

Money Laundering



"The criminals round here are really blatant".

Alex Ferguson - Legal Adviser, Caribbean
Criminal Asset Recovery Programme

Objectives

- History and background to money laundering;
- The stages of money laundering;
- Types of money laundering schemes;
- Money Laundering Offences
- Prosecutions types;
- The predicate offences;
- Current trends



History

The term money laundering is said to have its origins from the mafia's ownership of Laundromats in the US in the 1920's and 1930's. Organised criminals were making so much money from extortion, prostitution, gambling and bootlegging, they needed to show a legitimate source of the money.

One way in which they could do this was to purchase outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings from these businesses. Laundromats were chosen because they were cash businesses. Al Capone used this method in Chicago.

Journalist Geoffrey Robinson regards the tale that money laundering came from this as a myth. He states:

Money Laundering is called what it is because it perfectly describes what takes place – illegal or dirty money is put through a cycle of transactions, or washed, so that it comes out the other end as legal or clean money. In other words, the source of the illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.

Meyer Lansky

Lansky was to become known as the Mobster's accountant.

He was determined that the same fate that came of Al Capone would not befall him and he set about finding ways to hide money. Through this determination he discovered the benefits of numbered Swiss bank accounts.



He also developed one of the first money laundering techniques - the loan back concept – which meant that illegal money could be disguised by loans provided by compliant foreign banks.

Money laundering as an expression is a fairly recent one. The original sighting was in the newspapers reporting the Watergate scandal in 1973.

The expression first appeared in a Judicial or legal context in 1982 in the US case **US v \$4,255,625.39 (1982) 551 F sup.314.**

Background to Money Laundering offences

Money laundering as a crime only attracted interest in the 1980s, essentially within a drug trafficking context. It was from an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug abuse problem in western society .

Governments also recognised that criminal organisations, through the huge profits they earned from drugs, could contaminate and corrupt the structures of the state at all levels.

Money laundering is a truly global phenomenon, helped by the International financial community which is a 24hrs a day business. When one financial centre closes business for the day, another one is opening or open for business.

As a 1993 UN Report noted:

The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of organised and transnational crime, are its global nature, the flexibility and adaptability of its operations, the use of the latest technological means and professional assistance, the ingenuity of its operators and the vast resources at their disposal.

There are various definitions available which describe the phrase 'Money Laundering'. Article 1 of the draft European Communities (EC) Directive of March 1990 defines it as:

the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and

the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.

Estimates of the size of the money laundering problem totals more than \$500 billion annually world - wide. This is a staggering amount and detrimental by any calculation to the financial systems involved.

International Initiatives

It has been recognised by many governments that close international co-operation was needed to counter money laundering, and a number of agreements have been reached internationally in order to counter this menace.

These agreements have been reached on two fronts - financial and legal.

Financial - Basle Statement of Principles

On the financial front, the Committee on Banking Regulation and supervisory Practices issued the Basle Statement of Principles on the prevention of criminal use of the banking system for the purpose of money laundering in December 1988.

The Statement of Principles does not restrict itself to drug-related money laundering but extends to all aspects of laundering through the banking system:

- a) Know your customer - banks should make reasonable efforts to determine the customer's true identity, and have effective procedures for verifying the bona fides of new customers (whether on the asset or liability side of the balance sheet)

- b) Compliance with laws - bank management should ensure that business is conducted in conformity with high ethical standards, laws and regulations being adhered to and ensuring that a service is not provided where there is good reason to suppose that transactions are associated with laundering activities.

- c) Co-operation with law enforcement agencies - within any constraints imposed by rules relating to customer confidentiality, banks should co-operate fully with national law enforcement agencies including, where there are reasonable grounds for suspecting money laundering, taking appropriate measures which are consistent with the law.

"All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement".

INTERNATIONAL INITIATIVES - Part 2

Legal

On the legal front, various significant pieces of work have been done. These include:

UN CONVENTION AGAINST ILLICIT TRAFFICKING IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (THE VIENNA CONVENTION). (19 December 1988)

This is one of the most important international treaties in the past 50 years. It not merely requires its signatory states to criminalise the laundering of drug money, and to confiscate it where found, but lays down so far as possible a common wording for the criminal statutes, and a common mode of enforcement. It also requires full and prompt co-operation between the signatory states for the enforcement of these laws anywhere in the world.

This agreement in December 1988 commits all countries that ratify it to introduce a comprehensive criminal law against laundering the proceeds of drug trafficking and to introduce measures to identify, trace, and freeze or seize the proceeds of drug trafficking.

It is from this treaty that money laundering and proceeds of crime legislation was introduced in the Caribbean.



United States Department of State
Bureau of International Narcotics and Law enforcement Affairs
Money Laundering and Financial Crimes
Country Database (extract) , June 2013

COUNTRIES OF PRIMARY CONCERN

Antigua and Barbuda
Bahamas
Belize
British Virgin Islands
Cayman Islands
Curacao
Haiti
St. Maarten
United Kingdom
United States of America
Venezuela

COUNTRIES OF CONCERN

Barbados
Grenada
Guyana
Jamaica
St. Kitts and Nevis
St. Lucia
St. Vincent
Trinidad and Tobago
Turks and Caicos

JURISDICTIONS MONITORED

Anguilla
Bermuda
Cuba
Dominica
Montserrat

Money Laundering stages

Money laundering schemes can be divided into 3 stages:

1. PLACEMENT

At this stage the launderer disposes of his “dirty money”. The launderer attempts through placement to put the money into the financial system unnoticed. This is commonly done by asking a number of people to make small deposits or by physically taking the money out of the jurisdiction. It is at this stage that detection is most likely.

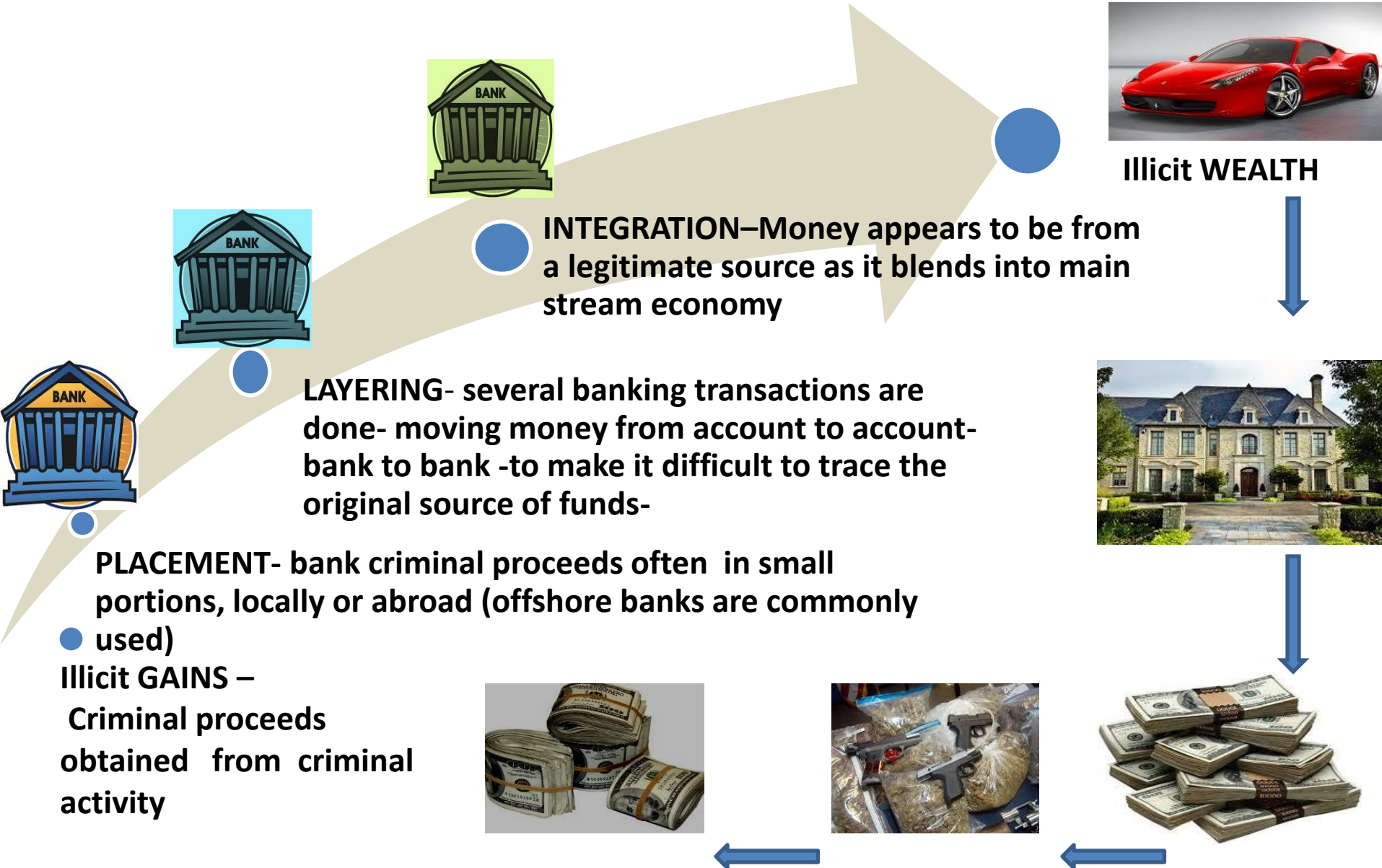
2. LAYERING

Layering occurs by conducting a series of financial transactions that, by the reason of their frequency, volume or complexity resemble legitimate financial transactions. The aim here is to make it extremely difficult to trace the funds back to the crime.

3. INTEGRATION

Here the launderer integrates the illicit funds into the economy. He does this by making it appear that the funds have come from a legitimate source e.g. business earnings or property

The Money Laundering scheme



Methods of Money Laundering

Placement Stage	Layering Stage	Integration Stage
Cash paid into bank (sometimes with staff complicity or mixed with proceeds of legitimate business).	Wire transfers abroad (often using shell companies or funds disguised as proceeds of legitimate business).	False loan repayments or forged invoices used as cover for laundered money.
Cash exported.	Cash deposited in overseas banking system.	Complex web of transfers (both domestic and international) makes tracing original source of funds virtually impossible.
Cash used to buy high value goods, property or business assets.	Resale of goods/assets.	Income from property or legitimate business assets appears "clean".

Money Laundering Offences

A common theme to all money laundering offences is that they relate to the conversion, transfer, concealing or disguising, movement, arrangements, acquisition and possession of the proceeds of crime.

- Concealing or disguising criminal property- its source, nature, location, disposition, movement, ownership or any rights affecting such property.
- Bringing in or removing from a jurisdiction
- Acquisition, use and possession of criminal property
- Converting or Transferring property
- Arrangements
- Conspiracy/Attempts/Aiding/abetting/counselling & procuring



MONEY LAUNDERING PROSECUTIONS

There are 4 types of money laundering prosecution:

Mixed Cases

There are, firstly, those "mixed" cases in which money laundering can be charged or included on an indictment in which the underlying proceeds-generating predicate offence is included.

There are 2 categories of Mixed Cases as follows:

1. Mixed Cases involving "Own proceeds" or "self laundering", where the defendant in a money laundering case may also be the author of the predicate crime.

Eg: Mr. Bigg, a fisherman, is found in possession of cocaine and US\$300,000. The drug charge is deemed the predicate offence that generates the proceeds/property that is the subject matter of the Money Laundering charge.

2. Mixed Cases involving Laundering by another- a person or persons other than the author of the predicate offence.

Eg. Mr. Small as co-accused may also be charged with Laundering proceeds of another, Mr. Bigg.

MONEY LAUNDERING PROSECUTIONS cont'd

Standalone Cases

Secondly, there are those cases where money laundering is the sole charge capable of proof or the easiest charge to prove.

Again, There are two subsets:

1. "Own proceeds" laundering; - In cases where it is difficult to identify a particular predicate offence- relying on circumstantial evidence pointing to general criminal nature of the money/property.
2. Laundering proceeds of another- usually obtains in cases with multiple defendants

The Predicate Offence

The offence of money laundering is intrinsically linked to the predicate offence that created the criminal property.

The Financial Action Task Force makes the following recommendation:

Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment.

Trends in Money Laundering

The drug world where cash is still king is the main area of criminality where money laundering takes place.

It is a cash business and the amounts generated are staggering.

Street dealers exchange the product for relatively small denominations of cash.

Mid tier dealers often seek higher denominations in order to reduce the sheer bulk of the cash.

Larger criminal organisations use every money laundering technique known. It is estimated that Mexican Cartels control 90% of the cocaine that enters the US and in turn they smuggle the proceeds to countries where placement into the financial system is less scrutinised.



"You sold the Mercedes-Benz to the guy who fixed our copier? For cash?"

Fraud

Cash is not a key medium of exchange in fraud. It is often the case that the proceeds of fraud move through the normal channels of the financial system.



Frauds are maintained by fooling the victim and institutions involved that the transactions emanate from legitimate means.

This became no more apparent than in the *“Ponzi Schemes”* that arose from the financial crisis in the last decade. Investors wanted good returns and wanted their investments converted to cash positions – enter Bernie Madoff and Alan Stanford. To keep the schemes running a constant influx of investors were required to maintain the dividend payments.

Victim money travelled through financial institutions all over the world, Europe, Canada and the Caribbean (notably Antigua & Barbuda).

An Evolving World

Pre Paid Cards

These allow for value to be paid in advance and then extracted later. They originated in Italy in the 1970's to address the theft of cash from pay phones.



In the mid 1990's long haul trucking companies used them as a way of paying employees who were constantly on the move. The card could be loaded remotely and the employee could use it at an ATM or at the point sale.

Issues:

- They are not contained in the legislative definition of cash or monetary instrument;
- They often look like credit/debit cards – how can a customs or police officer know?
- How can the value held on the card be determined?
- How can law enforcement seize the card? It holds no value. It merely allows the user access to pooled funds. The card maybe used in one country but the funds held elsewhere.

Online Gambling

Gambling is a threat to anti money laundering systems.

A gambler can use cash to obtain chips, place a few bets and then cash out

The casino is required to file a STR however this does not always happen. The same applies to online gambling. In order to access the site the gambler must download the software, create a profile and fund an e-wallet.

The control of such sites can only be as strong as the e-wallet provider. Dirty money can be put into the wallet and clean money from gambling can be paid into it or in some circumstances paid by cheque.

There is little control over where the e-wallet providers are situated.



The Beautiful Game

FATF have looked at money laundering in sport and they have concentrated on football/soccer. There are a number of reasons for this:

- Ownership structure;
- The transfer market in players;
- Betting activity;
- Sponsorship
- It is a cash business

France – a money losing amateur side balanced their budget each year from financial deposits from a local businessman. He was illegally misusing corporate assets!

Mexico – a local man returned to Mexico after 5yrs away. He purchased a local club, moved it to an urban location to a town of 30,000. The club outspent rivals on players, coaches and infrastructure and was promoted. The owner was later identified as a leader of a drug trafficking network.



Trade Based Money Laundering

The simplest form of this money laundering technique involves over invoicing of goods. A common example involves emeralds exported from Columbia.

A multi-million dollar would be placed in the US or Spain. The emeralds shipped against the order would be worth considerably less – inferior stones would be injected with oil and to an untrained eye, for example a customs officer, would think that the shiny emerald would have the value ascribed to them (Escobar & Fisher, 2009, p75). Once the inferior stones are exported clean money can be paid against the actual value and dirty money can be paid against the balance.



Free Trade Zones

Worldwide there are over 3000 free trade zones in 135 countries. They have the legitimate aim of encouraging exports by having exemptions from duties and taxes. Whilst they encourage trade they also provide an opportunity to money launderers allowing them to use dirty money to buy goods which can then be re-sold to create clean money.

Antiques and Fine Art

The market in antiques and fine art is susceptible to trade based money laundering.

Exchanging drug money for antiques or fine art does not actually launder the money but it leaves the trafficker with something to enjoy!

The market in antiques and fine can be secretive. For example at an auction an unidentified bidder can dial in and place bids via an agent, what checks are done to verify the authenticity of the buyer?

There are other techniques that can be employed by launderers:

- A dealer may take cash without carrying out the relevant checks;
- The value of the art can be overvalued;
- Multiple invoices for the same artwork;
- Back to back loan schemes can be used to launder money through art (Purkey, 2010)



Any Questions?