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**ANTI-MONEY LAUNDERING COMPLIANCE BY THE
REMITTANCE INDUSTRY IN MALAYSIA**

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Abstract

Money services business (MSB) consists of remittances companies and money changer sector which produce an enormous of remittance flows based on large population of legal and illegal migrants in Malaysia. The remittance system is categorized as one channel to transfer the funds around the world. Such system is often used by the migrant workers through the traditional banking method, MSB or underground banking system (*hawala*). However, criminals tend to using remittance system to launder their illicit gains and profit as the money can move quickly in a cheap cost. Since 2007 the remittance sector include as a reporting institution in Malaysia need to adhere statutory obligations imposed such as record keeping, due diligence, reporting suspicious transaction and compliance program within company. In the context of this study, the authors will discuss the extent of level of compliance by the remittance sector to the money laundering legislations in Malaysia. This paper engages a qualitative data of which the primary data is obtained from six case studies of remittance sector within Klang Valley. The preliminary finding indicates that the remittance sector need to bear the high cost of compliance despite of their purpose as profit making entities. This paper could be a useful source of information for the MSB sector, policymaker, academicians, and students in this particular area of crime.

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Keywords: Remittance, Vulnerabilities, Compliance, Money Laundering, Terrorism Financing, Financial Action Task Force.



1. Introduction

Every day, a large amount of money are generated from illegal activities i.e. drug trafficking, theft, smuggling, tax evasion, corruption etc. The proceeds of the criminal activities and their true ownership have been modified in order to make it seems that such profits originated from a legitimate source (Rhodes & Palastrand 2005). The crimes of money laundering and terrorist financing is a global phenomenon which estimated at 2 to 5% of global GDP, or roughly U.S. \$1-2 trillion annually (Coopers, 2016). The means to transfer the illicit funds could be through the remittance system where the criminals launder the money.

A remittance is a transfer of money by a foreign worker, migrant workers, to his or her home country (Liargovas & Repousis, 2011). According to Lucas and Stark, the motivation to remit funds is primarily concerned with an implicit contractual agreement between the migrant and the home community (Lucas and Stark 1985). Similarly, Richard, Dennis and Ahlburg (1999) contend that the common belief is that migrants remit funds for the purpose of family consumption support. The statistics provided by the World Bank (2014) have shown that remittances are expected to exceed USD\$516 billion in developing countries in 2016, marking an increase of 7.8% over 2013 figures. The deputy Bank Negara Malaysia, Datuk Muhammad Ibrahim (2015) stated that Malaysia's remittance business is expected to expand from RM 325 million in 2014 to RM 430 million in 2015. It shows that the growing numbers of foreign workers in Malaysia are increasing year by year. Remittance system may take place by using conventional banks and other financial institutions. According to Bank Negara Malaysia, currently there are 544 premises that provided remittance services in Malaysia (Bank Negara Malaysia, 2015). The first part of this paper analyse the global perspectives on vulnerabilities of the remittance sector to money laundering and terrorist financing crime. The second part discusses the Malaysian perspectives on vulnerabilities of the remittance sector to those crimes. The third section explores the statutory obligations of remittance sector to money laundering regime. Next, this paper will examines on the problem statement of the paper. The following part discusses the research questions and research objectives of this study. Subsequently, this paper investigates on the research methodology. The next part examines the preliminary findings of the research and lastly will conclude the paper.

1.1.Global Perspectives On Vulnerabilities Of The Remittance Sector To Money Laundering And Terrorist Financing

Since 2003, the Financial Action Task Force (FATF) has identified of the remittance sector to money laundering and terrorist financing. The FATF introduced the concept of reporting to the Financial Intelligence Unit (FIU) by financial institutions and non-bank financial institutions through Recommendations 10 to 29 in its 40 recommendations (Amrani, 2012). The FATF suggested that any person or legal entities that provide a service for the transmission of money including informal money transfer system should be registered and fall under FATF Recommendations. Such recommendation applies to bank and non-bank financial institutions and subject to administrative, civil or criminal sanctions if the service carries out illegally (FATF, 2013a).

Rees, (2010) indicates that various methods has been identified, whereby formal remitters or providers of designated remittance services (PoDRS), as they referred to, have been used or been involved in money laundering and terrorist financing activities. The APG Typologies Report in 2009 describes the examples whereby money launderers have used the PoDRS for laundering the proceeds of drug trafficking. Moreover, PoDRS have been used by people in Australia on a short term visa by ending bulk cash transactions offshore before being detected. While in Sri Lanka, the case has shown that terrorists were receiving off-shore remittances that were used for terrorist financing and structured remittances via Western Union. In a case reported by the United States Department, Western Union remitted the fund to a criminal to fund terrorist organizations, Hamas. In a case reported by the FATF, an FIU detected the leader of a terrorist organization has been involved in unusual remittance pattern. He was arrested for suspected terrorism, and evidence of the money transfers was used in the court proceedings (FATF, 2013b).

1.2. Malaysian Perspectives On Vulnerabilities Of The Remittance Sector To Money Laundering And Terrorist Financing

The APG Report on Malaysia, (2007) observes that Malaysia's economy is characterised by large remittance flows due to a variety of factors including the size, diversity and continued growth of its economy. Another factor is the large populations of overseas foreign workers and Malaysians living or working abroad. All remittance operators, banks and non-banks, are reporting institutions under the AMLA and must comply with the relevant AML/ATF Guidelines and subject to sanctions under the AMLA (now AMLATPUAA 2001) for non-compliance. Full anti-money laundering and counter financing of terrorism (AML/ATF) requirements only came into effect for all licensed non-bank remittance operators in late 2006 or early 2007. The APG report 2007 shows that the level of compliance is not clear for those remittance operators, except Bank Simpanan Nasional and Pos Malaysia, and there has been only a limited degree of compliance monitoring.

In response to these vulnerabilities, Malaysia has taken the necessary steps to promote financial inclusion by bringing the remittance service operators into the formal sector, which include the non-bank remittance operators. Despite the inclusion of the non-bank remittance operator as reporting institution, the entities become more vulnerable to financial abuses as a result of strict implementation of AML/AFT measures imposed on the banking institutions (Ibrahim, 2014). Moreover, based on National Risk Assessments in 2013 stated that remittance sector were rated high risk against money laundering and terrorist financing crime. Current APG report 2015 reveals that Bank Negara Malaysia has taken a step to strengthen the regulatory and enforcement measures against the remittance industry in response to money laundering risks. Moreover, the Special Taskforce has been set up to fight against illegal remittance and also to propose improvements to the systems and procedures.

In addition of the laws and such guidelines, Yahaya in a recent National Risk Assessment 2014 by the BNM has shown that actions have been and are being taken against more than 180 bank and non-bank remittance operators. Such action include the revocation of licence, removal of key responsible persons for serious failures to comply with regulatory requirements, and compounds for non-compliances with various regulatory and operational requirements. Several entities have been charged in the courts, and

some of these had been convicted. For instance, recent cases in November 2014, the Bank Negara Malaysia raided the premises of Jasa Kembar Sdn Bhd and Lancar Borneo Sdn Bhd for suspicion of carrying out remittance business without a license under Section 4 (1) of the Money Services Business Act 2011 (MSBA). The companies are also being investigated for engaging in money laundering activities (The Star, 2014). As a result, BNM has collaborated with the industry association to support the efforts in enhancing compliance and professionalism within MSB sector. BNM has conducted a very large number of onsite assessments during the previous five years with 157 in 2013 and 212 in 2014 (NRA, 2015).

1.3 Statutory Obligations under AML/CFT Regime

Remittance sector which could be categorised as a reporting institution obliged to follow the AML/CFT obligations list out under Section 13-19 of AMLATFPUAA 2001. Under Sec 13 of AMLATFPUAA 2001 requires the reporting institution to keep proper record on the customer and transactions records involving domestic and foreign currencies exceeding such amount as the competent authority specifies. Under Sec 22.1 of (AML/CFT) – Money Services Business (Sector, 3) expand on this requirement by lists the types of records that could be kept including any accounts, files, business correspondence and documents relating to transactions, in particular, those obtained during the customer due diligence process. Further, under Section 22.2 provides the reporting institutions are required to keep the records for at least six years following the completion of the transaction, the termination of the business relationship or after the date of the occasional transaction.

In relation to the requirement to maintain records in such a manner as to enable the reporting institution to maintain the record of a person/customer, under Section 17 (1) laid down “reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify under s.14.” These two section explains that such amount presumably for purposes of large currency or CTR together with the threshold currency recordkeeping requirements under section 13 of AMLATFPUAA 2001. Moreover, Section 14 (1) explains that the reporting institution need to report any suspicious transaction that involves with unusual pattern of transmission which could lead to money laundering activities.

The reporting institutions are subject to strict customer due diligence AML/CFT regime. Section 16 of AMLATFPUAA 2001 clearly points out customer identification requirements for reporting institutions. A reporting institution is expected to acquire an evidence of the identity of each customer and beneficial owner when conducting any transactions. A reporting institution is required to verify the identity of the customer by using a reliable and independent source of documents, data or information. Moreover, the reporting institution need to verify the any person acting on behalf the customer (third party) is authorised and take reasonable measures to obtain and record information about the identity. On verifying the CDD requirements, the reporting institutions urge to verify the identity of the beneficial owner, using an information obtained from reliable source, such that the reporting institution is satisfied that it knows who the beneficial owner is. The key requirements for the reporting institution is to understand the nature of obtaining information of each customer in order to fight against any suspicious identity.

Section 18 of AMLATFPUAA 2001 describes that no person is allowed to open an account or conducting business relationship, transaction or activity in fictitious, false or incorrect name. Additionally, the reporting institutions are required to perform enhanced CDD where the ML/TF risks are assessed as higher risk. An enhanced CDD, shall include the following:

- a. obtaining additional information on the intended level and nature of the business relationship;
- b. updating more regularly the identification data of customer and beneficial owner;
- c. inquiring on the reasons for intended or performed transactions; and
- d. requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

Finally, Section 19 of AMLATFPUAA 2001 explains that a reporting institutions need to implement develop and implement internal programmes, policies, procedures and controls against these crimes. For example, reporting institutions must have in place an adequate management information system (MIS), either electronically or manually, to complement its CDD process. The MIS is required to provide the reporting institution with timely information on a regular basis to enable the reporting institution to detect irregularity and/or any suspicious activity (Section 21.1 of MSB Sector 3).

2. Problem Statement

This study is based on an evidence that, the recent Mutual Evaluation Report on Malaysia in 2015 indicates such industry were closely monitored by the Central Bank of Malaysia in relation to its systems and routines for implementation of the Customer Due Diligence due to the lack of compliance by the sector to money laundering law. Moreover, the cost of compliance, which is higher due to implementation of Anti-Money Laundering system could adversely affect their business. The level of compliance by this sector is rather low mainly due to costs implication. Consequently, they might resort to the underground banking system which is illegal, in order to avoid the cost of compliance.

In view of this research, it is apparent that the use of remittance system has been overshadowed by its potential use by criminal and terrorist groups. In Malaysia, since 2006 the issue of remittance sector as a reporting institutions are under researched, and the relevant legislation affecting the sector has never been researched before. Hence, there is a need for academic research to be undertaken so as to fill in the gap in the literature.

3. Research Questions

From the above discussion, in analysing the extent of compliance by the remittance sector towards their statutory obligations, the research question could be imposed is; what is the current level of compliance by the remittance sector to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA) 2001 and MSBA 2011 in Malaysia?

4. Purpose of the Study

This study investigates and examining the preliminary findings to what extent the level of compliance by the remittance sector to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA) 2001 and MSBA 2011 in Malaysia.

5. Research Methods

This study adopts qualitative type of research method. The primary data for this research generated by adopting a case study research design. For this purpose, 6 units of analysis comprising remittance sectors have been chosen. The instrument for the case study is semi-structured interviews involving 15 to 20 respondents from which those remittance sectors represent. Furthermore, the representatives from the Central Bank of Malaysia, Financial Intelligence Unit and the Money Services Business Association has been interviewed using similar interview style for the purpose of triangulation with the earlier respondents. The main purpose of all these interviews are to elicit information that is unavailable in the literature, besides, to obtain the various individual views and opinions of all the respondents mentioned above. The interviews have digitally recorded, and their contents has been transcribed and analysed by using the ATLAS Ti qualitative research software.

As for the collection of secondary data, the research conducted is library-based, where there is a need to examine the primary sources, namely the provision of the Anti-Money Laundering, Anti-Terrorism Financing & Proceeds of Unlawful Activities Act 2001, the Money Services Business Act 2011, and the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Money Services Business (Sector 3). These primary sources have supported the secondary sources such as textbooks, journals, international and local reports, working papers, commentaries on case laws, articles, online resources from government, non-governmental organizations' websites and academic websites, as well as an online database sources such as Emerald, Hein online and Sage publication.

6. Findings

The research is currently at data analysis stage, in which the complete result has yet to be drawn from the primary data. Based on the preliminary result taken by the respondents, most of the respondents aware of the statutory obligations imposed to them and their business. However, the finding also revealed that they have to deal with the cost-benefit analysis. As such, the statutory obligations imposed are dispute with their purpose as profit making business. One of the respondent acting as a front liner of the business expressed his views;

“When doing the due diligence procedure towards the client, some of the client do not have proper documentation i.e.; illegal migrants, and due to the necessities to transfer the money, and of course to make a profit, I approved those transaction off record”.

Apart from due diligence procedure, the frontline of the company is obliged to perform name screening that is include complete customer name and identification number. Also, the complete name of customer's beneficiary must be include in the form when doing the due diligence procedure. If the

customer nationality is from the high risk country i.e.; Iran, Syria, Ecuador etc. the customer must fill in the CDD form and also disclosed the source of income obtained. Moreover, if the beneficiary's name matched as terrorist, the company is required to obtain identification documents of the beneficiary from the applicant. In addition, more than half of the respondents agreed that the cost of compliance is higher which is they need to put in place anti money laundering program in their system. Also, the company need to frequently update the system in order to deals with more clients. One of the officer states that;

“The company need to incur the cost in order to hire third party for the safekeeping of the documents. The number of migrants increasing in recent years therefore we have more clients. The stringent requirements by the Bank Negara Malaysia required all the reporting institution to keep the records for at least six years following the completion of the transaction, and termination of the business relationship”.

However, the MAMSB with the guidance of the Bank Negara Malaysia developed Group of Compliance Officer (GOCO) in 2015 acting as an advisory for compliance officer. As such, the main purpose of GOCO is to promote competency and efficiency of MSB compliance officers by providing mechanisms for professional qualification and accreditation. As observed by one respondent, she commented that:

“Since the establishment of GOCO in 2015, many changes has been made towards the remittance industry itself. As such, the trainers of GOCO facilitates an effective training and education to workers and employers of our firm. Consequently, the establishment of GOCO has proved to be an effective medium to train a competent and skilful staff in fighting against money laundering risks.

It is suggested that the best way to reduce the cost of compliance is through encourage competitive market for remittances. As such balancing the cost of compliance and reduce the cost of remittance transfer is one way to mitigate the risk of non-compliance.

7. Conclusion

From above analysis, it is to suggest that the legal and the regulatory measures in Malaysia in governing the remittance sector for money laundering and terrorist financing are in line with the international conventions and the FATF standards. As a regulator, Bank Negara Malaysia has taken a greater efforts in safeguarding the integrity of remittance sector and also play an important role in conducting an efficient supervision towards the MSB sector i.e. strengthened the enforcements and raise the awareness of the AML/CFT obligations. Likewise, it is important for the remittance sector to follow strictly the statutory obligations as to mitigate the crimes against money laundering and terrorist financing. Despite their nature as a profit making business, the preliminary evidence supports that remittance sector which is categorised as a reporting institution need to obliged the requirements made by the Bank Negara Malaysia i.e. record-keeping, customer due diligence, reporting suspicious transactions and implementing the compliance program within their company.

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