律師的處境

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

新加坡的律師並不獲豁免於第45條。該責任適用於在專業過程中取得的資料，法律專業亦不例外。然而，《貪污、販毒及其他嚴重罪行（沒收利益）法》（CDSA）保留了法律專業保密權：執業律師（advocate and solicitor）毋須披露受保密權保障的資訊。[1] 界線與英國法中常見的相同。為取得法律意見或與訴訟有關而向律師作出的通訊，受保密權保障，毋須舉報。律師在擔任交易代理人期間取得的資訊，例如處理資金或成立公司時取得的資訊，並不僅因由律師收到而受保密權保障。為推進犯罪目的而作出的通訊，則永遠不受保密權保障。

《2015年法律專業（防止洗錢及恐怖分子資金籌集）規則》增設了一層監管。律師行為客戶籌備或進行指明交易時，必須進行客戶盡職審查（CDD）。指明交易包括買賣房地產、管理客戶款項、證券或其他資產、為成立公司組織出資，以及成立、營運或管理法人或法律安排。[2] 由於CDSA第45條已訂有舉報責任，該規則並無另設舉報責任，但規定律師行須設有便於舉報的合規架構，並須保存紀錄。新加坡律師若為DAO基金會設計架構、在客戶帳戶持有代幣銷售所得款項，或為數碼資產基金設立可變資本公司（VCC），便完全受該規則規管。

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在我的執業經驗中，最常出現的問題與提供意見有關。客戶前來詢問一宗過往交易是否合法，而事實顯示並不合法。該通訊受保密權保障，律師可提供意見，毋須舉報。同一客戶其後要求律師收取並持有所得款項。律師若照辦，便已離開受保密權保障的範圍，進入交易範圍；他已在業務過程中取得資料，負有舉報責任，並可能因協助他人保留刑事行為的利益而須承擔第51條的風險。界線在於提供意見與代為行事之間。

跨境視角

處理同一事務的楚格瑞士律師與新加坡律師，承擔不同的舉報責任。瑞士律師只有在以金融中介人身份行事時，例如在交易過程中持有客戶資金時，才受《瑞士打擊洗錢法》（GwG/AMLA）規管。AMLA第9條下的瑞士舉報責任只適用於該類活動。截至法律狀況基準日，純粹的法律意見，包括有關成立公司的意見，仍在瑞士舉報責任範圍以外，有待第F部分第VI章所述的2024至2026年改革。新加坡律師則就其在專業過程中取得而不受保密權保障的任何資料，受CDSA第45條約束，並就指明交易受2015年規則約束。因此，瑞士與新加坡的團隊必須在一開始便決定由哪位律師處理資金及成立公司事宜，因為該律師承擔較重的責任；團隊亦必須確保受保密權保障的通訊留在其保密權能保障這些通訊的律師手中。

註釋

1. CDSA 1992，第45條，有關執業律師受保密權保障通訊的但書；Evidence Act 1893，第128條及第131條，有關法律專業保密權。 ↩
2. Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015，第4至18條規則，根據Legal Profession Act 1966訂立；Law Society of Singapore, Practice Direction on the Rules and Guidance Notes。 ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com