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Money Laundering: Factors Leading to Money Laundering in Gold Investment Company in Malaysia

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Abstract
Money laundering has always been one of the biggest frauds in the world and it has also been a serious issue in Malaysia. Money laundering can destabilize the economy of a country by introducing large amounts of illicit funds into the financial system, which can distort markets, increase inflation and undermine the integrity of financial institutions. This activity can be defined simply as a process of cleaning 'dirty' money to make it seem like the funds come from legitimate transactions. It is classified as a criminal activity since it uses a legal business to conceal the sources of their illegal incomes. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) was established to discuss the issue of money laundering in Malaysia. Some of the famous cases regarding money laundering are 1MDB, Shafee's case and Genneva Malaysia Sdn. Bhd. This study focuses on the case of Genneva Malaysia Sdn. Bhd. that uses the gold bullion investment to cover up their money laundering activity. The stages in money laundering are placement, layering and integration. These three stages are usually being used by all criminals involved in this fraud activity. There are several factors leading to money laundering discussed in this paper which are pressure, opportunity, rationalisation and capability. This study is using literature review matrix method to understand influences of money laundering in Malaysia. This paper proposed some recommendations on how money laundering can be reduced especially in Malaysia.
Keywords: Money Laundering, Pressure, Opportunity, Rationalisation, Capability, Conceptual Framework

Introduction

Money laundering can be defined as a process of converting any cash or funds that comes from criminal activities in order to give the proceeds a legitimate appearance. Criminals often used this in attempting to convert or hide the illegal sources from their income. In other words, money laundering aims to conceal and give the illegal funds a more 'legal' appearance accumulated from unlawful means (Zait, 2020). By passing money through a complex transaction, usually through a series of business transactions, the money will be defined as 'cleaned' of their illegitimate origins and will be made to look as if it is a legal business income (Peterdy, K., 2023). It can be concluded that money laundering is a process to clean 'dirty' money in order to disguise its criminal origin, hence the term 'laundering' is used.

Paragraph 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) defines money laundering as

> "..... the act of a person who - (a) engages directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence; (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of, or uses proceeds of an unlawful activity or instrumentalities of an offence; (c) removes from, or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or (d) 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 an unlawful activity or instrumentalities of an offence. No person shall structure, or direct, assist, or participate in structuring, any transaction in domestic or foreign currency, to evade reporting requirements" (Bank Negara Malaysia, 2022).

Background of Study

The UN Vienna 1988 Convention addresses money laundering in Article 3.1, which defines it as "the conversion or transfer of property, knowing that such property is derived from any offence(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offence(s) to evade the legal consequences of his actions" (Team, 2022).

Malaysia has a highly open, upper-middle-income country that is vulnerable to a variety of money-laundering concerns. Genneva Malaysia Sdn Bhd (GMSB) is one of the companies that is involved in money laundering with several factors such as pressure, opportunity, rationalisation and capability which will be discussed later. All those factors are also commonly used by other companies to carry out money laundering activities in Malaysia. This study will provide the understanding on the stages involved in money laundering that are often carried out by companies or individuals. Besides, factors that contribute to money laundering that need to be emphasised to reduce this illegal activity also will be discussed in depth in this study.

Problem Statement

Money laundering has disastrous economic, security, and social effects where it may fuel the operations and expansion of drug traffickers, terrorists, illegal arms dealers, corrupt public officials, and others. Due to rapid technological advancements and the globalisation of the financial services industry, crime has become more international in scope, and the financial aspects of crime have gotten more complicated. There are a few significant effects of money laundering where it can lead to economic distortion and instability. This is due to the fact that money launderers are more concerned with protecting their gains rather than generating profit from their businesses. As a result, they invest their funds in activities that are not always economically beneficial to the country in which the funds are located. Additionally, economic growth may suffer if money laundering and financial crime divert funds from sound investments to low-quality investments that conceal their proceeds (McDowell & Novis, 2001).

Furthermore, money laundering can lead to loss of revenue where it reduces tax revenue for the government, which indirectly affects faithful taxpayers. It also makes it harder for the government to collect taxes. Because of this revenue loss, tax rates are typically higher than they would be if the proceeds of crime were legitimately exempt from taxation. Moreover, (McDowell & Novis, 2001) also stated that money laundering affects the reputation of the related institution in a negative way, especially in today's global economy. Money laundering and financial crimes, such as the laundering of illegal proceeds, extensive financial fraud, insider trading in stocks, and embezzlement, degrade market confidence and the signalling role of profits. The resulting unfavourable reputation reduces legitimate global prospects and sustained growth while attracting international criminal organisations with terrible reputations and short-term goals. As a result, development and economic growth may suffer from this issue.

In Malaysia, the increasing number of money laundering activities are partly driven by loopholes in the current regulations, as well as a lack of awareness of the relevant legal institutions in the fight against money laundering. Money laundering activities in Malaysia frequently take advantage of high-risk investments, such as gold investment, which offers higher returns. It may attract a number of individuals who are seeking quick and easy money (Sanusi et al., 2016). The majority of financial institutions have implemented strict anti-money laundering measures, urging criminals to consider other alternatives. Due to the lack of strict regulations, the gold industry is extremely vulnerable to financial crimes, making it an ideal option for money launderers. The gold sector is primarily cash-oriented, which leads to untraceable transactions and makes it easier for criminals to conceal their illegal revenues. Hence, the lack of any kind of verification procedure when buying or selling gold significantly contributes to the vulnerability of the gold industry (Marley, 2022).

Research Gap

Money laundering is a growing issue that has a significant impact on Malaysia. Most research has shown that with the initiatives from all related parties to prevent, detect and combat money laundering activities, it is possible to minimise the illegal act despite the rapid development in Information Technology (IT) (Shanmugam & Thanasegaran, 2008). However, there is a lack of research regarding the factors leading to this issue especially in gold investment companies. Therefore, this research will look at the factors and how the government, regulators and companies should respond to the emerging problem of money laundering activities in gold investment companies in Malaysia.

Objectives

The objective of this research is to investigate the factors leading to money laundering since it has a lot of negative effects such as economic distortion, reduces the tax revenue for governments and can affect the reputation of the company or individual involved with money laundering. This study investigated the case of money laundering in a gold investment company since the transaction is almost untraceable hence it is easier for criminals to conceal their activities. The company chosen as a case study is Genneva Malaysia Sdn Bhd (GMSB) and the leading factors to money laundering examined are pressure, opportunity, rationalization and capability. All these factors could be a mechanism for the readers to easily understand the elements that drive the company to commit money laundering.

Literature Review

History

In the 1980s, governments turned to money laundering regulations once more in an attempt to monitor and seize the proceeds of drug offences in order to achieve the organisers and individuals controlling drug empires. Normally, law enforcement must prove an individual's guilt before seizing their property, however under money laundering laws, money can be taken and it is up to the individual to prove that the source of funds is legal in order to get the money back.

Following the September 11, 2001 attacks, which resulted in the Patriot Act in the United States and similar legislation throughout the world, there was a renewed emphasis on money laundering laws to combat terrorism financing. Beginning in 2002, countries throughout the world strengthened money laundering laws as well as financial transaction surveillance and monitoring technologies. Anti-money laundering legislation has grown to be a considerable burden for financial institutions, and enforcement has increased dramatically.

Several major banks suffered ever-increasing fines for breaches of money laundering legislation between 2011 and 2015. Many countries implemented or tightened border limits on the amount of cash that can be transported, as well as central transaction reporting systems that require all financial institutions to electronically disclose all financial transactions. For example, Australia established the AUSTRAC system in 2006 and mandated the reporting of all financial transactions (Tiwari et.al., 2020).

Factors Leading to Money Laundering

Pressure

Money laundering can occur due to the pressure on the individual or company that can be personal financial pressure or pressure from the superiors. If the pressure remains unsolvable, the pressures might motivate a person to commit money laundering since the financial problem cannot be solved by legitimate means. GMSB and others involved in these money-laundering activities are under pressure to make more money. We can see this as the present operating balance for GMSB is 10 times more in liabilities than in assets. It appears that the nature of the scheme itself was the source of this. The company’s lack of regulation means that when there are more buyers—or lenders, in this case—they actually are raising the company’s obligations even though it has not yet realised any profits (Boffo & Patalano, 2020).

Opportunity

When an individual is pressured with financial problems, they will seek any opportunity available to do fraud such as money laundering. Money laundering can be perpetrated because someone is able to do it, because low risk and can be easily concealed. It opens a path for a criminal to do money laundering as they think that they are able to get away from being caught.

GMSB had the opportunity to entice people into getting involved with their business because they asserted that the operating model was based on the shariah principle known as al-bai. Al-bai means a contract involving the sale and buy-back transactions of assets by a seller. Under this principle, the seller, which is GMSB, will sell an asset in the form of gold bullion to the purchaser, the customers, on a cash basis. The gold bullion will be purchased back by GMSB in the future on a deferred payment basis, with a price that is higher compared to what the customers originally paid.

GMSB had the chance to sell the gold bullion for a premium that was between 25% to 30% higher than the market price. They would then provide the customers a monthly return of 2% to 3%. The customers can choose to either keep the gold or sell it to the company at the price they paid when they purchased the gold bullion (Karim, 2020). It is possible for GMSB to conceal the deposit-taking scheme it perpetrated by employing gold as a medium for money laundering. In comparison to other deposit-taking scams, gold gives the unwary public a little bit more credit because it is a valuable item and very alluring. They also recognise that there is an opportunity since people desire to earn more money quickly and steadily. When Tun Mahathir encouraged Malaysians to invest in gold instead of money because gold has a more guaranteed value, this has encouraged the public to acquire gold from GMSB more frequently (Boffo & Patalano, 2020).

Rationalisation

Fraud rationalisation is described as a strategy for establishing the legitimacy of a practice or idea that conflicts with an individual's perspective. Employees who fabricate financial figures, for instance, can think that their activities are best for the companies.

Counsel Gooi Sooi Seng, who defended Tan, Lim, Philip, Marcus, Chiew, and Yao, stated his clients were made to think that it was a proper and legal system that didn't require any licence in his attempt to mitigate for leniency (Karim, 2020). The directors and management were informed that the company had hired a lawyer to help with the plan and were given the impression that no licence was necessary and that the plan was appropriate and lawful. Since GMSB did not conduct any banking, finance company, merchant banking, or discount house business, it was not obliged by law to obtain a licence under s. 6(4) of the BAFIA (Boffo & Patalano, 2020). Gooi said that evidence presented during the trial had established that each depositor had received a piece of gold equal to the agreed-upon purchase price. Additionally, he claimed that the depositors received a certificate of ownership over the gold. That is considered as enough evidence to prove that GMSB has fulfilled their duty to provide gold after the payment has been made.

Capability

The term "capability" refers to a person's position or function inside an organisation that may give them the potential to take advantage of a fraud opportunity that is not available to others. When fraudsters have the ego and confidence that their activities won't be noticed, they are smart enough to recognise and take advantage of internal control weaknesses and use their position, function, or permitted access to their fullest advantage (Kazemian et al., 2019)

The entire basis for GMSB sale of gold to consumers and buyback procedure was actually the conditions of the transaction, which had been meticulously constructed to avoid detection by the authorities. GMSB business strategy was nothing more than a cunning ploy to continue its operations, and as a result, it has been declared illegal under BAFIA Section 25(1) (Boffo & Patalano, 2020). GMSB was only concealing its deposit-taking strategy by disguising it with gold. Compared to other deposit-taking scams, gold offers the unwary public a little more credit because it was such an alluring and valuable item. Gold also is known for its value that always stabilised and can offer a promising return rather than money.

Conceptual Framework

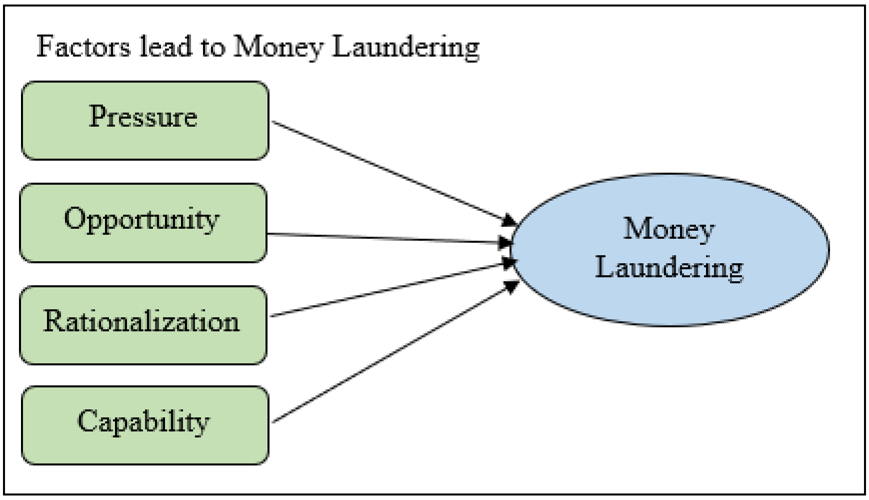

Figure 1: The Proposed Conceptual Framework of Factors lead to Money Laundering

Stages of Money Laundering

Placement

There are three stages in money laundering activity which are placement, layering and integration. The first stage is placement where 'Dirty money' is introduced into the financial system during the first placement step of money laundering. This is frequently accomplished by dividing large sums of cash into smaller sums that can be placed directly into a bank account or by purchasing monetary instruments such as cheques or money orders that can be collected and transferred into accounts at different locations.

Other ways of placement include combining the proceeds of a crime with the lawful profits of a firm, particularly one with little or no variable costs. False invoicing is also utilised, as is smurfing, which involves depositing tiny sums of money below the AML reporting threshold into bank accounts or credit cards and using them to pay bills, etc. Other placement techniques include utilising trusts and offshore organisations to conceal the beneficial owner's identity or using foreign bank accounts, moving modest quantities of cash below the customs declaration threshold overseas and depositing it in foreign bank accounts before re-sending it.

Layering

Second stage is layering. The layering stage happens after the funds have entered the financial system, with the launderer transferring the funds around to separate them from their source and conceal the money trail. The funds may be directed through the acquisition and sale of investments, a holding company, or simply transferred through a number of accounts at banks worldwide. Widespread accounts are more likely to be discovered in nations that refuse to cooperate with AML investigations. The launderer may disguise the transactions as payments for products or services or as a private loan to another company in some cases, giving them a meaningful image.

Integration

Last stage in money laundering is integration. The monies are finally absorbed into the legitimate economy in the last step of money laundering. To avoid catching the notice of law enforcement or tax officials, the criminal may invest in real estate, luxury possessions, or business ventures with the proceeds. Fake employees are a common integration tactic used to get the money back out. Typically paid and collected in cash. Then there are loans to directors or stockholders that will never be repaid. The final tactic is dividends provided to shareholders of enterprises owned by criminals (Tiwari et.al., 2020).

Recommendations

As the money laundering issue is getting bigger in Malaysia, few precautions should be taken to combat the issue of money laundering to smoulder in the country . First, through the act of the government. Government should take necessary steps to improve ethics, morality, religiousness, and the patriotism of people. All measures should be delivered to the communities on how money laundering could destroy one’s life and the country itself. Government also could impose strong punishment to the individuals who involve both directly and indirectly in the money laundering activities. Laws such as the Anti-Money Laundering Act (AMLA) that were introduced by the government in 2001 should be tightened because there is no legislation of AML that is applicable to the fintech industry (Basri et.al, 2015), since money laundering has emerged not only from physical businesses but also financial technology businesses. Therefore, the legislation that has been extended to these fintech companies regarding AML should be expanded and tightened more. Moving on, the companies themselves could play their roles. Suspicious transactions should investigate before and after the transactions and illegal transactions must be punishable. No transaction should be allowed to those who are involved in illegal transactions. This is important as the first step of avoiding money laundering in the company.

Conclusion

In conclusion, due to the fact that it plummeted a nation's economic growth and resulted in significant losses for the community, money laundering is viewed as a legal violation in practically every country around the globe. Developing nations suffer more as a result of a lack of possibilities for safe investments with better returns. These kinds of causes for money laundering are numerous. Countries are making the required efforts to limit crime, but the efforts are failing because officials are more likely to commit crimes in emerging nations. Money laundering took place in order to conceal the sources of the funds, including bribes, fast money, and other unlawful revenues that are prohibited in all nations. However, few measures have been taken by Malaysia to combat this issue such as assembling numerous legal frameworks and policies.

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