



Money laundering in Malaysia, regulations and policies

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Abstract

The objective, through this paper is to highlight the law and policies that regulate money laundering in Malaysia, for that the armchair library approach employed. The obtained results have shown that Malaysian government made huge efforts to regulate money laundering. Malaysia continues to make a broad and sustained effort to combat money laundering and terrorist financing flows within its borders.

Keywords: money, laundering, Malaysia, regulations, policies

1. Introduction

Money laundering is not new and has existed for many centuries. This is the process by which criminals try to hide the true origin of the proceeds of crime. According to some proposals, the term "money laundering" was first used in the 1920s by law enforcement agencies in the United States to refer to the activities of criminals using self-service laundries as a way to give a legal appearance to the large amount of "dirty" money they have accumulated from smuggling, gambling and prostitution (Guy Stessens, 2000)^[5].

According to section 3 of AMLATFA 2001: money laundering is the act of person who:

- a. Engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- b. Acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
- c. Conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity.

The increase in the electronic banking system facilitates the transfer of billions of dollars in illegal funds, revealing the vulnerabilities resulting from:

- Speed of money movement;
- The secrecy related to financial transactions;
- A large number of involved agencies that generate jurisdictional problems;
- Failure of measures prescribed by the government, and therefore the need to hold private sector entities more responsibility. Money laundering is called the third largest industry in the world and is associated with all types of crime. (World Bank Institute, 2002).

2. Background of the Study

Since September 11, 2001, commonly known as September 11, the governments of different countries have made great

efforts to reduce money laundering. Malaysia has taken various measures through relevant laws against money-laundering and information-sharing and law enforcement cooperation in the fight against money laundering (Bala Shanmugam Haemala Thanasegaran, 2008)^[4]. Money laundering around the world is a thriving industry. A considerable amount of time and money is spent on combating money laundering at the international level. Estimates of money laundering is so high that one can still easily understand the seriousness of the problem is. From conservative estimate of the IMF, the total amount of money laundering processed in the world is close to 2 to 5% of the world GDP, that is from about 800 to 2 trillion dollars per year. (R n d, 2018) Which law or statute regulate the anti-money-laundering, which institutions fighting the money laundering in Malaysia and what is the efforts taken by the government to fight this crime?

2.1 Literature Overview

Money laundering is the treatment of these criminal products to conceal their illegal origins. This process is crucial because it allows the offender to take advantage of these benefits without putting his source at risk (FATF, 2018)^[9]. The Financial Action Task Force (FATF) is an independent intergovernmental body established by the Group of Seven in Paris in July, year 1989. The Financial Action Task Force (FATF) develops and enhance policies to secure the global financial system against money laundering and terrorist financing. The forty original FATF recommendations were developed in 1990 as an initiative to combat the abuse of financial systems by people who recycle money from drugs. In 1996 the recommendations have been revised to reflect the evolution of the types of money laundering. The forty recommendations of 1996 were approved by more than 130 countries and are the international standard to combat money laundering. Following the September 11 terrorist attack in the United States, the FATF extended its mandate to address the issue of terrorist financing and took an important step in the creation of eight special recommendations on terrorist

financing in October 2001. These recommendations contain a series of measures to combat the financing of terrorist acts and terrorist organizations, the eight recommendations are completing the forty recommendations. To take into account the continuous evolution of money laundering techniques, the FATF recommendations were reexamined in 2003. In October 2004, the FATF published the ninth Special Recommendation. Finally, 40 + 9 recommendations have emerged officially and have been universally recognized as international standards to combat money laundering (AML) and counter-terrorist financing (CTF) in more than 180 countries and regions globally (Mei, D.X., Ye, Y.Y. and Gao, Z.G, 2014) [6]. The initial 40 + 9 recommendations were reviewed on February 16, 2012 and 40 new recommendations were approved, which emphasized a risk-based approach that completely revealed new threats to combat money laundering, terrorist financing and proliferation. According to Dr Zeti Akhtar Aziz, Governor of the Negara Malaysia Bank: Malaysia recognizes that it is important to have a coordinated national effort to fight money laundering and understands that this struggle requires a multidisciplinary approach. To this end, the National Anti-Money Laundering Coordination Committee was established, comprising 13 ministries and government agencies. The NCC is the forum for the coordination of national anti-money laundering strategies and policies in Malaysia. Members of the NCC also offered their support in promoting Malaysia's efforts to pass legislation against money laundering that criminalizes money laundering.¹

3. Methodology

Social research is a systematic study into social, political or other fact-conditions, to discover unknown or partly known factors working behind particular phenomenon, to understand why something happens and to draw inferences and general conclusions, it is to identify the cause and effect of certain problem (Yaqin, 2007) [11]. This paper is an attempt to find out the regulations and policies relating to money laundering in Malaysia. In conduction this paper, it is intended to use the exploratory study on the Malaysian law to know the legislation which related to the money laundering in Malaysia. The armchair library approach employed for the collection of the primary legal materials. For this purpose, the Library of University Utara Malaysia, the Faculty of Law Library used to source the primary legal material. The secondary data, books, articles, reports and online database equally sourced through the library approach.

4. Results

4.1 The National Coordination Committee (NCC) to counter money laundering

Formed in April 2000, this committee comprises of representatives from thirteen Malaysian Ministries and law enforcement agencies the objective of the committee is to develop and ensure the proper implementation of measures to counter money laundering and terrorism financing. (Bala Shanmugam Haemala Thanasegaran, 2008) [4]. It is

responsible for developing national policies and measures to counter money laundering and co-ordinates Malaysia's responses to international initiatives against money laundering. Representatives of member agencies in the NCC meet several times a year to coordinate their concerted efforts in fighting money laundering and in counter-attacking terrorism financing. In fact, it was the NCC that oversaw the drafting of Malaysia's Anti Money Laundering Act 2001 (AMLA).

4.2 The Anti-Money Laundering Act 2001 (AMLA)

The Government gazetted the AMLA in July 2001 which was brought into force in January 2002. The AMLA criminalized money laundering and lifted bank secrecy provisions for criminal investigations involving more than 150 predicate offences. The AMLA covers the offences of money laundering in general, which also includes the investigation, freezing, seizure and forfeiture of the proceeds of serious crimes, suspicious transactions, reporting, record-keeping and the establishment of the FIU. Additionally, the AMLA has also been invoked in financial, as well as non-financial institutions spanning conventional, Islamic and off-shore banking in the country. (Bala Shanmugam Haemala Thanasegaran, 2008) [4]. The Malaysian Anti-Money Laundering Act (AMLA) was enacted in to comply with the 40 Recommendations given by the Financial Action Task Force (FATF)

- As such the Act is meant to be generally in pari Materia with all other jurisdictions.
- On 6 March 2007 the AMLA (Amendment) Act 2003 came into force with the main intention to put the FATF 9 Recommendations into Malaysian law.
- AMLA is now officially called the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLATFA). Pro and con (2 in 1).
- AMLATFA has 93 sections, Divided into 7 parts namely:
 - Part 1: Preliminary
 - Part 2: ML offences
 - Part 3: Financial Intelligence
 - Part 4: Reporting Obligation
 - Part 5: Investigation
 - Part 6: Freezing, Seizure and Forfeiture
 - Part 6A: Suppression of Terrorism Financing
 - Offences and Freezing, Seizure and Forfeiture of Terrorist Property
 - Part 7: Miscellaneous
- AMLATFA: main objectives:
 - i) provide for the offence of ML
 - ii) measures to be taken for the prevention of ML and TF offences
 - iii) Provide for forfeiture of terrorist property and property derived from ML and TF offences. (Prof. Dr. Norhashimah Mohd. Yasin, 2012) [7].

The money laundering act follows the instructions of the FATF (40 recommendations). This act identifies 121 serious offences as a source of laundered money for example: narcotics trafficking, corruption and kidnapping ... The act contains sections for prevention, detection, investigation and prosecution of money launderers.

¹ Dr Zeti Akhtar Aziz, Governor of the Bank Negara Malaysia, to the Asia/Pacific Group on Money Laundering's 4th Annual Meeting, Kuala Lumpur, 22 May 2001.

The section 3 defined the money laundering, also the act provides a stiffer penalty against money launderers (s4). Section 29 until s43 is about the investigation in the case of any suspicion. Section 13 until s28 is about reporting obligation; all the banks, insurance companies, stock-broking firm, futures brokerage firms, etc adhere to the reporting obligation. (Bala Shanmugam, Mahendhiran Nair and R. Suganthi, 2003) ^[3].

4.3 The Financial Intelligence Unit (FIU)

The Financial Intelligence Unit (FIU) is established within the Financial Intelligence and Enforcement Department in Bank Negara Malaysia to manage and provide comprehensive analysis on the financial intelligence received relating to money laundering and terrorism financing. (Amlcft.bnm.gov.my, 2015).

The FIU, under the auspicious of BNM, works with more than twelve domestic and foreign enforcement agencies, receiving, analysing and sharing information and financial intelligence with them. In July 2003, BNM was admitted as a member of the Egmont Group of FIU. The Egmont Group provides a forum to expand and exchange information on financial intelligence, improve expertise and capabilities of personnel, and foster better communication among FIUs. The FIU of BNM has also signed Memoranda of Understanding (MOUs) with the FIUs of Australia, Indonesia, and the Philippines. MOUs with the USA, the UK, Japan, South Korea, The Netherlands, Finland, Albania, Thailand, and Argentina are pending. Malaysia has also endorsed the Basel Committee's "Core Principles for Effective Banking Supervision" and is a member of the Offshore Group of Banking Supervisors and the Asia/Pacific Group on Money Laundering. (Bala Shanmugam, Mahendhiran Nair and R. Suganthi, 2003) ^[3].

4.4 Banking System

The Central Bank is committed to ensure that the integrity of the Malaysian financial system is not in any way compromised by the criminal activities. In this connection, the Central Bank has introduced a number of initiatives to counter money laundering including:

- Know Your Customer Guidelines: which was issued in June 1989 and revised in December 1993 in compliance with the FATF's 40 Recommendations through the requirement of customer identification and verification, financial record keeping and mandatory reporting of suspicious activity. The Guidelines were issued to prevent banking institutions from being used as a conduit for money laundering. It requires banking institutions to determine the true identity of customers opening accounts and to develop a "transaction profile" of each customer and setting document retention policies with the objective of identifying unusual or suspicious transactions. Banking institutions are also required to identify a single reference point within their organization to which unusual or suspicious transactions can be reported promptly. Banking institutions are also required to report to the Central Bank all cases of unusual or suspicious transactions that they have knowledge of, irrespective of the amount.

-the Provision of Internet Banking Services: which was issued in May 2000, requires banking institutions to have face-to-face interaction with customers prior to the opening of

accounts or the extension of credit. Banking institutions are also required to establish appropriate measures to identify customers reached over third-party websites and the customer verification process as stringent as that for face-to-face customers. In providing

Internet banking services, banking institutions are also required to implement monitoring and reporting mechanisms to identify potential money laundering activities. This enables the Central Bank to ensure that the banking industry, while keeping abreast with developments in ICT, that is, information, communications and technology, would maintain the integrity of the financial system and prevent it from being abused by the money launderers. (Dr. Zeti Akhtar Aziz, 2001) ^[12].

- "Due diligence" requirements:

Malaysia has adopted "due diligence" or "banker negligence" laws that make individual bankers responsible if their institutions launder money. Failure to report any suspicious transaction to BNM is considered an offence under the AMLA and shall, on conviction, be liable to a fine not exceeding RM100,000 or imprisonment for a term not exceeding six months, or both. In order to protect the reporting institution from being used by criminals as a vehicle to integrate or layer their illegal proceeds, the AMLA requires all reporting institutions to place an effective compliance programme, adopting a best practices approach. Under the AMLA, any person or group who engages in, attempts to engage in, or abets the commission of money laundering would be subject to criminal sanction. Reporting institutions are required to file suspicious transaction reports under the AMLA. All reporting institutions are subject to the same review by the FIU and other law enforcement agencies. Reporting institutions include: commercial banks, money changers, discount houses, insurers, insurance brokers Islamic insurance and reinsurance (takaful and retakaful) operators, offshore banks, offshore insurers, offshore trusts, the Pilgrim's Fund (to pay for Haj trips to Mecca), Malaysia's postal service, development banks such as Malaysia's National Savings Bank (Bank Simpanan Nasional), The People's Cooperation Bank (Bank Kerjasama Rakyat Malaysia Berhad), and licensed casinos. (Bala Shanmugam Haemala Thanasegaran, 2008) ^[4].

4.5 The International Offshore Financial Centre (IOFC)

The main cases of money laundering, revealed in recent years, have a common feature: criminal organizations use the capabilities of financial havens and offshore centers extensively for the recycling of criminal assets, thus creating obstacles to criminal investigations. Financial havens offer a wide range of opportunities for a foreign investor who does not want to reveal the origin of their assets, from registration of International Commercial Corporations (ICD) or fictitious companies to services a number of "offshore banks" that are not subject to regulatory control by authorities. (World Bank Institute, 2002). However, the Labuan IOFC is located in the island of Labuan, off the eastern coast of Malaysia. The Labuan Offshore Financial Services Authority (LOFSA) director-general, Rosnah Omar said that LOFSA is committed to ensuring that the integrity of the Labuan IOFC is not compromised in any way. She believes that in the medium to long-term, LOFSA which is under the authority of BNM, will ensure that all offshore financial institutions will formulate

and implement AML framework as required by the AMLA and the OECD's FATF's 40 recommendations. ((Bala Shanmugam Haemala Thanasegaran, 2008) [4].

4.6 Other Institutions Contributing in Fighting Money Laundering

-The customs department, in addition to the proactive judicial system, the Malaysian Customs Department has also put the AMLA into action by identifying several companies involved in major money laundering and smuggling.

- The police force, Like the Customs Department, the Malaysian police force has also established AML units nationwide to track the underworld's money trail. In fact, the Federal Commercial Crimes division is planning a major expansion programme, which would include getting additional personnel to facilitate this move, in the later part of 2005. Part of the department's plan is to "beef up the Commercial Crimes Division with an additional 1,900 personnel.
- The bar council, in another effort to curb money laundering activities in the country, lawyers will have to report any suspicious transactions. Among the suspicious transactions are large and frequent currency exchange, use of multiple deposit accounts and activity inconsistent with customer profile. Lawyers were entrusted with this responsibility under the amended AMLA 2003.
- The securities commission (SC), Malaysia's equities market regulatory body, the SC has stated it "will not hesitate to use its powers to take action against and penalise actual and prospective abuses of power by directors and CEOs". Disqualification of company directors is also provided for under section 130 of the Companies Act 1965 for those convicted of offences involving fraud or dishonesty including facilitating money laundering activities for a maximum period of five years. (Bala Shanmugam Haemala Thanasegaran, 2008) [4].

4.7 Anti-Money Laundering Regulators

Ministry of Home Affairs (The Ministry of International Security has merged with the Ministry of Home Affairs and is now known as the Ministry of Home Affairs)

Royal Malaysian Police

Malaysia Anti-Corruption Commission (formerly known as the Anti-Corruption Agency)

Securities Commission

Royal Malaysian Customs

Immigration Department

Labuan Offshore Financial Services Authority

Companies Commission of Malaysia

Attorney General's Chambers

Ministry of Finance

Ministry of Internal Security

Ministry of Domestic Trade, Co-operatives and Consumerism. (Anti-moneylaundering.org, 2015).

4.8 The case of Dr. Hamimah

KUALA LUMPUR: Dr Hamimah Idruss became the first person to be convicted under the Anti-Money Laundering Act 2001.

Facts: accused, a medical doctor, falsified financial documents and promissory notes which resulting a sum of RM42 million been transferred into her own account. Prosecution against accused was initiated for eight counts of money laundering offences. Assets and property worth RM34, 9 million was seized.

Accused was found guilty and sentenced to 8 years of imprisonment for eight counts of offences prosecuted.

Besides, accused was ordered to pay a sum of RM5, 3 million under a pecuniary order. (Bala Shanmugam Haemala Thanasegaran, 2008) [4].

5. Conclusion and Recommendations

With the anti-money laundering act 2001 Malaysia has joined the international community in its effort to curb money laundering, Malaysia continues to make a broad and sustained effort to combat money laundering and terrorist financing flows within its borders.

However, Section 4 of anti-money act about the punishment, the person convicted will be either fined a maximum amount of 5m RM or imprisoned for maximum term of 5 years, this punishment should be raised, due the reasons below:

First, the max term of imprisonment is very low compared to comparable economic crimes under Malaysian law: Fraud/cheating: 10 years, Corruption: 20 years and Forgery: 20 years.

Second, Lower as compared to other countries: UK: 14 years, Hong Kong: 14 years, Indonesia: 5 -15 years, US: 20 years, Philippines: 7-14 years, Australia: 5-25 years, Brunei: 14 years and Algeria 20 years.

The combat of money laundering need to have international network and cooperation, capacity building, enhanced supervisory processes and so on. However, there is a need for an in-depth study of major weaknesses both from the legislative and the implementation point of view which will get reflected from a comparative analysis across jurisdictions around the globe.

6. References

1. Amlcft.bnm.gov.my, 2015. 'AML/CFT'. <http://amlcft.bnm.gov.my/AMLCFT02biii.html>.
2. Anti-moneylaundering.org, 2015. 'IBA Anti-Money Laundering Forum - Malaysia'. <http://www.anti-moneylaundering.org/asiapacific/Malaysia.aspx>.
3. Bala Shanmugam, Mahendhiran Nair, Suganthi R. Money laundering in Malaysia. Journal of Money Laundering Control. Emerald insight, 2003.
4. Bala Shanmugam Haemala Thanasegaran. Combating money laundering in Malaysia. Journal of Money Laundering Control. Emerald insight, 2008.
5. Guy Stessens, money laundering: a new international law enforcement model, 2000, 85.
6. Mei DX, Ye YY, Gao ZG. Literature Review of International Anti-Money Laundering Research: A Scientometrical Perspective. Open Journal of Social Sciences. 2014; 2:111-120.
7. Norhashimah Mohd. Yasin. Introduction & Background to money laundering & Terrorism financing. Awareness program on money laundering SME Bank, Dang Wangi, 2012.

8. R. (n.d.). United Nations Office on Drugs and Crime. Retrieved February 07, 2018, from <https://www.unodc.org/unodc/en/money-laundering/globalization.html>.
9. What is Money Laundering? (n.d.). Retrieved February 03, 2018, from <http://www.fatf-gafi.org/pages/faq/money-laundering/>
10. World Bank Institute. Anti-Money Laundering Literature Search, Financial/Banking Sector, 2002
11. Yaqin A. Legal research and writing: Malayan Law Journal, 2007.
12. Zeti Akhtar Aziz. Governor's Welcoming Remarks at the 4th Annual Meeting of the Asia/Pacific Group on Money Laundering. Bank Negara Malaysia, 2001.