Regulatory Compliance or Regulatory Overreach? A Critical Study of Company Secretarial Liability in Malaysia's AML/CFT Framework

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ABSTRACT

Malaysia's anti-money laundering and counter-financing of terrorism (AML/CFT) framework imposes preventive obligations on company secretaries who undertake specified corporate services. Following the commencement of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025 on 1 March 2026, the framework has strengthened regulatory supervision, extended certain obligations to individuals within reporting institutions and introduced additional enforcement mechanisms. This paper examines whether these developments represent justified regulatory compliance or risk imposing disproportionate liability on Malaysian company secretaries. Adopting a doctrinal and critical legal research methodology, the study analyses the relevant legislation, regulatory instruments, beneficial-ownership requirements, enforcement practices and academic literature. It evaluates the framework against five criteria: legal certainty, legitimate purpose and suitability, necessity and proportionality, responsibility and culpability, and procedural fairness.

The study finds that company-secretarial gatekeeping obligations are justified by the sector's exposure to money-laundering risks. However, concerns arise where individual liability is insufficiently distinguished from institutional responsibility, regulatory requirements lack clarity, verification expectations exceed reasonable professional capabilities or overlapping sanctions are imposed without adequate consideration of proportionality. The paper contributes to Malaysian legal scholarship by examining these issues within the post-amendment framework and proposes a defined reasonable-steps defence, clearer allocation of liability, harmonised regulatory guidance, improved verification and reporting infrastructure, and more coordinated enforcement. It concludes that effective AML/CFT regulation requires not weaker supervision, but clearer obligations and fairer, risk-based enforcement.

Keywords: Company secretary; anti-money laundering; AML/CFT; reporting institution; beneficial ownership; regulatory overreach; Malaysia

INTRODUCTION

Anti-money laundering and counter-financing of terrorism regulation increasingly relies on private professionals to prevent the misuse of legal and financial systems. Banks remain the most visible reporting institutions, but international standards also treat lawyers, accountants, trust and company service providers, and other professional intermediaries as "gatekeepers". The rationale is functional: a person seeking to conceal ownership, create layers of legal personality, provide a respectable address, appoint nominees or move assets through apparently legitimate structures frequently requires professional assistance. Corporate service

providers may therefore encounter suspicious circumstances before a financial institution sees the complete structure (Financial Action Task Force [FATF], 2024; Levi, 2002).

In Malaysia, the company secretary is not merely a clerical service provider. Every company must appoint a qualified secretary, and the secretary commonly manages incorporation, statutory registers, lodgements, changes in directors or shareholders, registered-office arrangements and beneficial-ownership records. When a company secretary conducts specified activities listed for designated non-financial businesses and professions, the secretary and, where applicable, the secretarial firm become reporting institutions under Part IV of the Anti-Money Laundering, Anti-Terrorism Financing, Anti-Restricted Activity Financing and Proceeds of Unlawful Activities Act 2001 ("AMLA"). The resulting obligations include customer due diligence, risk profiling, sanctions screening, ongoing monitoring, record keeping, internal controls and suspicious transaction reporting (Bank Negara Malaysia [BNM], 2024; Companies Commission of Malaysia [SSM], 2023).

This regulatory position creates a real tension. On the one hand, passive filing requirements alone cannot protect the corporate registry. Criminal enterprises can gain a legal front by exploiting false identities, obscure foreign ownership, nominee arrangements, and fabricated director appointments. Company secretaries are well positioned to identify irregularities and to refuse, report or escalate suspicious instructions. Secretaries, in contrast, generally rely on documents and representations provided by clients. They lack the investigative powers, databases or coercive authority of the State. The risk of criminal prosecution, administrative action, civil proceedings, professional disqualification and reputational damage can make a professional gatekeeper a de facto guarantor of information which may not always be independently verified.

The issue has become especially important after the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025 (Act A1761) came into operation on 1 March 2026. The amendments renamed and broadened AMLA, expanded record-keeping and reporting concepts to cover "activities", strengthened supervisory access to information, created additional administrative and civil enforcement mechanisms, and expressly extended several obligations to directors, officers and employees of reporting institutions (Anti-Money Laundering Amendment Act 2025; P.U. (B) 76/2026; Lim & Siew, 2026). Shortly afterwards, BNM and SSM publicised a joint enforcement action in which a company secretary pleaded guilty to failures involving suspicious transaction reports and false information lodged with the Registrar (BNM, 2026c; Bernama, 2026).

Against this background the paper raises three questions. First, what are the main legal bases for holding a Malaysian company secretary liable for AML/CFT? Second, does the framework draw a sufficient distinction between deliberate facilitation, recklessness, negligence and reasonable professional reliance? Third, what reforms would preserve effective gatekeeping without imposing undue or legally uncertain burdens? Here, "regulatory overreach" is used in a disciplined sense: regulation is overreaching where its obligations or sanctions are not sufficiently clear, necessary, proportionate, fault-sensitive or procedurally fair. The paper argues that the gatekeeping role itself is justified, but the legitimacy of liability depends on clearer fault standards, realistic verification expectations, coherent guidance and graduated enforcement.

For the purposes of this study, regulatory overreach is assessed through five interrelated criteria: legal certainty, legitimate regulatory purpose and suitability, necessity and proportionality, the allocation of responsibility and individual culpability, and procedural fairness in enforcement. The first criterion considers whether compliance obligations are clearly established by law or by instruments issued under valid statutory authority. The second examines whether the obligations are reasonably connected to the prevention and detection of money laundering and terrorism financing. The third considers whether the burden imposed is necessary and proportionate to the identified risk, including whether less burdensome measures could achieve comparable regulatory outcomes. The fourth examines whether liability is imposed on the appropriate person and reflects the applicable statutory elements, authority, knowledge and conduct. The fifth assesses whether enforcement procedures and sanctions are fair, transparent and proportionate, particularly where more than one authority may act upon the same conduct. These criteria provide a structured basis for distinguishing justified regulation from regulatory overreach.

The proportionality criterion is informed by Malaysian judicial recognition that restrictions affecting constitutionally protected rights must be assessed against the legitimacy of their objectives and the proportionality of the measures adopted. In Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2010] 2 MLJ 333, the Federal Court considered proportionality in evaluating statutory restrictions affecting members of the legal profession. The decision does not establish a specific constitutional test for AML/CFT duties imposed upon company secretaries. Nevertheless, it provides a relevant Malaysian legal foundation for examining the relationship between regulatory objectives and the burdens imposed. The broader five-part framework adopted in this paper remains an analytical approach rather than a claim that all five criteria constitute a single binding judicial test.

The originality of this paper lies in its combined examination of company-secretarial liability following Act A1761, the beneficial-ownership obligations introduced under the Companies (Amendment) Act 2024, and the regulatory and enforcement practices of BNM and SSM. Although existing Malaysian scholarship has examined AML/CFT compliance difficulties among professional gatekeepers, comparatively limited attention has been given to the interaction between institutional duties, individual liability, professional discipline and the practical limits of verification in the company-secretarial sector. This study addresses that gap by applying a structured assessment of regulatory overreach to the post-amendment framework and proposing reforms intended to preserve effective gatekeeping while improving legal certainty, accountability and proportionality.

METHODOLOGY AND SCOPE

This study adopts a qualitative doctrinal and critical legal research methodology, supported by a thematic review of relevant academic literature. It examines the Malaysian legal and regulatory framework as of 1 October 2026, with particular emphasis on AMLA as amended by Act A1761, the Companies Act 2016, the Companies (Amendment) Act 2024, applicable subsidiary legislation, BNM policy documents, SSM guidelines and publicly available enforcement materials. The doctrinal analysis distinguishes obligations imposed by primary legislation from those arising under subsidiary legislation and regulatory instruments issued pursuant to statutory authority. Relevant judicial decisions are examined to establish the applicable legal principles, while enforcement notices are considered as evidence of regulatory practice rather than binding judicial interpretation.

The study applies five evaluative criteria: legal certainty, legitimate purpose and suitability, necessity and proportionality, responsibility and culpability, and procedural fairness. The statutory and regulatory requirements are assessed against these criteria to identify circumstances in which preventive obligations are justified and circumstances in which their implementation or enforcement may become excessive. Malaysian and comparative academic literature provides theoretical support and contextual evidence, with foreign findings distinguished from established Malaysian conditions. The 2025 FATF–APG mutual evaluation is used as an important source of sectoral evidence, while recognising that its findings primarily reflect the regulatory position and supervisory information available during its February 2025 assessment. An anonymised practitioner example involving STR submission in May 2026 is used solely to illustrate an operational difficulty and is not presented as representative empirical evidence of the profession as a whole.

The analysis is confined to company secretaries in practice in Malaysia and the preventive obligations and liability arising from professional services. It does not intend to fully cover substantive prosecutions of money laundering offenses, asset forfeiture, or terrorist financing. Another limitation is the lack of reported decisions interpreting the duties under Part IV in the particular context of company secretaries. Thus, we use information from the public prosecution as a case study of enforcement, rather than as a substitute for binding judicial reasoning.

The Malaysian Legal and Regulatory Framework

The main legislation is AMLA. BNM is the competent authority and SSM is a supervisory authority for company secretaries under its regulatory scope. The framework is deliberately layered: the Act establishes core duties and enforcement powers; BNM sets out detailed risk-based requirements; SSM translates those

requirements into sector-specific expectations; and the Companies Act governs the accuracy and maintenance of corporate information. Although this architecture is capable of supporting specialized supervision, it also produces interpretive complexity, as professional exposure may depend on reading several instruments together.

Company secretaries do not become reporting institutions for every administrative task. The reporting obligations are engaged when they carry out prescribed activities, including acting as a formation agent; acting as, or arranging another person to act as, a director or secretary of a company or a partner of a partnership; providing a registered office, business address, correspondence address or administrative address; acting as, or arranging another person to act as, a trustee; and acting as, or arranging another person to act as, a nominee shareholder. SSM states that the obligations operate at both individual and firm level where the gazetted activity is performed (SSM, 2023). This activity-based boundary is important because liability should not be assumed merely from holding a practising certificate.

The increasingly structured supervision of the company-secretarial sector is also evident from the Data and Compliance Report ("DCR") 2026. By a joint circular dated 30 June 2026, BNM and SSM required reporting institutions in the company-secretarial sector, at firm level, to make the applicable declaration or DCR submission through BNM's Dynamic Submission Portal during the prescribed reporting period (Bank Negara Malaysia & Companies Commission of Malaysia [BNM & SSM], 2026). The exercise operates both as a supervisory information-gathering mechanism and as a means of assessing institutional compliance with AML/CFT/CPF and targeted-financial-sanctions requirements. Significantly, the requirement applies by reference to the performance of gazetted activities for clients, while in-house company secretaries fall outside its scope. The DCR therefore illustrates the movement from general regulatory obligations towards more systematic and data-driven supervision of company secretarial reporting institutions (BNM & SSM, 2026).

The duties of prevention are extensive. Section 16 of AMLA and the BNM policy document requires a reporting institution to identify and verify customers and relevant persons, understand the purpose and intended nature of the relationship, identify beneficial owners and apply enhanced measures where higher risk exists. The SSM guideline supplements the sectoral expectations on know-your-customer procedures, sanctions screening, politically exposed persons, risk profiling, enhanced due diligence, on-going due diligence and management information systems (BNM, 2024; SSM, 2023). It follows that a secretary who considers incorporation to be a one-off filing exercise may not measure up to the norm. The relationship has to be evaluated over time, especially where there are changes in ownership, control, directors, business activities or transaction patterns.

Suspicious transaction reporting is central. Section 14(1)(b) requires reporting where the identity of a person, the transaction or activity, or surrounding circumstances give an officer or employee reason to suspect a connection with proceeds of unlawful activity, instrumentalities of an offence, terrorism financing or other covered risks. SSM's guideline requires an STR to be submitted through the Financial Intelligence and Enforcement Department's reporting system and, as a sectoral operational rule, ordinarily by the next working day after suspicion is formed (SSM, 2023). The duty is not displaced by contractual confidentiality. Section 20 overrides inconsistent secrecy restrictions, section 14A prohibits tipping off, and section 24 protects good-faith reporting from civil, criminal and disciplinary proceedings. These provisions seek to ensure prompt reporting while protecting both the investigation and the reporting professional.

Sections 13 and 17 require records that permit transactions and activities to be reconstructed, while section 18 addresses fictitious, false or incorrect customer names. Section 19 requires a compliance programme with internal policies, controls, training and compliance-management arrangements. The risk-based approach permits measures to be calibrated to the nature, size and risk profile of a practice, and SSM's guideline contains modifications for small secretarial firms. Nevertheless, "risk-based" does not mean optional: the firm must be able to show why its controls are appropriate and how it reached its risk decisions (BNM, 2024; SSM, 2023).

Act A1761 significantly strengthened this framework. Section 13 is amended to require recordkeeping for all domestic and international transactions or activities and records concerning persons purporting to act for

customers. The amendments to section 17 strengthen the requirements for reconstructing transactions and activities. Section 21 now confers supervisory rights of access to information and examination for compliance with Part IV as a whole. Most importantly for individual exposure, obligations and sanctions in several provisions including sections 13, 16, 17, 18 and 19, now explicitly extend to directors, officers or employees of a reporting institution. Under the amended section 83 directions, instructions, guidelines, circulars, standards specifications and requirements can be issued and an express obligation to comply is created, with a fine of up to RM1 million for contravention. New sections 83A, 83B and 83C provide for action plans, administrative action and civil action (Anti-Money Laundering (Amendment) Act 2025 (Act A1761); Lim & Siew, 2026).

AMLA duties operate alongside the beneficial-ownership obligations introduced into the Companies Act 2016 by the Companies (Amendment) Act 2024. Sections 60A to 60E establish the statutory framework for identifying, recording and maintaining beneficial-ownership information, including the powers to obtain information through statutory notices and the duties imposed on beneficial owners. SSM's revised 2025 beneficial-ownership guideline further requires companies to take reasonable steps to identify beneficial owners and to maintain supporting records. Importantly, paragraphs 48 to 51 expressly address verification obligations at both company and company-secretary level, while recognising circumstances in which verification already undertaken by the company need not be duplicated by the secretary. The framework therefore allocates related but distinguishable responsibilities to the company, its board, beneficial owners and company secretaries. The difficulty arises not from the absence of verification standards, but from determining the extent of each party's responsibility where information is incomplete, inconsistent or dependent upon foreign documents and representations that cannot readily be independently authenticated.

Section 593 of the Companies Act is especially serious. A person who makes or furnishes or knowingly authorises or permits the making or furnishing of, a statement, information or report to the Registrar that is false or misleading may face imprisonment of up to ten years, a fine of up to RM3 million, or both. Separately, failures to comply with beneficial-ownership duties can expose the company and its officers to statutory penalties. A practising secretary also faces regulatory consequences under the practising-certificate regime. SSM’s 2025 guideline requires reasonable diligence, verification of documents before submission and compliance with AMLA duties; it also introduced mandatory AML/CFT, counter-proliferation-financing and targeted-financial-sanctions training from 1 January 2026 (Companies Act 2016, s. 593; SSM, 2025b).

Legal Sources of Obligations and Allocation of Liability

The sources of company-secretarial liability must be distinguished according to their legal authority and effect. AMLA and the Companies Act 2016 create statutory duties and prescribe offences or other consequences where their requirements are breached. Subsidiary legislation operates pursuant to delegated legislative authority, while BNM and SSM instruments may impose binding requirements where the relevant statute authorises their issuance and requires compliance. In particular, amended section 83 of AMLA expressly requires compliance with instruments issued under that provision and provides a statutory penalty for contravention.

Nevertheless, the existence of an enforceable requirement does not mean that every breach automatically establishes personal criminal liability or professional misconduct. Each allegation must be assessed by identifying the applicable provision, the person subject to the duty, the conduct constituting the breach, any prescribed fault element and the available enforcement mechanism. Administrative action under section 83B must additionally be considered in light of its statutory requirements concerning proportionality, notice and written representations. Professional disciplinary proceedings involve a further and distinct inquiry into the member's conduct and fitness to practise under the relevant professional framework.

These procedural requirements show that the amended framework already contains safeguards against arbitrary administrative action. The issue addressed by this paper is whether those safeguards should be supplemented by clearer criteria for assessing culpability, previous sanctions and the cumulative proportionality of enforcement.

Legal provision or framework	Principal responsibility	Possible legal consequence
AMLA, ss. 13–19	Reporting institution and, where expressly provided, relevant directors, officers or employees	Criminal or other statutory consequences according to the provision breached
AMLA, s. 83	Persons subject to validly issued regulatory requirements	Statutory penalty for non-compliance with the relevant requirement
AMLA, ss. 83A–83C	Persons subject to regulatory enforcement under those provisions	Action plans, administrative action or civil proceedings
Companies Act, ss. 60A–60E	Company, relevant officers and beneficial owners according to the specific provision	Consequences under the relevant beneficial-ownership provisions
Companies Act, s. 593	Person who makes or furnishes, or knowingly authorises or permits, false or misleading information to the Registrar	Criminal liability where the elements of the offence are established
Companies Act, s. 241 and applicable SSM guidelines	Practising company secretary	Practising-certificate or other regulatory consequences, subject to the applicable powers
Professional disciplinary rules	Members of the relevant professional body	Disciplinary proceedings and sanctions under the body's governing rules

The matrix presents that the existence of a professional obligation does not, by itself, determine the person liable or the applicable sanction. The relevant statutory provision must first be identified, followed by the person upon whom the duty is imposed, the conduct constituting the alleged breach and any applicable mental element. Regulatory and professional consequences must then be assessed separately according to their governing legal frameworks. This distinction is particularly important where an institutional compliance failure involves several individuals with different levels of responsibility and authority.

LITERATURE REVIEW

The literature on anti-money laundering and counter-financing of terrorism regulation is broadly supportive of the role of professional gatekeepers but raises questions about the extent to which private professionals should be expected to do functions traditionally performed by public enforcers. Levi (2002) conceptualises money-laundering control as a regulatory project the effectiveness of which depends not simply on criminalisation, but on the ability of institutions and intermediaries to identify, assess and communicate risk. Verhage (2009) similarly shows that AML regulation has led to a large compliance industry where regulated entities may choose to concentrate on auditable procedures and demonstrable compliance rather than actual crime-control outcomes. Such observations are particularly pertinent when considering professional intermediaries as the effectiveness of regulation is not only a matter of imposing duties but also of the quality of judgments made when those duties are operationalised.

Research on lawyers and other professional advisers reveals a similar tension between their professional service and regulatory responsibilities. Middleton and Levi (2015) demonstrate that professional services can be involved in organized crime, either knowingly or unwittingly, but also stress the need to distinguish

between complicit professionals and those who are duped by clients. Svedberg Helgesson and Mörth (2018) demonstrate how AML obligations can reconfigure professional identity, as advisers must simultaneously preserve client relationships and treat those clients as potential sources of regulatory risk. Recent comparative scholarship continues to explore the difficulties created when AML obligations interact with professional privilege, independence and confidentiality (Chaikin, 2025; Nicolas, 2025). Company secretaries do not enjoy legal professional privilege as advocates and solicitors do, but the wider literature is relevant, as company-secretarial work is also based on ongoing relationships, access to information provided by clients and professional judgment. The literature suggests that the legitimacy of gatekeeper regulation cannot be assessed simply by asking whether professionals should be subject to AML obligations, but also by asking how responsibility is distributed, what information professionals may reasonably be expected to obtain, and whether liability is commensurate with their authority and culpability.

Malaysian scholarship has long identified both doctrinal and practical difficulties within the domestic AML framework. Hamin, Omar and Wan Rosli (2016), examining earlier iterations of Malaysia's AML legislation, identified continuing instrumental and normative deficiencies notwithstanding the country's formal alignment with international AML standards and argued for further legal and institutional reform. Subsequent empirical studies of lawyers found limited awareness of AML obligations, perceptions of onerous compliance and tension between reporting duties, confidentiality and professional relationships (Hamin, Othman, & Kamaruddin, 2016; Hamin, Othman, & Kamaruddin, 2017; Kamaruddin & Hamin, 2019). Research on customer due diligence likewise indicates that formal AML requirements may encounter practical difficulties at the point of implementation (Hamin, Kamaruddin, & Othman, 2017). More recent work involving professional accountants identifies compliance as influenced by institutional, professional and operational factors rather than simply by the existence of statutory penalties (Ahmad Tarmizi et al., 2023). Tarmizi et al. (2023) also examine the tension between AMLA compliance and confidentiality of client information. Taken together, these studies suggest that effective AML regulation depends not merely upon the breadth of statutory obligations, but also upon regulatory clarity, institutional capacity and the practical circumstances in which professional gatekeepers are expected to comply.

The most directly relevant Malaysian study is Kamaruddin, Tahir, Othman and Kamaruddin (2025), which examines corporate gatekeepers, including company secretaries. The study identifies legal, technical and operational challenges in complying with the AML regime, including fragmented understanding, resource limitations, difficulties in identifying beneficial owners and client resistance. Its significance for the present study lies in demonstrating that regulatory effectiveness depends not only upon deterrence but also upon institutional capability. This is particularly important in the company-secretarial sector, which includes both larger corporate-service providers with specialised compliance infrastructure and smaller firms or sole practitioners operating with substantially fewer resources.

A related body of literature concerns customer due diligence, beneficial-ownership transparency and suspicious transaction reporting. Malaysian research indicates that CDD and reporting obligations require regulated actors to make evaluative judgments rather than merely complete mechanical checks (Hamin, Kamaruddin, & Othman, 2017; Jamil et al., 2024). Research concerning money-laundering risk in the Labuan International Business and Financial Centre similarly demonstrates the continuing importance of ownership structures and risk assessment in environments involving international corporate arrangements (Sulaiman @ Mohamad, Tajuddin, & Wahid, 2025). Comparative research concerning the United Kingdom's People with Significant Control register further illustrates that the creation of a beneficial-ownership register does not itself eliminate anomalies, complex structures or difficulties associated with identifying the person who ultimately owns or controls a legal entity (Jofre, Kiepe, & Knobel, 2026). These studies are relevant to company secretaries because verification frequently depends upon information supplied by clients, corporate registries and third parties. They therefore support an important distinction between imposing a duty to undertake reasonable verification and treating the professional as a guarantor of the ultimate accuracy of beneficial-ownership information.

Suspicious transaction reporting creates a comparable exercise of professional judgment. The reporting obligation is necessarily preventive and operates before unlawful conduct has been conclusively established.

Research into suspicious transaction reporting decisions in Malaysia indicates that reporting behaviour may be influenced by knowledge, organisational processes and the practical context within which suspicion is assessed (Jamil et al., 2024). Comparative scholarship on suspicious activity reporting also cautions that institutional culture may affect the effectiveness of reporting regimes (Loh, 2021). This literature supports the proposition that effectiveness should not be measured solely by the volume of reports submitted. A regime may generate defensive reporting if regulated professionals perceive that reporting whenever doubt arises is institutionally safer than exercising judgment over whether the statutory threshold for suspicion has genuinely been reached.

Risk-based regulation therefore occupies a central position in the literature. FATF's guidance for trust and company service providers similarly recognises that AML/CFT measures should reflect the nature, scale and complexity of professional services and the risks associated with the particular business relationship (FATF, 2019). Its principal justification is that preventive measures should correspond to the nature and degree of identified risk rather than impose identical compliance requirements upon every customer and every reporting institution. Goldbarsht and Sheedy (2024), examining the Australian context, critically analyse the difficulties inherent in applying a risk-based AML approach. The discretion created by risk-based regulation may improve proportionality, but it can also produce uncertainty because regulated actors must translate broad regulatory concepts into operational decisions. Where the consequences of underestimating risk are severe, institutions may rationally respond through more conservative classifications, additional documentation or avoidance of customers perceived to present compliance difficulty.

This problem is particularly significant for smaller professional firms. Malaysian studies across legal, accounting and corporate-gatekeeper settings identify compliance costs, limited specialist knowledge and resource constraints as recurring difficulties. The issue is not whether smaller practices should be exempt from AML duties, but whether equivalent regulatory outcomes can be achieved through measures proportionate to their size, resources and actual risk exposure. A risk-based framework loses part of its justification if, in practice, every reporting institution is expected to maintain the infrastructure of a large multidisciplinary firm regardless of the nature and complexity of its business.

The literature on de-risking illustrates a further unintended consequence of regulatory uncertainty. Halim and Basu (2024), examining customer due diligence and financial inclusion in Malaysia, address the tension between regulatory controls and access to financial services. Although evidence derived from banking and financial inclusion cannot be treated as direct evidence that Malaysian company secretaries engage in equivalent behaviour, it provides a useful conceptual comparison. When the perceived regulatory cost of managing a customer becomes excessive, a regulated institution may prefer to avoid the relationship altogether rather than undertake an individualised assessment. In the company-secretarial context, similar incentives could theoretically encourage categorical treatment of foreign clients, complex ownership structures or customers connected with higher-risk jurisdictions. Such conduct would be difficult to reconcile with the underlying logic of genuinely risk-based regulation.

A further strand of literature concerns the relationship between institutional and individual responsibility. The potential consequences of AML obligations for individuals within reporting institutions have also been recognised in Malaysian scholarship. Rahman and Abdul Wahab (2022), examining AML obligations imposed on bankers, explain that regulatory non-compliance may have consequences extending beyond institutional penalties to the individual professional, including termination of employment. Although bankers operate within a different regulatory and institutional context from company secretaries, the study illustrates a broader concern relevant to professional gatekeepers: obligations formally imposed upon a reporting institution may generate significant personal consequences for individuals responsible for their implementation. Comparative scholarship has similarly examined when deficiencies in organisational AML systems should translate into personal liability for directors and other responsible individuals. Goldbarsht (2025), for example, considers the adaptation of director liability to contemporary AML/CTF compliance in Australia. The issue is important because AML compliance is ordinarily operationalised through policies, compliance officers, delegated responsibilities, technological systems and internal escalation mechanisms. Personal accountability may be justified where an individual knowingly or recklessly permits serious

deficiencies to continue. It becomes more difficult to justify where a failure results principally from institutional systems, inadequate resources or decisions lying outside the individual's authority. The literature therefore supports closer attention to decision-making power, knowledge, control and culpability when organisational compliance duties are translated into personal liability.

The 2025 FATF–Asia/Pacific Group mutual evaluation provides the most substantial recent empirical context specifically concerning the Malaysian company-secretarial sector. It classifies company secretaries as a medium-high-risk sector and identifies exposure to misuse involving fraud, corruption and organised crime. The evaluation records stronger risk understanding among larger firms than smaller practices and identifies weaknesses involving enhanced due diligence, risk profiling, record keeping and verification of foreign beneficial ownership. It also reports that sectoral assessments have sometimes relied upon generic risk templates rather than sufficiently tailored evaluations (FATF & APG, 2025). These findings provide empirical support for continued regulatory intervention while simultaneously demonstrating that the quality of compliance cannot be inferred merely from the existence of formal policies.

The same evaluation identifies an effectiveness gap. The FATF–APG evaluation identified 68 higher-risk company-secretarial reporting institutions, of which 11 were subject to on-site inspections during the relevant reporting period. These figures must be understood within the supervisory authority's risk-based inspection programme rather than treated as evidence that all institutions were intended to be inspected. The onshore company-secretarial population was approximately 3,652, yet only 11 on-site inspections were undertaken during 2024 to February 2025 among institutions identified as presenting higher risk. Broader beneficial-ownership inspections covered less than 0.3 per cent of the company population between 2022 and 2024, while STR submissions by company secretaries remained comparatively limited notwithstanding an increase in 2024 (FATF & APG, 2025). These findings reinforce the dual nature of the regulatory problem. Company secretaries occupy a genuine gatekeeping position capable of being misused for illicit corporate structures, but regulatory effectiveness also depends upon supervision, professional capability, access to reliable information and meaningful regulatory feedback.

The literature therefore reveals an important gap. Malaysian scholarship has established that professional gatekeepers encounter practical, financial and ethical difficulties in implementing AML obligations, while comparative scholarship has examined risk-based regulation, beneficial-ownership transparency, personal accountability and the unintended consequences of defensive compliance. Direct scholarship concerning Malaysian company secretaries nevertheless remains limited, and substantial parts of the available evidence derive from lawyers, accountants, financial institutions and other reporting entities. More importantly, existing scholarship has not systematically examined the combined effect of the individual responsibilities introduced by the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment) Act 2025, the Companies Act beneficial-ownership regime, regulatory instruments issued by BNM and SSM, and recent enforcement specifically affecting Malaysian company secretaries. Nor has sufficient attention been given to the point at which legitimate gatekeeper accountability may become insufficiently clear, disproportionate or detached from individual culpability. This paper addresses that intersection.

Bases and Forms of Company Secretarial Liability

A company secretary may face at least four overlapping forms of exposure. The first is criminal liability under AMLA. Failures involving STRs, due diligence, record keeping, false customer information, compliance programmes or binding regulatory requirements may constitute offences where the relevant statutory elements are proved. The second is administrative or civil action under the strengthened post-2026 regime. Sections 83A to 83C permit action plans and public-law enforcement without relying exclusively on prosecution. This can improve responsiveness, although procedural transparency is essential because administrative sanctions may carry severe reputational and commercial consequences.

The third form is liability under the Companies Act, particularly for false or misleading information and failures in beneficial-ownership compliance. Section 593 of the Companies Act criminalises the making or furnishing of false or misleading information to the Registrar and separately refers to knowingly authorising

or permitting such information to be made or furnished. The express reference to knowledge is attached to the latter form of conduct. The fault element applicable to each form of conduct must therefore be considered by reference to the statutory wording and applicable principles of criminal interpretation, rather than assuming that every inaccurate filing automatically establishes an offence or that proof of actual knowledge is expressly required in every case. Nevertheless, a company secretary's operational role in preparing, verifying and lodging corporate information may place the secretary close to the circumstances giving rise to an alleged breach. This reinforces the importance of identifying the particular conduct, statutory elements and individual responsibility before liability is imposed. Sections 60B to 60D distribute duties among the company, officers, members and beneficial owners, but the secretary's operational control of the register and lodgement process places the secretary close to the point of breach.

The fourth form is professional discipline. A practising certificate may be suspended or revoked by the Registrar, while a practising secretary who qualifies through membership of an approved professional body may also be subject to that body's own ethical and disciplinary framework. Such bodies include the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA), the Malaysian Institute of Accountants (MIA), the Malaysian Bar and the Malaysian Association of Company Secretaries (MACS). For example, MAICSA requires its members to observe standards of professional competence, integrity, due diligence and compliance with applicable laws and regulations, while MIA members are subject to its By-Laws on professional ethics, conduct and practice and may face investigation and disciplinary proceedings for professional misconduct. Advocates and solicitors are separately subject to the disciplinary framework established under the Legal Profession Act 1976, while MACS maintains its own disciplinary machinery for members. SSM's 2025 practising-certificate guideline similarly links professional competence to reasonable diligence, document verification and AMLA compliance. Professional discipline may therefore operate alongside statutory enforcement rather than as an alternative to it. Although such action may be justified even where conduct does not warrant criminal punishment, cumulative proceedings may become disproportionate where the same conduct results in an AMLA penalty, liability under the Companies Act, loss of a practising certificate and separate professional disciplinary consequences without a coherent account of how those sanctions interact.

The appropriate fault standard depends upon the nature of the statutory duty. There is no question that someone deliberately helping to hide a beneficial owner is culpable. Severe action may be justified if a nominee director is recklessly accepted who knows nothing about the company. Failure to maintain controls through negligence may result in regulatory remediation or an administrative penalty. Facilitation should not be equated with a reasonable failure to detect sophisticated forgery following documented verification. The major issue is that the amended Act explicitly imposes a number of duties on individual officers and employees while some operational details are spelled out in policies and guidelines. Liability becomes excessive when the legal system fails to distinguish between these levels of fault.

The distinction between institutional failure and individual culpability is also supported by comparative AML scholarship. Goldbarsht (2025), in examining contemporary director liability for AML/CTF compliance, highlights the increasing use of personal accountability within regulatory systems traditionally directed at institutional compliance. The relevance to the Malaysian company-secretarial context lies not in equating directors with company secretaries, but in the underlying allocation problem: an organisational breach does not necessarily establish that every individual involved in the compliance process bears equivalent responsibility. Where duties are performed through delegated procedures, compliance officers, screening systems and internal escalation mechanisms, personal liability should reflect the individual's authority, knowledge and ability to prevent or correct the deficiency. This supports a fault-sensitive approach under which deliberate facilitation, wilful blindness and serious recklessness remain distinguishable from negligent system failure or a reasonable inability to detect client deception.

The concept of "reason to suspect" in section 14 is intentionally lower than proof of criminality. An STR is not an accusation, and a secretary is not required to establish the predicate offence. Suspicion should arise from an assessment of objective facts, professional knowledge and red flags, such as unexplained foreign control, a director who cannot describe the business, inconsistent identity documents, rapid changes in

ownership, unusual nominee arrangements or resistance to providing source-of-funds information. Yet hindsight is dangerous. Once criminal activity is discovered, a regulator may regard earlier facts as obvious even though they were ambiguous when presented. Fair enforcement should therefore examine what the secretary knew, what checks were reasonably available and whether the decision was contemporaneously documented.

Section 24's good-faith protection is important but incomplete as a safeguard. It protects reporting, not necessarily the failure to report where suspicion was genuinely but reasonably not formed. Section 581 of the Companies Act allows a court, in certain proceedings for negligence, default or breach of duty, to relieve an officer who acted honestly and reasonably and ought fairly to be excused. Its availability depends on the nature of the proceeding and should not be assumed to displace specific criminal liability. A clearer AMLA-specific reasonable-steps defence would provide greater certainty.

Case Law and Enforcement Experience

Reported Malaysian AMLA case law is voluminous on substantive laundering, freezing and forfeiture but offers little guidance on a company secretary's preventive duties. For example, Public Prosecutor v. Kuala Dimensi Sdn Bhd & Ors [2021] 2 MLJ 469 involved the evidential requirements for forfeiture under section 56. The Federal Court said the prosecution must establish the necessary link between the property and unlawful activity. The decision shows the judicial insistence on statutory proof even in a strong enforcement regime, but does not interpret customer due diligence, STR thresholds or the conduct of company secretaries.

As of 1 October 2026, there does not seem to be any reported appellate judgment which addresses the issue of the interpretation of Part IV liability in relation to a Malaysian company secretary in detail. However, the available regulatory materials suggest that AML/CFT obligations are actively enforced in the company-secretarial sector.

BNM had taken enforcement action against Ilham Secretarial Services and Boardroom Corporate Services Sdn Bhd in January 2026. Ilham was compounded RM8,625 for not filing a suspicious transaction report within a reasonable time when irregular transactions were detected during an on-site examination (BNM, 2026b). Boardroom Corporate Services Sdn Bhd was compounded RM46,000 for failures relating to the timely submission of a STR and the performance of enhanced due diligence in respect of higher-risk customers, including customers receiving nominee services (BNM, 2026a). The significance of these actions is that they show enforcement not only against the intentional facilitation of illegal activity, but also against deficiencies in preventive compliance systems and professional judgment.

The latest case of individual prosecution involving a company secretary is the joint BNM-SSM action announced in May 2026. The public notice and a Bernama report said Ardzlyn Hawatul Yuhanis Uyob @ Ayob, through Continuum Corporate House Sdn Bhd, had failed to submit two STRs on foreigners linked to two companies. SSM separately found that false information had been given in relation to the appointment of a foreign director and revoked her practising certificate. On 10 December 2025, she was charged with two offenses under section 86 read with section 14(1)(b) of AMLA and the relevant policy document, and two offenses under section 593(b) of the Companies Act. She entered a plea of guilty on 15 April 2026 and was fined RM50,000 in total. As the charges were filed in December 2025, the matter arose under the pre-Act A1761 framework and does not judicially test the amended provisions that started in March 2026.

The significance of the Ardzlyn case is the connection of the two aspects of the gatekeeper liability, failure to report suspicion and submission of false corporate information. It makes it clear that AMLA compliance will not be an educational aspiration for regulators. But a guilty plea generally does not result in a fully reasoned judgment on the boundaries of suspicion, the significance of adequate verification, the relationship between personal and firm liability, or the degree to which reliance on client documents is reasonable. It should thus be understood as an enforcement signal rather than a binding doctrinal test.

The enforcement materials collectively disclose a continuum of regulatory responses, from monetary settlements for preventive-compliance deficiencies, to prosecution and professional revocation where failures overlap with inaccurate corporate filings. This is relevant to the proportionality inquiry developed below: the Malaysian framework already has elements of graduated enforcement, although the limited publication of detailed reasoning makes it difficult to determine consistently how culpability, remediation, firm size and seriousness influence sanction selection.

The absence of reported reasons has wider implications. Professionals have very little judicial guidance regarding borderline cases, and regulators may have access to confidential supervisory facts that are unavailable to the market. This can lead to defensive practice – extensive de-risking, turning away foreign clients, over-demand for documents, or STRs raised purely to avoid criticism. Clear anonymized enforcement summaries and, where prosecution occurs, reasoned sentencing or agreed-facts documents would enhance consistency without undermining intelligence.

Regulatory Compliance or Regulatory Overreach?

The following analysis applies the five evaluative criteria identified earlier to the Malaysian regulatory framework. The assessment begins by considering whether the preventive duties imposed on company secretaries serve a legitimate regulatory purpose and are suitable for addressing identified money-laundering risks. It then examines legal certainty, proportionality, the allocation of responsibility and procedural fairness through eight areas of concern: fragmented regulatory guidance, small-firm compliance burdens, beneficial-ownership verification, individual liability, cumulative sanctions, confidentiality obligations, STR reporting infrastructure and defensive compliance. Although these concerns overlap, they provide a practical basis for assessing whether the design and enforcement of the framework remain proportionate to its preventive objectives.

The case for robust regulation is strong. Company secretaries offer the access to legal personality and public credibility of a registered entity. Their services can act as a buffer between the businessperson and the documents that are available to the outside world. The FATF–APG finding that the sector is medium-high risk, as well as misuse in fraud and corruption, make a purely self-regulatory approach unfeasible (FATF & APG, 2025). Transparency about beneficial ownership will also not work if the professional charged with maintaining the register ignores contradictions or takes nominees at face value.

Nor is the duty of reporting any less defensible. Secretaries may spot non-financial indicators which banks cannot see: a proposed director who does not know of the appointment; instructions made entirely by an undisclosed intermediary; shareholders who will not accept direct contact; a registered office which is used for many unrelated foreign-controlled companies; or repeated changes designed to obscure control. The prompt STRs mean that this intelligence is in a form which is amenable to analysis by the competent authority. The spike in secretarial STRs in 2024 may reflect greater awareness. However, volume is less important than report quality and operational usefulness.

The first concern of overreach is, however, legal certainty. The standard is scattered across AMLA, amendments, BNM policy, SSM guidelines, beneficial-ownership guidance, practising-certificate conditions and regulatory notices. Where BNM and SSM requirements differ, the SSM 2023 guideline states that the more stringent requirement should be applied. Act A1761 amended the statute and expanded section 83 so that non-compliance with a direction, instruction, guideline, circular, standard, specification or requirement could attract substantial liability. Soft law can be a useful way of interpreting a statute, but penalties should not be dependent on vague or inconsistent language in instruments that are often revised and drafted for different sectors. Legally binding provisions should at least be clearly identified and differentiated from recommended good practice.

This concern is only exacerbated by the timing and the continuing fragmentation of the applicable guidance. SSM's publicly available sector-specific AMLA guideline for company secretaries was issued in December 2023, while BNM's AML/CFT/CPF and TFS Policy Document was updated in February 2024 and Act A1761

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came into force on 1 March 2026. As of 1 October 2026, SSM continued to consider the December 2023 guideline as the relevant sector-specific guidance for company secretaries, while BNM continued to consider its February 2024 policy document as the relevant DNFBP (Designated Non-Financial Businesses and Professions) framework. Both instruments remain operationally useful, but neither had been replaced by a consolidated post-amendment instrument that expressly incorporated the terminology, expanded obligations and enforcement architecture introduced by Act A1761, including the new restricted-activity-financing provisions. Practitioners should not have to guess, based on a number of instruments issued at different points in the regulatory framework, which provisions are still in effect or how the amended statutory requirements apply in ordinary secretarial practice. The fact that this harmonization gap persisted after the amendment came into force increases the risk of interpretive inconsistency and unintentional breach and makes a stronger case for consolidated post-amendment guidance.

The second problem is one of proportionality for small firms. A large multi-disciplinary practice may be able to support specialist screening software, independent compliance review, secure record-management systems and dedicated compliance staff. The basic statutory duties that a sole practitioner or small secretarial firm has to perform are essentially the same but with far fewer resources. The identification of cost, limited specialist knowledge, technological constraints and organizational capacity as factors affecting compliance in Malaysian research involving professional reporting institutions is repeated. Comparative scholarship on the risk-based approach also cautions that regulatory discretion does not necessarily result in proportionality; when broad expectations are paired with severe consequences for under-compliance, regulated actors may react with more conservative and resource-intensive controls (Goldbarsht & Sheedy, 2024). Therefore, FATF's finding that smaller Malaysian company-secretarial firms exhibit weaker risk understanding should not be conflated with a lack of willingness to comply. Where risk-based requirements in effect require enterprise level systems regardless of a firm's size, complexity and true exposure, regulation becomes disproportionate. The right goal is equal regulatory outcomes, not necessarily identical compliance infrastructure.

The practical difficulty faced by smaller firms is supported by the FATF–APG 2025 mutual evaluation, which identifies weaker internal controls and more limited access to comprehensive training among smaller DNFBPs. The evaluation also records concerns that certain supervisory reporting templates do not adequately reflect differences between professional sectors. These findings suggest that differences in compliance capability may arise from institutional resources and the design of regulatory requirements, rather than deliberate unwillingness to comply. They do not, however, justify a general reduction in preventive obligations. Instead, they support proportionate implementation, clearer sector-specific guidance and regulatory assistance directed towards weaknesses that affect the quality of AML/CFT compliance.

The third concern is the reliability of information on beneficial ownership. Malaysian and comparative literature shows that beneficial ownership transparency remains elusive even with formal disclosure and verification mechanisms in place. Studies on complex corporate structures and high-risk business environments indicate continuing difficulties in pinpointing ultimate ownership. A recent examination of the United Kingdom's People with Significant Control register demonstrates enduring anomalies within a mature beneficial-ownership framework (Sulaiman @ Mohamad et al., 2025; Jofre et al., 2026). This does not detract from the importance of verification. Rather, it indicates that the presence of a registry or documentary trail does not necessarily imply substantive accuracy.

In Malaysia, the ultimate responsibility for obtaining and maintaining beneficial-ownership information rests with the company and its board, with the company secretary typically performing the day-to-day operational functions of keeping and lodging such information. A secretary can serve statutory notices, examine identity documents, cross-check corporate records, investigate discrepancies and demand explanations. But the secretary cannot demand a foreign registry to respond, independently check every foreign trust or corporate instrument, or find an undisclosed informal controller in the absence of relevant evidence. The literature thus supports a distinction between a duty to perform reasonable checks and a duty to assure the truth of information supplied by others. Liability should be attached essentially to the adequacy of the steps reasonably available at the material time rather than the mere later discovery of the inaccuracy of information.

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The practical limitations of verification must also be assessed against the existing statutory framework for access to beneficial-ownership information. The Companies (Access to the Register and Information Relating to Beneficial Ownership) Regulations 2025 distinguish access to the register maintained by a company from access to beneficial-ownership information lodged with the Registrar. In particular, regulation 4 provides a mechanism through which eligible reporting institutions may obtain beneficial-ownership information from SSM, subject to the prescribed requirements. Accordingly, the difficulty faced by company secretaries should not be characterised as a complete absence of legal access to beneficial-ownership information. Rather, the concern is whether the available mechanisms provide sufficiently timely, reliable and practical access to support the verification expected of reporting institutions, particularly where ownership structures involve foreign entities or information beyond the Malaysian registry.

SSM's revised 2025 beneficial-ownership guideline also recognises the importance of documented reasonable verification. Paragraphs 43 to 47 address circumstances in which a beneficial owner cannot be identified despite reasonable measures, while paragraphs 54 to 56 require supporting records, including statutory notices and responses, to evidence the steps undertaken. The issue is therefore not whether Malaysian law recognises reasonable enquiries, but whether those requirements provide sufficient certainty about the limits of professional responsibility and the circumstances in which liability may arise despite documented compliance efforts.

Fourth, individual liability must be sensitive to fault. Act A1761 explicitly assigns several duties to officers and employees. This would close a possible accountability gap where a firm blames failure on an abstract corporate system. But the word “officer” can refer to people with varying degrees of authority, expertise, and resources. A junior employee who adhered to procedure, a compliance officer who continuously warned management, and a proprietor who knowingly ignored red flags should not all be treated equally. The enforcement policy should assign responsibility by reference to decision-making power, actual knowledge, recklessness, control over the deficient system and response to escalation.

Fifth, cumulative sanctions can be too much. The same underlying conduct can give rise to AMLA prosecution, administrative monetary penalties, civil proceedings, liability under the Companies Act, practising-certificate action and separate professional discipline. The constitutional ban on double jeopardy does not necessarily bar these different kinds of regulatory action because professional and administrative proceedings may have goals other than criminal punishment. For example, professional discipline may rightly consider whether a person remains fit to practise after a criminal court has imposed sentence. Act A1761 itself provides for overlapping enforcement mechanisms: sections 83A to 83C maintain administrative and civil action notwithstanding the availability or commencement of prosecution. Overlap is not inherently unjust, but a function of different regulatory purposes. The problem is when more than one body imposes punitive consequences for substantially the same culpability regardless of sanctions already imposed. Any subsequent regulator or professional body should be required to consider the previous final criminal sentences for the same underlying conduct, identify the distinct regulatory purpose served by further action and explain why the combined outcome remains proportionate. If additional monetary penalties are imposed, they should not simply replicate punishment already imposed by the court. Suspension or revocation of professional status should not be justified by a desire to punish the individual again, but primarily by public protection, professional fitness or the risk of recurrence. A transparent totality analysis would limit the risk of cumulative over-punishment while preserving legitimate professional regulation.

Sixth, confidentiality and tipping-off rules create operational difficulties. A secretary asking for clarification should ask enough questions to do due diligence without mentioning that a STR is being considered or filed. A professional may also be faced with the decision to resign, to continue with basic statutory services or to refuse further instructions. Literature on lawyers demonstrates how reporting may break trust and create ethical uncertainty (Kamaruddin & Hamin, 2019; Tarmizi et al., 2023). Sector-specific examples are required by company secretaries of permissible inquiries, conduct after reporting, access to records, resignation and communications with directors.

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Seventh, the effectiveness of the STR obligation depends also on the accessibility and usability of the reporting infrastructure provided by the competent authority. BNM currently accepts completed STR forms by email, post or through the Financial Intelligence System ("FINS"), where applicable, and encourages reporting institutions to use FINS as its electronic reporting platform (BNM, n.d.-b). FINS 2.0 has real governance and confidentiality controls including prior approval of access, user activation, two-factor authentication and differentiated user roles . BNM's published guidance states that first time access can be a multi-stage process, and that approval can take up to 30 days (BNM, n.d.-a). This is despite the expectation that a STR is to be submitted by the next working day once suspicion has been formed. Alternative channels for submission reduce the immediate risk of delayed reporting. However, the simultaneous existence of manual and electronic channels may create uncertainty for occasional users as to which channel is preferred or required. An anonymised practitioner experience in May 2026 illustrates this concern. A completed STR was initially submitted by email and acknowledged by BNM, after which the reporting institution was encouraged to obtain FINS access for future submissions.[1] Although this single experience cannot establish that the platform creates difficulties across the sector, it demonstrates the importance of clear reporting procedures and accessible technical support, particularly for smaller firms that may submit STRs infrequently. The problem is not to remove appropriate security controls, but to make it as easy as reasonably possible to comply with the regulatory infrastructure. Where the competent authority expects smaller firms to have effective AML systems in place and to comply with reporting obligations in a timely manner, it should provide an intuitive, well explained and easily accessible reporting mechanism.

Eighth, enforcement regimes may produce formal rather than effective compliance. Generic risk assessments, repeated document requests and indiscriminate high-risk classifications may be easy to audit but do not necessarily improve the detection of suspicious activities. Verhage (2009) describes the compliance industry and warns that organizations may focus on procedures that can be demonstrated, rather than substantive intelligence. A regulator using STR counts or checklist completion as a measure of success may incentivize defensive reporting. Instead, effectiveness should be measured in terms of the relevance, timeliness and intelligence value of reports, if beneficial-ownership discrepancies are resolved and if firms improve after supervision.

This is consistent with the literature that has warned that risk sensitive regulation can induce defensive behaviour in cases where regulated institutions believe that the cost of underestimating risk is higher than the cost of unnecessary compliance. Goldbarsht and Sheedy (2024) demonstrate the difficulties of operationalizing broad risk-based expectations and Halim and Basu (2024) show the broader tension between intensive customer due diligence and exclusionary outcomes in the financial-services context. Even though the evidence from banking does not prove that Malaysian company secretaries will do the same, the underlying incentive is relevant. A professional confronted with uncertain liability may rationally react by over-documentation, unnecessarily high-risk classifications or avoidance of customers more costly to assess.

The same distinction is further highlighted in FATF's statement on jurisdictions under increased monitoring issued in June 2026, which is later incorporated in BNM's revised notification on FATF statements issued in July 2026. The FATF makes it clear that increased monitoring does not necessarily mean that enhanced due diligence is required and that the FATF standards do not provide for de-risking whole categories of customers (FATF, 2026; BNM, 2026d). In a company secretarial context, foreign nationality, foreign incorporation or a link with a monitored jurisdiction should be risk assessment factors and not grounds for automatic refusal. Higher risk factors should not be ignored. The point is that categorical defensive compliance may be as inconsistent with a genuinely risk-based regime as inadequate due diligence.

Applying the five criteria adopted in this study, the Malaysian framework is generally justified in its regulatory purpose and suitability, but concerns remain regarding the legal certainty, proportionality, allocation of responsibility and procedural fairness of particular compliance and enforcement requirements. The identified

[1] Correspondence between a reporting institution and Bank Negara Malaysia concerning a suspicious transaction report submitted in May 2026 (unpublished correspondence, on file with the authors; identifying information withheld).

risk profile and access to corporate information call for preventive duties, meaningful supervision and effective sanctions in the company-secretarial sector's gatekeeping function. Nor does the literature provide any persuasive basis for exempting professional gatekeepers on the grounds that compliance is expensive or operationally difficult. The concern is rather how legitimate obligations are translated into liability; Overreach can occur where ambiguous regulatory instruments impose severe penalties, where an incorrect result is taken as sufficient evidence of unreasonable conduct, where nominally risk-based requirements do not take account of substantial differences in institutional capacity and real risk, where personal accountability is separated from authority, knowledge and blame, or where aggregate penalties lack sufficient proportionality. Therefore, more stringent supervision and enforcement does not necessarily imply regulatory overreach. Instead, they increase the stakes on getting right the obligations that are overseen and enforced – that they are clear, proportionate, truly risk-based and properly calibrated to individual responsibility.

REFORM PROPOSALS

First, AMLA should be amended to provide a carefully defined reasonable-steps defence for professional gatekeepers in relation to specified preventive-compliance obligations. The defence should recognise that company secretaries are required to undertake reasonable risk-based enquiries but cannot guarantee the accuracy of every representation or document supplied by clients. Protection should be available where the individual demonstrates a genuine and objectively reasonable attempt to comply with the relevant obligation, having regard to the nature of the service, identified risk, information reasonably accessible at the material time and the individual's authority and responsibilities.

To rely on the proposed defence, the individual should be required to produce contemporaneous evidence of the steps undertaken. Such evidence may include customer identification and verification records, beneficial-ownership enquiries, statutory notices and responses, screening results, risk assessments, internal escalation records, explanations obtained from clients and documented reasons for relevant compliance decisions. The adequacy of those steps should be assessed objectively, taking account of any warning signs that would reasonably have required further enquiry. Mere completion of a checklist should not be sufficient where material inconsistencies were ignored.

The proposed defence should not apply to deliberate misconduct, wilful blindness, recklessness or a conscious failure to submit an STR despite the relevant suspicion having been established. Nor should it operate as a general exemption from mandatory statutory duties. Rather, it should provide a defined protection against liability arising from the reasonable inability to identify concealed or misleading information despite appropriate preventive measures. The availability of the defence should be determined by the court under the relevant statutory provision, while documented compliance efforts should also be expressly recognised as relevant mitigating factors in administrative enforcement. This would preserve accountability for genuine misconduct while reducing the risk that reasonable professional conduct is judged unfairly with the benefit of hindsight.

Additionally, the proposed defence should be distinguished from existing statutory safeguards. Section 24 of AMLA protects specified good-faith reporting conduct, while section 83A(1) recognises the absence of a reasonable excuse as a condition relevant to the imposition of an action plan following non-compliance with an AMLA obligation. The SSM beneficial-ownership framework also recognises reasonable verification measures and supporting documentary evidence. These protections, however, do not necessarily provide a general defence for a company secretary who has undertaken reasonable preventive measures but remains exposed to liability following the discovery of inaccurate information. The proposed reform would therefore supplement, rather than duplicate, existing safeguards. Its application should be confined to clearly identified statutory breaches and should not extend to offences involving deliberate dishonesty or other culpability inconsistent with reasonable professional conduct.

For greater legislative certainty, the proposed defence should identify the specific AMLA obligations to which it applies. Its principal application should be confined to appropriate preventive-compliance duties, particularly customer identification and verification under section 16, record-keeping obligations under

sections 13 and 17, and compliance-programme requirements under section 19, to the extent that liability arises from a failure to take objectively reasonable preventive measures. It should not operate as a general defence to every offence under AMLA, nor should it excuse deliberate concealment, knowingly false information, wilful blindness, reckless disregard of identified risks or a failure to report where the statutory threshold for suspicion has been established. The precise statutory scope and interaction with existing offence provisions would require legislative drafting to ensure that the defence does not undermine mandatory reporting or other enforcement obligations.

Secondly, BNM and SSM should publish a responsibility matrix, which sets out the duties of the client company, board, beneficial owner, practising secretary, secretarial firm, senior management and compliance officer. The matrix should include common scenarios such as outsourced secretarial services, group-wide compliance systems, nominee appointments, foreign corporate shareholders and the use of third-party verification. A clear division of responsibility would prevent directors passing on their statutory duties to the secretary and would help regulators to pinpoint who was really to blame when things went wrong.

Third, the 2023 SSM guideline and 2024 BNM policy should be consolidated or explicitly updated for Act A1761. The revised instrument should distinguish between requirements that are legally binding, evidential indicators of reasonable practice and recommendations. It should explain the enhanced definition of "activity", the new restricted-activity-financing provisions, individual responsibility, sections 83A to 83C and the relationship between AMLA and the 2024 beneficial-ownership regime. A change table and transition period would enhance legal certainty.

Fourth, enforcement should be graduated and co-ordinated across regulators and professional bodies. Normally, technical or isolated control failures should result in guidance, an agreed action plan or proportionate administrative response, while repeated, systemic or reckless failures may warrant heavier sanctions. Criminal prosecution and professional exclusion should be confined to conduct that is sufficiently serious including deliberate wrongdoing, wilful blindness, serious recklessness, fabricated records or persistent refusal to remediate. Where a court, regulator or professional body has already imposed a sanction arising from the same underlying conduct, any subsequent decisionmaker should be required to take that into account. Specifically, the proportionality assessment under section 83B should explicitly require that sanctions imposed by a court, other regulator or professional body are a mandatory consideration. Additional punitive monetary sanctions should require specific justification, and licensing or disciplinary actions must specify the additional protective purpose that justifies further action. By contrast, in the case of multiple authorities, a coordinated totality assessment should be employed to explain why the combined result is proportionate to the person's overall culpability.

This proposal would build upon the existing safeguards in section 83B, which already requires consideration of proportionality and provides for notice and written representations before administrative action is taken. A further reform would be to require regulators to consider expressly the seriousness of the breach, actual or potential harm, individual culpability, previous compliance history, remedial measures, institutional capacity and sanctions already imposed for substantially the same conduct. Such an approach would promote deterrence without treating every technical failure as equivalent to deliberate facilitation. It would also encourage early remediation and improve the consistency of enforcement decisions, thereby supporting the preventive objectives of AMLA.

Fifth, the State should improve the verification environment by embedding verification standards into the regulatory infrastructure itself, instead of leaving it to the individual company secretary to determine, at their own risk, what constitutes an adequate verification process. As the principal corporate regulator, SSM is in a better position to set a consistent baseline by embedding identity checks, beneficial-ownership verification, sanctions screening, discrepancy reporting and audit-trail functionality in its own digital systems, including the Companies Registration System (CRS). A process so designed by a regulator would ensure consistency across the profession, as all practising secretaries would be required to meet the same verification standard at the point of lodgement. Conversely, when verification is left in the hands of the individual practitioner without adequately prescriptive criteria, there is uncertainty as to whether the particular process adopted will

subsequently be deemed adequate by the regulator. Regulatory expectations are more defensible where the regulator defines and operationalizes the minimum verification standard, rather than retrospectively assessing whether each practitioner's independently designed process was sufficient. The integration should capture who supplied, verified, approved and lodged each item, enable discrepancy reporting and provide secure access to authoritative identity, sanctions and beneficial-ownership information. Shared screening tools, model procedures and subsidized training could supplement a common regulatory baseline, rather than replace it, enabling smaller firms to achieve equivalent compliance outcomes without duplicating costly verification infrastructure.

The proposed digital integration would not remove the duty of company secretaries to exercise professional judgment or investigate suspicious circumstances. Rather, it would establish a common minimum verification process, reduce duplication of routine checks and produce consistent documentary evidence of compliance. Automated validation against authoritative data could assist in identifying discrepancies at an earlier stage, while unresolved inconsistencies would remain subject to professional review and appropriate escalation. Such measures could improve the quality of beneficial-ownership information available to SSM and other authorised authorities, reduce avoidable filing errors and allow supervisory resources to be directed towards genuinely higher-risk cases. Any integration with external databases should remain subject to lawful access arrangements, information-security requirements and appropriate data-protection safeguards.

Sixth, BNM should simplify and standardize the process of submitting STRs, especially for smaller DNFBP reporting institutions that may submit such reports only occasionally. If FINS is to be the primary channel for STR reporting, access to the system needs to be easy enough to facilitate, rather than hinder, the obligation to report in a timely manner. The platform should have a clear and intuitive submission process, distinguish between mandatory and optional information, allow secure saving of incomplete reports, provide immediate acknowledgment of successful submission and offer accessible technical assistance. BNM should also clearly indicate when FINS is mandatory, preferred or optional, where email or other submission channels are still officially available, so that reporting institutions are not required to determine the appropriate reporting channel themselves. STR information is sensitive and requires strong safety controls including authentication and role-based access. However, security and usability are not mutually exclusive. The regulatory expectations that smaller firms should have effective compliance systems must be matched by an equally effective regulatory infrastructure within which those obligations can be met. Improving the accessibility and reliability of the reporting process would reduce avoidable administrative delays, support timely submission of STRs and enable reporting institutions to devote more resources to identifying and assessing genuinely suspicious activities.

Seventh, regulators should release anonymized typologies and summaries of their enforcement reasoning. The May 2026 case teaches us that non-reporting and false filings will be punished, but it does not tell us what the red flags were, what steps were missed, or why the sentence was handed down. More detail would help compliant practitioners learn while maintaining confidentiality in cases where administrative or licensing sanctions are applied. Likewise, an independent review or appeal mechanism should be easily available.

Finally, measure supervisory performance on the basis of risk reduction, not volume. Quality and conversion of STR intelligence, correction of beneficial-ownership discrepancies, improvement after action plans, consistency of inspection findings and reduction in repeat breaches are useful indicators. This would align enforcement with the risk-based philosophy and reduce incentives for defensive reporting that is not warranted.

CONCLUSION

Malaysia is entitled to require company secretaries to protect the corporate system from misuse. Their role in incorporation, registered offices, appointments, nominee arrangements and beneficial-ownership reporting gives them access to information that may be indispensable to detecting illicit structures. The FATF–APG assessment and recent enforcement experience establish that the risk is not theoretical. A regime limited to voluntary ethics would be inadequate.

At the same time, a company secretary is a professional intermediary, not a law-enforcement agency and not an insurer of every statement supplied by a client. The post-2026 framework creates legitimate concern where direct personal duties, broad regulatory instruments and overlapping sanctions are not matched by consolidated guidance, realistic verification access and explicit fault calibration. The absence of reported judicial reasoning on secretarial Part IV duties further increases uncertainty.

The issue is therefore not a simple choice between regulatory compliance and regulatory overreach. Effective regulation and protection against excessive liability can operate together. A clear reasonable-steps standard, fair allocation of responsibility, proportionate sanctions, updated guidance, better access to reliable information and clearer enforcement decisions would make the framework both more effective and more defensible. The aim should be to ensure that company secretaries remain alert and accountable gatekeepers, while recognising that they should not automatically be held responsible when a client successfully conceals or misrepresents information despite reasonable checks.

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