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Professional Accountants Expertise towards Anti – Money Laundering and Terrorism Financing Act 2017 (AMLATFAPUAA 2001)

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Abstract

This paper discuss on the professional accountant responsibility towards money laundering regime. In 2004, professional accountant becomes reporting institution and needs to comply with AMLATFA Act. In order to comply with the Act, accountant need to adopt risk based approach practices, maintaining a good due diligent relationship with customer, reporting any suspicious transaction activities and maintain the record of client for six (6) years. BNM as regulators have conducting a several training and workshop to disseminate the knowledge and skill to comprehend with money laundering requirement. Besides AMLATFA 2001 Act, FATF also produces a recommendation that can be applying the reporting institution. There are four recommendations that relate to professional accountant. The recommendations are recommendation 12 - Customer Due Diligence (CDD) explains about the customer due diligence and record-keeping requirements. Recommendation 16 - Suspicious transactions reporting (STR) explains about suspicious transactions reporting. Recommendation 24 - DNFBPs subject to regulatory and supervisory which explain on regulatory and supervisory measures as set out in the recommendation and finally Recommendation 25 - establishment of guidelines and provide feedback talks about establish guidelines, and provide feedback which will assist DNFBPs in applying national measures to combat money laundering and terrorist financing. This paper seeks to explore on the level of expertise among the professional accountant in mitigating money laundering activities. Seven (7) questions will be given to the respondents on accountant daily responsibility to hold up AMLATFA 2001. Looks at the finding, the competencies level among professional accountant were not yet satisfied. Many of the accountant claims that they are not competent enough in carried out their task to support money laundering regime.

Keywords: Money laundering practices, risk based approach, client due diligent, suspicious reporting transaction, expertise and competency

1. INTRODUCTION

Money from illegal activities will still be considered as illegal even though it is transform into legitimate (Agha, 2007). Historically, the term became famous in the 1920s in the United States of America by Al-Capone, a laundromat who actively involved in criminal activities like extortion, prostitution, gambling and drug trafficking (Lilley, 2006). The phenomenon of money laundering will threatens the integrity of the global financial system. Primary predicate offences in money laundering may include corruption, fraud, gambling, sex trade, commodity trafficking, human trafficking, drug trafficking, tax evasion and theft (Irwin et al, 2011).

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Due to that situation, Anti-Money Laundering law in Malaysia was introduced on year 2001 with the name Anti – Money Laundering and Anti- Terrorist Financing Act (AMLATFA 2001) which came into forces on 15th January 2002. Currently, there are 288 predicate offences from 42 legislations. BNM is the competent authority whereas PDRM, KASTAM, SPRM, LHDN, SC, LOFSA, KPDKK, SSM and MITI are law enforcement agencies. In Malaysia, there are a total of one hundred eighteen offences under Penal Code, eight offences covered by AMLATFA in the Anti-Corruption Act 1997, seven offences in Banking and Financial Institutions Act (BAFIA) 1989, three offences in Customs Act 1967, six offences in Offensive Weapons Act 1958, one offence in the Copyright Act 1987, one offence in the Corrosive and Explosive Substances and Offensive Weapons Act 1958, five offences in the Explosives Act 1957, two offences in the Internal Security Act 1960, two in the Securities Commission Act 1993. Money laundering activities include a variety range of crimes (Dhillon, 2013).

2. BACKGROUND OF STUDY

In 2004, Designated Non –Financial Businesses and Profession (DNFBPs) also need to comply with AMLATFAPUAA 2001. Independent legal professionals are consist of credit institutions, financial institutions, auditors, insolvency practitioners, external accountants and tax advisers, trust or company service providers, estate agents, high value dealers and casinos, lawyer, trust and company service providers (TCSPs), Real Estate Agents, Dealers in Precious Metals / Stones (Haynes, 2008). Automatically, this professional like accountants and lawyers have become reporting institutions and obliged to report of any suspicious transactions identified while they provides varied services to their clients. The suspicious transaction or such activities must be vulnerable and may lead to intricate money laundering offences. The accountant will be able to identify and report money laundering activities because there are accountable to respond on companies operation, producing reliable financial statement and mitigating the risk that facing by the company by holding good internal control and risk management (Melnik, 2003).

On 30th internal policies, procedures and compliance program, pursuant to the other relevant sections in September 2004, professional accountant only needs to report suspicious transactions pursuant to section 14(b) of the AMLA Act, together with section 20 (overriding of secrecy obligations) and section 24 (protection of persons reporting), whereas in 30th September 2005 new requirement for accountant to identify and verify particulars of clients, maintain records for a minimum period of 6 years, implement Part IV of the AMLATFAPUAA 2001. In this case, the professional accountant have to conduct know your customer and client due diligent programs. In addition to that in 2006, any cash transactions exceeding a threshold limit that is more than RM10000 specified by Bank Negara Malaysia pursuant to section 14(a) of the AMLA need to be reported to FIU (AMLATFAPUAA, 2001).

On 2007, FATF through APG is responsible to evaluate the money laundering and combating financing terrorism based on Forty Recommendations of AMLATFA in Malaysia. The evaluation is largely referred to the laws, regulation and other materials that are related to Malaysia. After evaluation, FATF will provide a rating that range as Full Compliant, Largely Compliant, Partially Compliant, Non-Compliant and Not Available. Low level of suspicious transaction reporting been identified among professional accountant on evaluation made on 2007 as well as 2013. The possible reason might be due to lack of skill and expertise to detect money laundering activities. This study apparently looking at the expertise of the professional accountant in playing a role to sustain their responsibility as a gatekeeper towards AMLATFAPUAA 2001.

3. RESEARCH OBJECTIVE

This paper seeks to explore on the level of expertise among the professional accountant in mitigating money laundering activities. Seven (7) questions will be given to the respondents on accountant daily responsibility to hold up AMLATFA 2001.

4. LITERATURE REVIEW

Money laundering activities involves three stages known as placement, layering and integration. In the placement stage, money is obtained through any number of illegal activities such as drug trafficking, prostitution, embezzlement, bribery, computer fraud schemes, and so on. The first concern of the money launderer is to enter the funds into the financial system as quickly as possible. Money launderer places the illegal money into the legal financial system to distance it from illegal sources. Layering stage however may involve undertaking a series of fund movements away from its source in order to make it difficult to trace the origin for example channelling the funds into various bank accounts around the globe. At the integration stage may transform the illegal money into legitimate money by re-entering the legal financial system through investments into assets such as real estate, luxury goods, shares or many more. There are a variety of financial instruments used to accomplish this task such

as purchase of luxury item, real estate, company stock, letters of credit, and bonds, bank notes, providing loans, bills of lading and guarantees.

4.1 FATF Requirement to Professional Accountant

There are four recommendation of FATF Recommendation related to professional accountant which are Recommendation 12 - Customer Due Diligence (CDD) explains about the customer due diligence and record-keeping requirements. Recommendation 16 - Suspicious transactions reporting (STR) explains about suspicious transactions reporting. Recommendation 24 - DNFBPs subject to regulatory and supervisory which explain on regulatory and supervisory measures as set out in the recommendation and finally Recommendation 25 - establishment of guidelines and provide feedback talks about establish guidelines, and provide feedback which will assist DNFBPs in applying national measures to combat money laundering and terrorist financing.

Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economics or visible lawful purpose. That means, financial institutions need to know their clients (Know Your Client). The CDD and recordkeeping requirements apply to accountants when they prepare for or carry out transactions for their clients such as buying and selling of real estate, managing of client money, securities or other assets, management of bank, savings or securities accounts, organisation of contributions for the creation, operation or management of companies or creation, operation or management of legal persons or arrangements, and buying and selling of business entities and company secretarial services.

All necessary domestic or international transaction records should be maintained for at least five (5) years to enable compliance with information request from the competent authorities. The Consultative Paper indicates that this will be increased to six (6) years) and keep records on the identification data obtained through the CDD for at least 5 years after the business relationship is ended.

Recommendation 16 on suspicious transaction reporting focuses on accountancy practices have the obligation to report promptly their suspicions to FIU if they suspect or have reasonable grounds to suspect that the transaction involved a criminal activity. The requirement to report suspicious transactions should generally override any professional duty of client confidentiality. Those who report their suspicions in good faith are prohibited by law from disclosing the fact that a STR is being made (no tipping-off). Each practice should appoint a person of sufficient seniority designated as a responsible money-laundering compliance officer to whom disclosures should be made internally in the first instance responsible for making disclosures to the FIU in accordance with the Provisions, keep a register of all disclosures made to him internally by employees and if staff suspect or know of any suspicious transactions, they should immediately report to the compliance officer in writing in a sealed envelope.

Recommendation 24 stated that professional accountant should be subject to regulatory and supervisory measures, for example Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. Competent authorities should take the necessary legal or regulatory measures to prevent criminals from holding or controlling interest or being an operator of a casino. Countries should ensure that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This may be performed by a government authority or by an appropriate self-regulatory organisation.

Under Recommendation 25, the competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

However, new adjustment was introduced in 2012 by FATF. There are only two recommendations that are related to DNFBPs which are Recommendation 22 and 23. Under Recommendation 22, the customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the situations as listed under the recommendation. There are no significant changes in term of requirements set out in the new recommendation as compared to the previous recommendation relating to DNFBPs. However, FATF has simplified all the recommendations related to DNFBPs into only two recommendations as compared to the previous recommendation (Normah & Hajudin, 2015).

4.2 Competency and Expertise

Competency emphasizes the individual's capabilities and competence to cope with the task or make a choice (Bandura, 1977, 1991). It has been shown to have a significant impact on an individual's ability to accomplish task behavior, including Information System usage (Compeau and Higgins, 1995). In fact, Compeau and Higgins (1995) showed that people with higher levels of self-efficacy regarding information system will employ such systems in their work more than those with low self-efficacy. With respect to money laundering, it is to be expected that individuals with high capabilities, competence and training will appreciate the need to follow money laundering requirement.

5. RESEARCH METHODOLOGY

This research adopts primary data collection by giving questionnaire to the respondents. 1000 questionnaire has been post out to the professional accountant registered with Malaysian Institute of Accountant (MIA). However, since AMLA Act only applicable to those working as auditors and external accountants, then the questionnaire were posted to audit and accounting firm by providing a notes mention that the questionnaire is only for the managers and partners which are Chartered Accountant. Three weeks after the questionnaires been post out, 280 questionnaires were received and ready for the analysis.

6. FINDINGS ON PERSONAL COMPETENCY OF THE RESPONDENTS

This study also looks into the personal competency of the respondents in dealing with anti-money laundering matters. The respondents have to rated their competency level by using seven scale measurements which are 7=extremely high, 6 = mostly high, 5=generally high, 4=not sure, 3=generally low, 2=mostly low and 1=extremely low. Seven questions were ask to respondents on anti-money laundering matters which are identification of fraud risk, identification of money laundering activities, gathering relevant data and information, identification of relevant legislation for different types of money laundering offences, ability to develop internal control system, investigation procedure for money laundering offences and standing as expert witness for money laundering investigation.

Pertaining to identification of fraud risk indicators related to AML, thirteen respondents believe that they are extremely high competent to identified the risk, forty two mostly high competent, sixty six generally high competent, thirty generally low competent. In addition, one respondents believe that he is extremely low competent and forty three not sure whether he is competent or not.

Furthermore the skill to identified money laundering activities, only sixteen respondents believe that he is extremely high competent to identified the activities. Thirty eight not sure on their competency level, one respondents believe he is mostly low competent to detect the activities. Thirty three respondents believe he is mostly high competent followed by seventy respondents believe generally high competent to detect the activities and the remaining fifty seven were generally low competency to detect money laundering activities.

Next question were ask on gathering relevant data and information as evidences to support detection of money laundering activities. Fourteen respondents believe that he is extremely high competent to gather the data and information, followed by forty respondents mostly high competent and seventy three believe that he is generally high competent. On the other hand, one respondent believe he is mostly low competent and fifty four respondents not sure on their competency level. The remaining thirty three believe he is generally low competent to gather the data and information as evidences.

Furthermore, by looking at the legislation of money laundering in Malaysia, it is covers few statutory bodies and each statutory bodies have their specified legislation on money laundering offences. This part asking on the competency of the respondents to identified money laundering offences and it is relates to which legislation and statutory bodies. Only fifteen respondents believe he is extremely high competent to differentiate the legislation, however, seventy three respondents not sure on the competency level and six respondents believe that he is mostly low competent. Twenty four respondents were mostly high competent, sixty one respondents generally high competent and thirty six respondents respond generally low competency to differentiate the legislation.

Thirteen respondents believe that he is extremely high competent to be able to develop internal control system to mitigate money laundering activities, thirty three respondents respond as mostly high competent and forty nine respondents is generally high competent. In addition, sixty eight not sure their competency level to develop

internal control system, two respondents mostly low competent and finally sixty respondents generally low competent to develop internal control system.

Eight respondents believe that he is mostly low competent in investigation of money laundering offences, eighteen respondents generally low competent and sixty eight respondents not sure on their competency level. Fourteen respondents however believe that he is extremely high competent in investigation of money laundering offences followed by thirty one respondents mostly high competent and forty eight respondents believe he is generally high competent.

Last but not least the question on expert witness for money laundering investigation. Ten respondents both believe that he is extremely high competent and extremely low competent to be an expert witness for money laundering investigation. Fifty five respondents believe he is not sure on their competency level to be an expert witness. Twenty three respondents were mostly high competent and this followed by fifty eight respondents that is generally high competent to be an expert witness. On the other hand, eighteen respondents believe that he is mostly low competent and at the same time forty one were generally low competent to be an expert witness.

7. CONCLUSION

As a conclusion, competency plays a vital role in supporting the implementation of money laundering regime. Without having knowledge and competency, professional accountant will be left behind other reporting institution like banks, lawyer, and jewellery dealers and so on in the detecting money laundering activities. Based on the questionnaire answered by the professional accountant, it is identified that many of the professional accountant are not extremely high competent in conducting their daily task. Even more, many of the accountants are not sure whether there are competent yet or not. 43 or respondents are not sure their competency level for the identification of fraud risk, later 57 respondents on the other hand said there are low competent in identified money laundering activities. 54 respondents are not sure their competent level under gathering relevant data to support money laundering practices. In addition 36 respondents claim that there are low competent to identify money laundering offences. The legislator for example Bank Negara Malaysia should take a progressive actions to rectify the problem, as we know competency are vital, each of the professional accountant should comprehend of their task. More training should be given to the professional accountant to booth the competency level.

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