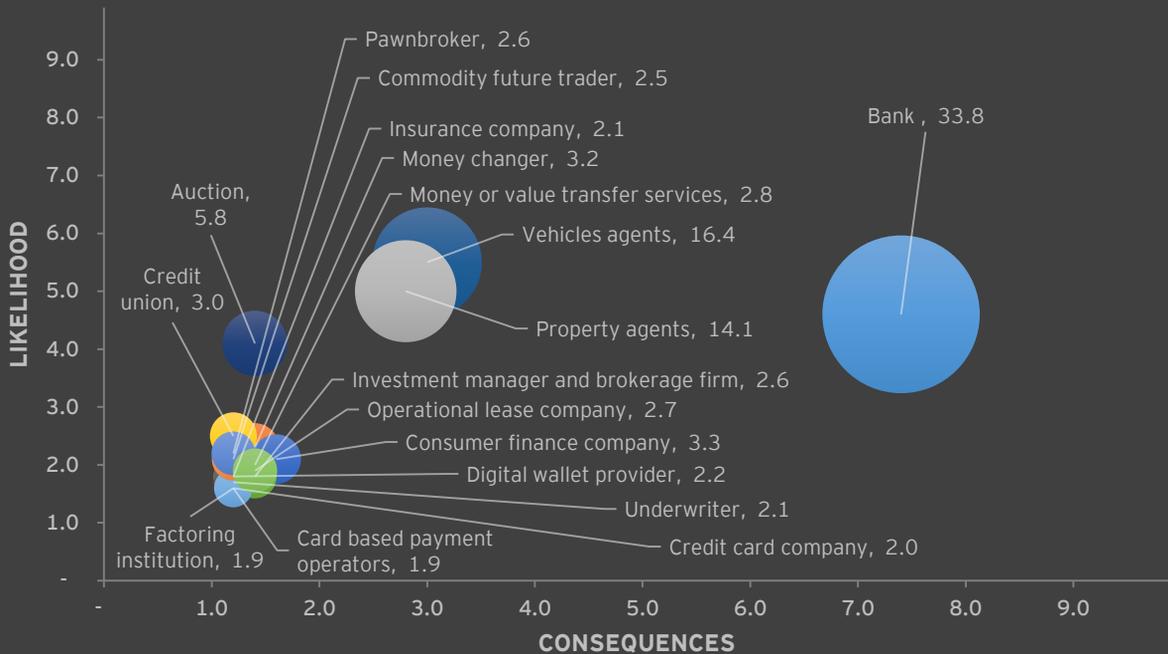## 4.4. Risk of Money Laundering based on Reporting Party

Figure 4.4.1 – AML – POC Reporting Party

Indonesia's financial sector is dominated by banks. Financial sector assets equal about 72% of GDP with banking assets equal to about 55% of GDP and about 75% of total financial sector's assets. In line with the significant role of banks in Indonesia, the 2015 NRA highlights the banking sector as the highest risk sector.

As for other reporting parties, the property and vehicle agents are also exposed to a higher AML risk as they're nor adequately regulated and supervised in terms of AML/CTF.

Recommendations

▸ Assess the effectiveness of industry's AML risk assessment (as required by POJK 12/2017) through industry supervision activities. Risk assessment process should be properly documented and based on a sound methodology.

▸ Ensure that the sophistication of the AML/CFT system and the size of the AML unit in the industry is directly proportional with the size of the organization and complexity of the market/product it manages.

▸ Reinforce POJK's requirement for banking industry to reject or exit relationship with customers who, based on a thorough analysis, may have derived his/her wealth from proceed of crime. The bank should be required to operationalize this policy into procedures and processes.

▸ Provide financial services industry with controlled access to certain government's data repository, including PEP list, Dukcapil, land/property ownership repository and corporate registration portal, to help the industry in validating customer's profile and beneficial ownership status.

▸ Prepare a comprehensive guidelines related to CDD on legal arrangement for the industry. The guidelines may cover types, scope and characteristics of legal arrangement, and other information that can help the industry identify and mitigate ML/TF risks related to legal arrangement.

▸ Prepare and disseminate a more prescriptive guidelines on suspicious transactions detection and reporting for the industry. The said guidelines should cover, inter alia, system information requirements, detection scenarios management, and the governance of the transaction monitoring.

▸ Enhance the industry's capability to detect suspicious transactions which involve legal persons. This may require specific industry training related to predicate crimes that involve legal person and the strategy to detect them.

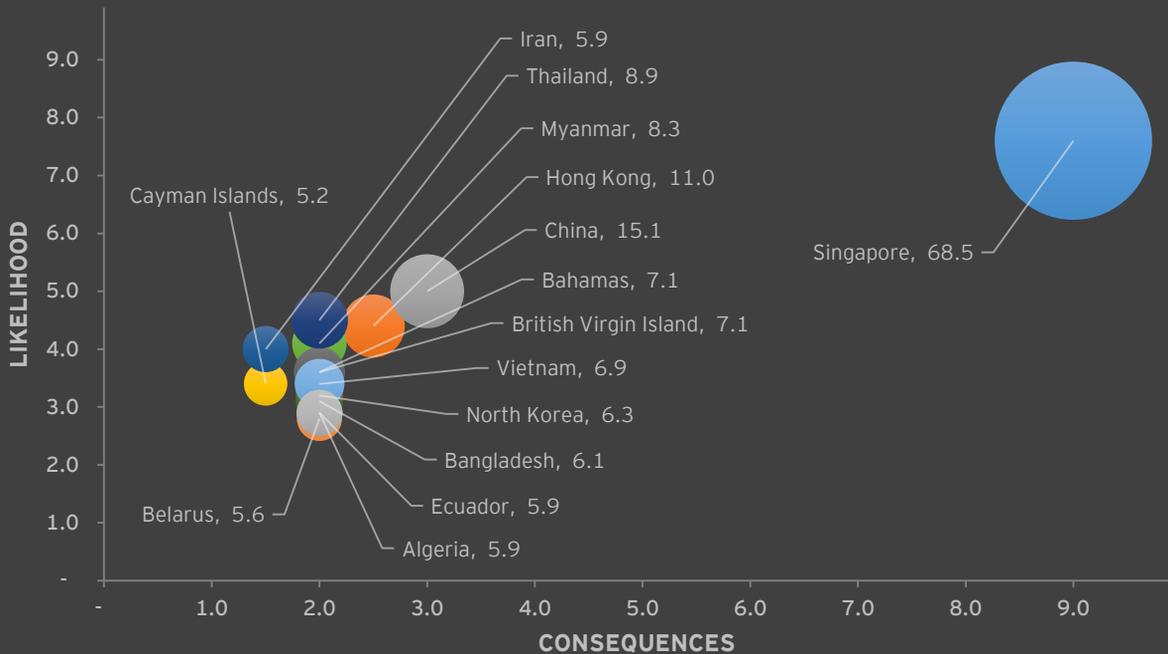## 4.5. Risk of Money Laundering based on International Transaction (Inflow)

Figure 4.5.1 – AML – POC International Transaction (Inflow)

We conducted risk assessment on the origin countries from which the illicit money may have come to Indonesia. We based our analysis on the notion that the money would have come from countries with high financial crime risk. A number of global parameters were used to assess the risk of the country origin. Such parameters include those obtained from the following sources:

‣ The International Narcotics Control Strategy Report 2016
‣ Corruption Perception Index 2016
‣ Global Financial Integrity
‣ International Consortium of Investigative Journalists' Panama Papers
‣ The government official's perception related to the quality of information exchange between Indonesia and the surveyed countries.

We also used the data that we obtained from PPATK to support our analysis.

Based on the assessment that we conducted using the above data, Singapore is perceived as the highest risk country in terms of the origin of the illicit money.

Recommendations

‣ Implement an effective beneficial ownership regime (for details, please refer to the recommendation related to BO in "Gap Analysis" report).
‣ Enforce a robust due diligence requirement for the industry when they open a business relationship with foreign entity. The regulator may need to provide guidelines related to the due diligence process.
‣ Strengthen the mutual legal assistance ("MLA") agreement between Indonesia and other high risk countries, including Singapore, Hong Kong and China.
‣ Enhance industry's capability in dealing with ML schemes using cross-borders transactions, e.g. letter of credit, particularly when the transactions involved high-risk countries.

4.6. Risk of Money Laundering based on International Transaction (Outflow)
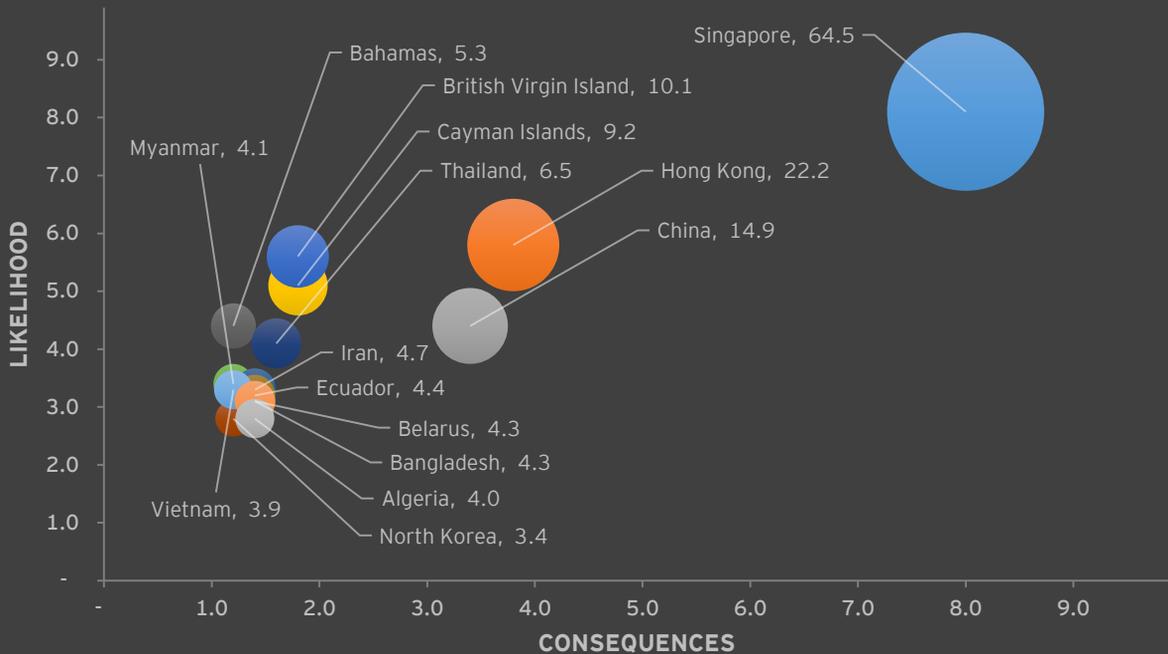

Figure 4.6.1 – AML – POC International Transaction (Outflow)

We also conducted risk assessment on the destination countries to which the illicit money may have been sent from Indonesia. We mainly based our analysis on the result of Indonesia's tax amnesty programme, i.e. the declaration and the actual repatriation of tax-payers assets. The tax-payers' preference for a country in which they keep their assets may reflect the country's risk related to money laundering. To increase the reliability of the result, we also used other sources of data as variables in risk calculation. Such data includes:

‣ Case frequency involving legal person in respective countries
‣ The frequency of cases involving legal persons in a particular country
‣ Tax Attractiveness Index
‣ Global Financial Integrity's Outflow of Illicit Funds
‣ International Consortium of Investigative Journalists' Panama Papers
‣ Financial Secrecy Index
‣ International Narcotics Control Strategy Report
‣ Data related to confiscation of assets
‣ The government official's perception related to the quality of information exchange between Indonesia and the surveyed countries.

We also used the data that we obtained from PPATK to support our analysis.

Based on the assessment that we conducted using the above data, Singapore is perceived as the highest risk country in terms of the destination of the illicit money.

Recommendations

‣ Please refer to the recommendation related to Internasional Transaction (Inflow) as described in page 41.

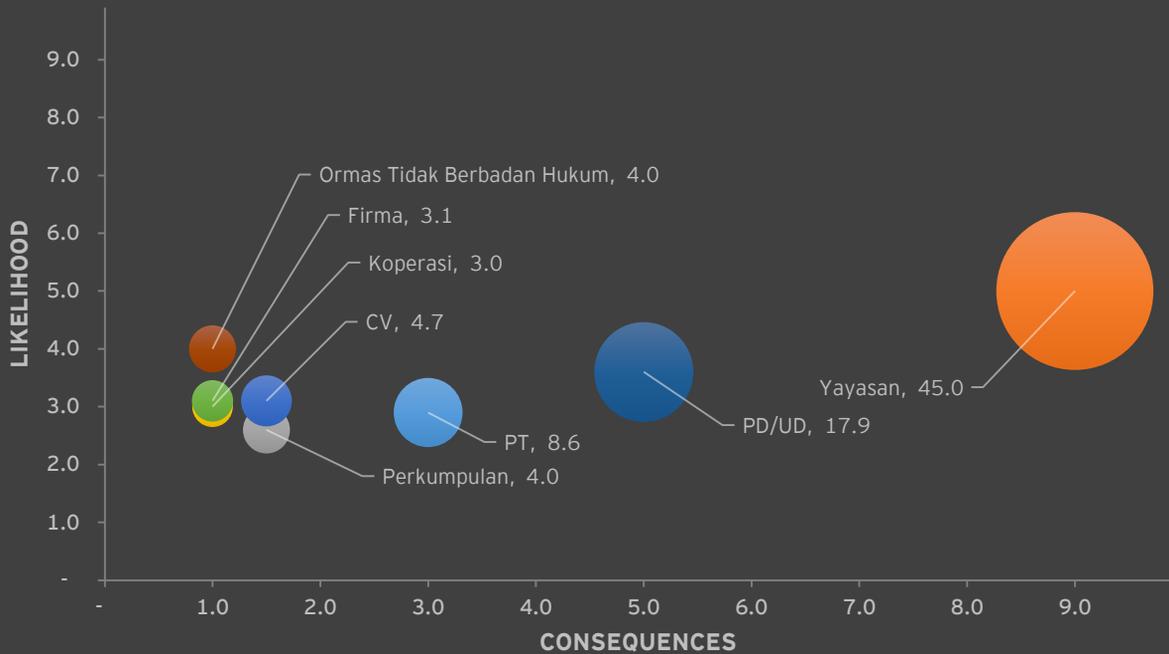## 4.7. Risk of Terrorist Financing based on Type of Legal Person

Figure 4.7.1 – CFT – POC Type of Legal Person

During the review we did not find any convictions which involve legal person in TF. However, there are several active investigation cases which involve donation that had been received by *Yayasan* from individuals who allegedly had provided funding to terrorist organizations.

Recommendations

‣ Strengthen the industry's customer screening process for legal person, particularly by implementing a more effective detection scenarios for legal person.

‣ Enhance the industry's AML officers awareness of TF through training and disseminations.

‣ Enhance the BO unwrapping process in relation to high risk legal person, particularly *Yayasan*. This may require the industry to impose a more robust CDD during the onboarding and information update process.

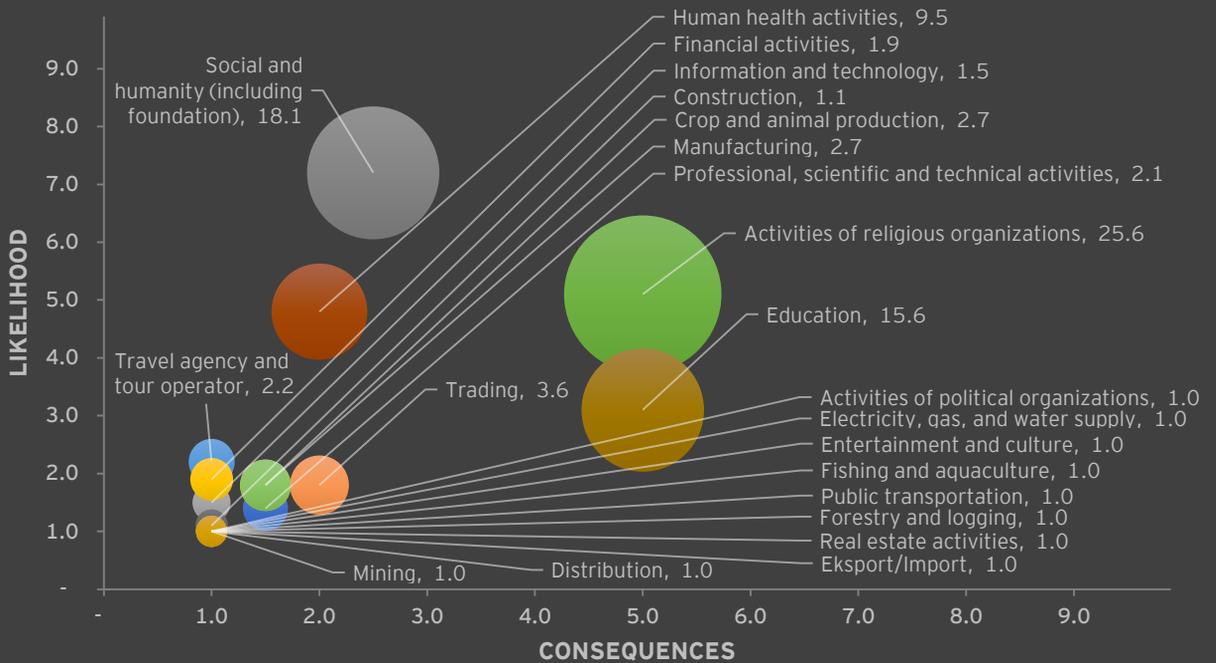## 4.8. Risk of Terrorist Financing based on Type of Business

Figure 4.8.1 – CFT – POC Type of Business

Based on the cases that have been investigated by the LEAs, foundations with religious missions have been used to disguise terrorist funding. Having said that, the LEAs has been facing with challenges in distinguishing the flow of the terrorist funding from the legitimate donations.

Recommendations

▸ Enhance the quality of the transaction monitoring and customer screening on social/religious institutions.
▸ Strengthen the quality of the industry's Customer Due Diligence ("CDD") process, particularly in relation to BO unwrapping process.
▸ Consider a requirement for the financial services industry to only accept Ormas that is registered in the Ormas Registration System ("SIORMAS") as customer.

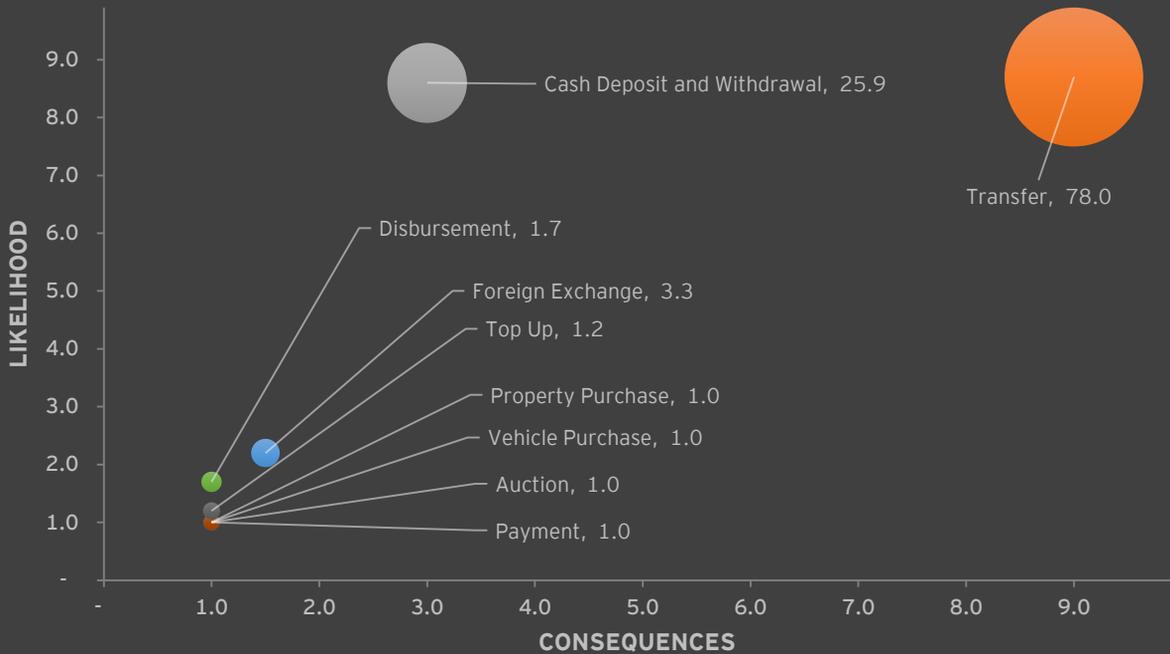## 4.9. Risk of Terrorist Financing based on Delivery Channel

Figure 4.9.1 – CFT – POC of Delivery Channel

The linear flow of the money in TF (as opposed to the circle flow in ML) may have been reflected in the delivery channels used by the terrorist groups. Cash transactions and transfers, mostly in small amount of money, are the most frequent modus in TF.

Recommendations

‣ Please refer to the recommendation for Reporting Party as described in page 40.

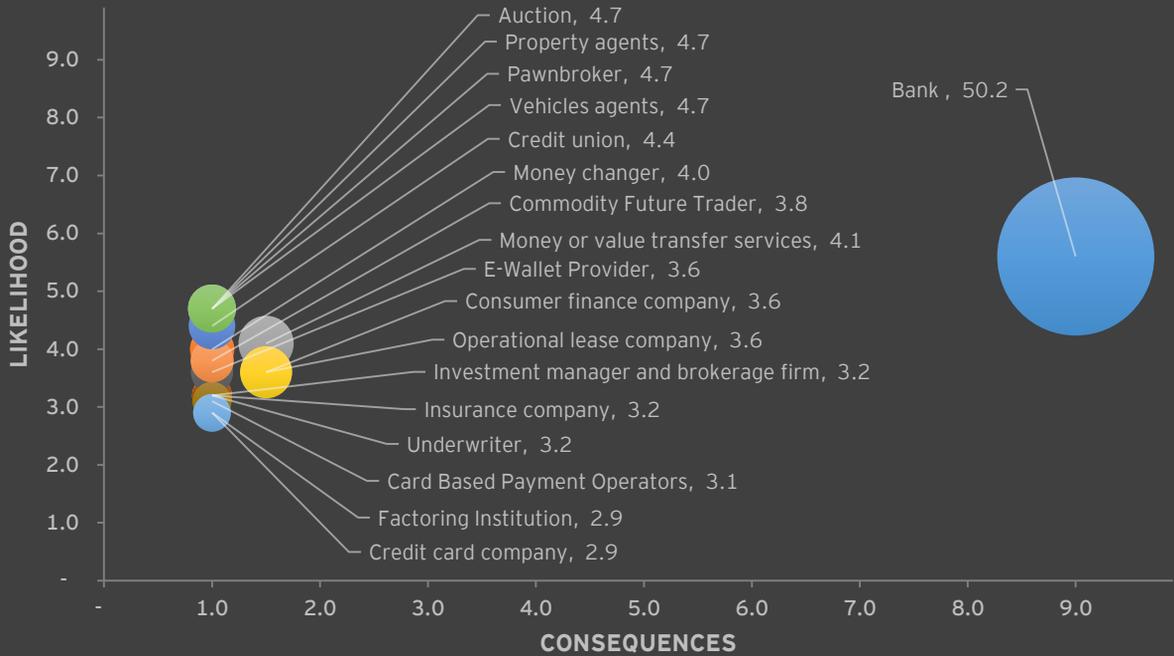## 4.10. Risk of Terrorist Financing based on Reporting Party

Figure 4.10.1 – CFT – POC of Reporting Party

As seen in the ML risk assessment on reporting parties, banking remains the riskiest reporting party from TF's perspective. This may be due to the wide-availability of the payment channels, including branches and ATMs. This is consistent with the 2015 NRA report which highlights the banking sector as the highest risk sector.

Recommendations

‣ Please refer to the recommendation for Reporting Party as described in page 40.

Annex - Case Study

1. Case of XY

XY managed to override controls in Bank Z for 5 (five) years without having majority legal ownership and transferred the money to several PTs and natural persons.

As a result, the Central Bank of Indonesia ("BI") had to bail the Bank out for IDR 6.7 trillion (equivalent to USD 504 million).

He then was charged in 6 (six) cases and was found guilty in all charges. XY was found to have 7 (seven) Wealth Management accounts in Bank M in Hong Kong, N in Jersey, P in Guernsey, 4 (four) Insurance Polices in Bermuda, assets in Q, Switzerland, 2 (two) Private Wealth Management accounts in England totaling USD 261.3 million and lots of assets in Indonesia.

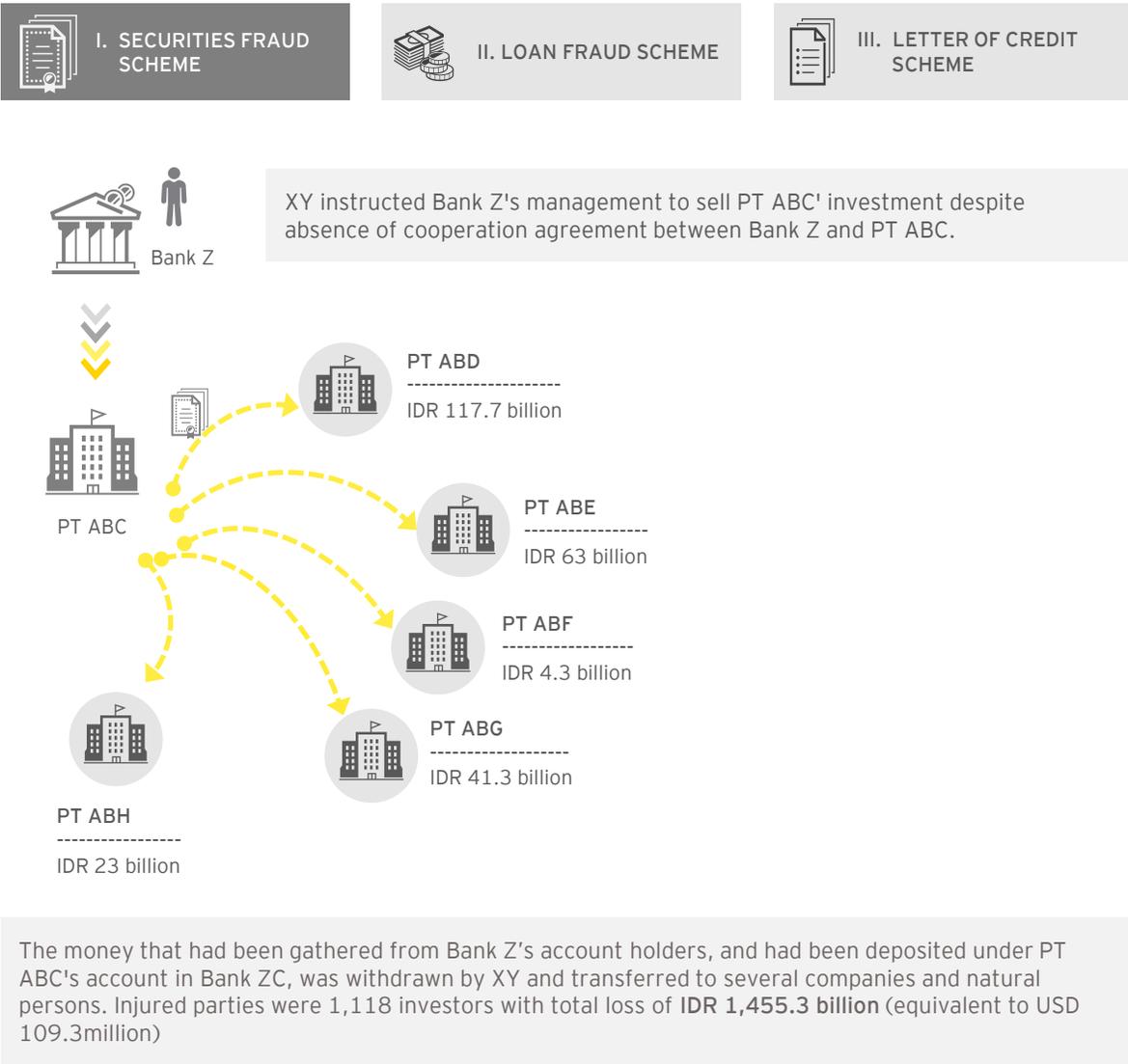In general, there were 3 (three) fraud and ML schemes conducted by XY.

| I. SECURITIES FRAUD SCHEME | II. LOAN FRAUD SCHEME | III. LETTER OF CREDIT SCHEME |

Bank Z

XY instructed Bank Z's management to sell PT ABC' investment despite absence of cooperation agreement between Bank Z and PT ABC.

PT ABC

PT ABD

IDR 117.7 billion

PT ABE

IDR 63 billion

PT ABF

IDR 4.3 billion

PT ABG

IDR 41.3 billion

PT ABH

IDR 23 billion

The money that had been gathered from Bank Z's account holders, and had been deposited under PT ABC's account in Bank ZC, was withdrawn by XY and transferred to several companies and natural persons. Injured parties were 1,118 investors with total loss of **IDR 1,455.3 billion** (equivalent to USD 109.3million)

Figure A.1.1 Illustration of XY case on Securities Fraud Scheme

1. Case of XY (continued)

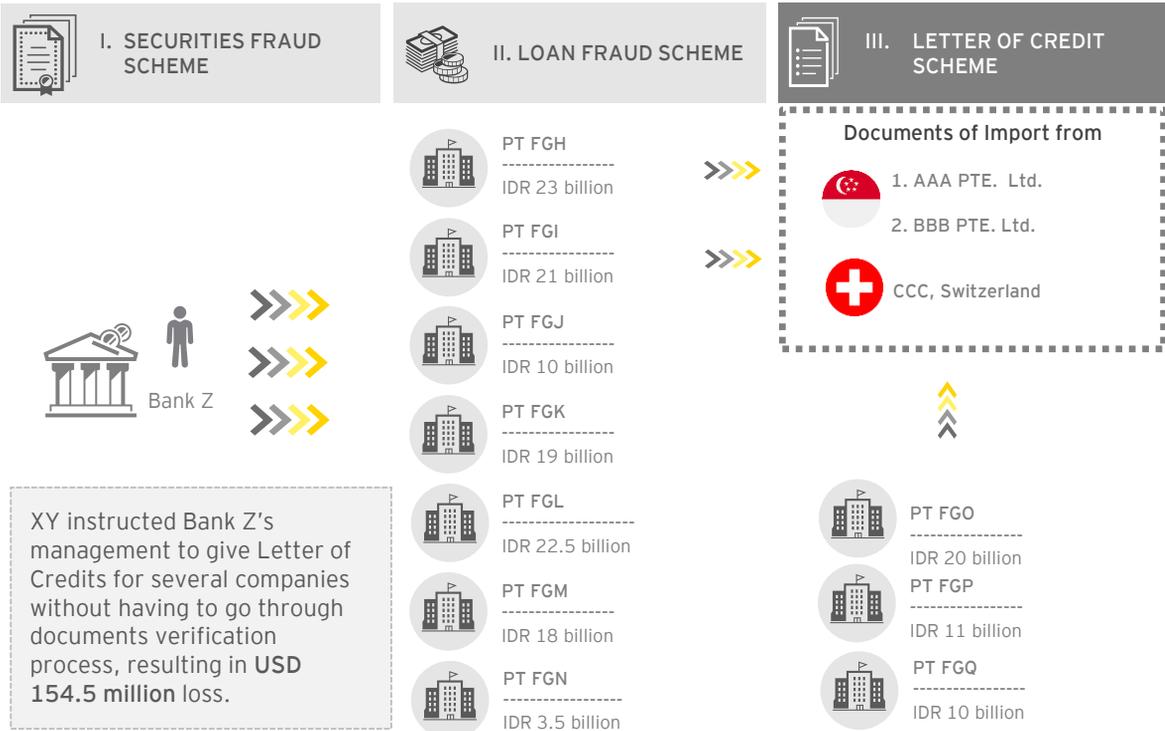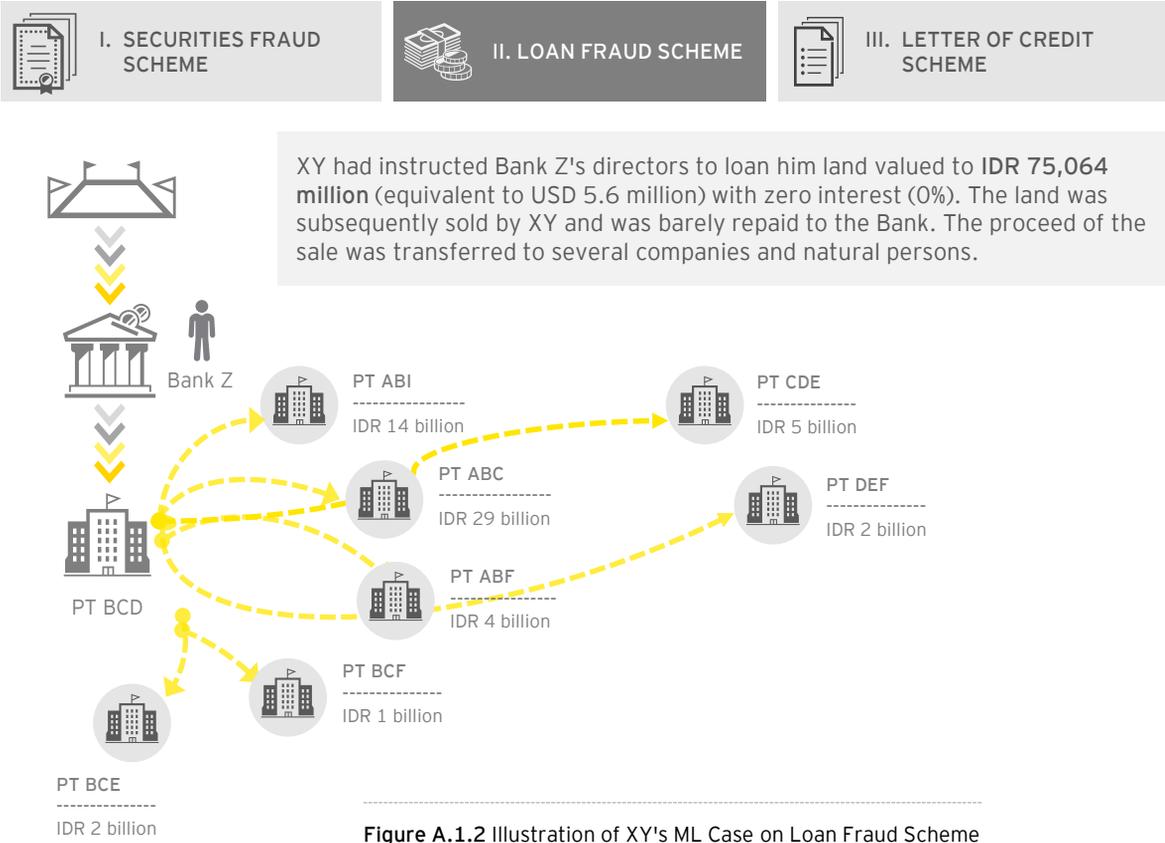Figure A.1.2 Illustration of XY's ML Case on Loan Fraud Scheme

Figure A.1.3 Illustration of XY's ML Case on Letter of Credit Scheme

2. Case of A

A was prosecuted for laundering illicit money through shares purchase in various companies. The money had been derived from corruption when he was still a member of the House of Representatives ("DPR RI").

The shares purchase was made through securities companies registered in Indonesia Stock Exchange under the name of B Group, which is owned and controlled by A himself.

Based on the indictment, B Group's revenue came from "the fee" granted by third parties in exchange of favors the company had given to win several government's projects.
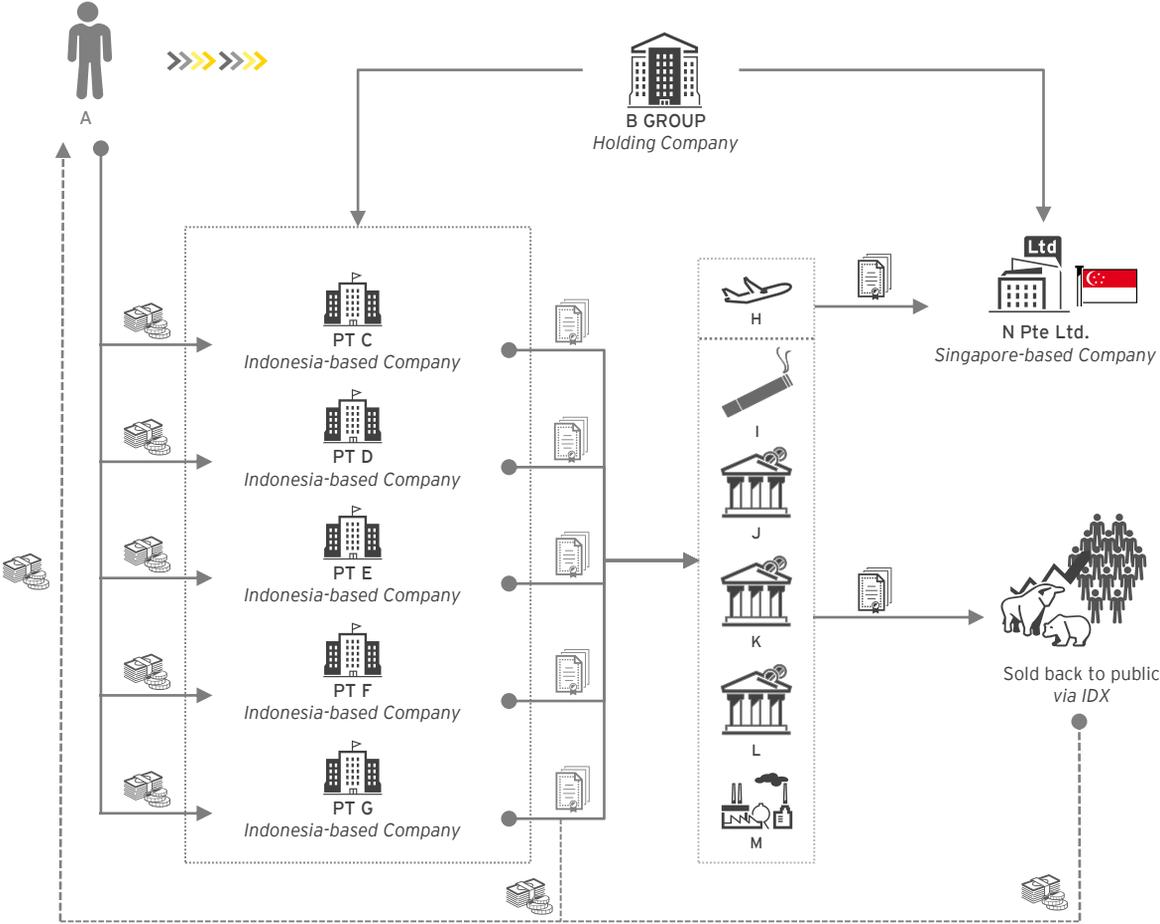

Figure A.2.1 Illustration of A's ML Case

3. Case of Z

Z was an Indonesian police officer who was convicted of illegal logging crime. Z had established three companies to disguise the flow of timber sales proceed. The three companies include PT B, CV C and CV D. In the deed of the company PT B is not listed under the name of Z. Instead, it was listed under his wife's name as the company's commissioner. Z name is also not listed in either company.
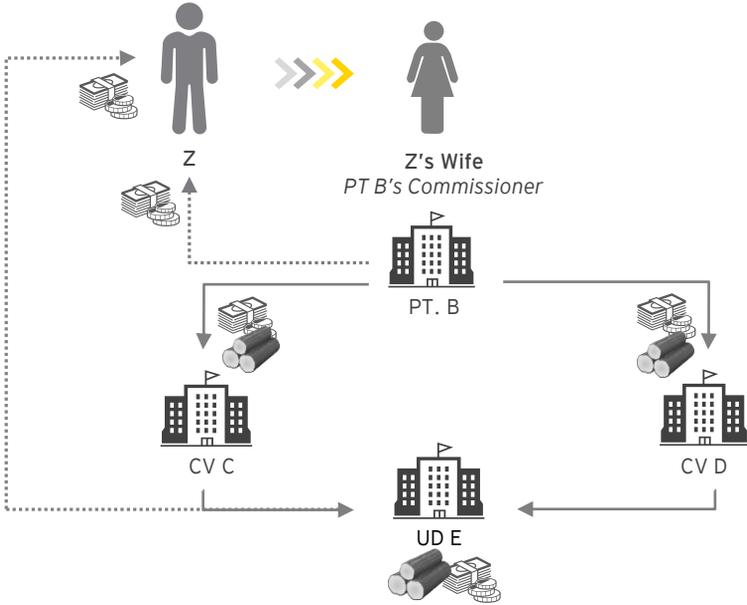

Figure A.3.1 Illustration of Z's ML Case on Illegal Logging

Apart from being convicted for illegal logging, Z was also convicted for illegally storing fuel oil ("BBM"). Z purchased PT F, a company owned a license to purchase fuel from Pertamina. Z's name is nowhere found in the Company's Deed. His wife's name is listed as the commissioner. PT F was effectively controlled by Z as the money used to fund fuel purchase comes from his account and the proceed of sales were transferred back to him.
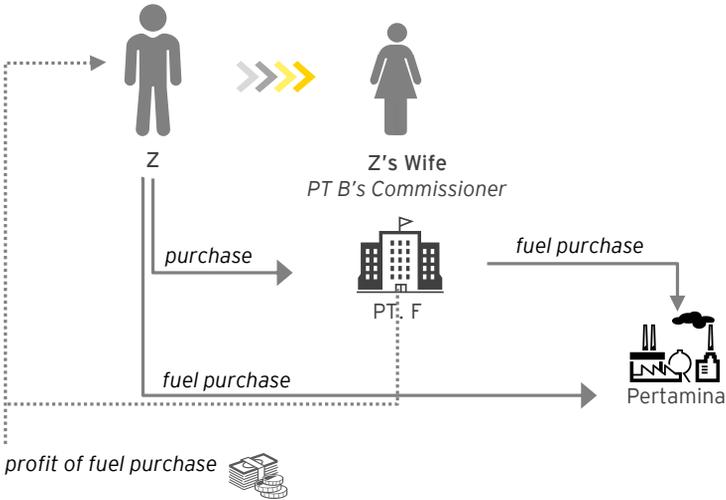

Figure A.3.2 Illustration of Z's ML Case on Accumulation of Fuel Oil

4. Case of H1

H1 as the Head of Bank X in Y branch, used several companies to create fictitious credit schemes by abusing his authority as the branch manager. He created the following scheme to move the money from the bank to his own company's account.
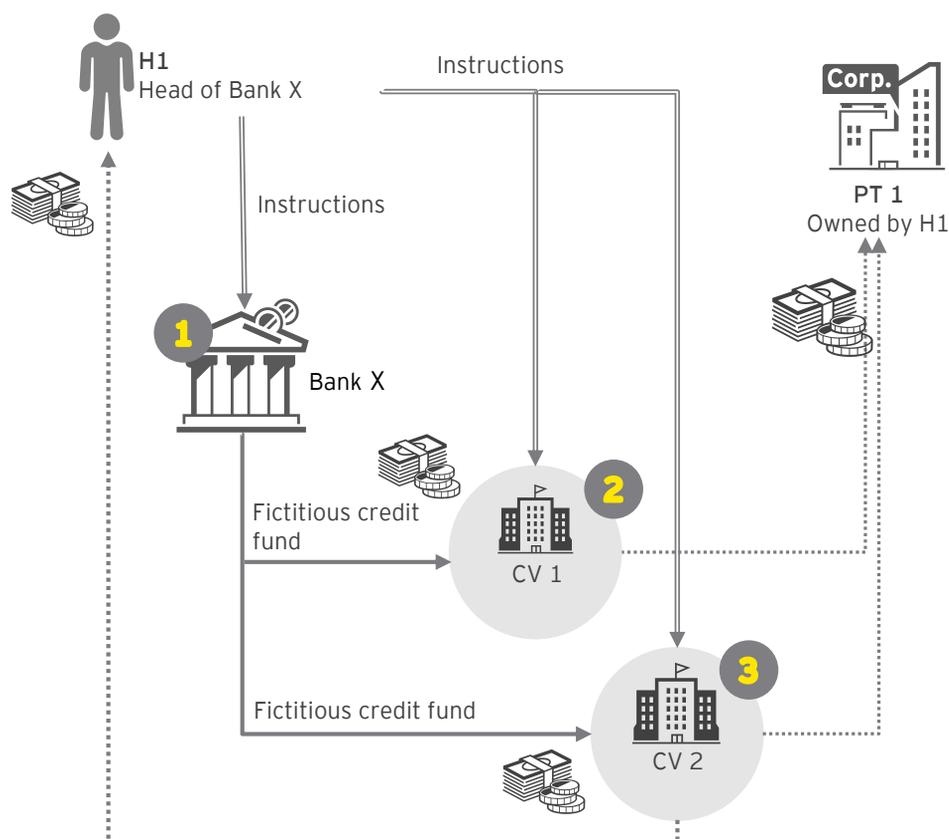

Figure A.4.1 Illustration of H1's ML Case

Details

1 As a branch manager H1 has a wide network in the local business community. He used his network to defraud the bank by creating fictitious credit applications. Being the highest approver in the branch, he approved the credit applications. He channeled the money to several companies owned by his relations, i.e. CV 1 and CV 2.

2 CV 1 was owned H1's neighbor. He created several fictitious credit applications and successfully laundered IDR 13.3 billion. The laundered money was sent to his personal account and was used to repay PT 1's debt. He bought the company afterwards.

3 In CV 2, he successfully laundered IDR 9.5 billion through another fictitious credit scheme. The money was used to pay his business relations and provide operational credit to other companies.

5. Case of A1

In 2008, A1 along with A2, A3, and A4 established a group called JAT. A1 as the group leader allegedly involved in providing and raising fund to the militia's training camp in Aceh.

A2
JAT Treasury

Cash:
IDR158,000,000

A1
Amir

Instructions

A3
Majelis 1 JAT

Cash:
USD5,000 +
IDR82,000,000
Transfer:
IDR82,500,000

JAT East Java

JAT Central Java

JAT Bima

To fund militia's training camp in Aceh
Total: ± IDR 1,039,500,000

JAT Bekasi
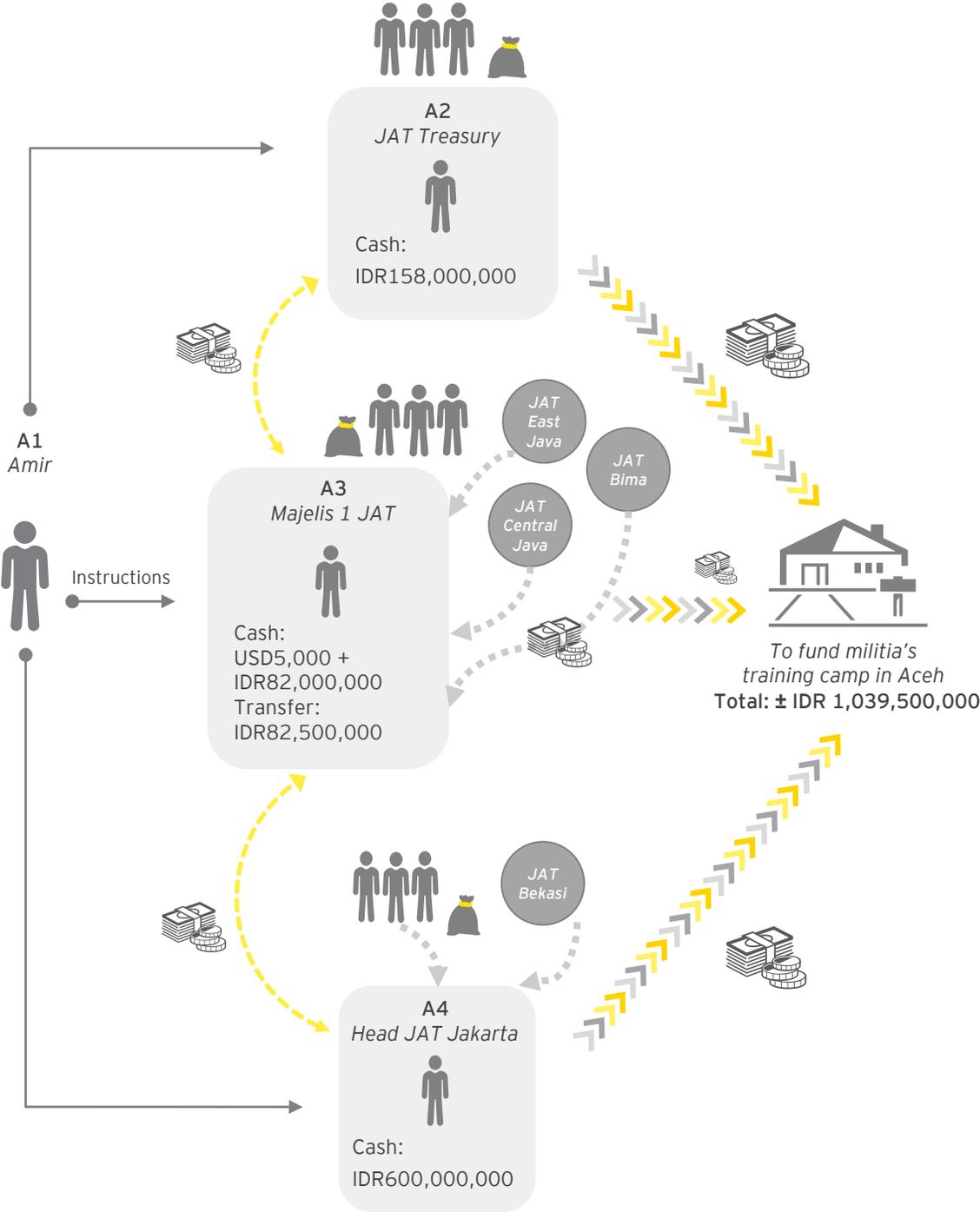
A4
Head JAT Jakarta

Cash:
IDR600,000,000

Figure A.5.1 Illustration of A1's TF Case

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Wetboek van Koophandel Staatsblad No. 23 of 1847 on CV

Limitation

We draw your attention to the limitations inherent in this report.

- We were not required to and did not undertake an audit in accordance with Indonesian Auditing Standards. Consequently, no assurance will be expressed. None of the services provided nor the report is intended to provide an opinion or legal advice.
- The scope of our work was limited to analysis of documentation and information made available to us and specific enquiries undertaken to pursue our mandate. We have not verified the authenticity or validity of the documentation made available to us.
- This report is prepared based on information and documents gathered. We do not provide assurance that all documentation relevant to the scope of work have been made available to us.
- Our work does not cover tax reviews, legal audit or legal opinion. Consequently, no taxation or legal interpretation was made in this report.
- Our work does not include preparation of report or providing statement or information to legal representatives for litigation and/or other legal proceedings purposes.
- If additional or new information is brought to our attention subsequent to the date of this report which would affect the fact-findings detailed below, we reserve the right to amend and qualify our findings accordingly.

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