Money Laundering in Plain Sight - a Case for Individual Gold Sellers

Dr.Tan Weng Chiang David

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Abstract

The Thailand Prevention and Suppression of Money Laundering Act 1999 ("PSMLA") has been amended in recent years to be in line with recommendations by international organizations, predominantly, the Financial Action Task Force or FAFT. Some of the recommendations being Know Your Customer ("KYC") and Customer Due Diligence ("CDD") measures. Section 16 (2), (3), (4) and (5) of the PSMLA provide for customer identification and CDD to be carried out by non-financial businesses and professions, including reporting their customer's identity to the Anti Money Laundering Office ("AMLO"). However, these laws have left open a loophole for money laundering to take place in plain sight - as recent criminal charges made against prison inmates, who coordinated from prisons in Thailand, the laundering of money (obtained from the sale of illicit drugs) through purchasing gold at gold shops. This paper aims to: (a) Trace and deliberate on the origins of Section 16 (2), (3), (4) and (5); (b) Highlight a deficiency in Section 16 (2) through surveying the laws of four other countries i.e. Australia, Canada, Malaysia and Singapore; and (c) Propose changes to Section 16 (2) for strengthening the prevention and suppression of money laundering.

Keywords: money laundering, gold seller, non-financial businesses and professions

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1. Introduction

Money obtained from crimes like drug trafficking, human trafficking, prostitution, sale of arms, extortion, corruption etc. need to be converted somehow by criminals into legitimate money. Money laundering is the process of converting money obtained from crimes or dirty money into legitimate money or money for everyday use. The Prevention and Suppression of Money Laundering Act B.E. 2542 (1999) ("PSMLA") was enacted in 1999, and came into force on August 19, 1999. Due to inadequacies of the laws at the time to suppress the laundering of proceeds of crime and the use of these proceeds in furthering criminal activities and offences, drafting of the PSMLA began at the Office of Narcotics Control Board[1] in May 1994. The Act aims to effectively combat money laundering and cut off the vicious process of laundering and furtherance of criminal proceeds. This law brought forth the criminalizing of money laundering with criminal penalties and the confiscating of assets suspected of being related to crimes. Since 1999 the PSMLA has gone through numerous amendments to keep abreast with deterring and suppressing money laundering in Thailand.

On June 26, 2020 the Bangkok Post newspaper reported in "Thailand targets narco millions hidden in gold, steel and crypto"[2] that at least twelve billion Baht of drug money was being turned into gold, zinc panels, steel rods and oil. It is further reported thereto that the main group of money launderers was controlled by a Thai woman in custody in a Bangkok prison. This may have exposed a loophole despite recent attempts by the Thailand Anti-Money Laundering Office ("AMLO") to curb trade-based money laundering through amending paragraph one of Section 16 of the PSMLA. Section 16 (2) of the current PSMLA places a duty on sellers of gold,

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[1]An agency under the Ministry of Interior responsible for narcotic drugs and drug related crimes.

[2]Bangkok Post, **Thailand Targets Narco Millions Hidden In Gold, Steel and Crypto** [Online], available URL: https://www.bangkokpost.com/world/1941520/thailand-targets-narco-millions-hidden-in-gold-steel-and-crypto/, 2020 (June, 26).

who are juristic persons, to have to report to the AMLO any cash transaction at 2,000,000 Baht or more.[3] Section 16 (2) however, does not place any reporting duty on gold seller, who are natural persons or individuals when selling gold to anyone. Unless there is probable cause for suspicion by the gold seller, and supported by reasonable evidence, the seller (i.e. a natural person or individual) has no duty to report the transaction to the AMLO. In other words, any customer appearing before a gold seller who is not registered at a governmental department as a juristic person, can purchase gold without having to worry about the transaction being reported to the AMLO. The non-juristic person gold seller here has no legal duty to report the transaction. Consequently, and as reported in the Bangkok Post on the actions of the alleged money launderers, this provides a loophole for money obtained from selling illicit drugs or illegal services or goods to be traded in for gold.

The exposure of this legal loophole in money laundering prevention and its consequent deficiency compelled the need for this paper to trace the origins and the cause for amending the first paragraph of Section 16, survey similar legal provisions of other countries and propose further amendment to Section 16 to strengthen the prevention of trade-based money laundering in Thailand.

2. Why was Section 16 amended - according to endnotes of Prevention and Suppression of Money Laundering Act (No.3) B.E.2552 (2009)

Prior to its amendments in 2009, Section 16 provides for a business carrying out investment transactions or the movement of capital, or otherwise providing advisory services thereof, has a duty to report to the AMLO any suspicious transaction or when there is probable cause to believe that the transaction is related to an asset involved in a crime. A business carrying out or providing advice

[3] Anti-Money Laundering Office, **Ministerial Regulation – Designating the Cash Threshold Which Businesses and Professions under Section 16 shall Report to the Anti-Money Laundering Office B.E.2554 (2011) Article 2 (1)** [Online], available URL: https://www.amlo.go.th/index.php/en/aml-cft-laws-policy-measures/2016-06-04-14-55-30/detail/5140/,2020 (December, 24).

on investment transactions or the movement of capital, covers mainly businesses carry out by a financial institution and a few other categories of licensed operators. Money laundering carried out through sellers of precious stones or metals, antiques, cars and real estate were not provided for in paragraph one of Section 16. As stated in the endnote of Prevention and Suppression of Money Laundering Act (No.3) B.E.2552 (2009) ("PSMLA No.3"), the law that amended paragraph one of Section 16, the reasoning for amending is there have been money proceeds of crime laundered through non-financial institutions and thereby renders the need for amending Section 16 to prevent the laundering of money through certain non-financial businesses and professions – referred to in the PSMLA as designated non-financial businesses and professions ("DNFBP"). This amendment is aimed at expanding the duty of reporting to the AMLO to sellers or traders of certain kinds of commodities where money gets laundered. This expands reporting duty to not just financial institutions but also certain specific kinds of sellers or traders, thereby provides prevention on trade-based money laundering. Trade-based money laundering is defined by John A. Cassara as a "process of disguising the proceeds of crime by moving value through the use of trade transactions… to legitimize their illicit origins"[4]

Section 16 (2), (3), (4) and (5), as inserted into paragraph one of Section 16 by Section 3 of PSMLA No.3, thereby specifically list out the following DNFBPs who has the duty to report cash transaction at or exceeding 2,000,000 Baht to the AMLO:

"…(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;

[4] John A. Cassara, **Trade - Based Money Laundering – The Next Frontier in International Money Laundering Enforcement** (New Jersey: John Wiley & Sons Inc., 2016), p.2.

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

Section 16 also stipulated in its paragraph one that the DNFPBs listed in (2), (3), (4) and (5) apply to juristic persons.

3. Financial Action Task Force Recommendations

The amendment to paragraph one of Section 16, as provided by Section 3 of PSMLA No.3, can be said to originate from a policy statement issued by the AMLO on Compliance with the Know Your Customer (“KYC”) and Customer Due Diligence (“CDD”) for Financial Institutions and Designated Non-Financial Business and Professions (“Policy Statement”)[5]. This Statement was approved by the Cabinet in parliament on February 27, 2007. The Statement was announced in part to comply with the recommendations of the Financial Action Task Force (“FATF”) [6], as revised in 2003, on compliance by financial institutions and certain designated non-financial businesses or DNFB on customer identification and KYC measures.[7] FATF Recommendation

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[5]Anti-Money Laundering Office, **Measures for Anti-Money Laundering and Combating the Financing of Terrorism Policy Statement on Compliance with the Know Your Customer (“KYC”) and Customer Due Diligence (“CDD”) for Financial Institutions and Designated Non-Financial Business and Professions (2007)** [Online], available URL: http://www.amlo.go.th/index.php/en/search/detail/723/, 2007 (February, 27).

[6]An international organization founded in 1989 on the behest of the G7 countries to combat money laundering. Its forty Recommendations and nine Special Recommendations have been endorsed by more than 180 countries and are recognized as the international standard for anti-money laundering and countering the financing of terrorism. FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, FATF**, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendation (Updated June 2019)** [Online], available URL: https://www.fatf-gafi.org/about/membersandobservers/, 2020 (August, 23).

[7]Note: Thailand is not a member of the FATF. FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation**,** FATF**, International Standards on Combating Money Laundering and the Financing of Terrorism**

Numbers. 22 and 23 categorize dealers in precious metals as one of the DNFBPs that have to carry out CDD, record-keeping and suspicious transaction reporting.[8]

In Thailand, the first paragraph of the Policy Statement issued by the AMLO states:

"The Anti-Money Laundering Office was designated by the National Corporate Governance Sub-Committee on Commercial Bank, Securities and Insurance Sectors to chair the working group on Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) under the Report on the Observance of Standards and Codes (ROSCs). The working group opined that the current anti- money laundering law has not sufficiently contained the customer identification and due diligence policies applicable to all financial institutions and to designated non-financial businesses and professions....

This Policy Statement should be applicable to –

Designated Non-Financial Businesses and Professions as follows:

1. Any person or juristic person trading in precious stones or metals, such as gold and jewelry.

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and Proliferation – The FATF Recommendation (Updated June 2019) [Online], available URL: https://www.fatf-gafi.org/about/membersandobservers/, 2020 (August, 23) but since Thailand is a founding member of the APG – a regional organization with similar aims as the FATF. United Nations Office of Drugs and Crime, **Thailand's Development of AML-CFT Regime, Chapter IV** [Online], available URL: https://www.unodc.org/documents/ southeastasiaandpacific/ 2009/02/TOCAMLO/09-CHAPTER_IV.pdf/, 2020 (August, 24); Asia Pacific Group on Money Laundering, **Members & Observers** [Online], available URL: [http://www.apgml.org/members-and-observers/members/details.aspx?m=6ff62559-9485-4e35-bf65-305f07d91b05/, 2020 (August, 24). Thailand is committed to meeting the FATF recommendations regarding the operation, supervision and regulation of financial sectors.

[8]FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, FATF, **International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendation (Updated June 2019)** [Online], available URL: https://www.fatfgafi.org/media/fatf/documents/ recommendations/pdfs/FATF%20Recommendations%202012.pdf/, 2020 (August 23).

Designated Non-Financial Businesses and Professions should

Apply the above policy insofar as it does not conflict with the normal business practice and have customers identified before conducting a cash transaction of one million Baht or more,…”[9]

As revealed by the Policy Statement above, the recommendation of the FATF with regard to CDD to be conducted by dealers in precious metals is now reflected in the Policy Statement. The attempt by the AMLO to be on the same international standard for anti-money laundering measures got as far as this Policy Statement – a mandate for CDD and customer identification measures applicable to financial institutions and DNFBPs. One of the DNFBP that the Statement is applicable to is a juristic person or person trading in gold. However, Section 16 (2) of the PSMLA on reporting of transactions by gold sellers, as amended by PSMLA No.3, applies to only gold sellers who are juristic persons.

4. Why does Section 16 (2) of the PSMLA applies to only sellers of gold who are juristic persons, and not sellers of gold who are natural persons or individuals?

Why has Section 16 (2) of the PSMLA narrowed down gold sellers to only juristic persons as the only category of sellers who have to report transactions. Differing from that provided by the Policy Statement. In 2009 when Section 16 paragraph one was amended by PSMLA No.3, there were a substantial amount of gold sellers who were not registered as juristic persons. This was reflected in 2016 when the Revenue Department encouraged gold retailers and wholesalers to register as juristic person so that their income can be properly accounted for[10]. The Ministry of Commerce stated in 2013 that 1866 gold traders are registered with its

[9] United Nations Office on Drugs and Crime, op.cit.

[10] Bangkok Post, **Gold shops, Drugstores Targeted for Tax** [Online], available URL: https://www.bangkokpost.com/business/1080876?fbclid=IwAR1L_nzU1v_14lLb7XKP65jnSI7sQnb8-tQtr8B8rk6RP49xuZu9gQuY0dY/, 2016 (September, 8).

Department of Business Development, but there is an estimate of 7500 gold traders in Thailand.[11]

Furthermore, under the current poor economic climate, there are many people who would rather part with their gold or gold ornaments for cash.[12] This provides an ideal environment for money laundering through purchasing gold and indicates the deficiency of Section 16 (2) in preventing money laundering.

The Policy Statement ends with “DNFB should apply the above policy insofar as it does not conflict with the normal business practice...” Does “normal business practice” here refer to the businesses of non-juristic person or individual gold sellers at this time? As there are more gold sellers registered as juristic person now, probably with the recent encouragement of the Revenue Department, this has strengthened the prevention of money laundering somewhat since more gold sellers will have to report transactions.

Section 16 also provides for DNFBP to have to report customer’s identity to the AMLO.

However, there remains an avenue for money launderers to buy gold from non-juristic or individual gold sellers of various kinds e.g. an indebted person who has some saved up gold or gold ornament, and needs to pay up his or her debt, or pay for his or her children’s school fees and/or food for the family etc. Under the current poor economic climate, this is an avenue that money launderers can exploit.

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[11]The Nation, **Initial Capital Requirement for Gold Traders to Be Increased** [Online], available URL: https://www.nationthailand.com/Corporate/30218394?fbclid=IwAR0i6O_Hh5q3fwWEmfXdqCTAK8ZH43Bcb25XdJ2aZPBiAZujPlCVcGTbuIo/, 2013 (October, 31).

[12]Associated Press, **With Price High, Thais With Dwindling Incomes Sell Off Gold** [Online], available URL: https://www.khaosodenglish.com/news/business/2020/04/17/with-price-high-thais-with-dwindling-incomes-sell-offgold/?fbclid=IwAR0dFQgpvuNzDSqhFXpAWDNeR2hYuxH426w2ure3ljvxRHLQSs_ouyndfs/, 2020 (April, 17). And Jiraporn Kuhakan and Satawasin Staporncharnchai, **Cash-Strapped Thais Rush to Sell Gold as Coronavirus Hits Economy** [Online], available URL: https://www.reuters.com/article/us-health-coronavirus-thailand-gold-idUSKCN21Y1FO?fbclid=IwAR3yPQburlMiXL6ssnTZAefMFw53PikO9gBscxxiIl65GSFIaoYytDO92Y/, 2020 (April, 16.)

5. Comparing the same or similar legal provisions of four other countries

Laws providing for prevention of money laundering in other countries tend to favor either: mandating that all gold sellers, whether being juristic person or individuals, obtain authorization from a central government authority – in other words, all kinds of gold sellers in the country are regulated from a central governing body thereby giving raise to centralized administering and legalizing of gold sellers; or having specific legal provisions on the activity of gold selling by individual gold sellers.

The prevention and suppression of money laundering laws of four countries: Australia, Canada, Malaysia and Singapore illustrate quite clearly these two tendencies of legal provisions for individual gold sellers. Given this, the laws of these four countries are explored here to highlight their legal provisions.

5.1 Australia

The prevention and suppression of money laundering laws of Australia seems to focus on the selling activity of any kind of gold sellers, rather than who is the gold seller whether being a juristic person or an individual. Section 5 of the Anti-Money Laundering and Counter – Terrorism Financing Act 2006 ("AML & CTF Act 2006") sets out clearly from the onset of the legislature a broad definition for person provided by the Act. "In this Act: ... person means any of the following:

(a) an individual;
(b) a company;
(c) a trust;
(d) a partnership;
(e) a corporation sole;
(f) a body politic..." [13]

[13]Federal Register of Legislation, The Office of Parliamentary Counsel, Australia, **Anti-Money Laundering and Counter – Terrorism Financing Act 2006** [Online], available URL: https://www.legislation.gov.au/Details/C2019C00011/, 2020 (December, 21).

Also, Section 4 of the Act provides that: "A reporting entity is a financial institution or other person, who provides designated services." One of the designated services listed in Table 2 of Section 6 thereto is: "...selling bullion, where the selling is in the course of carrying on a bullion-dealing business..." Bullion has been defined as gold in the form of bars, ingots, plates, wafers or similar forms, or in coins, used for trading.[14] This is defined by AUSTRAC – the Australian government agency responsible for detecting, deterring and disrupting criminal abuse of the financial system.[15]

Section 5 of the AML & CTF Act 2006 has stipulated clearly that a bullion seller includes: "...(a) an individual..." and such individual bullion seller has the duty to report the transaction, regardless of the amount of the transaction involved. The prevention of money laundering here acts on placing the reporting duty on a broad spectrum of gold sellers. This seems to indicate that Sections 5, 4 and Table 2 of Section 6 aim at preventing money laundering at the point of selling gold rather than the persons involved in the sale transaction. The trade-based money launderer has no means of laundering money when there is hardly any available outlet to purchase gold without having to reveal his, hers or its identity.

5.2 Canada

Sections 5 (L) and 6 of Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("PCMLTFA") S.C. 2000, c.17 provides for individual gold sellers selling gold at 10,000 Canadian Dollars or more per transaction has the duties of record keeping and verifying the identity of the customer.[16] Therefore, a

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[14]AUSTRAC for the Common wealth of Australia, **Defination of Bullion** [Online], available URL: https://www.austrac.gov.au/bullion/, 2020 (December, 21).

[15]AUSTRAC for the Common wealth of Australia. **AUSTRAC overview.** [Online], available URL: https://www.austrac.gov.au/about-us/austrac-overview/, 2020 (December, 21).

[16]Department of Justice, Canada, Justice Laws Website, **Proceeds of Crime (Money Laundering) and Terrorist Financing Act S.C. 2000, c.17** [Online], available URL: https://lois-laws.justice.gc.ca/eng/acts/P-24.501/page-1.html#h-398160/, 2020 (December, 21).

transaction at lesser than 10,000 Canadian Dollars is not subjected to these record keeping and identity verification duties.[17]

It can be said that Sections 5 (L) and 6 of the PCMLTFA limits record keeping and identity verification to 10,000 Canadian Dollars per transaction may have provided a window for trade-based money laundering to be practiced by a gold purchaser, as compared to Sections 5, 4 and Table 2, Section 6 of the AML & CTF Act 2006 of Australia which require gold sellers to have to report any sales transaction (see also Figure 1 below). A trade-based money launderer in Canada is able to purchase gold from a seller, or from different sellers over numerous occasions, at the purchase price of lesser than 10,000 Canadian Dollars per transaction, without having to reveal his, hers or its identity and have records kept on the details of the transaction.

However, the prevention and suppression of money laundering provisions of Sections 5 (L) and 6 of the PCMLTFA remain more efficient than Section 16 (2) of the PSMLA as they apply to individual sellers of gold as well.

5.3 Malaysia

In Malaysia all sellers and purchasers of gold, gold coin and bullion must be first authorized by the Governor of the Bank Negara Malaysia, Malaysia's central bank. This is provided for by Sections 3 and 4 of the Exchange Control Act 1953 ("ECA 1953"). Section 4 (1) of the ECA 1953 provides: "Except with the permission of the Controller, no person, other than an authorized dealer, shall, in Malaysia buy or borrow any gold ... from, or sell or lend any gold ... to, any person other than an authorized dealer." And Section 3 defines the Controller as the Governor of the Bank Negara Malaysia.[18] These provisions restrict the possibility for sale of gold by individual sellers who are not authorized by the Controller.

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[17] Financial Transactions and Reports Analysis Centre of Canada, **Financial Transactions That Must Be Reported** [Online], available URL: https://www.fintrac-canafe.gc.ca/re-ed/dpms-eng/, 2020 (December, 21).

[18] Commonwealth Legal Information Institute, **Exchange Control Act 1953** [Online], available URL: http://www.commonlii.org/my/legis/consol_act/eca19531969245/, 2020 (December, 21).

Furthermore, authorized gold dealers have the duty to conduct customer due diligence on the customer for a cash transaction amount equivalent to 50,000 Malaysian Ringgit or more.[19] This applies to a single transaction or through several transactions in a day that appear to be linked. Also, the dealer has the duties to: report any cash transaction equivalent to 25,000 Malaysian Ringgit or more in a single or multiple cash transactions within the same account in a day[20], conduct suspicious transaction reporting[21] to the Bank Negara Malaysia and keep records on the details of the transaction, for example, customer's identification details, beneficiary details etc[22]. These are duties provided by the Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions (DNFBPs) and Non-Bank Financial Institutions (NBFIs) Policy Document, effective on January 1, 2020 ("Policy Document") issued under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLA Malaysia").

In examining the laws of Malaysia, it can be said that despite the various duties placed on the sellers of gold by the Policy Document, the legal requirement pursuant to Sections 3 and 4 of the ECA 1953 for any sellers of gold to be authorized by the Governor of the Bank Negara Malaysia has to a certain extend provided a first line of defense against any intentional or unintentional money laundering by sellers of gold. Absence of law mandating the requirement for

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[19]Bank Negara Malaysia, Central Bank of Malaysia, **Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions (DNFBPs) & Non-Bank Financial Institutions (NBFIs) (AML/CFT and TFS for DNFBPs and NBFIs) (2020).** [Online], available URL: https://www.bnm.gov.my/-/anti-money-laundering-countering-financing-of-terrorism-and-targeted-financial-sanctions-for-designated-non-financial-businesses-and-professions-dnfbps-non-bank-financial-institutions-nbfis-aml/cft-and-tfs-for-dnfbps-and-nbfis-1/, 2020 (December, 22).

[20]Ibid, p. 54.

[21]Ibid, p. 56.

[22]Ibid, p. 61.

authorized gold sellers removed this very first line of defense against money laundering by purchase of gold, and having to rely solely on the laws legislated pursuant to the recommendations by FATF. As for Thailand, the recommendations of FATF on customer due diligence and customer identification do not even apply to individual gold sellers.

5.4 Singapore

Similar to Malaysia, all sellers of gold in Singapore must be registered as a regulated dealer. This is mandated by Section 6 (1) of The Precious Stones and Precious Metals (Prevention of Money Laundering and Terrorism Financing) Act 2019 ("Precious Metal Act 2019").[23] Section 2 of the Act defines a regulated dealer as "…any person who carries on – (a) a business of regulated dealing; or (b) business as an intermediary for regulated dealing, …" and "…regulated dealing…" here "…means doing any of the following: …(c) selling or offering for sale any precious stone, precious metal or precious product;…". "…Precious metal…" is defined in Part 1 of the Schedule to the Act as including gold.

A gold dealer would have to be registered as a regulated dealer with the Registrar of Regulated Dealers who is appointed by the Minister of Law[24]. There are however two exceptions to the rule on registration as a regulated dealer: (i) pawnshops regulated under the Pawnbroker's Act 2015 which has its own anti-money laundering provisions; and (ii) one-off purchasers of gold who purchased gold for subsequent resale to secondhand dealers are regulated by the Secondhand Goods Dealers Act 2008.

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[23]Singapore Statutes Online, **The Precious Stones and Precious Metals (Prevention of Money Laundering and Terrorism Financing) Act 2019** [Online], available URL: https://sso.agc.gov.sg/Act/PSPMPMLTFA2019/, 2020 (December, 22).

[24]Section 4 of the Precious Metal Act 2019.

Regulated gold dealers are required by the Precious Metals Act 2019 to: (i) conduct customer due diligence before entering into the transaction (Section 16), (ii) provide cash transaction reporting on any cash transaction (Section 17); and (iii) keep records on all transactions, regardless of whether the transaction have been completed or not (Section 18).

As explained above, Section 2 of the Precious Metal Act 2019 applies to "...any person..." who carries on a business of regulated gold dealing or act as an intermediary for regulated gold dealing. This applies to both individuals and juristic persons. Furthermore, the legal requirement mandating sellers of gold to have to be registered as regulated dealers closed out the possibility for individual sellers of gold to be involved in money laundering activity. This is in itself the first line of defense against money laundering as the regulated dealer has to conduct customer due diligence from the onset, reporting the transaction if gold is to be purchased with cash and maintaining records. These may deter illicit money from being laundered for gold.

It is observed that both the AML & CTF Act 2006 of Australia and the Precious Metal Act 2019 of Singapore focus on the money laundering activity through sale of gold by any kind of person, without any limitation on the transaction amount involved (see Figure 1 below). The ECA 1953 and Policy Document of Malaysia and the PCMLTFA of Canada also deter money laundering activity through sale of gold by any kind person but such intended transaction must be above a certain amount i.e. 50,000 Malaysian Ringgit or above for Malaysia and 10,000 Canadian Dollars for Canada. These exclude from the respective laws sale of gold transactions that are below these prescribed amounts.

Figure 1

LEGALIZING GOLD SELLING BY AN INDIVIDUAL		
	Gold Selling Activity	Authorized by Central Governing Body
Australia	Individual gold seller has duty to report the transaction.	x
Canada	Individual gold seller has duties of record keeping and verifying customer's identity for a transaction at 10,000 Canadian Dollars or more.	x
Malaysia	X	All sellers of gold must be authorized by Central Bank.
Singapore	X	All sellers of gold must be registered as a regulated dealer with Registrar of Regulated Dealers.

6. Suitable Amendment for Section 16 (2) of the PSMLA

A common feature of the laws of the four countries surveyed above is there is no restriction on the kind of person whom the anti-money laundering law is applicable to, there is limitation on the cash amount involved in the sale of gold transaction for both the Canadian PCMLTFA and the Malaysian ECA 1953 and Policy Document though. It seems peculiar that Section 16 (2) of the PSMLA of Thailand specifically provides for application to juristic person, and not an individual gold seller. Section 16 (2) appears oddly incomplete and narrow in comparison with similar laws of Australia, Canada, Singapore and Malaysia (see Figure 1 above). Thus far, the researcher cannot ascertain any reason for this peculiarity from the laws and information made available.

Section 16 (2) was added into the PSMLA pursuant to Section 3 of PSMLA No.3 because money proceeds of crime was laundered through non-financial institutions and thereby renders the need for expanding Section 16 to include non-financial businesses and professions or DNFBP, one of which are gold sellers. Section 16 (2) expands the duty of reporting cash transaction to the AMLO to sellers of gold who are juristic persons only. This does not thoroughly carry out the intention for amending Section 16 as express in the end note of PSMLA No.3. Also, to a large extend, it does not comply with the objective of the Policy Statement and recommendation Numbers. 22 and 23 by FATF which categorize dealers in precious metals as one of the DNFBPs that has to carry out CDD, record-keeping and suspicious transaction reporting.

The anti-money laundering laws of Australia, Canada, Malaysia and Singapore surveyed above have legislate their laws to apply to any kind of gold sellers, whether being juristic person or individuals. Whilst the laws of these countries focus on regulating gold sellers and/or placing the duties of: record keeping, verifying customer identity, conducting customer due diligence and transaction reporting on gold sellers. These appear to be more in line with the recommendation of FATF on legislating anti-money laundering laws to include DNFBPs.

It appears from the Policy Statement and PSMLA No.3 that the Thai law intends to comply with, if not get adjusted to, the FATF recommendations on DNFBPs. Given this, the reporting duty of Section 16 (2) should logically be amended to apply to any kind of gold sellers, whether being juristic person or individual.

7. Conclusion

Section 16 (2), (3), (4) and (5) aim at preventing and suppressing of money laundering in transactions not carried out in financial institutions, or what is known as trade-based money laundering, by sellers of precious stones, metals, antiques, cars and real estates. This originates from the recommendations of FATF to include sellers of gold under the umbrella of DNFPB and be subjected to conducting customer due diligence and customer verification duties. However, the current Section 16 (2) seems deficient in deterring money launderers from laundering their illicit money through individual gold sellers. With no reporting duty place on individual gold sellers, similar money laundering activity as that controlled by the Thai woman in custody in the Bangkok prison will likely arise again and again.

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