

Suspicious Transactions: An Analysis from the Perspective of Consumers in Malaysia

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Abstract: This study attempts to address issues related to suspicious transactions that are regulated by the Malaysian Anti-Money Laundering and Terrorism Financing 2001 (AMLA) from the perspective of consumer/client. This study discusses: the historical background of the legislation that regulates suspicious transaction, i.e., AMLA; how suspicious transactions are determined and managed and the relevant procedures under the legislation that have compromised the rights of consumers/customers. All these issues are considered in light of the existing Malaysian legal framework and under international law. In terms of its methodology, this study considers the conflict between the duty of state to ensure peace and security via anti-terrorism legislation and its duty to protect human rights vis a vis consumers' rights.

Key words: Anti-terrorism, consumer protection, AMLA, money-laundering, suspicious transaction, Malaysia

INTRODUCTION

Money laundering has become a major concern globally, particularly in the financial services sector where inherent vulnerabilities in certain financial systems are exploited to the advantage of criminals. The concern includes potential terrorist financing following increases in international terrorist activities. According to the Malaysian Attorney General, three common methods was utilised to carry out money-laundering activities. The first was the increased use of repository accounts whereby immediate withdrawals were made once deposits had been received. The other two methods consisted of the fast movement of money across borders and the involvement of third parties in laundering activities.

Initially, the Malaysia Dangerous Drugs Act in 1988 and Anti-Corruption Act in 1997 were the principal legislative measures relating to such activities. The Anti-Money Laundering Act (AMLA) 2001 which came into effect in 2002 is the first legislation, specifically criminalizing and addressing money laundering activities. In 2003, an amendment to the AMLA was enacted by the parliament. The new provision covers the suppression of terrorism financing offences and the freezing, seizure and forfeiture of terrorist property in accordance with the United Nations Convention for the suppression of the financing of terrorism which entered into effect in April of 2002. By this amendment, the AMLA was renamed the Anti-Money Laundering and Anti-Terrorism Financing Act in 2001 (Hasan, 2008). In effect, the amendment extended enforcement powers under the

original text of the AMLA to include freezing, seizing and forfeiture of proceeds derived from money laundering activities.

As mentioned by Bank Negara Malaysia (BNM) in the Anti-Money Laundering and Counter Financing of Terrorism Programme in March, 2007, the AMLA was again amended with four other different laws namely; the Penal Code (Amendment) Act, 2003, Criminal Procedure (Amendment) Act, 2006, Court of Judicature (Amendment) Act, 2004 and Subordinate Courts (Amendment) Act, 2004 to ensure that they remain effective and relevant in dealing with money laundering and terrorism financing threats. These laws were brought into force in March, 2007.

The amendments were made to incorporate provisions dealing with the offence of terrorism financing. Predicate offenses for money laundering were expanded from 219-223. These amendments among other aspects, impose penalties for terrorist acts; allow for the forfeiture of terrorist-related assets and allow for the prosecution of individuals who have provided material support for terrorists. These new measures for the freezing of terrorist-related property include requirements that provide for the full implementation of the United Nations (UN) Security Council Resolution (UNSCR) 1267 and UN SR 1373, both of which call for the freezing of terrorist assets.

The present study attempts to address a few issues, namely:

- The historical background of legislative acts to regulate suspicious transactions

- Determining and managing suspicious transactions
- Procedures under the legislation that compromise the rights of consumers/customers

These issues will be addressed in light of potential conflicts between the duty of the state to ensure peace and security and the duty of the state to protect human (consumers) rights. In the present context, consumers are the clients or customers of banking and financial institutions; money changers and other institutions that are governed by AMLA.

AMLA: INITIAL ANALYSIS

Two things discussed are namely: The principles on anti-money laundering that explains and defines the concept of anti-money laundering and financing terrorism within Malaysian law and the background of the legislations in Malaysia. This part describes the International Anti-money Laundering Standards Measures and Malaysian response to Financial Action Task Force on Money Laundering (FATF) special recommendations.

Definition of the concepts: The office of the coordinator for counter-terrorism of the US. Department of State (2010) (DoS), in its Country Reports on Terrorism in 2010 explains that a number of terrorist organizations have been active in Malaysia and terrorist financing is conducted primarily using cash. It reports while Malaysia has recently improved the legislative framework to criminalize terrorist financing, there have been no investigations, prosecutions or convictions relating to terrorist financing under this new scheme. However, the fundamental question to be addressed here is: how is money laundering and financing terrorism defined.

Generally, money laundering is a fundamentally simple concept. It is the process by which proceeds from a criminal activity are disguised to conceal their illicit origins. Likewise, the financing of terrorism is also a simple concept; it is the financial support of terrorist acts or those who encourage, plan or engage in terrorism. Money laundering and terrorist financing often display similar transactional features, most having to do with concealment. Money launderers send illicit proceeds through legal channels so as to conceal their criminal origins while those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use which is the support of terrorism.

As stipulated in the guideline of the Council of Malaysian Institute of Accountant in 2005: Money laundering is the process by which cash or other funds generated from illegal activities is funnelled through legitimate financial institutions and businesses to conceal

the true source of the funds. If undertaken successfully, money laundering allows the owners of the dirty funds to maintain control over these proceeds and ultimately, to make these funds appear clean.

Further, standard guidelines on anti-money laundering and counter financing of terrorism defines, money laundering as the process of converting money or property which is derived from illegal activities to give it a legitimate appearance. Generally, there are three stages in money laundering, namely; placement, layering and integration. These three basic stages may occur as separate and distinct phases, i.e., they may occur independently, simultaneously or more commonly, they may overlap. As the legal definition of money laundering, there are three actions consider as money laundering based on Section 3 of the AMLA as follows:

- Engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity
- Acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity
- Conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of rights with respect to or ownership of, proceeds of any unlawful activity

These actions must, first of all be the subject matter of an unlawful act. Thus, drug money or money derived from a criminal act falls under the definition. Even legal money can become illegal if moving it violates a country's foreign exchange controls or other financial regulations (Shahreedha and Ghazali, 2008).

The Bank Negara Malaysia guidelines on anti-money laundering and counter financing of terrorism states that financing of terrorism generally refers to carrying out transactions involving funds that may or may not be owned by terrorist or that have been or are intended to be used to assist the commission of terrorism. Section 3(1) of the AMLA defines a terrorism financing offence as any offence under Section 130N, 130O, 130P or 130Q of the Penal Code. Essentially, financing of terrorism includes:

- Providing or collecting property for carrying out an act of terrorism
- Providing services for terrorism purposes
- Arranging for retention or control of terrorist property
- Dealing with terrorist property

Background of the legislation and its measures: According to Malaysian Attorney General as at 2010, some 94 money laundering cases were in various stages of prosecution in Malaysia with >3,000 charges involving

proceeds amounting to RM1.2 billion. Generally, there were 54 cases pending in court for violation of the AMLA. At the same time, the Bank Negara Deputy Governor said concerted efforts by law enforcement agencies had resulted in an average annual increase of 86% in Anti-money Laundering/counter Financing Terrorism cases under prosecution and forfeiture without prosecution. It should be mentioned that the US. Department of State (2004) Report shows Malaysia made its first money laundering arrest. As of October, 2008, the Attorney General's Chambers had prosecuted 62 money laundering cases involving a total of 2,392 charges with a total adding up to USD \$225.7 million. Out of the 62 cases, there have been four convictions. Efforts were undertaken to amend AMLA to extend its scope of application to provide more powers to the relevant authorities. These included the interception of communications and expanding enforcement powers, such as the extension of the scope of property for possible forfeiture to include property involved in or derived from, money laundering, terrorism financing, terrorist property, property of a liable person, proceeds of an unlawful activity and instrument of an offence.

As the Anti-Money Laundering and Counter Financing of Terrorism Programme Malaysia (AML/CFT) tries to ensure its measures are compatible with international standards, namely the 40 recommendations on money laundering and 9 recommendations on terrorist financing (FATF 40+9 recommendations) proposed by the Financial Action Task Force on money laundering (FATF), an inter-governmental body. The second round of Asia/Pacific Group on Money Laundering (APG, 2007) declared that the Malaysia AML/CFT program is comparable with many developed countries. The APG mutual evaluation finds Malaysia partially compliant with recommendation 13 (R13) relating to Suspicious Transaction Reporting (STR). While noting that the quality of STRs has improved over time for most sectors, the evaluation cites two key weaknesses, namely:

- There is no explicit obligation in Malaysian law to report transactions suspected of being linked to terrorist financing other than when the financing is the proceed of an unlawful activity
- The low level of reporting by money changers and offshore financial institutions (APGML, 2007)

Financial action task force on money laundering special recommendations: Despite of high degree of technical compliance with FATF standards, Malaysia has not completely incorporated or complied with the relevant standards of FATF 40+9 recommendations in 2003. Among the 9 special recommendations, special

recommendation number IV on suspicious transaction reporting, special recommendation number VI on AMLA requirements for money/value transfer services, special recommendation number VIII on non-profit organisations, special recommendation number IX on cross border declaration and disclosure are not compliance with relevant standards.

FATF standards require countries to improve their Anti-Money Laundering and Counter Financing terrorism (AML/CFT) measures on Designated Non-Financial Business and Professions Sectors (DNFBPs). Approximately, there are 30,000 DNFBPs in Malaysia. They are consisting of casinos, real estate agents, dealers in precious metals or precious stones, lawyers, company secretaries, accountants and other independent legal professionals. All have been made reporting institutions and shall keep a record of any transactions under the Article 13(1) AMLA (Anonymous, 2008).

The National Coordination Committee to Counter Money Laundering (NCC) was established in April, 2000 with the BNM as the lead agency. It was established to coordinate the implementation of the national anti-money laundering/combating the financing of terrorism programme. NCC is also responsible to develop and ensure proper implementation of measures to counter money laundering based on internationally accepted standards. NCC comprises of 13 government ministries and agencies. Each agency is responsible to study, provide information and report the development of any decision in the NCC meeting.

Based upon Section 7-9 of Part III of the AMLA, the Minister of Finance appointed BNM as Competent Authority (CA) under the act. BNM established a Financial Intelligence Unit (FIU) on 8 August, 2001 to carry out its functions as CA. The FIU's primary objective is to receive, analyze and disseminate all Suspicious Transaction Reports (STRs) submitted by regulated entities to the appropriate enforcement agencies. It is also to spearhead national efforts in combating money laundering and serious crimes by providing value-added contributions to national and international supervisory/enforcement agencies; promote national awareness of money laundering issues and the AMLA; formulate and implement comprehensive national anti- money laundering regime and act as Secretariat to the NCC. FIU framework provides for detailed examination procedures for high risk areas, products and services which are highly susceptible to the risk of money laundering such as electronic banking, funds transfer and remittances, correspondent banking, money changers, non-bank financial institutions.

Bank Negara Deputy Governor Datuk Zamani Abdul Ghani stated that at the same time, the Royal Malaysian Police, the Malaysian Anti Corruption

Commission and the Royal Customs Malaysia established dedicated anti-money laundering/counter financing terrorism units to focus on money laundering and terrorism financing investigations. To facilitate international cooperation, BNM signed six Memoranda of Understanding (MoUs) on the exchange of financial intelligence involving the countries of Australia, Indonesia, the Philippines, China, South Korea, Japan, the United Kingdom, Sweden, the United States of America, Chile, Sri Lanka and Brunei Darussalam. At the same time, BNM has adopted a risk-based approach which provides a framework to identifying the degree of money laundering risks with specific customers and transactions when preparing for an on-site examination. BNM appoints relationship managers to take charge of off-site examination and to gather all available information about a specific bank (Chatain *et al.*, 2009).

Malaysia response to the United Nations Security Council:

According to Tai Soon (2004), it has immediately frozen funds related to Taliban and Al-Qaida in response to UNSC Resolutions 1267, 1333 and 1483. The Malaysia's National Report in fulfilment of United Nations Security Council Resolution 1455 on 9 July, 2003 shows that there are no financial activities relating to Osama Bin Laden, Al Qaeda, the Taliban or their associates occurring in Malaysia. As response to UNSC Resolution 1373, adopted in 2001, Malaysia criminalised terrorism financing by amending AMLA to include new definitions relating to "terrorist property" and "terrorism financing offence" and by expanding the activities of the anti-money laundering mechanism to include reporting suspected terrorism financing activities, measures for the detection and prevention of terrorism financing and freezing of terrorist property. The amendment also sought to address UNSC Resolution 1373 by providing a new Part VI A to AMLA (Hasan, 2008) by defining serious offence in the second schedule of the AMLA; amending Section 125 of the Penal Code to criminalise waging war against any country in alliance with Malaysia and amending Section 125A of the Penal Code to criminalise harbouring or attempting to harbour any person in Malaysia or in foreign states at war or in hostility against Malaysia.

As emphasised by Scott (2006), there are eight steps that each country needs to take to meet international standards for effective AML/TF regime. These requirements are as follows:

- Criminalization of money laundering in accordance with Vienna and Palermo Conventions
- Criminalization of terrorism and terrorism financing

- Law of seizure, confiscation, forfeiture and illegal proceeds
- The type of entities and persons to be covered by anti-money laundering laws
- Integrity standards for financial institution
- Consistent law for implementation to FATF recommendations
- Cooperation among competent authorities
- Investigations

DETERMINING AND MANAGING SUSPICIOUS TRANSACTION

The present section considers how suspicious transactions are determined and how such transactions are later managed. For purposes of clarity, the discussion on the management of suspicious transactions is considered in terms of the development and adoption of measures by reporting institutions; reporting obligations; investigation and prosecution.

Developing and adopting measures by Reporting Institutions (RIS):

The list of predicate offences under the AMLA has been expanded to include a broader range of offences commonly associated with money laundering and terrorist financing. The BNM stated in its Anti-Money Laundering and Counter Financing of Terrorism Programme that these offences include corruption, fraud, criminal breach of trust, illegal gambling, credit card fraud, currency counterfeiting, robbery, forgery, human trafficking, extortion, smuggling and drug-related crimes. Under Section 19(1) of the AMLA, RIs are required to "adopt, develop and implement internal programmes, policies, procedures and controls to guard against and detect any offence".

Based on Section 9(3) of the Malaysian Institute of Accountant's Guidelines, suspicion is rather subjective and there is no specific definition of "suspicious transactions" under AMLA. General principles of law suggest that suspicion arises if there is more than mere speculation but falls short of actual proof or knowledge. Suspicion is often built on some factual or objective foundation. Members and member firms are required to take note that there must be a degree of satisfaction of suspicion even if it does not amount to belief. As stated at the BNM Anti-Money Laundering and Counter Financing of Terrorism Programme all "Suspicious Transactions Reports" (STR) should be forwarded to the FIU pursuant to the standards or guidelines issued by FIU.

Reporting obligations: The first schedule of the AMLA consists of a long list of RIs. These institutions must file suspicious transactions pursuant to AMLA. RIs include: commercial banks, merchant banks, finance companies,

Islamic banks, money changers, discount houses, insurance brokers, Islamic insurance (Takaful) operators, offshore banks, offshore insurers, offshore trusts, the Pilgrims fund, Malaysia's postal service, development banks such as Malaysia's National Savings Bank, The People's Cooperation Bank and licensed casinos. The US DoS in International Narcotics Control Strategy Report, 2004 stated that the FIU is working with the Malaysian Bar Council and the Malaysian Institute of Accountants to help them in drafting reporting obligations within the scope of their own code of ethics/fiduciary duties. The invocation of the AMLA reporting is done in two stages. Stage one involves the mandatory obligation to report suspicious transactions when the RIs have reason to suspect that the transaction involves proceeds from an unlawful activity.

Stage two of the invocation covers all the reporting obligations under part IV of the AMLA which primary includes recordkeeping, identification and verification of customer, compliance programme and retention period of records. According to Section 13 of AMLA, a RI shall keep a record of any transactions and it shall include of information such as information on the person conducting the transaction, information on the account holder and the address of beneficiary of the transaction, details of transaction such as services, time, date and the amount of the transaction. Also, Section 17(1) AMLA mentioned that these reports shall maintain not <6 years from the date that account has been closed or the transaction has been completed or terminated.

Investigation: Pursuant to Section 30 of AMLA, the competent authority and relevant enforcement agency may appoint their employee or any other person as an Investigation Officer (IO). Section 31 contains of wide powers of the IO. These powers can be invoked when the officer is satisfied or has reason to suspect that a person has committed an offence under the AMLA. The powers of IO can be divided as follows:

- Enter power of any premises without warrant
- Power to conduct search, inspection and take possession of any property; including records, reports or documents and can also seize them under Section 31(3)
- Power to use destructive force: IO can break open, examine and search any article and container; stop, detain or search any conveyance and break open any outer or inner door of them, remove by force any obstruction to such entry
- Power to detain any person found on such premises or conveyance, until the search is complete

Prosecution: As a result of the Annual Report of the Attorney General's Chambers of Malaysia Prosecution Division 2005/2006, the Forfeiture of Property Unit (FOP) was established to peruse investigation papers and handle trials under the Dangerous Drug (Forfeiture of Property) Act in 1988 (DDFOP) where the value of property exceeds RM50,000; handle cases under the AMLA; conduct hearings and applications of cases prosecuted under the AMLA and DDFOP and to monitor cases under the DDFOP which are handled by the state. In addition, this unit issues its orders under the part V of the AMLA. FOP also handled cases of public interest such as the case of Dato' Wasli bin Mohd Said and Abd Khalid bin Hamid. Abd Khalid bin Hamid was charged with five offences under AMLA on 10 November, 2005 at the Kuala Lumpur Sessions Court and was sentenced to 3 years' imprisonment for each charge to be served concurrently, on 19 December, 2005. The case of PP vs. Abd Khalid bin Hamid was the first forfeiture proceeding heard by the courts under Section 61 of the AMLA and resulted in the court ordering RM71,516.00 resulting from criminal activities to be forfeited to the government.

The Annual Report of the Attorney General's Chambers of Malaysia Prosecution Division 2005/2006 shows that other cases of public interest were the cases of Teo Chin Hua, Ng Lian Chi and Lee Swee Chwee. They were charged separately at the Malacca Sessions Court under the AMLA on 27 September, 2006 with 202 charges altogether and the amount involved was RM18,694,067.82.

AMLA PROCEDURES: CONSUMERS' RIGHTS COMPROMISED

The study discusses the specific procedures and measures under AMLA and how human rights vis a vis the rights of the consumers (clients/customers) are being compromised.

Immunity and the clients' rights to claim for compensation: According to the AMLA, no civil, criminal or disciplinary proceeding shall be brought against a person who discloses or supplies any information in good faith. An obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise is overridden to enable the reporting of information under Section 14(b) of AMLA. Section 77 AMLA provides guaranties for official bodies involved in investigations of money laundering.

According to Section 50(2) of AMLA, the financial institution and its employees and agent are given immunity against any criminal or civil proceeding as a result of complying with the order. Section 24 AMLA

protects any person who lodges a STR, against civil, criminal or disciplinary proceedings unless the STR was lodged in bad faith. Arguably, even if the investigation revealed that the transaction is clean; consumers are not able to claim for compensation for any loss suffered as the consequence of the action.

Regarding to the right to claim for compensation, the international human rights and other international law instruments provide for compensation for the victim of a violation of such rights. For example, Article 41 of the European Convention on Human Rights (ECHR), Article 63(1), sentence 2 of the American Convention on Human Rights (ACHR), Article 27 of the Protocol on the African Charter on Human and Peoples' Rights (ACHPR) and Articles 14(6) and 9(5) of the International Covenant on Civil and Political Rights (ICCPR). All these provisions protect the right of individuals against any violation to the right to claim compensation (Schwager, 2005).

Freezing, seizure and forfeiture and right to property: If an enforcement agency feels that an offence has been or will be committed, it may issue an order to freeze any property of that person on suspicion under Section 4(1) of the AMLA. It ceases to have effect after 90 days from the date of the order. Sections 44, 50 and 51 of AMLA provide that Public Prosecutor upon being satisfied on information given by an IO may direct financial institutions to freeze movable assets. The public prosecutor can only issue the seizure's order if he is satisfied that the movable property, including monetary instruments is the subject of an offence under Section 4(1) of AMLA (Yasin, 2007). A notice of seizure under Section 51 of AMLA is issued in such instances by the public prosecutor pursuant to Section 4(1). A copy of the notice must be placed in Malay and English newspapers and a copy must be served on the relevant administrative authority (Yasin, 2007).

The AMLA allows enforcement agencies to act when there are grounds for suspicion. However, the new law wishes to amend this to prima facie grounds. The Malaysian government comments that under this law, enforcement officers can get away with far too much. Datuk Ismail Kasim (BN-Arau) comments that Section 50 of the act gives enforcement officers the power to freeze assets for any length of time. He states this may be just where criminals are concerned but to those who are innocent; it infringes their fundamental rights. He further proposes that freezing powers should be extended to the courts. Some have supported Datuk Ismail Kasim's view that grounds for suspicion is a very broad phrase which potentially attracts maltreatment of suspects (Anonymous, 2008). These unlimited enforcement officers

power is a risk for the right to property that enshrined in international human rights instruments such as Article 17 of the Universal Declaration of Human Rights (UDHR) and Article 1 of the Protocol of the European Convention on Human Rights 1952 (ECHR), Article 21 of the American Convention on Human Rights (ACHR) and Article 14 of the African Charter on Human and People's Rights. Like other human rights the right to property is subject to the fundamental rules of human rights law (Krause and Alfredsson, 1999). In Malaysia, the right to property is protected by Article 13 of the Federal Constitution.

Tipping off and rights to information and to be informed: Section 35 AMLA provides for two offences of revealing information to a person, such as the customer that may prejudice an investigation. The first, occurs when a person who knows or has reason to suspect, discloses the fact that an IO is conducting or is about to conduct an investigation. The second is a disclosure that a STR has been made. The only defence for these two offences is that the accused had no knowledge that the disclosure would be harmful to the investigation (Yasin, 2007).

In effect, the compliance officer or any employee of the RI should not inform the customer that a STR on the customer has been or is about to be submitted. Tipping off a potential suspect is an offence under the AMLA. The customer should not be treated differently from the normal manner so as not to alert the customer that STR has been submitted and his transactions are being monitored.

Arguably, these AMLA provisions are inconsistent with the right to information and informed of costumers which is not only consumer right but also human rights. However, the right to information is not absolute. Article 19 of International Covenant on Civil and Political Rights (ICCPR), Article 19 of UDHR, Article 10 of ECHR, Article 13 of ACHR and Article 9 of the African Charter on human and people's rights are international provisions that emphasized on the right to information.

Under Section 79 of AMLA, any person who discloses information to an unauthorized person commits an offence and shall be liable on conviction to a fine not exceeding RM1 million, to imprisonment for a term not exceeding 1 year or to both. Based on the above, arguably the customer is no longer having the right to be informed on issues related to their transactions.

Right to remain silence: According to Section 32(4) of the AMLA, a person must answer all questions during investigation. Furthermore, according to Section 32(8) (b) if the person refuses to answer a criminal offence has been committed. Although, the suspect still has a

common law right to silence, exercising this right may lead the court to draw on inference under Section 72(6) and (7) as to the person's guilt or otherwise as implied by caution in Section 72(3) (Yasin, 2007). The right to remain silence has been reflected in Article 14(3)(g) of ICCPR and Article 40(2)(b)(iv) of the United Nations Convention on the Rights of the Child (UNCRC).

Right of arrestee: Under Section 41 of the AMLA, the IO will have a power to arrest without warrant. It provides that an investigating officer appointed under Section 30 may arrest without warrant a person whom he reasonably suspects to have committed or to be committing any offence under this act. The issue here is that the power given to IO to arrest without warrant is too much and may be used arbitrarily. The right to arrest without warrant undermines the freedom of movement of the arrested person which is also protected by the Federal Constitution in Malaysia.

Burden in proving conviction or acquittal: Generally, speaking, on questions concerning the seizure or forfeiture of property but save for a criminal prosecution under AMLA, the courts shall decide the question on the civil balance of probabilities standard and not on the criminal standard of beyond reasonable doubt. This, however is not the case in regards to forfeiture of property under the AMLA. This is a dilution of the burden of proof in matters involving a penal sanction (Tai Soon, 2004).

It also should be mentioned that under Section 76 of the AMLA, the fact that the person has previously been charged with an offence (it is unclear if this refers to any offence or one relating to money laundering) either in Malaysia or abroad can be given as evidence in court, irrespective of whether that person was convicted or acquitted. As such, it cannot be argued that evidence of this nature would be prejudicial (Yasin, 2007).

CONCLUSION

In general, this study demonstrates the conflict between the duty of Malaysian State to ensure peace and security via anti-terrorism legislation and its duty to protect human rights vis a vis consumers' right. As discussed in this study, Malaysia responded positively to the UNSC Resolutions 1267, 1333 and 1373 with regard to terrorism financing. Concerted efforts by relevant government agencies to counter terrorism, particularly the financial aspects of terrorism have been undertaken. In terms of the State's legislative measures, Malaysia was currently on par with other jurisdictions with sufficient

control over such illegal activities. At the same time, the Federal Constitution of Malaysia guarantees human rights and civil liberties. The rights such as rights to life, rights to movement, rights to fair trial, rights to information, right to property have also been extensively emphasised by international human rights instruments.

However as discussed throughout this study, counter-terrorism legislation like AMLA has potential to impact negatively on human rights and freedom including those of the consumers. This is because AMLA confers extensive powers to law enforcement agencies that potentially threaten human rights. For example, extensive power is granted to authorities to monitor bank accounts, emails, telephone calls and other electronic communications of suspects.

Ironically, constitutions are generally proclaimed to be supreme law and any law that is inconsistent with the constitution is void to the extent of its inconsistency.

However in Malaysia, the legislative measures that have implications on human rights violations can be reconciled with the constitutional guarantees of human rights. This is because the human rights guarantees in the Federal Constitution of Malaysia are not absolute.

Enjoyment of such rights is subjected to limitation and restriction made in accordance to the laws (Nordin, 2010). Pending any amendments made to the relevant provisions in AMLA in balancing the conflict between the duty of Malaysian State to ensure peace and security via anti-terrorism legislation and its duty to protect human rights it is urged for RI to ensure that there must be a degree of satisfaction of suspicion, even if it does not amount to belief before reporting for any suspicious transaction. General principles of law suggest that suspicion arises if there is more than mere speculation but falls short of actual proof or knowledge. Suspicion is often built on some factual or objective foundation. This is important because without fulfilling this pre-requisite requirement, potential mistreatment of suspects will continue existing.

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