



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Proposed Amendments to the Money Services Business Act 2011

Consultation Paper

This consultation paper outlines the proposed amendments to the Money Services Business Act 2011 (MSBA), with a view to enable more effective enforcement to stamp out illegal money services business (MSB) by unlicensed operators, and provide appropriate deterrents against non-compliances by licensed MSB.

Bank Negara Malaysia (the Bank) invites written feedback and comments on the proposed amendments. To facilitate the Bank's assessment, please support each comment with clear rationale, accompanying evidence or illustrations where appropriate.

Feedback and comments are to be submitted to the following address by 19 April 2019:

Pengarah

Jabatan Pengawasan Perniagaan Perkhidmatan Wang

Bank Negara Malaysia

Jalan Dato' Onn

50480 Kuala Lumpur

Email: msbareview@bnm.gov.my

Electronic submission is encouraged. To facilitate the Bank's collation efforts, kindly use the feedback form attached for your submission.

TABLE OF CONTENTS

PART A OVERVIEW	1
1 Introduction.....	1
2 Objectives of the proposed amendments.....	2
PART B PROPOSED AREAS FOR AMENDMENT	5
1 Definition of remittance business	5
2 Admissibility of evidence.....	5
3 Scope of abetment.....	6
4 Mandatory imprisonment and minimum fine for the offence of conducting money services business without a licence.....	6
5 Forfeiture power of the court.....	7
6 Scope of administrative actions by the Bank.....	7
7 Replace the words ‘money changing business’ with ‘currency exchange business’.....	7
APPENDICES	8
APPENDIX I.....	8
APPENDIX II.....	9
APPENDIX III	12

PART A OVERVIEW

1 Introduction

- 1.1 The Money Services Business Act 2011 [Act 731] (MSBA) was enacted in December 2011 to govern money services business (MSB) activities, which comprise the remittance, money changing and wholesale currency businesses. The MSBA principally aims to fortify the industry safeguards against money laundering and terrorism financing (ML/TF) and other illegal activities; enhance consumer protection; and elevate the standards of professionalism in the MSB industry. Under the MSBA, a service provider must be licensed in order to carry out MSB activities.
- 1.2 Since the introduction of the MSBA, the MSB industry has transformed to become more dynamic and efficient, with strengthened safeguards to prevent its use as a conduit for financial crimes. Over the years, the industry has grown steadily with increasing usage of legal channels for conducting money services transactions. This is supported by a significant expansion of the authorised access points which offer cost-efficient, safe and convenient services to the consumers. It is estimated that approximately a quarter of the money services transactions captured through the legal channels were previously conducted via illegal channels.
- 1.3 Despite significant strides made to disrupt and stamp out illegal MSB activities, such activities continue to pose risks to the integrity of the MSB industry. These illegal operators facilitate money services transactions without performing customer identification and verification, thus allowing anonymity and concealing money trails of such transactions. Not only do these illegal MSB activities increase the vulnerability of the industry to ML/TF risks, they also result in a loss of national income which could otherwise be channelled for productive purposes and heightened reputational risk to the country.
- 1.4 Under the MSBA, carrying out MSB without a licence is a serious offence. It is also a predicate offence under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 631] (AMLA). As such, enforcement has been stepped up by the Bank to combat illegal MSB activities. As at end-December 2018, 48 entities have been convicted for operating MSB without a licence, while trial for 27 cases are on-going.

Currently, investigation is also being undertaken by the Bank on 31 cases suspected of carrying out MSB activities without a licence.

- 1.5 In parallel with the heightened enforcement actions undertaken over the years, the Bank continues to seek avenues in enhancing the effectiveness of enforcement against illegal MSB activities. At the same time, continuous efforts are also being taken to ensure swift actions in addressing non-compliances by licensed MSB with regulatory requirements that serve to protect consumers and promote high standards of integrity and professionalism in the industry.

2 Objectives of the proposed amendments

- 2.1 The proposed amendments to the MSBA are aimed at:

I. Enabling swifter, more punitive and visible enforcement actions to combat illegal MSB by:

a) enhancing the definition of “remittance business” to better cover the conduct of remittance business

Based on the Bank’s supervision on licensed MSB, surveillance and enforcement actions on illegal remittance operators since the enactment of MSBA, a key observation has been that cross-border remittance transactions, especially trade-based remittances, are not necessarily accompanied by a corresponding movement of funds. Corresponding movement of funds refers to the movement of funds from (i) a sender to the remittance operator and (ii) from the remittance operator to its overseas corresponding counterparty, and (iii) for subsequent disbursement to the beneficiary. Illegal remittance operators have also been observed to resort to a wide range of settlement methods such as net settlement, set-off, debt assignment, or other settlement methods to reconcile and settle their cross border transactions (see Appendix I for illustration of the modus operandi). Other key features observed in such transactions conducted by illegal remittance operators, which could potentially increase ML/TF risks include:

- (i) lack of documentation (which would otherwise allow for due diligence on senders) that enables anonymity and complicates the traceability of the remittance transactions; and
- (ii) absence of a clear trail (normally exists in a remittance instruction from the sender that contains information on the recipient and the destination of the funds) linking the parties involved in the remittance transaction. This makes it difficult to show that the illegal remittance operator accepts the money from the sender with a view to making the funds available to the beneficiary.

These observations and the evolving modus operandi employed by illegal remittance operators necessitate a wider and enhanced definition of “remittance business”.

b) enhancing punitive and deterrent effects of the law against illegal MSB activities

Carrying on MSB without a licence is a serious offence listed under the Second Schedule of the AMLA, given that such activity undermines the integrity of the industry, financial system and the country. It also poses risks which can include financial losses to customers (i) if the monies remitted do not reach the intended beneficiary for any reason; or (ii) where disputes arise without mechanisms in place for customers to seek redress. Unlike illegal remittance operators, licensed remittance service providers must comply with the requirement to ring-fence remittance funds, which cannot be used for purposes other than remittance payments to intended beneficiaries. Licensed money changers are also required to install counterfeit detection machines at their business premises to prevent counterfeit currencies from being used for exchange transactions. In addition, a licensed MSB is required under the law to disclose adequate information to customers on its products and services, as well as on the process to lodge a complaint.

Given the severity of the offence and the risks posed to customers by illegal MSB operators, enhancements to the current legislation are necessary to ensure that penalties imposed are appropriate to reflect the gravity of the offence, and the court has forfeiture power under the MSBA to deprive offenders of the tools and proceeds of illegal activities. This is important to create the desired deterrent effect

against the conduct of illegal MSB, and ensure that criminals will not profit or gain benefit from such activities.

II. Enabling prompt actions in addressing non-compliances by licensed MSB through an expanded scope of administrative actions

The current provision of the MSBA empowers the Bank to take administrative action for offences committed under the MSBA, except for offences under the provisions listed in the Schedule of the MSBA, which provides for any violations to be dealt with through criminal action. The provisions listed in the Schedule of the MSBA include provisions that are operational in nature, such as the requirements for record keeping and issuance of receipt. With improvements in the compliance standards in the industry, as evidenced by the positive feedback from the Mutual Evaluation Exercise by the Asia/Pacific Group on Money Laundering that was conducted on Malaysia in 2015, it is timely to introduce a more proportionate enforcement approach for operational offences by licensed MSB, while promoting continued improvements in compliance by the licensees.

The enhanced MSBA is expected to result in more effective enforcement against illegal MSB operators, and an expanded scope of administrative actions that can be taken by the Bank in the event of non-compliances by licensed MSB, thereby promoting increased usage of authorised MSB services.

PART B PROPOSED AREAS FOR AMENDMENT

I. For swifter, more punitive and visible enforcement actions against illegal MSB activities

1. Definition of remittance business

The Bank proposes for the definition of 'remittance business' in section 2 of the MSBA to be enhanced, as reflected in paragraph 1 of Appendix II. The proposed enhancements (i) remove the requirement to show that a remittance operator acted 'with a view to making the funds available' to a beneficiary, and (ii) expand the definition of 'remittance business' to cover different types of remittance transactions and modus operandi used to undertake remittance transactions. Accordingly, the phrase 'facilitating the transfer of funds' will be elaborated to cover activities commonly associated with remittance as follows:

- (i) offering to transfer the funds;
- (ii) accepting or receiving the funds;
- (iii) transporting the funds;
- (iv) arranging for the transfer of the funds;
- (v) issuing receipts for the transfer of the funds;
- (vi) utilising a system to transfer the funds;
- (vii) engaging in activities involving or connected to any form of settlement of the funds including net settlement, set-off and debt assignment; or
- (viii) allowing an account to be used as a channel for transfer or receipt of the funds.

2. Admissibility of evidence

The Bank proposes for the scope of admissible evidence to be widened by making all evidence obtained by an investigating officer admissible in court. This is to ensure that the law can be effectively enforced and criminals would not be able to avoid prosecution on technical grounds. In this respect, it is proposed for a new section 89A to be introduced in the MSBA, as provided in paragraph 2 of Appendix II.

3. Scope of abetment

To facilitate enforcement actions against parties who assist the conduct of illegal MSB activities, the Bank proposes for the current provision on abetment in section 86 of the MSBA to be enhanced as provided in paragraph 3 of Appendix II, by including:

- (i) an explanation to describe the word 'abet', whereby a person abets an offence if he continues to lend assistance and support in any manner or form to another person, who he knows is engaging in an unlawful activity under the MSBA; and
- (ii) illustrations of abetment in the conduct of illegal MSB activities. The illustrations make references to a landlord, employer and remittance system provider allowing the continuation of illegal MSB activities even with knowledge, or after being notified by the Bank of the illegality of such activities. These illustrations are based on actual observations from the Bank's surveillance activities. These are intended to be illustrative and shall not limit the Bank's ability to invoke the provision against any person who abets illegal MSB activities by any other means.

4. Mandatory imprisonment and a minimum fine for the offence of conducting MSB without a licence

Given the significant risks posed by illegal MSB activities, the Bank proposes for the legislation of mandatory imprisonment and a minimum fine of RM50,000 for the offence of conducting MSB without a licence. The proposal adopts a similar enhancement made to the AMLA in 2014, to ensure a sufficiently punitive penalty and effective deterrent for serious offences. For this, the Bank proposes for the amendment to section 4(4) of the MSBA as in paragraph 4 of Appendix II.

5. Forfeiture power of the court

The Bank proposes for the MSBA to include the power for the court to forfeit all exhibits, namely properties and documents tendered during trial, similar to the AMLA. This is aimed at preventing criminals from benefiting from illegal MSB activities by depriving them of the proceeds or properties associated with the commission of the offence. Additionally, this proposal will also help prevent a recurrence by the offender. A new section 66A will be inserted into the MSBA to operationalise this proposal, as in paragraph 5 of Appendix II.

II. For prompt enforcement actions on non-compliances by licensed MSB

6. Scope of administrative actions by the Bank

To enable the Bank to take prompt actions against operational breaches and encourage continued improvements in compliance by licensed MSB, the Bank proposes to expand the scope of breaches for which it may take administrative actions. These are:

- 5 provisions relating to conditions of licence and directives imposed by the Bank;
- 2 provisions relating to issuance of receipt and maintenance of records; and
- 3 provisions relating to key responsible persons and shareholding.

(See Appendix III for the list of 10 provisions proposed to be subject to administrative actions).

The types of administrative actions include monetary penalties, issuance of a directive, reprimand, requirement to remedy or mitigate the effect of breach and issuance of a public statement.

III. Additional area for review

7. Replace the words 'money changing business' with 'currency exchange business'

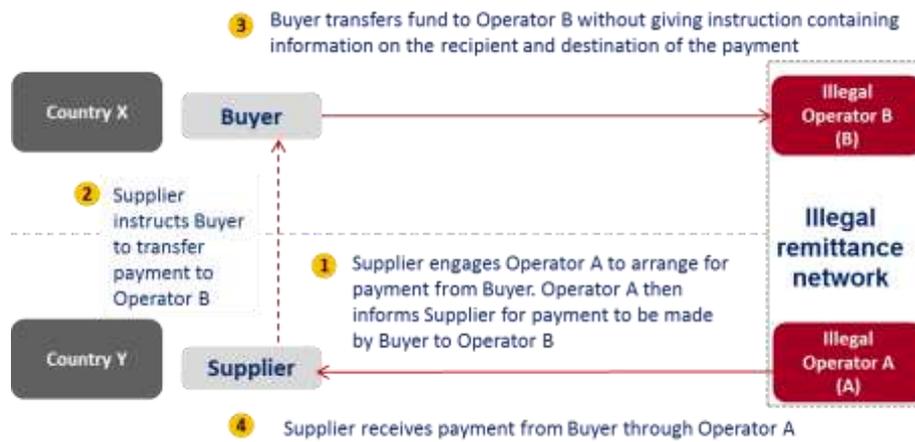
Based on the Bank's observation, the term 'money changing business' has often been confused by members of the public with money lending business. As such, the Bank proposes to replace the words 'money changing business' in the MSBA with 'currency exchange business'. This is aimed at distinguishing the industry more clearly from the money lending activities.

APPENDICES

APPENDIX I

Illustration : Modus operandi of trade-based illegal remittance

In a typical cross border trade-based illegal remittance, a supplier will engage the service of an illegal remittance operator (A) to facilitate payment from the buyer. Upon receiving information from the supplier, the buyer will give the funds to the sending illegal remittance operator (B) for payment to be made, without having to provide instruction containing information on the recipient and destination of the payment. At the other end, the supplier receives the payment from the buyer through illegal remittance operator (A), with no trail clearly linking operators (A) and (B). This is further compounded by the fact that the remittance transaction performed may not necessarily involve the corresponding movements of funds, as unauthorised remittance operators often resort to net settlement, set-off, debt assignment, or other settlement methods to reconcile and settle their cross border transactions.



APPENDIX II

1. Definition of remittance business

Section 2 of the MSBA is amended by substituting the definition of 'remittance business' with the following definition:

“remittance business” means the business of transferring funds or facilitating the transfer of funds, whether in any form or by any means, or whether there is any movement of funds or not, on behalf of an originator person in or outside Malaysia to a beneficiary person in or outside Malaysia, and the originator person and the beneficiary person may be the same person, but excludes such other businesses, activities, systems or arrangements as the Bank may prescribe. For purposes of this definition, “facilitating the transfer of funds” includes:

- (a) offer to transfer the funds;
- (b) acceptance or receipt of the funds;
- (c) transportation of the funds;
- (d) arrangement for the transfer of the funds;
- (e) issuance of receipt for the transfer of the funds;
- (f) utilisation of a system to transfer the funds;
- (g) engagement in activities involving or connected to any form of settlement of the funds including net settlement, set-off and debt assignment; or
- (h) allowing an account to be used as a channel for transfer or receipt of the funds.”

2. Admissibility of evidence

The MSBA is amended by inserting the following section:

“89A. Any document or other evidence, whether primary or secondary, obtained or seized by virtue of this Act, and their content shall be admissible as evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.”

3. **Scope of Abetment**

Section 86 of the MSBA is amended by inserting the following explanation and illustrations:

“Explanation – A person abets an offence under this Act if he continues to lend his assistance, services, facilities or support, in any manner or form, to another person who he knows is engaging in an unlawful activity under this Act.

ILLUSTRATIONS

- (a) A, a landlord, continues to rent out his premises to B, who is carrying on currency exchange business without a licence, after being informed by the Bank of B’s unlawful activities. A abets the commission of an offence by B for carrying on currency exchange business without a licence under this Act.
- (b) C, an employer, invites D, who he knows is not a licensee under this Act to provide remittance services for C’s employees. C abets the commission of an offence by D for carrying on remittance business without a licence under this Act.
- (c) E, a remittance system provider, who knows F is not a licensee under this Act, continues to provide F with a system or application that supports F’s remittance business activities, abets the commission of an offence by F, for carrying on remittance business without a licence under this Act.”

4. **Mandatory imprisonment and minimum fine for the offence of conducting money services business without a licence**

Section 4 of the MSBA is amended by substituting section 4(4) with the following:

“(4) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and a fine of not less than fifty thousand ringgit but not exceeding five million ringgit.”

5. **Forfeiture power to the court**

The MSBA is amended by inserting, the following section:

“Forfeiture upon prosecution

66A. (1) In any prosecution for an offence under this Act, the court may make an order for the forfeiture of any property which is the subject matter of the offence or appears to have been used in the commission of the offence where the offence is proved against the accused.

(2) Any forfeiture to be made under this section shall be made in accordance with the procedures under the Criminal Procedure Code [Act 593].”

APPENDIX III**Proposed provisions to be subject to administrative actions**

No.	Sections	Areas
<i>Provisions relating to conditions of licence and directives imposed by the Bank</i>		
1.	7(4)	Conditions of licence
2.	9(11)	Conditions of renewal of licence
3.	10(3)	Conditions of licence imposed by the Bank at any time
4.	73(10)	Compliance with directives issued by the Bank within the stipulated time
5.	73(14)(a)	Conditions imposed via directive when the Bank decides not to take action on the licensee or MSB agent under Section 73(1)
<i>Provisions relating to issuance of receipt and maintenance of records by licensed MSB</i>		
6.	27(1)	Issuance of receipt
7.	28(1)	Maintenance of records
<i>Provisions relating to key responsible persons and shareholding</i>		
8.	30(10)(a)	Notification to the Bank when the CEO, director or manager ceased to hold office
9.	32(2)	Obtaining of prior written approval from the Bank for new substantial shareholder
10.	33(2)	Obtaining of prior written approval from the Bank in effecting change to shareholding structure which would result in the change of control