Privacy and the anti-money laundering duties

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The sharpest conflict in practice is between the retention limitation and purpose limitation obligations on one side and the AML duties on the other. MAS Notice PSN02 requires a digital payment token service provider to retain customer due diligence records for at least five years after the end of the relationship and to screen customers against sanctions and adverse media. It must transmit originator and beneficiary information with value transfers and report suspicious transactions without informing the customer.[1] Each of these is a use or disclosure of personal data. The Act accommodates them through the exceptions for use and disclosure required by law and through the recognition that retention is permitted where required for a legal purpose.[2] What the Act does not permit is the use of AML data for unrelated commercial purposes, such as marketing based on transaction patterns, without separate consent. Nor does it permit the sharing of suspicious transaction reports within a group beyond what the tipping-off rules allow, which is a point on which the privacy analysis and the AML analysis coincide.

The travel rule deserves a separate word. A Singapore provider sending a transfer to a Swiss provider must transmit the originator's name, account number and address or identity number. The Swiss provider must verify the beneficiary.[3] The transfer of

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that data from Singapore to Switzerland is a cross-border transfer under s 26 of the Act. The basis is that it is required by law, but the sending provider must still satisfy itself that the recipient will protect the data, which the industry has addressed through the data protection terms of the travel-rule messaging protocols.

Notes

1. MAS Notice PSN02 on Prevention of Money Laundering and Countering the Financing of Terrorism – Digital Payment Token Service, as amended. Part L, Chapters II to IV describe the obligations. ↩
2. Personal Data Protection Act 2012, s 25 (retention limitation, subject to legal or business purposes) and First Schedule exceptions. ↩
3. MAS Notice PSN02, value transfer requirements, and Art. 10 AMLO-FINMA on the Swiss side. Part F, Chapter IV and Part L, Chapter III treat the travel rule. ↩

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