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Modern Illegal Investment Schemes: An Assessment of its Combating Regime in Malaysia

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Abstract

Illegal investment schemes have been a long-standing problem in Malaysia. According to the most current National Risk Assessment conducted by Bank Negara Malaysia, fraud is the most widespread, with the most considerable losses recorded. Despite repeated efforts to crack down on the operation of unlawful investment schemes, the reported cases showed a growing trend with total losses year on year. This research is conducted to gain insight into Malaysia's current trend of illegal investment schemes and modus operandi adopted by the Malaysian Government to combat them. Malaysia's regulatory structure was also examined, including relevant laws, regulations, enforcement measures, and prevention and mitigation efforts. This research found that illegal investment schemes are highly complex and aided by technology, mainly social media and instant messaging apps. Further, the past Covid-19 outbreak has exacerbated illegal investment activities. Mule accounts, cryptocurrency, and e-wallets played significant roles in illegally obtained money's movement. This research also made recommendations to prevent the continuation of illegal investment schemes.

Keywords: Illegal investment, fraud, control JEL: K2, G28

Introduction

Illegal investment scheme (IIS) is a global phenomenon and a concern for regulators worldwide. Several mega scandals were recently revealed concerning money laundering, illicit financial flows, and IISs. These leaks not only ascertained the parallel economy of ill-gotten proceeds and their transfer globally but also exposed the authority and robustness of regulatory enforcement. The FinCen leaks established the role of financial institutes (FIs) in facilitating the transfer of ill-gotten proceeds of IIS, i.e., HSBC (BBC, 2020). In another case of 2008, a shocking fraud was confessed by Bernie

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Madoff, who engineered the largest Ponzi scheme in the world, which caused a paper loss of USD 64.8 billion (Henriques, 2021: Steinberg & Cohn, 2021). The situation of IISs in Malaysia is no different i.e., Skim Pak Man Telo, JJ Poor to Rich, MBI, VenusFX Forex and Richway Global Venture.

Globally the number of cases is increasing unprecedently. Therefore, thousands of common people from developing and developed jurisdictions fell victim to fraudsters. For example, in the US, 78,988 reports concerning IISs were received in 2021, with an increase of 194% from 26,912 cases in 2020; as a result, approximately 90,000 Americans lost USD 1.58 billion. The situation in Singapore shows that the country rated investment scams as the costliest in 2021, where the total losses stood at $ 190.9 million, and the cases rose to 2476 in 2021 from 1096 in 2020 (Lin, 2022). Hong Kong saw a sharp jump in investment scams from 208 cases in 2018 to 980 in 2021. This year, in 2022, the country recorded 243 cases in January and February (Lo, 2022). The situation is also alarming in Malaysia concerning IIS.

IISs in Malaysia are defined as any companies or individuals that are dealing in securities, trading in futures contracts, and providing fund management services and investment advice related to securities or futures without being licensed by the Securities Commission Malaysia (SCM) under the Capital Markets & Services Act 2007 (Bank Negara Malaysia, 2021). In 2021, SCM received 1,897 complaints and 3,464 inquiries. 52.40% of the complaints were related to unlicensed activities, and 72.23% were related to the legality of the schemes. Year on year, the complaints and queries show an upward trend from 2,157 in 2019; to 3,675 in 2020 and 5,321 in 2021 (SCM, 2022). Resultantly, 758,851 investors have lost RM1, 135 billion in the country since 2015 because of illegal investments (Aisyah, 2020).

From 2015 to 2017, the Malaysian Companies Commission (MCC) identified 10 illegal investment schemes that accounted for RM1.14 billion. Malaysia's most infamous IISs include Skim Pak Man Telo, which caused RM 91 million in losses to 50000 investors (Kasim et al., 2020), the Swisscash Mutual Fund caused around RM190 million in losses (Ghani & Halim, 2017), JJ Poor to Rich, MBI, VenusFX Forex and Richway Global Venture (Teo et al., 2019) and Dynasty Group (Jalil, 2021). Investments without products contributed to the highest losses of RM 700 million. In response to the increasing number of various IISs, SCM cautions the public to be alert for clone firms, Covid-19, and technological investment scams, as 64% of the payment mediums in illegal schemes were cryptocurrency (SCM, 2020). Therefore, crypto-based IISs are also showing an increasing trend. The actual cost of online IISs is around USD

2.54 billion (Bischoff, 2022). In Malaysia, Illegal online investment frauds increased to 3,195 cases involving losses worth more than RM245 million in 2021 compared to 1,671 cases with losses exceeding RM180 million in 2020 (The Sun, 2022).

Further, IISs operators typically use their banking accounts to facilitate the deposit and transfer of funds. However, the schemes are seeing a change in their modus operandi, where mule accounts are used to accept deposits from investors. The schemes' masterminds control these mule accounts. Recently, SCM investigated 10 clone firms with mule accounts that used to transfer IIS proceeds to masterminds (Bernama, 2022). The investigation also identified 32 mule account holders who facilitated the movement of investment funds. One of the mule accounts successfully moved RM 3.6 million in six months. It was evident that millions were lost through this illegal conduct, and the recovery of the funds from the perpetrators is an uphill task. Mule account holders appeared to play a pivotal role in layering illicit proceeds (Mutch, 2020).

Recruitment of money mule is easy, making it the preferred choice as transit accounts for fraud-related crimes. In the 2021 press release, Home Minister Datuk Seri Hamzah Zainudin stated that over 104,032 mule accounts were reported since 2015, with 29,124 people arrested and 18,660 charged (Daim, 2021). The scheme operators exploited gaps in enforcement and various legislations. As of 2016, losses involving mule accounts exceeded RM 500 million, with more than 13,500 cases investigated.

Several studies on various types of illegal investment schemes, i.e., (Kasim et al., 2020: Rahman et al., 2020) discussed the different aspects of IISs in the Malaysian context. However, very few discussed the enforcement actions, preventive measures, and the implementation challenges of existing legislation to contemporary typologies of IISs. Further, despite noticeable action, the number of cases concerning IISs is increasing significantly. If these issues are left unattended, they will result in consequences for creditors, investors, and the public (Omar et al., 2016). Therefore the research aims to examine the contemporary techniques of IISs and trends of IISs, review the effectiveness of the regulatory regime in Malaysia, and finally propose a mitigation strategy to fight the IISs effectively.

Literature Review

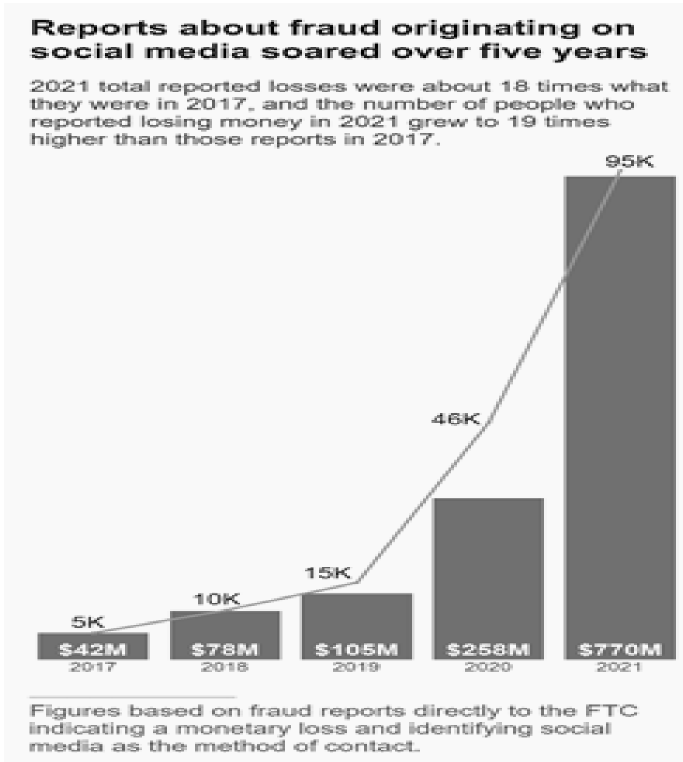
Ghani and Halim (2017), whilst agreeing that IISs affect all walks of life, found an interesting fact that the majority of the investors in Malaysia are Bumiputeras (The original Malaysians) and, specifically, public servants. Conversely, Bumiputeras have low equity in companies listed in Bursa Malaysia. The authors also stated that Bumiputeras are not interested in investing in legal instruments and prefer unregulated for higher returns. However, this statement is not further substantiated with adequate empirical evidence to support the proposition.

Kasim et al. (2020) discuss in length the characteristics and *modus operandi* of Ponzi schemes. The authors reflect on the issue from the perspectives of the victims and the factors behind their participation in Ponzi schemes. The authors found that victims were called upon to join Ponzi schemes when everybody else, especially their close circle of friends and families, participated. The authors also mentioned that the victims lacked knowledge in investment matters and thus exhibited an easily manipulated personality, which is consistent with the Gullibility Theory. Gullibility Theory has four elements: situation (external to the person), cognition, personality, and state (internal) (Greenspan, 2009).

Greenspan (2009), as cited in Halim et al. (2021), explained how Gullibility Theory demonstrates the success of a Ponzi scheme from the investors' perspective. Furthermore, Greenspan & Woods (2016) found that despite having a high education, one can still be naïve to trust existing pseudo-investors who persuade the victims to invest in the schemes. Therefore, currently, it is observed that many working professionals and well-educated were falling victim to the schemes. Ghani and Halim (2017) found early investors were made up of people who knew that the schemes would fail but wanted to take the opportunity to make quick money by being early on the hierarchy.

Lewis (2012), as cited in Halim et al. (2021), stated that the victims of the Ponzi schemes were typically either too greedy or too gullible. They found that besides Gullibility Theory, it is observed that usages of social media significantly influenced the participation of university students in joining the IISs. This finding was consistent with Pricewaterhouse Cooper's (PwC) 2022 Global Economic Crime and Fraud Survey, where digital platforms such as social media opened the door to fraud and economic crime risks. The same was endorsed by Interpol (2019) and Kasim et al. (2017). For example the situation in the USA is explained as Under:

Figure 4.1 The figure shows the trend of fraud in the United States originating from social media.



Source: Federal Trade Commission, United States (2022)

With the recent surge and hype surrounding cryptocurrency, digital currency is extensively researched to assess the vulnerabilities and usages in fraud and money laundering (Sultan et al., 2023a). Trozze et al. (2022) found Ponzi Scheme and High Yield Investment Programmes were the most preferred in the academic literature, which experts considered harmful. Bartoletti et al. (2020) & Chen et al. (2018) concluded that smart contracts in cryptocurrency, like Ethereum, were said to have facilitated many of the Ponzi schemes. Furthermore, cryptocurrency's opaque characteristic allowed money movement from one party to another, not subject to regulatory scrutiny, thus passing all AML obligations. Cuervo et al. (2019) said the existence of crypto assets subject to varying regulatory frameworks globally leads to a lack of monitoring and information sharing across jurisdictions (Sultan and Mohamed, 2022a). It makes cryptocurrency attractive to fraudsters who want to evade existing controls to commit fraud, cybercrime, tax evasion, launder illegal proceeds, or even fund terrorism (Cuervo et al., 2019).

A money mule is nothing but a facilitator of financial crimes. Arevalo (2016) & Vedamanikam (2020) stated that the role of mule accounts is vital in enabling the movement of illicit funds from one party to another without revealing the actual identity of the money launderers and remaining anonymous. Without money mules, fraudsters would have nowhere to go instead of using their accounts, which would link them with the crimes. Arevalo (2016) found recruitment of money mules varied between countries. However, online job scams, face-to-face recruitments, social media networks, and romance were mainly used, with face-to-face being the most common method. Arevalo (2016) also observed that financially burdened individuals were more easily recruited to become money mules since they were paid between $200 to $500 daily for processing transfers up to $100,000. Furthermore, gaining access to money mules was deemed difficult.

Mules can be categorized into witting, unwitting, and complicit. Unwitting mules refer to the mule account holders who are unaware of the activity in their account and did not know about any early indication of being used to facilitate the transfer of illegally obtained funds. Witting mules can be classified as "willful blindness" as they receive an early red flag but choose to disregard it. On the other hand, a complaint mule refers to a mule who knows about the criminal activity and willingly supports the syndicate to accept the deposit from victims and transfer it out to another counterparty. Complicit mules receive a percentage of the total payments being laundered through the account instead of a one-off payment for witting and unwitting mules.

Mule account is not a new phenomenon in the country, but statistically, the number of reported cases over the last 5 years is alarming. Mule has always been associated with scams, but in recent years, research has found mule accounts are being used as the primary method to receive investment funds from the victims of illegal investment schemes. In other words, mule accounts are the lifeline to unlawful investment schemes, as, without them, the fraudster has nowhere to go to move their money. Students and housewives are the main targets of the mule syndicate recruited via social media.

In Malaysia, Vedamanikam (2020) found that university students were targeted for using their identities to open bank accounts. The finding revealed that almost 50% of the mules facilitated fraudulent funds from loans, Macau, e-commerce, and love scams. Although related law and enforcement actions were ramping up, the author still believed that awareness was scarce, as evident in the reported mule accounts. Rani et al. (2022) proposed a risk assessment technique for money mules derived from The Wolfsberg Group's prescribed guidelines and National Risk Assessment. The risk assessment would focus on Know Your Customer (KYC), red flags assessments, and transaction monitoring red flags. Further, robust customer due diligence (CDD) implementation for general and high-risk accounts is vital (Sultan, 2022: Sultan and Mohamed, 2022b: Sultan and Mohamed, 2023b). therefore, a robust financial intelligence unit is required (Sultan and Mohamed, 2022c).

Mugarura (2017), as cited in Kasim et al. (2020), stated that no solution or measure could be the silver bullet in preventing IISs from flourishing. Masterminds of the scheme are not alone but are using other individuals to form a company legitimately but conducting illegal deposits. It also included hiring promoters to promote the scheme. Kasim et al. (2020) found that when the scheme went down, little could be done to recover the cash and identify the masterminds since it is a dummy company with puppet directors. The author found that regulators and law enforcement agencies differed in their strategies in terms of preventive measures. It mainly happens due to various contemporary typologies used for fraud and money laundering (Sultan and Mohamed, 2022d).

Kasim et al. (2020) stated that laws and legislation should be specific to Ponzi schemes. Rahman (2020) recommends legal action against scheme participants to raise awareness and take better precautions. He also opined that stricter punishment for company directors guilty of operating the illegal scheme would influence proper corporate behavior and protect the public. With the increasing usage of online platforms to promote IISs, Albrecht et al. (2017) suggested that increased surveillance was required to detect the schemes better. In conclusion, awareness, punishment (investors and employees/directors), supervision of online platforms, monitoring of digital currencies, and robust regulatory regime are utmostly required to curb the menace of IISs and safeguard stakeholders' trust.

Research Methodology

This research aimed to explore the contemporary trends in IISs and the effectiveness of the regulatory regime to combat them in the Malaysian context. Purposive sampling was applied to select experts for interviews, enabling researchers to collect empirical data from interviewers relevant to the study (Strauss and Corbin, 1998). The study targeted experts with multi-dimensional experience in controlling and field offices. The study acquired a list of 10 potential informants through rigorous field research, and the list was performed as our sampling frame. Therefore, purposive sampling was appropriate for this study compared to random sampling (Gehman et al., 2018).

The interview is an excellent method to explore an individual's specific issues, views, experiences, and beliefs on particular matters (Ryan et al., 2009). Further, semi-structured interviews are a critical technique for collecting qualitative data (Patton, 1990) and can be defined as "conversations with a purpose" (Lune and Berg, 2017; Burgess, 2002). Their relaxed style produces discussion and enables the informers to lead it (Mason, 2017). The semi-structured face-to-face interviews were arranged keeping in view the convenience of informants. The meetings were accomplished at the respective informer's office to provide a favorable atmosphere for the discussion (Holstein and Gubrium, 1995). The questions' nature was wide-ranging, allowing the informers to debate their distinct opinions and experiences.

The interviews were scheduled with officers from Securities Commission Malaysia (SCM), Bank Negara Malaysia (BNM), Royal Malaysia Police (RMP), and senior AML officers from FIs to understand the current trends of IISs and the effectiveness of the regulatory regime. Interviews were conducted with intervals to gather experts' opinions on the issues. Interviewing key personnel from the corresponding regulators and FIs is crucial to understanding and gathering in-depth information on the subject matter. A formal request via email was sent to secure an interview session with the regulators, law enforcement agencies, FIs, and audit companies. Several attempts were made to reach out to BNM, SCM, and RMP for an interview; however, no response was received from them. Only two participants from private organizations were interviewed, as none of the government agency responded to the request.

Further, this study employs the document analysis method (Bowen, 2009; Saiti et al., 2021) to analyze reports, policy documents, research and news articles, and legal documents to investigate the relationship between IISs and the regulatory regime in Malaysia. The nature of the research question requires connecting dots and findings explanations; therefore, a qualitative methodology is appropriate in the given context (Ahmad et al., 2021; Saiti et al., 2021: Sultan, Mohamed and Hussain, 2023c).

The document analysis method includes finding potentially relevant documents, screening documents for inclusion in the analysis, extracting relevant information and synthesising the data for correlation, and developing plausible explanations (Bowen, 2009; Labuschagne, 2003: Sultan, et al., 2022e). The qualitative analysis of documents may provide essential data about a specific matter or social reality and enable researchers to develop noteworthy explanations and conclusions based on the information extracted from contents, analysis, and findings of non-technical reports and non-academic articles. The study mainly relied on secondary data sources i.e., official reports, papers and prosecution reports to name a few. We extensively searched for the relevant documents for the analysis using online and offline sources and many pertinent documents. The documents were analysed using content analysis (Sultan et al., 2023d). Subsequently, these were manually analysed to extract relevant information.

Research Analysis and Discussion

The main objective of the research is to examine the contemporary techniques of IISs and trends of IISs, review the effectiveness of the regulatory regime in Malaysia, and finally propose a mitigation strategy to fight the IISs effectively. The term illegal financing scheme is broad and covers many schemes such as the Ponzi scheme, Get Rich Quick Scheme, High Yield Investment Scheme, and more. The recent disclosure from regulators and enforcement bodies revealed that these schemes have picked up their pace in execution. The speed appears to be quicker, and the losses appear to be more significant. The research revealed that for the last 5 years, illegal investment schemes in Malaysia could be clustered categorically in the following trends:

From the early inception of the schemes until the current time, it has become evident that the schemes somewhat remain the same, but the narrative has changed. The pandemic forced working professionals to work from home and the larger public to be placed under movement control. The restricted movement has caused more people to spend more time in the digital world than ever. Any crisis presents opportunities for fraudsters as they always find ways to create a scheme to defraud victims. As such, the pandemic gave a chance for them to launch a strike taking advantage of millions of people who are spending hours on the online platform.

The Covid-19 pandemic has amplified the illegal investment scheme. The impact of the pandemic on society and the economy varies between low-income and high-income groups. Some may have enough safety net to hamper the effect, but many do not have sufficient savings to continue their lives. Therefore, the need to improve one's financial standing and livelihood in a tight economy has driven many people to invest in these schemes. This analysis is supported by Bar Leve et al. (2021), who found that most of the victims in developing countries fell victim due to a desire to escape poverty and naivety. The authors also stated sudden changes in the economic condition are a driving reason affected by financial, family, and psychological circumstances. People are inclined towards investments that give them good returns even if it is significantly beyond the average market rate. The reality of the scheme's legality and promised return is not understood until too late. Although the current situation is endemic, the trend of working from home (WFH) and digital time did not change much. With such change in behaviour and workplace, the first and second line of defence starts to break down where existing controls that have been placed may not be adequate and corresponds adequately to the risk.

Historically, illegal investment schemes existed, focusing more on having a physical office and a public figure or "Datuk" who promotes the scheme. The recent shift shows that fraudsters resort to their operations almost entirely digital. The Research found that social media platforms are gaining popularity among fraudsters. Fraudsters are quick to adapt and find new ways to execute their schemes. Illegal investment schemes are promoted using social media (SocMed) and instant messaging platforms. The most popular social media are Facebook, Instagram, WhatsApp, and recently, Telegram & Tik Tok. Some fraudsters even have a website that changes the user experience, leading them to believe it is a genuine scheme. It is consistent with the purpose notice released by Interpol (2019) and research published by Kasim et al. (2017). Federal Trade Commission (FTC) observed a similar trend in the United States, where social media is deemed a gold mine for fraudsters. The report showed that social media fraud increased 8-fold from 15,000 in 2017 to 95,000 in 2021 (Fletcher, 2022**).**

Features of social media platforms allow sharing of information from anywhere and anytime. The penetration of information reaches the community in every corner of Malaysia. For example, one can control how Facebook ads get their users. The ads can be optimized to reach specific demographics, ages, ethnicities, and interests. This function allows fraudsters to optimize their ads to reach specific target groups, often the vulnerable ones. Since Instagram is part of the same holding company as Facebook, the same ads can be advertised across Instagram capturing more potential victims. It allows for capturing potential investors in a highly effective manner from two of the most popular social media platforms.

Telegram allows fraudsters to create a group and add up to 200,000 members, a function not available in Whatsapp. Once users are added, the fraudster begins to share investment-related materials. Fraudsters don't work alone, as they add their people to the group to convince the victims by agreeing to the investment strategy of the group owner and sharing fictitious investment returns. Most investment material and projected returns are mythological and make no economic sense.

One of the interviewees mentioned: "I don't think the schemes have evolved much, but the vehicle has changed significantly due to social media platforms." Based on the analysis from the regulator's websites, the research found that gold, forex, share market scheme, business investment scheme, and money game (get rich quick scheme) still exists. However, newer variations of schemes were added to the regulator's websites.

Recent disclosure revealed that clone firms and crypto investments are frequently reported. Clone firms refer to a tactic where fraudsters create a firm using an existing investment company's name. The name may be taken from a genuine foreign investment company or partially matches an investment company's name. The website will incorporate the company's official logo and language and display the regulator's logo to give a legitimate appearance. The scheme is also promoted using various digital communication platforms. Investors are instructed to deposit their investment funds into a mule account. The promised returns are beyond the market rate and often go as high as 100% after a few hours of investing. Interested investors will be asked to register via a given link and transfer the fund into an account provided by the scheme operator. The scheme is promoted as no risk involved with significantly high return. When investors opt to withdraw their money, scheme operators will impose various conditions and restrictions that make withdrawal difficult.

Similarly, with the rising interest in cryptocurrency, a digital asset is preferred as an investment instrument. Cryptocurrency refers to the digital asset available through solving complex computer algorithms, referred to as mining. The first and most famous cryptocurrency is Bitcoin, followed by Ethereum, XRP, and Tether have their use cases. The hype surrounding cryptocurrency investing triggered the "Fear of Missing Out (FOMO)" sentiment. The price of Bitcoin, for example, once traded at RM 3000, went as high as RM 275,000 but now stands at only around RM 80,000 at the time of the research. Cryptocurrency investment is complex since there is no intrinsic value and requires someone with a high-risk appetite to trade. Fraudsters see this as an opportunity and claim to be cryptocurrency investment experts.

The interviewees believe that many of the illegal investment schemes are controlled by organized crime syndicates. It is justified based on the modus operandi, sophisticated method, and the scale of carefully designed schemes. Defrauded funds are often transferred from one country to another country in Asia. The facilitation of the fund transfer is conducted using online remittance service, foreign cryptocurrency exchange, and e-wallets, while some funds are withdrawn immediately via ATMs. The lack of standard regulations across countries allows fraudsters to park their defrauded money in foreign cryptocurrency exchanges. The products' speed enables significant funds to be transferred across the border almost instantly until the bank system flags the account. One of the interviewees mentioned that although some locally organized illegal investment schemes exist, these syndicates see Malaysia as a mere target instead of an investment fraud hub.

Fraudsters are quick to understand the demographic and cultural aspects of the victims. Based on the recent cases, it is evident that fraudsters engineered schemes targeted toward specific products that appeal to particular age groups, races, and religions. This type of investment fraud is known as affinity fraud. For example, major investors of Bestino and Geneva gold investment schemes are Indians, Get Rich Quick, or Money Game, which is predominantly famous in Penang and is favored by the Chi. Ponzi Scheme is more attractive to Malays, and cryptocurrency investment is attractive amongst the younger age group.

The victims consist primarily of M 40 compared to T 20 and B 40. It is likely attributed to the fact that M40 have disposable income and are easier to trick because of their urge and desire to improve their economics. T20s are somewhat tricky because they are well-informed and prefer to invest with a regulated entity, but some of them, such as businessmen/businesswomen, became victims. B40s, on the other hand, may not have sufficient funds to invest and may only invest smaller amounts. Fraudsters require more victims from the B40s to pool out a sizeable fund. This trend could be linked to Malaysia's status as a developing or upper-middle-income country and political unstable (Bashir et al., 2021).

The fraudsters who operate illegal investment schemes either via the establishment of the sole proprietorship or private limited companies and receive funds via the company account shall be liable and criminally tried in court. The link between the fraudsters and the illegally obtained fund can be established. However, with mule account holders, the money trail is broken, and the connection between the depositor and the final recipient can span several layers. It makes the process of following the money difficult.

Malaysian Regulatory Framework

Malaysia has no specific law or penal code to incriminate illegal investment schemes. A particular law has been recommended to fight the Ponzi scheme. However, a Ponzi scheme is just one type of unlawful investment scheme; there are many other types; thus, amending the existing law to cover all kinds can be challenging—however, several laws govern the conduct of illegal investment schemes in Malaysia.

Capital Market and Services Act 2007 is an Act that comes under the purview of SC. Besides making the rule, the role of SCM is to enforce regulations related to the capital market, supervise capital market activities, and regulate all licensed persons and entities under the said act. Despite the current trend leaning towards a "scam" related investment scheme, it still comes under the purview of SC since the schemes may breach securities law that the SCM administers. For example, unlicensed activities refer to unlicensed regulated activity that requires a valid license and must be registered with the SC, although actual investment may be involved. On the flip side, scams related investments refer to schemes that do not exist and are created to deceive investors.

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) is a broad act enforced and comes under the purview of BNM. The Act covers the offense of money laundering deriving from the extensive list of predicate offenses as per schedule two of the Act, the measures to be taken for the prevention of money laundering, seizure and forfeiture of property involved in or derived from money laundering, and terrorism financing offenses, and proceeds of unlawful activity. AMLA gives power to BNM to enforce the law and issue freezing orders for illegally obtained assets. As stipulated in schedule one, the Act requires all reporting institutions (RI) to have appropriate AML programs and adequate controls to detect and deter the scheme operators from not allowing the bank to be used as a conduit to facilitate the illegal movement of funds.

Compliance programs in banks consist of Know Your Customer (KYC), Client Due Diligence (CDD), Transaction Monitoring, and Financial Crime Compliance. In terms of a fraud detection system, it comes under the purview of the business unit. The compliance program focuses on post-event, except for KYC, designed to verify the identity before establishing a business. Fighting fraud requires real-time surveillance since their modus operandi changes occasionally. The fraud detection function commonly sits with the business unit. Even though banks use the latest technology to detect fraud, fraudsters will always find ways and vulnerabilities to defeat them.

Since illegal investment schemes utilise digital and messaging channels to advertise and convince investors in Malaysia, the Communication and Multimedia Act of 1998 covers the conduct of the operators. MCMC does not have enforcement power; instead, the commission shares information about illegal investment schemes that utilities digital channels with the regulators. The research looks into the regulations, specifically the applicability of the sections related to the incriminate unlawful investment schemes, and provides enforcement statistical analysis for previously charged cases. The data is collected from SCM and BNM's websites.

Table 5.1: All the applicable acts related to illegal investment schemes

Regulation/Act/Legislation	Regulatory/Enforcement Body
Capital Market and Services Act 2007	Securities Commission Malaysia
The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) Section 4(1)	Bank Negara Malaysia
Financial Services Act 2013 (Sec 137(1))	Bank Negara Malaysia
Banking and Financial Institution Act (BAFIA) 1989 Section 25(1)	Bank Negara Malaysia
Communications and Multimedia Act 1998	Malaysian Communication & Multimedia Commission
Section 420 of the Penal Code	Royal Malaysian Police

Source: Compiled by authors

BNM established Financial Intelligence & Enforcement Department (FIED) in 1986 (formerly known as Special Investigation Unit) to conduct surveillance and investigation of illegal investment schemes. FIED conducts searches and seizure operations and gathers information from witnesses to secure a successful prosecution of unlawful investment scheme operators. BNM takes a tough stance on the crime and does not hesitate to act against the scheme operators. The research found that enforcement action by the BNM over the last 5 years, only 4 companies involved in illegal investment schemes were charged in court. A retrospective review also found that some of the previous unlawful investment scheme cases from a decade ago are still pending final judgment, while some are pending Court of Appeal decisions.

Table 5.2: Status of Cases Investigated from January 2017 to October 2022.

Companies/ Individuals	Date	Activities	Status
JJ Poor To Rich (JJPTR)	12-May-2017	A joint raiding was carried out on JJPTR's premises by Royal Malaysian Police and Bank Negara Malaysia for the suspected offence of conducting illegal deposit taking in breach of Section 137 of the Financial Services Act 2013	On-going investigation
MGSB Berhad	15-Sep-2017	Joint raiding was carried out on MGSB Berhad's premises by Bank Negara Malaysia, the National Revenue Recovery Enforcement Team of the Attorney-General's Chamber (NRRET), the Royal Malaysian Police (RMP), and Companies Commission of Malaysia (SSM) for suspected offenses of conducting illegal deposit taking and money laundering in breach of Section 137 of Financial Services Act 2013 and Section 4(1) of Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.	On-going investigation
Dinar Dirham	28-Nov-2017	Joint raiding was carried out on Dinar Dirham's premises by Bank Negara Malaysia, Malaysia Co-operative Societies Commission (SKM), and Companies Commission of Malaysia (SSM) for suspected offences of conducting illegal deposit taking and money laundering in breach of Section 137 of Financial Services Act 2013 and Section 4(1) of Anti-Money Laundering Anti-Terrorism	On-going investigation

		Financing and Proceeds of Unlawful Activities Act 2001.	
MonSpace Sdn Bhd	24 Jul. 2018	A joint raiding was carried out on MonSpace Sdn Bhd's premises by the Ministry of Domestic Trade and Consumer Affairs, Royal Malaysian Police (RMP), Companies Commission of Malaysia (SSM), and Bank Negara Malaysia for the suspected offence of conducting illegal deposit-taking in breach of Section 137 of Financial Services Act 2013.	On-going investigation

Source: Extracted and modified from Bank Negara Malaysia

Table 5.3: Refers to the enforcement actions by SC.

#	Year	Offence	Accused	Charges	Offense Description
1	2022	Money Laundering	Tan Soon Hin	5 counts of money laundering under section 4(1)(a) of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLATFPUAA)	Unlicensed investment advice to investors.
2	2022	Money Laundering	Teh An See	5 counts of money laundering under section 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of	Provision of unlicensed investment advice by Tan to investors.

				Unlawful Activities Act 2001 (AMLATFPUAA)	
3	2022	Money Laundering	Muhamad Afiq bin Md Isa	8 counts of money laundering under section 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLATFPUAA)	Provision of unlicensed investment advice to investors.
4	2022	Money Laundering	Natasha binti Mohamed Taufek (Natasha)	1 count of money laundering under section 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLATFPUAA)	Provision of unlicensed investment advice to investors.
5	2022	Securities Fraud	Chua Yi Fuan (Charles Chua)	13 counts of securities fraud under Section 179(b) of the Capital Markets and Services Act 2007 ("CMSA").	Representation about purported investment schemes involving the subscription of securities, which did not exist.
6	2022	Securities Fraud	Chua Yi Fuan (Charles Chua)	4 counts of securities fraud under Section 179(b) of the Capital Markets and Services Act 2007 ("CMSA").	Representation concerning purported investment schemes involving

					the subscription of securities, which did not exist
7	202 2	Derivatives fraud, unlicensed activities, and failure to appear before the SC's Investigating Officer	Mohd Azhidi Bin Laili (Azhidi)	9 counts of offences under subsection 206(b) of the Capital Markets and Services Act 2007 ("CMSA")	Holding himself out as a representative of AmFutures Sdn Bhd when the Securities Commission Malaysia does not license him
8	202 1	Holding out as a fund manager without a license.	Uzir Bin Abdul Samad	1 count under section 58(1) of the Capital Markets and Services Act 2007 (CMSA)	Using the titles of "Fund Manager" and "Securities Commission Capital Market Services Representative's Licence (CMSRL) holder," respectively, tended to create the belief that he was licensed to carry on the business of fund management.

Source: Extracted and modified from the Securities Commission Malaysia website.

An analysis of the same was conducted on enforcement actions taken by SCM, where only 8 cases were charged over the same timeline. The charges were framed for money laundering, securities fraud, derivatives fraud, and unlicensed fund manager for securities fraud. The charges were mainly framed under section 4(1)(a) of AMLATFPUAA,179(b), 206(b), 59(1), 58(1) of CMSA 2007.

Based on the analysis, with the increasing complaints received by both SCM and BNM, followed by the growing number of companies and individuals added to the investors alert listing, the number of cases charged in court for the past 5 years is meager. Similarly, based on RMP number of mule accounts that were charged is only one-fifth of the total cases. PDRM, through their statement in the media, discloses that the number of mule accounts found for 2021 is 29,769, but only 12,659 were arrested and charged for various offences (Bernama, 2022). Based on statistics revealed by the Home Minister, Datuk Seri Hamzah Zainuddin, only 29,124 were detained out of 104,032 reported from 2015 to 2021. Out of the arrested number, only 18,660 were charged. They can be charged under sections 411, 414, 424 of the Penal Code and 29(1) and Section 29(1) of the Minor Offences Act 1955. Based on the reported cases, those charged were only fined RM1000 and, in default, 1-year imprisonment. The crux here is the vast gap between the reported and charged cases. Even so, the penalty for mule accounts is relatively low and inadequate compared to the impact of the crime itself since they receive a higher monetary amount for being mules.

The challenge in prosecuting the mule account holders is proving that they intentionally and knowingly allowed their bank account to be used for criminal purposes. The law cannot be implied over mule accounts unaware their bank account is being used to facilitate fraudulent payments. However, based on RMP's investigation, most mule account holders knew they should not allow or share their banking credentials with anyone as stipulated in the bank account opening terms and conditions.

The rise in technology has enabled fraudsters to commit crimes remotely and hide behind the digital wall. As described above, the current schemes are perpetrated using social media, marketed using digital advertisements, and communicated using a messaging platform to which none requires proper registration and being regulated appropriately. By operating this way, the enforcement agencies face the challenge of identifying, locating, and connecting the perpetrators to the crime. Furthermore, when the crime is transnational and involves an organized crime syndicate, the time taken to conduct an investigation, collect evidence, document testimonies, and coordinate the joint effort with multiple foreign enforcement agencies takes time and is even more challenging. The prosecution team faces difficulty fulfilling the charges' ingredients due to lacking any mentioned elements. Even those who have been charged were allowed bail. It will enable fraudsters to scoot free when charged while waiting for their trial to complete, which can take many years. Based on the monetary losses incurred from the scheme, prison time and fines should be amended for a longer prison time and higher penalty. The law should be amended to include whipping to send a stern message to the criminals. One of the interviewees also suggested "naming and shaming" to humiliate these perpetrators.

BNM, SCM, CCM, RMP, MCMC, and Cybersecurity Malaysia work hand in hand to clamp down on the operations of illegal investment schemes. Cybersecurity and MCMC, for instance, track and close websites that illegally promote unlawful schemes. Furthermore, they also work with the social media platform, Facebook, to block business pages that conduct the same.

Prevention and Mitigation

Malaysian regulators and enforcement bodies have long been at the forefront of preventing illegal schemes, with more stringent measures taken in the last few years to clamp down on the issue. Establishing the National Anti-Financial Crime Centre (NFCC) in 2019 is necessary for better coordination among 12 enforcement agencies, including BNM, SCM, RMP, Cyber Security Malaysia, and CCM, in the fight against financial crime. NFCC, while tasked to coordinate enforcement actions, also plays a pivotal role in prevention efforts. Previously regulators and enforcement agencies had been working in silos; thus, sharing of intelligence is time-consuming and restricted, which has been the main challenge. As such, establishing NFCC is a timely first step to collaborating and sharing data among agencies. The research found the prevention strategies by the regulators and enforcement agencies are targeted toward educating and creating awareness among the public.

BNM and SCM, being the primary regulators, established a portal within their website that lists down companies and individuals operating illegal investment schemes. The list is created to create awareness among the public and allows them to check the name of the company they are investing in. The list is updated and published proactively as and when a new illegal scheme is detected. The regulators also notify the reporting institutions in Malaysia when the list is updated. It allows the reporting institution to further monitor and investigate these companies and individuals against their client base and take appropriate action, including increased monitoring and exiting the customer from the bank.

SCM started an initiative called SmartInvest in 2014 to supplement investment literacy with the existing investor education channel. SmartInvest is incorporating awareness about investment scams in its website and portal. It has learning modules that explain how to spot scams, avoid being scammed, the modus operandi of investment scams, and anti-scam videos. The anti-scam videos with the theme "Silap Labur, Duit Lebur" focus on using celebrities to spread more awareness via video songs and clips that encompass re-enacted scenes of actual investment scams taking place. Such video is touted to be more effective since the public can relate and be alert when an actual event occurs. SmartInvest application also has a "Scam Meter," which asks specific questions about investment schemes to detect the likelihood of potential illegal investment schemes.

RMP has devised an initiative to prevent the public from falling victim to depositing money into mule accounts through a web portal. The portal, launched in January 2019, and known as Semak Mule, is also available in the mobile application form that supports Android and Apple phones. The primary function of Semak Mule is to allow the public to identify if the account number or phone number given by the fraudster to deposit the money has been used in scams or other fraudulent activities. No regulated entity or approved investment scheme will require investors to deposit funds into individual accounts. Even if the investors do not know this fact, this extra layer of checking allows the investor to be more vigilant and make an informed decision. The Commercial Crimes Investigation Department (CCID) maintains the portal regularly as and when the victims report cases.

In addition, with the listing that RMP shares, reporting institutions will blacklist the mule accounts from opening any new accounts. This step is important to mitigate the further creation of accounts from other financial institutions. The regulators and the enforcement bodies have long been pushing the awareness agenda through various initiatives and channels. Banks in Malaysia have also been ramping up the awareness campaign to their account holders. For example, United Overseas Bank (UOB), HSBC, and Maybank have been informing their customers about potential investment scams and mule accounts through their website and app pop-up messages. The warning notification is strategically placed at the first landing page and icon within the app, which results in higher chances of reading the message. Furthermore, HSBC and Malaysian National Security Council (NSC) have been going the extra mile by sending SMS informing customers to be alert on the various types of scams and mule accounts.

Conclusion

The research investigated the current trends in illegal investment schemes (IISs) in Malaysia, focusing on the changing narrative and the impact of the COVID-19 pandemic. IISs have increased in speed and severity, with larger losses being incurred. The pandemic, which forced people to spend more time online, created an opportunity for fraudsters to exploit individuals seeking financial stability during difficult economic times. The analysis reveals that the pandemic has affected low-income groups more significantly, leading them to invest in these schemes to improve their financial situation. The desire to escape poverty and naivety, coupled with sudden changes in economic conditions, contribute to individuals falling victim to IISs. The reliance on working from home and increased digital engagement have weakened existing controls and made it easier for fraudsters to operate digitally. Previously, IISs relied on physical offices and public figures for promotion, but the research demonstrates a shift toward digital operations. Social media platforms, such as Facebook, Instagram, WhatsApp, Telegram, and TikTok, have become famous avenues for promoting and executing IISs. Fraudsters adapt quickly to new platforms and even create websites that mimic genuine schemes. It aligns with findings from Interpol and other studies, highlighting the prevalence of social media as a favoured tool for fraudsters. Overall, the research underscores the changing nature of IISs, their increased presence on digital platforms, and the heightened vulnerability of individuals during the pandemic. Effective regulatory measures, enforcement actions, and mitigation strategies are essential to counter the increasing prevalence of IISs and minimize the financial and societal impacts they cause. The study could be extended to respondents from all walks of life and data should be gathered through questionnaires for more robust results.

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