



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Law of Banking and Security

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Introduction

- Money launderers may use B as a place to legitimate their ill-gotten gains through utilization of various financial instruments.
- Bank as one of the reporting institutions has statutory duties relating with money laundering.

What is ML?

- Money laundering is the process by which criminals create the illusion that the money they are spending is actually theirs to spend.
- Section 3 of the AMLA defines money laundering as the act of a person who engages, directly or indirectly in a transaction that involves proceeds of an unlawful activity, and who enquires, receives, possesses, disguises, transfers, converts exchanges, carries, disposes, uses, remove from or brings into Malaysia proceeds of any unlawful activity.

ML

- money laundering involves three main activities namely
- 1. the conversion of illegal cash into another asset,
- 2. the concealment source of the illegally acquired proceeds and
- 3. the creation of the perception of legitimacy of source and ownership.

Process

- Money laundering process comprises of three main stages.
- 1. Placement, which means illegal gains which introduce into the financial system. The illegal profits may derive from drug trafficking, prostitution rings, smuggling, illegal arms sale, kidnapping for ransom, bribery, computer-fraud schemes and smuggling of human beings and organs.
- 2. ‘Layering’ is the process of transferring illegitimate funds among various accounts so as to disguise the money trail such as purchase and sales of investment instruments or through multiple transfers of funds from different accounts around the world disguised as payments for goods or services.
- 3. Integration ie to integrate the illegal proceeds back into the economy as legitimate funds through legitimate transactions such as business ventures, luxury assets, lending, financing and

PREVENTIVE MEASURES

- In International community, the Financial Action Task Force on Money Laundering (FATF) is an important inter-governmental body that develops and promotes policies to combat money laundering.
- The G-7 industrial group established the FATF as a global money-laundering watchdog, as a response over money laundering

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- In Malaysia, there are several preventive measures that have been taken by the authorities:-
- Guidelines on Money Laundering and Know Your Customer Policy.
- Malaysia joined the Asia PacBankc Group on Money Laundering (APG) in 2000.
- There is also a committee at national level to combat money laundering consists of 13 ministries and government agencies known as NCC which has been set up in April 2000.

LEGAL PERSPECTIVE

- The Malaysian government took a step in combating money laundering by introducing the AMLA 2001 and its amendment in 2003.
- The AMLA gives certain agencies authority to trace, seize and ultimately confiscate criminally derived wealth and enabling inter government exchange of information with counterparts in other countries.
- The AMLA requires the reporting institutions to comply with certain statutory duties.

Reporting Institutions

- Reporting institutions refer to financial Institution as an institution licensed under the IBA 1983, the Takaful Act 1984, the BAFIA 1989, The Insurance Act 1996 and the Money-Changing act 1998 or
- a person licensed under the Securities Industry Act 1983, the Securities Commission Act 1996 and the Futures Industry Act 1993 or an offshore financial institution (Labuan Offshore Financial Services Authority) Act 1996
- including Lembaga Tabung Haji, Development financial institutions, postal financial services and gaming houses.

Roles of Reporting Institutions vis a vis Bank

- Reporting of Suspicious Transactions- Section 14 of the AMLA, banks or financial institutions have responsibility to report for any suspicious transactions to BNM.
- Internal Policy- The AMLA requires a reporting institutions to adopt, develop and implement internal programs, policies, procedures and controls to guard against and detect an offence.

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- Know Your Customer- There must be a standard operational procedure to enable Bank in identifying customers such as verifying by reliable means the identity, legal capacity, occupation or business purpose through the use of documents such as identity card, passport, birth certificate and driver's licence

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- Compliance officer- The Compliance Officer will deal with the FIU of any matter pertaining to suspicious transactions as well as inculcating awareness to employees on the essence of anti money laundering programme.
- Continuous Training- Guidelines on Money Laundering and Know You Customer Policy issued by CBM requires financial institution to conduct continuous training to its employees either at branch or management level

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- Record Keeping- Section 17 of the AMLA requires reporting institution to maintain record for not less than 6 years.
- Production of Documents- Public Prosecutor if he is satisfied may authorize in writing an investigating officer in relation to any financial institution to inspect, take copies of books, record, reports belonging to the bank and to scrutinize share transactions or related affairs.

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- Freezing Orders- Section 44 (1) states that where an enforcement agency having the power to enforce the law under which a serious crime is committed or about to be committed, it may issue an order freezing any property of that person, wherever his property may be or in his possession, under his control or due from any source to him.

Cases

- *PP v Dr. Hamimah*- She was charged under the AMLA involving a sum of RM37.062 million at KL Sessions Court.
- *PP v Gan Kiat Bend* – He was charged in KL Sessions Court for accepting illegal money in a sum of RM2 million through Standard Chartered Bank in Jan 2004.
- *PP v Ismail Husin*- He was charged in KL Sessions Court on 3 May 2005 for accepting and using illegal money in a sum of RM2.85 million through Standard Chartered Bank and a telegraphic transfer from the bank to his wife's BCB account.
- *PP v Abdul Khalid Hamid* – He was charged of using illegal money in a sum of RM65,761.09