

	<b>Commerce &amp; Industry Group</b> recognised by <b>The Law Society</b>
<a href="http://www.cigroup.org.uk">www.cigroup.org.uk</a>	

## Money Laundering

*This note is of relevance to all in house lawyers, and especially those in the financial services industry firms.*

### 1. What is money laundering?

Money laundering is the process by which the identity of “dirty money”, that is the proceeds of criminal conduct/crime, and the true ownership of those proceeds, is changed so that the proceeds appear to originate from a legitimate source. Types:

- (i) Placement: the process of transferring the proceeds of crime into the financial system, either directly through high cash business or through the purchase of high value goods, property or business assets;
- (ii) Layering: the process of separating the proceeds of crime from the criminal source by creating layers of financial transactions to disguise the audit trail and provide anonymity; and
- (iii) Integration: the process whereby the layered funds re-enter the financial system as normal business funds.

In most cases, the success of money laundering depends upon the transaction looking normal. Consequently, funds are usually laundered as part of seemingly ordinary business transactions.

### 2. Legal and regulatory position

The main UK anti-money laundering legislation is contained in The Proceeds of Crime Act 2002, the Terrorism Act 2000, the Serious Organised Crime and Police Act 2005 and the Money Laundering Regulations 2003.

Further regulatory obligations may arise for regulated firms (e.g. those regulated by the Financial Services Authority, The Law Society or HM Revenue & Customs).

### 3. The main criminal offences affecting everybody

- Concealing, disguising, converting, transferring criminal property or removing criminal property from the UK
- Entering into or becoming concerned in an arrangement which a person knows or suspects, facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquisition, use and possession of criminal property
- Attempting, aiding, abetting, counselling or procuring the commission of any of the above
- “Tipping off” any person that a potential case of money laundering has been reported or is being investigated (whoever may be the subject of a suspicion)

- Prejudicing an investigation.

There are similar offences related to terrorist financing: Note: “criminal” activity is very widely defined and includes, for example, tax evasion and certain intellectual property offences as well as theft, drug trafficking and so on. The legislation contains provisions whereby a person can seek the State’s consent to proceed with a transaction which might otherwise involve money laundering.

Depending on the offence, the maximum penalties are up to 14 years’ imprisonment and/or an unlimited fine.

#### 4. Additional provisions affecting financial services and related businesses

UK law subjects “relevant businesses” and their employees to a number of additional obligations, including the following:

- to appoint a Money Laundering Reporting Officer (MLRO);
- to disclose knowledge or suspicion of money laundering or terrorist financing internally to MLRO;
- for the MLRO to disclose knowledge or suspicion of money laundering or terrorist financing to the relevant State authorities (currently the Serious Organised Crime Agency, “SOCA”);
- to set up procedures for verifying the identity of customers;
- to establish record keeping procedures for evidence of identity;
- to make effective use of customer information for money laundering prevention;
- to keep full records of all transactions;
- to train relevant employees in their obligations and in the procedures for recognising and reporting suspicions of money laundering.

Broadly, “relevant businesses” for this purpose are: regulated financial services businesses (such as firms regulated by the Financial Services Authority); bureaux de change; real estate agents; casinos; insolvency practitioners; tax advisers; accountants; auditors; providers of legal services which involve participation in a financial or real property transaction; company or trust formation, operation or management services; and dealers in high value goods.

#### 5. How does this affect you?

- (i) If you are the MLRO, you will have various personal responsibilities that you need to be aware of. Attending an accredited course would be a good first step to take to ensure that you are aware of these responsibilities. You will then need to establish, or review existing, internal procedures and ensure that they are properly communicated to staff. In particular, all staff will need regular training on money laundering.

*It is important that your role as MLRO is given appropriate authority by senior management and your appointment is clearly communicated to staff.*

- (ii) If you are not the MLRO (in a “relevant business”), you should establish who is and familiarise yourself with the internal procedures and check that they are up to date with

the current legal and regulatory position. Perhaps offer yourself as a useful point of contact to the MLRO.

- (iii) If you are not in a “relevant Business”, you should nevertheless consider whether a responsible nominated officer should be appointed and whether training and/or guidance to key staff would be beneficial so that they can be alert to warning signs.

## 6. Warning signs

The following are examples of 'red flags' that you should look out for. This list is not exhaustive, but may help you to recognise possible money laundering schemes.

Beware of customers that:

- enter into transactions which make little or no commercial sense or which go against normal market practice;
- are happy to enter into a bad deal;
- are unwilling to explain the purpose of a transaction or refuse to provide information requested without reasonable explanation;
- suddenly change their pattern of activity;
- enter into deals beyond their apparent financial means;
- take part in transactions across a number of different jurisdictions;
- make large cash payments;
- use offshore accounts, companies or structures in circumstances where the customer's needs do not support such economic requirements;
- unnecessarily route funds through third party accounts.

## 7. If you spot a warning sign

If you spot a warning sign which gives you reason to suspect money laundering activity, then you should take steps to report it (through your MLRO if you have one) to the State authorities for further investigation and/or consent to proceed with a transaction.

Sometimes it can be hard to decide whether or not a particular transaction is suspicious. If this is the case, then it may be prudent for the company to carry out an internal investigation into the circumstances underlying a possible suspicion before a concluded view can be reached. Corporate investigations must be handled with care, so various factors should be considered including:

- ensuring that the key people who must be involved are, but keeping this number to an absolute minimum – normally this will be (a) the employee; (b) the employees' line manager or whoever is “responsible” for the transaction; (c) the MLRO; and (d) depending on the nature of the business, the General Counsel. HR and/or general management will not normally be involved at the investigation/reporting stage unless, possibly, own employee complicity is suspected;
- ensuring that all internal notifications are made on a strictly confidential basis;
- preserving privilege where you have been asked to advise;

- taking steps to preserve documents and capture evidence;
- ensuring that any steps you take do not “tip off” the suspected person;
- considering whether to proceed with the transaction – but note that there are restrictions on proceeding with a suspect transaction without State consent, and that in certain circumstances it may be appropriate to delay or not to complete a transaction (care being taken at the same time not to “tip-off” the suspected person);
- for businesses without an MLRO, nominating someone appropriate to lead the disclosure process and liaise with the SOCA;
- ensuring that all reports and disclosures concentrate only on the facts.

The SOCA website contains detailed forms and guidance for submitting disclosures and a wealth of further information.

**Useful links:**

[www.lawsociety.co.uk](http://www.lawsociety.co.uk)

[www.jmlsg.org.uk](http://www.jmlsg.org.uk)

[www.soca.gov.uk](http://www.soca.gov.uk)

© July 2006 Commerce & Industry Group

**Disclaimer:** *This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document. The Commerce & Industry Group, the C&I Corporate Governance Committee and its members accept no liability to any person for the contents of this document.*