UNIVERSITI TEKNOLOGI MARA

LEGAL PRACTITIONERS' COMPLIANCE TO ANTI-MONEY LAUNDERING OBLIGATIONS IN MALAYSIA AND THE UNITED KINGDOM

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ABSTRACT

Money laundering has received much concern from the government in protecting the country against such crime. One of the efforts taken at the international level and within the anti-money laundering (AML) regime is to extend the supervision and monitoring of money laundering from the financial sector to the professionals and businesses, which include the legal profession. As a consequence of such extension, the law places several obligations upon them involving customer due diligence, record keeping measures, reporting of suspicious transactions and compliance program. However, in complying with such duties, the legal practitioners are continually facing various impediments involving legal, technical and operational ones. Previous research in Malaysia has not addressed the lacuna in the compliance of legal practitioners to their AML obligations. Given such statutory obligations and impediments in compliance, the central thesis of this research is twofold. Firstly, the legal practitioners are reluctance to comply with their obligations as reporting institution under the AML law which is mainly due to their ethical dilemma relating to the legal professional privilege, involving the duty of confidentiality towards their clients. Secondly, the presence of business rationality based on a cost-benefit analysis in implementing the AML program within the legal firms tends to suggest that complying with the AML law is counter-productive for them. Guided by this thesis, the research aims at examining the extent of compliance by legal practitioners to their obligations and the impediments arising out of such duties. This research seeks to propose amendments to the existing law in enhancing such compliance. At the theoretical level, this research analyzed how the gatekeeping theory, the rational choice theory, and the routine activity theory would benefit legal practitioners. This study adopts a qualitative method, in which the primary data is obtained from the seven case studies of legal firms within the Klang Valley. Such data is triangulated with those from the Central Bank of Malaysia and the Malaysian Bar Council. The findings of this research are in Chapter Five. The legal analysis of the United Kingdom and Malaysia are presented respectively in Chapter Three and Chapter Four. This research reveals that legal practitioners are constantly facing legal, technical and operational challenges in carrying out their obligations. This study aimed at contributing to the body of literature on AML compliance, assisting the policy maker and the regulators who are directly involved in monitoring the crime of money laundering.

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CHAPTER ONE:
INTRODUCTION TO RESEARCH

1.1   Introduction

This chapter provides the structure of this research, outlining the main aspects of the research covering the background scenario and the problems being explored within the legal firms in adherence to the statutory AML obligations and the level of compliance to such obligations. This part explains the crime of money laundering and the inclusion of financial institutions as gatekeepers under such regime and the extension of the AML gatekeeping function to the nonfinancial businesses and professions which includes the legal profession. Also, this part briefly explains the exact scenario of the legal professional's AML compliance in the UK, before laying down the problem statement of this research.

The second part lays down the two central arguments or thesis of this research, followed by the third part that discusses the research questions which explain the subject matter under study. Such questions need to be addressed and investigated within this research. Together with the thesis, such questions serve as a guide for the researcher, the answers to these questions are found in the literature, and the fieldwork findings laid down in Chapter Two, Three, Four and Five. The next part of the chapter presents the research objectives which the tasks are essentially involved in conducting the research, which must be in accordance with the research questions to be answered.

The fifth part of the chapter explains the methodology undertaken to address the research questions and to meet the research objectives in the study. This part describes the design adopted in the study, the data collection process, management of the data, data analysis, and the data validation. In essence, this part elaborates the methodological aspects with regards to both the secondary and the primary data engaged in this research.

The scope and limitations are then discussed in parts sixth and seventh respectively. While the previous part depicts the limits supporting the whole research, the last part clarifies the requirements looked by the researcher in completing this