Social Science Asia, Volume 5 Number 2, p: 56-69

Social Responsibility of Lawyers in Reporting Suspicious Transactions Under Money Laundering Measurement[1]

Pornpat Rodphotong Boontanom[2]

Abstract

The existing money laundering measures in Thailand offer few resolutions to fundamental problems on money laundering crime because they are concerned mainly with government sectors and financial institutions. As a result of the rigid and systemic measures adopted by financial institutions to prevent money laundering, criminals resort to using lawyers for their financial actions. With globalization, lawyers have become a bigger part of the society; they not only work in court but also play significant roles in investment, tax management, business advisory, and different kinds of money-generating enterprises. However, one of the most important roles of lawyers is to underpin society with law and regulations; therefore, lawyers must work responsibly in the public interest and for society as a whole. When it comes to the discussion of to what extent lawyers are responsible for money laundering prevention, we should focus not only on the public interest, but also on lawyers' professional code of conduct, ethics, morals, and human rights. This research argues that filing suspicious-transaction reports is not only a duty of lawyers as it represents social responsibility, but also that such a duty is implied in their professional related activities at a systematic and practical level, which underpins a new framework on money laundering crime prevention

Keywords: lawyer, money laundering, public interest, suspicious-transaction report duty

Introduction

The global anti-money laundering regime is expanding, particularly in the prevention pillar. Duty to report suspicious financial transactions has become one of the most important obligations of financial systems in taking precautions against money laundering. It was initially a voluntary activity associated only with financial institutions. The report was first introduced in 1988 by the Basel Committee on Banking Regulations and Supervisory In practice, it was intended to ensure that banks are not used to hide or launder funds derived from criminal activities. However, with the evolution of money laundering schemes, the strategies against money laundering activities need to be dynamic. The Financial Action Task Force (here after called "FATF") was the first organization to address the issue of a mandatory reporting obligation at the

[1] This article is part of a thesis on "Social responsibility of Lawyers in reporting suspicious transactions under Money laundering measurement", Doctor of Philosophy program in Criminology and Criminal Justice. This thesis is under supervised by Assoc. Prof. Jutharat Ua-Amnoey, Ph.D. Deputy Dean for academic affairs, Faculty of Political Science, Chulalongkorn University.

[2] Doctor of Philosophy program in Criminology and Criminal Juarice Chulalongkorn University.

Received 28/2/2019 ; Revised 2/5/2019 ; Accepted 22/5/2019

International level. The Recommendations 16 of the FATF emphasized that "when the financial institutions suspect that funds are connected to crime, they should be permitted or required to report promptly their suspicions to the competent authorities". However, this was still focused on the financial sector itself.

As a result of the rigid and systemic measures adopted by financial institutions to prevent money laundering, criminals turned to the expert knowledge of professionals to devise new methods of money laundering and in turn minimize the risks of their crime being detected. The Annual Typologies Reports of FATF stated that "As regards money laundering techniques, the most noticeable trend is the continuing increase in the use by money launderers of non-bank financial institutions and non-financial businesses relative to banking institutions. This is believed to reflect the increased level of compliance by banks with anti-money laundering measures… "Money launderers continue to receive the assistance from professional facilitators, who assist in a range of ways to mask the origin and ownership of tainted funds" [1]

Literally, legal professions are often targeted by criminals to assist them, whether intentionally or unintentionally, in money laundering schemes. This is because most money laundering activities will inevitably require the assistance of professionals of one type or another somewhere along the way. Legal professions are key professionals in the business and financial world, facilitating vital transactions that underpin the economy. For instance, legal professions are used in the formation of corporate vehicles or trusts, the purchase of real estate, and drawing up of false accounts to disguise the true nature of money flows or underlying transactions. Many legal professions also operate client bank accounts, in which the proceeds of crime can potentially be laundered. As such, they have a responsibility to ensure that their services are not being used to support a criminal act. In light of these facts, the revised 40 Recommendations of FATF came into existence in 1996. This enhanced the mandatory reporting system by suggesting that the financial recommendations should also apply to all non-financial institutions. The obligation of suspicious transactions reporting is therefore extended to all financial actions of non-financial businesses or professions as well as financial institutions. This change reflects the FATF's intention to ensure that both financial and non-financial institutions are using a uniform and consistent method to engage in the fight against money laundering. At International level, legal professionals are now obliged to inform competent authorities when taking part in transactions if they suspect that those transactions might be involved in money laundering. Furthermore, they are also required to provide, on request of the authorities, any necessary information.

Even though it is thought that legal professions are one of the most important elements in preventing money laundering, as they act as a "gatekeeper", imposing anti-money laundering obligations on these professionals has always been a sensitive

[1] He, P. **Lawyers, notaries, accountants and money laundering** (Online) 2005. Retrieved from https://www.emeraldinsight.com/journal/jmlc (2019, January 14)

issue which at times had led to difficulties and controversy.

There is arguably a dilemma between the role in fighting money laundering and the protection of professional secrecy or privilege. Since money laundering cannot be totally stopped and professional secrecy or privilege cannot be protected unconditionally, the key to the settlement of the question lies in seeking a proper balance between these related interests. These professionals must therefore maintain their independence as well as be proactive in their anti-money laundering duty. This research aims to explore the fundamentals of money laundering law in relation to money laundering together with other regulations related to legal professionals at a domestic level

Research Objectives

To study the law and regulations related to anti-money laundering at both international and national levels, focusing on the involvement and collaboration of legal professions in the fight against anti-money laundering.

Methodologies

The research was developed by qualitative methods (documentary research), with a primary focus on law and regulations, together with academic documents such as books and law journals. This research looks at the current situation at both domestic and international levels, on law and regulations, including international standards and recommendations.

Literature Review: Criminology theories

Money laundering has always been of great concern to the world, as it is not only considered as a serious and sophisticated form of crime, but also threatens human rights, democracy, and the integrity of nations. This type of crime has rapidly developed new techniques due to the evolution of technology and the inadequacy of relevant law. Moreover, it is believed that money laundering is usually conducted by well-educated people, sophisticated entrepreneurs, or people in the higher class of society, as this form of crime has financially-related effects. All of these factors make money laundering a very dynamic crime.

In criminology terms, there are several economic-related theories that explain the reasons behind money laundering. One of the main criminology theories is Rational Choice Theory.

Rational Choice Theory is rooted in the classical school of criminology from the 18th-19th century. The great philosophers, Cesare Beccaria and Jeremy Bentham, were interested in controlling crime through penalty and sanctions. The philosophy developed during the Enlightenment era in Europe, where they believed that all human beings were born with so-called “free will”, which means any cause of action is a result of their state of mind. All humans have rational thinking and every individual has preferences among the available choices that allow them to make a decision. Rational thinking considers surrounding factors

including available information, probabilities or events, and potential costs and benefits, in order to act consistently in the choices they make. It is argued that individuals do not only consider individualism but also self-interest, therefore it is undeniable that everyone aims to advance their personal goals. This theory believes that when 3 elements are encountered it enables crime to occur:

- available and suitable target
- motivation
- lack of law enforcement

These early criminologists defined offenders as morally guilty because those individuals had freely chosen to commit a crime.

The Rational choice theory is categorized as an aspect of crime control or crime prevention theory. Cornish and Clark[2] designed this method to aid and give focus to situational crime prevention, which comprises of reducing opportunity and managing the environment systematically making crime more difficult and riskier. Apart from changes to the physical environment and security, they also focused on stringent law enforcement and its penalties. It is believed that a hard punishment is necessary to keep people from breaking laws. This theory is situated in the center of criminal law to discourage the commission of deliberate unlawful acts.

As mentioned earlier, money laundering is often committed by educated people; therefore, another criminology theory that is worth mentioning is "Differential Association Theory" by Edwin Sutherland.[3] In his theory, he attempted to described the mechanisms that led a culprit to economic crime, especially so called "white collar crime", regardless of the social and individual conditions involved. He was one of the first criminologists to draw attention to white collar crime as it caused a much greater financial loss. He argued that crime is connected to socialization which refers to the dominant norms and social values we absorb.

Differential Association Theory refers to an action that we learn from different values and behavior based on interaction between people. Sutherland emphasized it as learning behavior by and between people in the same society or environment. The 2 essential elements defined in this theory are:

1. The content they learn, including motivation, inspiration, incentive, opinion, and reasoning that makes a person conform or agree to commit crime and also the process of learning various techniques to engage in crime. This recognition element is only a concept, not yet a matter of action.

2. The learning process which is derived from association of people. This is not only limited to close associations but also includes those who have come through the learning process. This learning process takes into account the frequency, duration, priority, and intensity which Sutherland gave precedence to the most. Simply put, if a person has learned about illegal behavior during the early stages of life and this originated from close people then this person is more likely to violate the law.

[2] Cornish, D.B. & Clark, R.V. **Understanding Crime Displacement: An application of Rational Choice Theory** (Online) 1987. Retrieved from https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.1987.tb00826.x (2019, January 14)

[3] Sutherland, E. **Differential Association Theory** (online) Retrieved from https://study.com/academy/lesson/edwin-sutherland-differential-association-theory.html (2019, January 14)

Research discussion: Thai legislation in response to money laundering crime

Historically, "crime" has been considered only in terms of acts of violence, threats of violence, and overt theft.[4] The Thai system of jurisprudence has evolved by defining illegal as, certain activities directed against property and persons, and over a number of years, law enforcement agencies have developed widely accepted methods for investigating these traditional crimes. Due to globalization, the business world has become more complicated, and "economic crime" now causes a lot of problems for law enforcement. One of these types of crime, which has emerged on a massive scale in Thailand, is money laundering.

Thailand had no specific legislation related to money laundering until 1991 when the government of Thailand introduced the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534 (1991) and the Money Laundering Control Act, B.E. 2542 (1999) in pursuance of the 1988 Vienna Convention (The United Nations Convention against Illicit Trafficking in Narcotics Drugs & Psychotropic Substances).[5] As a member of United Nations, Thailand must utilize the most notable guidelines governing money laundering issues including the 1988 Vienna Convention, the 1999 Convention against financial terrorism, UNSC Resolutions, FATF, and Basel Core Principles. In 1997 Thailand joined as a member of the Asia-Pacific Group in Money Laundering (APG; FATF-style regional body) that was set up to assist the Asia-Pacific region in adopting and enforcing international standards. This includes enacting laws which criminalize the laundering proceeds of crime, and also provides guidance for setting up a system to report and investigate suspicious transactions. Because the APG is closely affiliated with the FATF, all APG members, including Thailand, commit to effectively implement the FATF's international standards for anti-money laundering and combating financing of terrorism (40 Recommendations). However, shortcomings in implementing the FATF in Thai regulations have been found in many areas. For instance, all financial institutions are not properly covered by AML/CFT regulations, the financing of terrorism is not criminalized fully in accordance with international standards, and there are no legally enforceable requirements in place in relation to any categories of Designated Non-Financial Business and Professions (DNFBPs).[6]

Thailand has a legal framework in the Anti-Money Laundering Act 1999 (AMLA) where the core elements of its anti-money laundering regime are established. The underlying rationale of the Act as stated in its accompanying principle is to combat crime and provide measures to deter the economic motive for committing financial crimes. In furtherance of this objective, the law provides for two separate enforcement schemes. One is the creation of the criminal offense of money laundering for which an offender can be criminally prosecuted. The AMLA initially criminalizes money

[4] Watjanasaward, K. The Development of Thai Criminal law (Bangkok: Chulalongkorn University Press,2002) p.78
[5] Kasemsun, K. Money laundering Legislation (Bangkok: Dujlapaha Journal,1998) p.21
[6] eStandards Forum, Financial Standard Foundation **Anti-Money Laundering/Combating terrorist financing standard; Thailand** (online) Retrieved from www.estandardsforum.org/jhtml/country/Thailand/sp/173/13 (2019, January 14)

laundering by reference to eight predicate offenses, establishes the Anti-Money Laundering Office (AMLO) as Thailand's financial intelligence unit (FIU), imposes some customer due diligence (CDD) obligations, and requires financial institution to report suspicious transactions to the AMLO. The other remedy is to bring a civil proceeding for forfeiture against the asset involved in the offense of money laundering by creating a civil process for the AMLO to seize criminal assets and have them vested in the state. However, some of this Act's provisions are not efficiently and appropriately enforced for eliminating or reducing criminal activities because money laundering is very dynamic. In order to tackle this criminality effectively, it is necessary to prescribe other criminal offenses that obstruct the peace and morals of society, security, and the economic stability of the State as predicate offenses. The AMLA has therefore been amended severally times due to the evolution of crime. The current regulation is the Anti-Money Laundering Act (No.5) B.E. 2558 (2011) which includes 26 culprit offences for money laundering.

Although Thailand has already implemented principles of an International standard, they fall short in certain areas where there are loopholes in legal enforcement. These areas give opportunity to those who would launder money in Thailand. The philosophers Cesare Beccaria and Jeremy Bentham explained that apart from thinking of potential costs and benefits, money laundering is committed where there is lack of law or its enforcement, or a breach of law where there is weak punishment.

Consequently, money laundering schemes in Thailand do not only attract domestic criminals, but also transnational organizations with a large amount of money involved, especially from drugs and human trafficking. Moreover, the nature of money laundering has changed dramatically; becoming an increasingly transnational phenomenon. It is believed that in addition to stringent laws and broader jurisdiction a proactive measurement is also needed to be applied in order to tackle the crimes effectively. The anti-money laundering regime in Thailand can then focus on expanding particularly in the prevention pillar. The suspicious activities report obligation is one of the vital methods that alert the authorities to activities that may involve or attempt to launder those proceeds.

Suspicious transaction reporting regime

Like many countries, the anti-money laundering obligations are mostly put on financial institutions such as Bank and Insurance companies. Therefore, it is a fact that the anti-money laundering legal framework in Thailand is almost non-existent when it comes to non-financial institutions, including that of the legal profession. There are no specific AML provisions to apply to legal professionals. Put simply, Thai legal professionals and other service professionals, such as accountants, auditors, tax advisors, and estate agents and are not directly imposed to report suspicious activities.

Currently, it is being argued whether such obligation is suitable. The legal professionals' Council seems extremely reluctant

[7] IMF Country Report No.07/376 **Thailand: Detailed Assessment Report on Anti-Money laundering and Combating the Financial of Terrorism**" (Online) 2007 Retrieved from www.apgml.org/documents/docs/17/Thailand%20DAR.pdf (2019, January 14)

to support the disclosure of information in suspicious activities.[7] This is because legal professionals have the obligation of professional ethics to keep a client's secrecy. Legal professionals are taught to believe that their role is to give advice and not to suspect their clients of wrongdoing which would eventually destroy client confidentiality. It would therefore seem to be a conflict to do something against the client they were hired by. Not only do legal professionals believe that a Client's secrecy is a priority, they are also afraid of losing clients if this secrecy is broken. It is obviously burdensome, risky, and unfair to the profession, as legal professionals may be sentenced for unintentionally committing a crime. Moreover, there might also be a problem associated with law enforcement and the difficulty in defining the term "suspicious activities". Authorities find it hard to set a standard when it comes to the matter of using discretion.

Despite these facts, the closest obligation potentially conferred onto "certain type of legal professionals" is section 16 of the AMLA 2008 which imposes "a person who is engaged in a business of operating, or advising to engage in investment transactions, or the movement of capital has a duty to report to the office when there is probable cause to believe that such transaction may relate to asset involved in a commission of offense or is a suspicious transaction." Furthermore, they also have a continuing obligation following the filing of a report providing to the AMLO any additional facts or significant information about which it becomes aware that is relevant to the reported transaction or to confirm or deny the original information about the reported transaction. Section 62 and 63 of this Act address two offences for acting against suspicious reporting duty respectively; refusal to make a report and making a false report or concealment of the facts. Notwithstanding, this provision does not impose "general legal professionals" but it particularly refers to the following professionals under section 16 [8] :

1. Professions that undertake provision of advice or being an advisor in transactions relating to the investment or movement of funds, under the law governing securities and stock exchange.

2. Professions relating to trading of precious stones, diamonds, gems, gold, or ornaments decorated with precious stones, diamonds, gems, or gold.

3. Professions relating to trading or hire-purchase of cars.

4. Professions acting as a broker or an agent in buying or selling immovable property.

5. Professions relating to trading of antiques under the law governing selling by auction and trading of antiques.

6. Professions relating to personal loan under supervision for businesses that are not a financial institution under the Ministry of Finance Notification relating to Personal Loan Businesses under Supervision or under the law governing financial institution business.

7. Professions relating to electronic money card that is not a financial institution under the Ministry of Finance Notification relating to electronic money card or under the law governing financial institution business.

[8] Anti-money laundering Act B.E.2542 (1999). (Online) Retrieved from http://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4(1).pdf (2019, January 14)

8. Professions relating to credit card that are not a financial institution under the Ministry of Finance Notification relating to credit card or under the law governing financial institution business.

9. Professions relating to electronic payment under the law governing the supervision of electronic payment service business.

Concerning the reporting entities issue, the IMF has commented that "the persons who are required to report suspicious transactions are limited, and these do not cover all of the categories of persons required to report suspicious transactions under the FATF" [9]

Exemption

Thai legal professionals have one exemption from reporting duty. They cannot report any suspicious activities to the AMLO concerning the behavior of a client because, under section 323 of the Penal Code B.E.2499 (1956), this will be a breach of secrecy. This section stipulates that, "Whoever knows or acquires a private secret of another person by reason of [their] functions as a competent official or [their] profession as a medical practitioner, pharmacist, druggist, midwife, nursing attendant, priest, advocate, legal professional or auditor, or by reason of being an assistant in such profession, and then discloses such private secret in a manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht, or both." The only obligation they have is to provide information if they receive a court order. This provision, controversy to the obligation under the AMLA, has caused a lot of theoretical problems. There is no precise rule indicating which duty is more important between the new obligation on reporting suspicious activities and the long history of a Client's confidentiality.

Current issues of reporting obligation

The requirement of legal professionals to divulge relevant information to the authorities regardless of the civil obligation of persons who divulge the information causes problems in many ways. The onerous and costly effects of compliance with a growing burden of regulation affect not only financial institutions, but also legal professionals. This obligation has been subjected to negotiation when the appropriate anti-money laundering compliance procedures incur legal and financial liabilities. Legal professions are obliged to inform competent authorities when taking part in certain transactions of any nature that might be involved in money laundering and they are also imposed to provide, on request of authorities any necessary information. This obligation, arguably, would undermine two basic human rights, namely access to justice through legal proceedings and access to legal advice on a private and confidential basis.[10] This leads to an "ethical and moral dilemma"[11] as it constitutes a conflict of interest between their legal obligation of disclosure and their professional duty through maintaining the

[9] IMF-Legal department Detailed Report on AML/CFT on Thailand (Online) 2007 Retrieved from https://www.imf.org/external/pubs/ft/scr/2007/cr07376.pdf (2019, January 16)

[10] Salas, **F.M. The Third Anti-Money Laundering Directive and the Legal Profession** (online) 2005 Retrieved from http://www.anti-moneylaundering.org/AMLResources.aspx#FeArticles (2019, January 16)

[11] Wadsley, **J. Perception of AML and legal professionals** (Oxford: Oxford University Press,2008) p. 68

trust and confidence of their client. The fact that anti-money laundering compliance requires legal professionals to provide information also raises an acute problem of confidentiality and threatens their professional relationship with their clients. It affects the ability for clients to consult with their legal representatives freely without distress of disclosing the content of their consultations. Client confidentiality is instinctive, in all normal circumstances, to the sound professional. It is harder, particularly for those living and working in the same community, as their clients have to report what they perceive as "administrative" crime, when they would normally be able to counsel the client to voluntary, and discreet, corrections.[12]

The controversy to the suspicious reporting obligation for a solicitor is a breach of client confidentiality that is a serious step to take and goes very much against a solicitor's training and code of ethics. This is particularly the case if the solicitor's suspicions of "criminal conduct" are based solely on his own assessment of whether an offence has been committed and not on a ruling of the court.[13] Suspicion is not an easy state of mind to define and it is exacerbated by the fact that there is no definition in the primary legislation".[14] Thus, a burden is placed on legal professionals by requiring them to make their own assessment of whether that person had the necessary criminal intention in carrying out his act. It is extremely hard to acknowledge/train legal professionals to suspect the money laundering crime, for it involves work skills and personal experience. New legal professionals obviously have less work experience; thus, they may have less sense of detecting money laundering activities and it seems unfair to sentence them because of their less experienced assessment. Another point is that the timing of the authorized disclosure is also critical. If the client is about to do a prohibited act (e.g. disposing of criminal property), the solicitor is under a duty to make the disclosure prior to the prohibited act taking place. If he fails to do this and has no good reason for his failure to make the disclosure before the client did the act, he may commit an offence for becoming concerned in an arrangement where he knows or suspects of money laundering activities. As a result, the disclosure will not be "authorized", thus depriving him of a defense under the Proceeds of Crime Act.[15]

There is an example of a solicitor imprisoned under the money laundering provisions; Philip John Griffith[16], a Shrewsbury solicitor whom was given a 15 months sentence for failing to disclose that he knew or suspected that a money laundering offence was taking place. But in Thailand, by contrast, even if your client announces their intention to commit a money laundering crime, you are not required to blow the whistle.

---

[12] Silcock, K. & Banks, F. & Plumridge, S. & Haskins, N. **AML - legal, ethical and practical issue** (Oxford: Oxford University Press,2006) p. 25

[13] Itsikowitz, A. & Goredema, C. (edited) **Legal Professional Privilege/Intermediary Confidentiality; The Challenge For Anti-Money Laundering Measures"** (Online) 2006 Retrieved from http://www.iss.co.za/static/templates/tmpl_html.php?node_id=1474&slink_id=3302&slink_type=12&link_id=28 (2019, January 16)

[14] Howard C. **The Mens Rea test for money laundering offences (part 2)** (London: New Law Journal,1999) p.28

[15] Porter, **H. legal professionals as bloodhounds: Proceeds of Crime Act 2002 and its application to intellectual property practitioners in the UK** (London: European Intellectual Property Review, 2007), 29(2), p.71

[16] Law Gazette Thursday 27 July 2006; **KSL Anti-Money Laundering Training "Training for new KSL Staff 2007**" p.4

Another vital point that is worth noting is that, the effectiveness of the suspicious transactions report regime is heavily reliant upon the accuracy of the reports completed.[17] The reporting requirement coupled with the no tipping rule, so the argument goes, will open a myriad of troubling issues of definition interpretation and application. Furthermore, there is no standardized definition of what is sufficiently suspicious to require a report. Since the reporting obligation is solely based on the legal professional's own assessment, legal professionals face a risk of wrong assessment which may result in losing their reputation amongst clients in return. The fact that a suspicion which turns out later to be unfounded will put the confidant into a worse position than if the suspicion turns out to be well founded because it turns a confidant into an untrustworthy legal professional. Even more worrying on a practical level is the lack of clear safeguards over the confidentiality of the source of a report to the authorities, and the content of that report. In this way, legal professionals who gain information in a commercial capacity and which causes that person to disclose such information may use such information for their own benefit.[18] Generally speaking, this loophole may allow some legal professionals to use this duty to intimidate their clients for money or other benefits.

A further concern is the cost of compliance with anti-money laundering legislation by legal professionals, particularly smaller firms. The cost is not only germane to the one legal profession but across the industry which has to carry significant costs that are ultimately borne by the customer or client. As a result, the cost of service will increase due to these circumstances.

How necessary is reporting obligation?

Inevitably, there are problems and dilemmas with reporting but it is inarguable that this obligation is one of the essential tools in fighting money laundering. The reporting element provides information for use in investigation, which is part of enforcement. This prevention pillar reflects on public interest as an essential tool to protect the integrity and stability of the nation and its financial system. It is an ideal that a disclosure relating to terrorist or criminal property by one institution is likely to protect other institutions in the future.[19] Criminologists suggest that stringent and rigid laws are important for crime prevention. It is certain that this has some deterrent on certain methods of money laundering, but it also creates incentives for the mutation of the phenomenon.[20]

Legal professionals are often targeted by criminals to assist them, whether intentionally or unintentionally, in money laundering schemes because they are key professionals in the business and financial world, facilitating vital transactions that underpin the economy. Many legal professionals also operate client bank accounts through which the proceeds of crime can potentially be laundered. Unlike banks or real estate, legal professionals are not the money laundering end, but

[19] Lander, S. **Review of Suspicious activity reports regime** (Online) 2006. Retrieved from http://www.soca.gov.uk/downloads/SOCAtheSARsReview_FINAL_Web.pdf (2018, December 15)

[20] Reuter, P. & Truman, E.M. Chasing Dirty Money: Fight against money laundering (Washington: Peterson Institute, 2005) p.176

a means to an end; they play an intermediary role by facilitating access to other money laundering vehicles (bank accounts, real estate, and companies).[21] They can convert the cash into other less suspicious assets, such as bank accounts, monetary instruments, or real property and help to conceal the true source of funds by setting up complex corporate hierarchies, establishing off-shore accounts, or through the use of legal trust accounts and the invocation of solicitor-client privilege. They can also create a legitimate explanation or source for illegally-derived funds and/or assets by establishing shell or legitimate companies for their clients or by facilitating the purchase of revenue-generating real property. Undoubtedly, it is necessary to have an obligation on suspicious activities report. Imagine if there was no such provision, not only would legal professionals be totally free to conduct their business regardless of the society, or so-called public interest, but their role as a conduit to other sectors of the economy for the purposes of money laundering may also in fact undermine suspicious transaction reporting by other individuals and entities covered by the legislation (especially financial institutions). Legal professionals can be used by criminal organizations to provide credibility to transactions involving illicit funds, while circumventing the reporting requirements of other organizations covered by the legislation. They can also structure certain transactions with other entities covered by the legislation to avoid arousing suspicion or other grounds for filing transaction reports. Therefore, exempting legal professionals from suspicious transaction reporting could potentially create a significant gap in the coverage of transaction reporting legislation. It would mean that individuals could now do banking through a legal professional without having their identity revealed, bypassing a key component of the anti-money laundering system. The principal of reporting duty is aimed at protecting the general population against some elements of terrorist activities. The regulators believe that reporting suspicious activities is critical to a country's ability to utilize financial information to combat money laundering, financing of terrorism, and other financial crimes.

To what extent anti-money laundering provision should impose on legal professionals?

The main problem appears to be that the rules that legal professionals are being asked to adhere to might be disproportionate and inconsistent with their duties. In order to balance the public interest in fighting money laundering and sustain the fundamental rights of legal professionals, there are 3 points that need to be considered.

- Protection and reduce burden

The secrecy of personal information is protected by law or where the only information you will get is directly from your client. There should be a protection from threats or harassment as a result of reporting suspicions of money laundering. Indeed, such a report should not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or

[21] Schneider, S. **Testing the limits of solicitor-client privilege: legal professionals, money laundering, and suspicious transaction reporting**, Journal of Money Laundering Control (Online) 2005. Retrieved from https://www.emeraldinsight.com/journal/jmlc (2019, January 16)

administrative provision. The Regulations also require identifying the information of clients wherever they exist. This means that even in low risk transactions, you are still required to go through quite a burdensome process. In order to reduce this burden on legal professionals, it is suggested that the personal information shall only apply to a "risk-based approach". Basically, legal professionals have to report only when they encompass recognizing the existence of the risks and undertaking an assessment of the identified risks.

- Certainty

It is a fact that the definition of "suspicion" creates confusion, since it contemplates the forming of suspicion where a person has only an inkling or merely a faint notion that a person has been engaged in criminal conduct or has benefited from the proceeds of criminal conduct. Hence, in order to reduce the burden and to protect legal professionals from sentencing, the government should make primary legislation more certain than just relying on the surmise of an individual.

- Disclosure of data

The world is driven by information; therefore, data privacy and data protection are important topics. Information has great value which empowers data collectors; thus, the focus should be on the relationship between the collection and dissemination of data, technology, and the legal and political matters surrounding such issues. One has argued that the obligation to disclose personal information might become an essential instrument to acquire such a database.

To this end, it would seem that Thailand should take steps toward this obligation. It is not only to meet the international standard of combating money laundering schemes but also in helping to reduce social problems, as well as the risk of abuse of legal professionals' role by money launderers. This specific provision of suspicious activities report for legal professionals should therefore be introduced. However, a better balance is required between the need to try to detect, punish and prevent crime, and the need to avoid placing an unsustainable burden on the professionals. It could be argued that the resolute opposition to mandatory transaction reporting by the legal profession is not simply about concern over solicitor-client privilege or the role of legal professionals in combating money laundering. To some, these obligations may be perceived as a broader attack on the power of legal professionals and their privileged position in society. One thing we can be sure of, the increased sophistication of money laundering requires the cooperation and expertise of professionals to navigate the laundering operation through the complexities of the legitimate business and financial world.

REFERENCE

Chaikin, D. (2009). How effective are suspicious transaction reporting systems? Bingley: Emerald Insight.

Haines, A. (2008).“The impact of recent developments in the anti-money laundering laws on companies” Oxford: Oxford University : 225-226

Howard C., (1999). The mens Rea Test for money laundering offences (part 2) London: New Law Journal : 514-517

Information Commissioner. (2004). “Freedom of Information Act Awareness Guidance No.4; Legal Professional Privilege”

Kasemsun, K. (1998). Money laundering Legislation Bangkok: Dujlapaha Journal 41(4)

Law Gazette. (2006). KSL Anti-Money Laundering Training “Training for new KSL Staff 2007”

Porter, H. (2007). legal professionals as blood-hounds: Proceeds of Crime Act 2002 and its application to intellectual property practitioners in the UK (London: European Intellectual Property Review 29(2): 70-73

Prayoonrat, S. (2008). The Need and Compliance issues of Thailand’s regime on Anti-Money laundering and Combating financial terrorism Bangkok: Chulalongkorn University.

Reuter, P. & Truman, (2005). E.M. Chasing Dirty Money: Fight against money laundering Washington: Peterson Institute.

Roger J. Goebel, (1981). Professional Responsibility Issues in International Law Practice Oxford: Oxford University Press.

Root, V. (2014). Monitor-Client Relationship Virginia: Virginia Law Review.

Ryder, N. (2008). The Financial Services Authority and money laundering: a game of cat and mouse Cambridge: Cambridge law Journal: 635-653

Schneider, S. (2005). Testing the limits of solicitor-client privilege: legal professionals, money laundering, and suspicious transaction reporting Bingley: Emerald Insight: 27-47

Silcock, K. & Banks, F. & Plumridge, S. & Haskins, N. (2006). AML legal, ethical and practical issue Oxford: Oxford University Press: 23-27

Wadsley, J. (2008). Perception of AML and legal professionals Oxford: Oxford University Press: 65-75

Watjanasaward, K. (2002). The Development of Thai Criminal law Bangkok: Chulalongkorn University.

Cornish, D.B. & Clark, R.V. (1987). Understanding Crime Displacement: An application of Rational Choice Theory (Online). Retrieved from https://online library.wiley.com/doi/abs/10.1111/ j.1745-9125.1987.tb00826.x

eStandards Forum, Financial Standard Foundation Anti-Money Laundering/ Combating terrorist financing standard; Thailand. Retrieved from www. estandardsforum.org/jhtml/country/ Thailand/sp/173/13

He, P. Lawyers, notaries, accountants and money laundering (2005). Retrieved from https://www.emeral-dinsight.com/ journal/jmlc IMF Country Report No.07/376 Thailand: Detailed Assessment Report on

Anti-Money laundering and combating the Financial of Terrorism (2007).Retrieved from www.apgml.org/documents/docs /17/Thailand%20DAR.pdf

IMF-Legal department Detailed Report on AML/CFT on Thailand (2007). Retrieved from https://www.imf.org/external/pubs/ ft/scr/2007/cr07376.pdf

Itsikowitz, A. & Goredema, C. (edited) Legal Professional Privilege/Intermediary Confidentiality; The Challenge For Anti-Money Laundering Measures (2006). Available from http://www.iss.co.za/static/templates/tmpl_html.php?node_id=1474&slink_id=3302&slink_type=12&link_id=28

Lander, S. Review of Suspicious activity reports regime (2006). Retrieved from http://www.soca.gov.uk/downloads/SOCAtheSARsReview_FINAL_Web.pdf

Salas, F.M. The Third Anti-Money Laundering Directive and the Legal Profession (2005). Retrieved from http://www.anti-moneylaundering.org/AMLResources.aspx#FeArticles