

SUSPICIOUS TRANSACTION REPORTING:

LEGAL OBLIGATIONS & LEGAL PROFESSIONAL PRIVILEGE

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LEGAL PROFESSIONAL PRIVILEGE ("LPP")

- A fundamental human right.
- Article 35 of Basic Law:
"Hong Kong residents shall have the right to confidential legal advice ..."
- Article 87 of Basic Law:
"In criminal or civil proceedings ..., the rights previously enjoyed by parties to proceedings shall be maintained."

LEGAL PROVISIONS

Disclosure of knowledge or suspicion that property represents proceeds of indictable offence / terrorist property

- s. 25A(1) Organized & Serious Crimes Ordinance, Cap. 455 (“OSCO”)
- s. 25A(1) Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405 (“DTROP”)
- s. 12(1) United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“UNATMO”)

DISCLOSURE OF KNOWLEDGE / SUSPICION UNDER S.25A(1) OSCO

- Where a person knows or suspects that any property –
 - (a) in whole or in part directly or indirectly represents any person's proceeds of;
 - (b) was used in connection with; or
 - (c) is intended to be used in connection with
 - an indictable offence
 - he shall as soon as it is reasonable for him to do so
 - disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based
 - to an authorized officer

DISCLOSURE AS A DEFENCE TO MONEY LAUNDERING OFFENCE: section 25A(2) OSCO

If a person who has made a disclosure does any act in contravention of the offence of money laundering (s. 25(1)), (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under s. 25(1) if –

- (a) that disclosure is made before he does that act, and he does that act with the consent of an authorized officer;
or
- (b) that disclosure is made –
 - (i) after he does that act;
 - (ii) on his initiative; and
 - (iii) as soon as it is reasonable for him to make it.

PROTECTION ON DISCLOSURE: section 25A(3) OSCO

A disclosure made under s.25A(1) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

LEGAL PRIVILEGE IN OSCO: section 2(18) OSCO

- *“Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege.”*

[Similar provisions:

- DTROP - s. 2(14)
- UNATMO - s. 2(5)]

ITEMS SUBJECT TO LEGAL PRIVILEGE: section 2(1) of OSCO

- (a) Communications between a professional legal adviser and his client or his client's representative made in connection with the giving of legal advice to the client;
- (b) Communications between a professional legal adviser and his client or his client's representative or between such persons and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) Items enclosed with or referred to in such communications.

BUT

- * **Communications or items held with the intention of furthering a criminal purpose are NOT subject to LPP.**

SUSPICION

- Mere suspicion is not enough to negative LPP.
- What is suspected must be demonstrated to the high degree: though not a case proved beyond reasonable doubt; a substantial case rests on solid grounds.

Pang Yiu-hung Robert v. Commissioner of Police & anor [2003] 2 HKLRD 125

BE ALERT

- A client / 3rd party puts in cash of large amounts for a transaction.
- Instructions from a new client to act on a complex commercial transaction involving significant amount.
- Indirect client contact / access.
- Suspicion of illegal dealings by the deceased in estate administration.
- Legitimate abortive transactions.
- Administration of donations for charity.

THANK YOU