Money Laundering in Malaysia

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This paper highlights the growth of money laundering activities in Malaysia and the efforts taken by the Malaysian governments to curb it. Money laundering is a major concern among the developed countries and now developing countries are also becoming attractive centres for money launderers. Malaysia may not be an exception. This factor and the probability of the Labuan International Offshore Financial Center (IOFC) being prone to money laundering have caused the government to initiate steps in Malaysia to undertake some countermeasures to combat money laundering. One of the measures was the enactment of the Anti-Money Laundering Act 2001. Though this Act is seen as a strong weapon in the battle against money laundering, it does have some shortcomings, which may require amendments. Nevertheless, it is imperative that the financial industry be vigilant and cooperate with other related parties in order to contain the money laundering problem in Malaysia.

INTRODUCTION

Money laundering is not a new phenomenon. Since the time crime began, laundering of stolen goods must have also occurred. The tragic events of 11th September, 2001 have, however, given a new twist and importance to money laundering operations. The Pentagon has named Malaysia as one of those countries through which terrorist funds travel in their efforts to become legitimate. The US Congress is moving rapidly ahead with the most sweeping package of anti-money laundering legislation in more than a decade. Amendments to the current legislation would have a much wider impact, making the most significant changes in US law since money laundering was declared a crime in 1986.[1] This paper focuses on the efforts of the Malaysian government to minimise money laundering activities within its borders.

Money laundering is generally referred to as the process by which the proceeds of illicit sources of money are brought into the organised and legitimate financial system. This process is of critical importance, as it enables the criminal to enjoy the fruits of the crime without jeopardising its source. Any crime that generates significant profit such as extortion, drug trafficking, arms smuggling, the flesh trade and even some aspects of white-collar crimes can cause money laundering to become a down-stream activity.

As highlighted by Sharma,[2] there are basically three different stages in the process of money laundering. They are categorised as the placement, layering and integration stages. In the initial or placement stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into bank accounts or by purchasing a series of monetary instruments (cheques, bank drafts, money orders, etc) that are then deposited into accounts at other locations. After the funds have entered the financial system, the layering stage takes place.

In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not cooperate in anti-money laundering investigations or in those regions of the globe where regulations on financial transactions are very relaxed (financial safe havens).

Having successfully pushed the criminal profits through the first two phases of the money laundering process, the launderer them moves them to the third stage — integration — in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds in real estate, luxury assets, or in legitimate business ventures.

For money laundering to be successful, there must be no 'paper trail' to connect the three steps of this process. Regulatory requirements must be evaded, manipulated or ignored. Within the banking system, launderers may structure transactions, influence bank employees not to file proper reports, or establish legitimate front businesses to open accounts. While this overall process is well known, identification of the actual occurrence is no simple matter.

Journal of Money Laundering Control
Vol. 6, No. 4, 2003, pp. 373–378
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ISSN 1368-5201

MONEY LAUNDERING IN MALAYSIA

The globalisation of financial services has greatly facilitated money laundering. According to Walker,[3] Malaysia is one of the leading Asian nations highly exposed to money laundering, largely due to the wide range of financial services available within its banking system and also because of the fairly relaxed nature of the monetary legislation.

In order to protect itself from this illegal act, Malaysia has made some significant moves that will possibly help to curb money laundering. The participation of Malaysia as a serious member in the Asia Pacific Group of Money Laundering (APG) in May 2000 denoted the country's keen intention to counter money laundering. The APG was established in 1997 at the Asia Pacific Money Laundering Symposium held in Sydney, Australia.

The APG follows the guidelines provided by the Financial Action Task Force's (FATF) Forty Recommendations to fight money laundering. The APG's core objective is therefore to provide a regional focus for cooperation against money laundering. Malaysia recognised the importance of implementing a coordinated national effort to battle money laundering. This was seen to require a multidisciplinary approach. To this end, Malaysia established the National Coordination Committee (NCC) in 2000. The NCC is an independent body consisting of 13 ministries and government agencies. It provides a platform for the coordination of national anti-money laundering strategies and policies in Malaysia.[4]

The banking system, which has been the focal point of money laundering activities, received significant attention from the Central Bank of Malaysia (Bank Negara Malaysia). Bank Negara Malaysia undertook several initiatives, which provided the basic platform for the control of money laundering activities. In June 1989, the 'Know Your Customer Guidelines' were issued through the Central Bank's initiative. It was subsequently revised in December 1993.

Further revisions of this document was prepared in accordance to the FATF's Forty Recommendations and required the banks to identify and verify their customers, maintain financial records and report any suspicious activities.[5] The development of Internet banking in Malaysia caused the Central Bank to issue the *Minimum Guidelines on the Provision of Internet Banking Services* in May 2000. This document requires all banks to have face-to-face interactions with Internet-based customers prior to the opening of accounts or the extension of credit facilities. While providing Internet banking services, banks are also required to implement a monitoring and reporting system, which identifies potential money laundering activities. This enables the Central Bank to ensure that despite the development of Information and Communication Technology (ICT), the integrity of the financial system is maintained and the abuse by money launderers is minimised.

In a move to cover the lacuna in the law relating to money laundering the Malaysian government enacted the Anti-Money Laundering Act in July 2001. This is the first law in Malaysia to provide for a multi-agency enforcement. The agencies involved in the enforcement process consist of the Anti-Corruption Agency, the Central Bank, the Securities Commission, the Narcotics Bureau, the Customs Office and the police.[6]

Within the purviews of this Act, a total of 121 serious offences, excluding tax evasion, have been listed with a maximum jail term of five years and/or a maximum of an RM5m fine (US$1.32m).[7] In order to ensure compliance with the law, the Central Bank in collaboration with the Institute of Malaysian Banks has initiated a series of education and training programmes for the banking and financial services staff.[8] The Central Bank sees this as essential in identifying and checking activities related to money laundering.

The series of anti-money laundering education and training programmes began in mid-June 2001 with conferences being held for internal and external auditors as well as compliance officers and legal advisers of banking and financial services. In Malaysia, little data are readily available on the volume and value of money laundering activities.

This may be because Malaysia is not a significant centre for the production of illegal drugs or for other major outlawed activities. The probable significant figure, which can be used as a benchmark by Malaysia, would be the one provided by the APG's 2001 report on money laundering. It was stated that money laundering activities in the Asia Pacific region amounts to US$200bn each year as of 1998.[9]

International Offshore Financial Center in Labuan

One of the main areas liable to be involved in money laundering activities in Malaysia is the Labuan IOFC. Labuan was declared as an IOFC by the government of Malaysia in October 1990.

Labuan was established with the specific objective of complementing the activities of the domestic financial market in Kuala Lumpur.

Strengthening the contribution of financial services to the GNP of Malaysia as well as developing the island and areas within its vicinity were supplementary objectives of Labuan. Two distinctive regulations govern Labuan, namely the Labuan Offshore Financial Services Authority Regulations (LOFSA) and the Offshore Banking Act of 1990.

Labuan combines a flexible and favourable tax treatment with a low cost of setting up and operating. This framework has succeeded in attracting substantial numbers of international businesses to become domiciled in Labuan, including 60 international banks, 78 insurance and insurance related companies, and 20 trust companies.[10]

Currently the main offshore banking services in Labuan tend to be foreign currency loans, issuance of standby letters of credit and bank guarantees, money market transactions, foreign currency deposits, underwriting of bonds in foreign currencies, private banking activities and investment activities. It is within this web of activities that money laundering tends to occur. These financial activities provide sufficient spawning grounds for the conversion of dirty money into clean money. Sources, of foreign currency deposits, for instance, are not determined. Hence there has been a massive influx of foreign currency deposits into Labuan. While data on the quantum of these deposits are unavailable, what is more important to note here is that a sizeable proportion of these deposits may not be entirely legal. Largely for this reason Malaysia promulgated its new money laundering Act.

The Anti-Money Laundering Act 2001 (Act 613) in Malaysia

The Anti-Money Laundering Act (Act 613) was enacted in July 2001. This Act offers a comprehensive set of obstacles to money laundering. It follows the guidelines provided by the FATF Forty Recommendations,[11] which sets out the basic framework for anti-money laundering efforts. These recommendations were designed to be of universal usage and to cover the criminal justice system and law enforcement together with the financial system and its regulation. It also caters for international cooperation and extradition possibilities.

As mentioned earlier, this Act identifies 121 serious offences as sources of laundered money, which includes narcotics trafficking, corruption, kidnapping, robbery, trafficking in persons, gambling and fraud. The Act is a wide-ranging set of rules that provide provision for prevention, detection, investigation and prosecution of money launderers. Pertinent sections of the Act will be discussed below to provide a greater understanding of the Malaysian government's efforts to fight money laundering.

Section 3 of the Act defines money laundering as the act of a person who engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity; acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or 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 Act provides for stiffer penalties against money laundering including those abetting the commission of money laundering. Those found guilty will be liable for a maximum fine of RM5m (US$1.32m) or maximum imprisonment for 5 years or both (s. 4). To encourage divulgence of information on money laundering, the Act ensures immunity to informants through s. 5.

Noting the serious nature of money laundering, ss 29–43 insist on the need for investigation in case of any suspicion and extend authority to an investigating officer to examine, search and seize an offender's property or documents, if it is deemed appropriate. A broad range of powers are granted to investigating officers who can arrest, without warrant, any person who is reasonably suspected of having committed an offence under the Act.

The Act prescribes that all reporting institutions such as banks, insurance companies, stock-broking firms, futures brokerage firms, money changers, etc adhere to the reporting obligations which are governed by ss 13–28. This incorporates the requirements of prohibition of non-anonymous accounts or accounts in fictitious names, proper record keeping, reporting suspicious and abnormal transactions (including currency transactions) which are above the amount specified by the Central Bank. All records are to be maintained for a period of not less than six years.

To make sure that financial institutions submit all the records as mentioned by the Central Bank, the

Act specifies that failure to adhere to the sections mentioned would render the reporting institutions liable for a fine not exceeding RM1m (US$0.26m) or imprisonment for a term of not more than one year, or both. Once an entity has been convicted of a money laundering offence, the Act requires the freezing, seizure and forfeiting of the properties (both movable and immovable) that have been deemed to be proceeds of such activities (s. 44).

This same section also requires advocates and solicitors to disclose information in respect of any transaction or dealings related to any property, which is liable to seizure under this Act.

Shortcomings

Although the Anti-Money Laundering Act 2001 covers fairly comprehensively all aspects of criminal proceedings related to money laundering, this may not be sufficient to fully curb this activity. Reporting institutions, for instance, complain of their ignorance with respect to reporting requirements on currency transactions, monetary instruments and foreign accounts. In this 'battle' against money laundering, the 'soldiers' are basically staff of the financial institutions but if these soldiers are unable to identify the 'enemy' then there is hardly any battle! An extensive training programme to educate employees of financial institutions to identify money laundering activities may assist in minimising this problem.

The requirement under s. 16 of the Act, which insists that financial institutions identify and verify their customers, may prove to be futile. This is because the large volume of information collected about their customers will be of no use if the employees are not trained to detect attempts at laundering. There may be a need to conduct an internal audit to evaluate the effectiveness of money laundering awareness programmes and compliance among the staff of financial institutions.

Specific staff need to be posted at major financial outlets to oversee compliance to reporting requirements. Sometimes while financial institutions are busy with customers' activities, they may tend to overlook the problems in their own backyard. In other words there should be observation of their employees, who are often involved in money laundering activities. For instance, it has been argued that centralised filing of reports from headquarters rather than branches with a minimum of two levels of reviews before reports are filed, and a daily check of currency accounts against the currency and monetary instrument transactions, will minimise cases of criminal behaviour by employees.[12] Currently there is no mechanism to oversee the activities of employees.

Employees of financial institutions must be alerted to smurfing as highlighted by the Royal Canadian Mounted Police Proceeds of Crime Branch.[13] Smurfing refers to the act of using couriers to purchase numerous bank drafts or money orders (small amounts), which subsequently get deposited into bank accounts and eventually transferred electronically to overseas accounts. The large numbers of people who patronise banks make it just about impossible for bankers to differentiate between dirty and clean money.

Another area that raises concern is the type of punishment that is being meted out. Section 4 of the Act stipulates that the person being convicted will be either fined a maximum amount of RM5m (US$1.32m) or imprisoned for a maximum term of five years. There have been discussions that the fine and the imprisonment term would probably need to be raised as the probability of the offender going back into his 'old ways' is quite high, especially since the sums involved tend to be large. Perhaps the duration of imprisonment and the fine should be raised significantly.

The scope of the Act being very wide, it would not be effectively enforced without proper support services. These support services should come in the form of research and development facilities. There should be continuous efforts to assess money laundering activities, as the launderers will no doubt undertake 'loophole mining', that is, finding loopholes in the law and exploiting them to a maximum. Constant research and development will allow the filling of loopholes as they occur.

One particular area that may need monitoring is the gambling arena in cruise ships. If a person brings in a large amount of money after going on one of these cruises, it may not be possible to prove that the money was not brought in from indiscriminate activities. The domestic gambling industry is also a common avenue for money laundering scams. Winning lottery tickets are purchased by criminals for a premium from the original winner. Illegal funds are used for this purchase. The launderer then presents the winning ticket for collection and obtains clean, legitimate money from the lottery organisers. Returns from gambling have, however, always been an area of concern for enforcement

officers as proving the source is not direct and simple.

Fighting organised crime makes various difficulties for the authorities. Issues such as the duration of proceedings and the costs involved in the investigation and judiciary process and most importantly the difficulties involved in incarcerating the 'kingpin' of the crime, can prove to be a major obstacle in solving cases of money laundering.

RECOMMENDATIONS

According to Asselin,[14] one of the best ways to counter money laundering problems would be by creating legislative solutions that are capable of improving the fight against organised crime. Two types of solution were mentioned: first, there should be intermediate legislative measures and, secondly, new laws aimed directly and exclusively at eliminating organised crime.

Members of organised crime have two goals: power and money. In order to be efficient, new legislation must undermine their power and impoverish them while reducing the cost of police investigations and legal procedures. To this end, various intermediate measures aimed at reaching criminals, facilitating seizures and confiscation of proceeds of criminal activity and improving the administration of justice need to be implemented.

For example, in Canada, there presently exists an informal system of recruiting and protecting valuable witnesses. The Malaysian legislative body could take the necessary steps to work along these lines. Csonka[15] pushes this argument even further by suggesting that there should be formal law to give the witness protection programme a greater punch.

Based on the issues highlighted earlier, several pre-emptive measures can be recommended for the effective combating of money laundering problems in Malaysia.

(1) Malaysia should strengthen its international cooperation on information exchange and law enforcement relating to money laundering.
(2) There is a need for proper mechanisms for handling suspicious reports.
(3) There is a need to implement a compliance culture among financial institutions and to ensure that they put proper systems and procedures in place.
(4) Financial supervisors should be encouraged to apply bank-licensing procedures strictly, exchange information and train practitioners.
(5) Public awareness of the threat from money laundering and its implications for the economy should be increased.
(6) The currently limited human resources involved in the labour intensive and time consuming work of investigating suspected violations should be increased.
(7) There should be in-depth focus on new technologies and increases in countermeasures to combat their usage in money laundering activities.

CONCLUSION

It is imperative that the financial industry be vigilant to ensure that all efforts of money launderers are thwarted. This may prove futile if there is no coordination between the regulators, financial institutions and the public. While the financial institutions are not expected to be detectives, there should nevertheless be an awareness of the potential for money laundering activities and the need to report such activities.

With the enactment of the Anti-Money Laundering Act 2001, Malaysia has joined the international community in its effort to curb money laundering, which amounts to trillions of dollars yearly. It is estimated that in the Asia Pacific region alone, nearly US$200bn is being laundered. Despite some shortcomings, this new Act is Malaysia's latest arsenal against money laundering activities.

With regard to Labuan, the LOFSA is said to assess and upgrade the legal and supervisory framework continuously to ensure that it is on a par with the latest international supervisory requirements. At present, the supervision related to the compliance function has been enhanced in Labuan, as reported by the Central Bank.[16] This may preserve Labuan IOFC's image as a reputable offshore centre encouraging quality and genuine players. In addition, LOFSA being a National Coordination Committee member would continue to promote Labuan IOFC as a well-regulated and clean financial centre.

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