

Money Laundering and Associated Crime





Corruption

OECD, the Council of Europe and the UN Conventions do not define “corruption”. Instead they establish the offences for a range of corrupt behaviour. Offences such as bribery of foreign public officials, trading in influence, and bribing domestic as well as foreign public officials.

UN Convention also include embezzlement, misappropriation or other diversion of property by a public official and obstruction of justice. The conventions therefore define international standards on the criminalisation of corruption by prescribing specific offences, rather than a generic definition.

Examples of definitions are:- Transparency International: “Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them”.

The Korean Independent Commission against Corruption promotes the reporting of “any public official involving an abuse of position or authority or violation of the law in connection with official duties for the purpose of seeking grants for himself or a third party” (www.kicac.go.kr/eng_content).

The Asian Development Bank: “Corruption involves behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.”



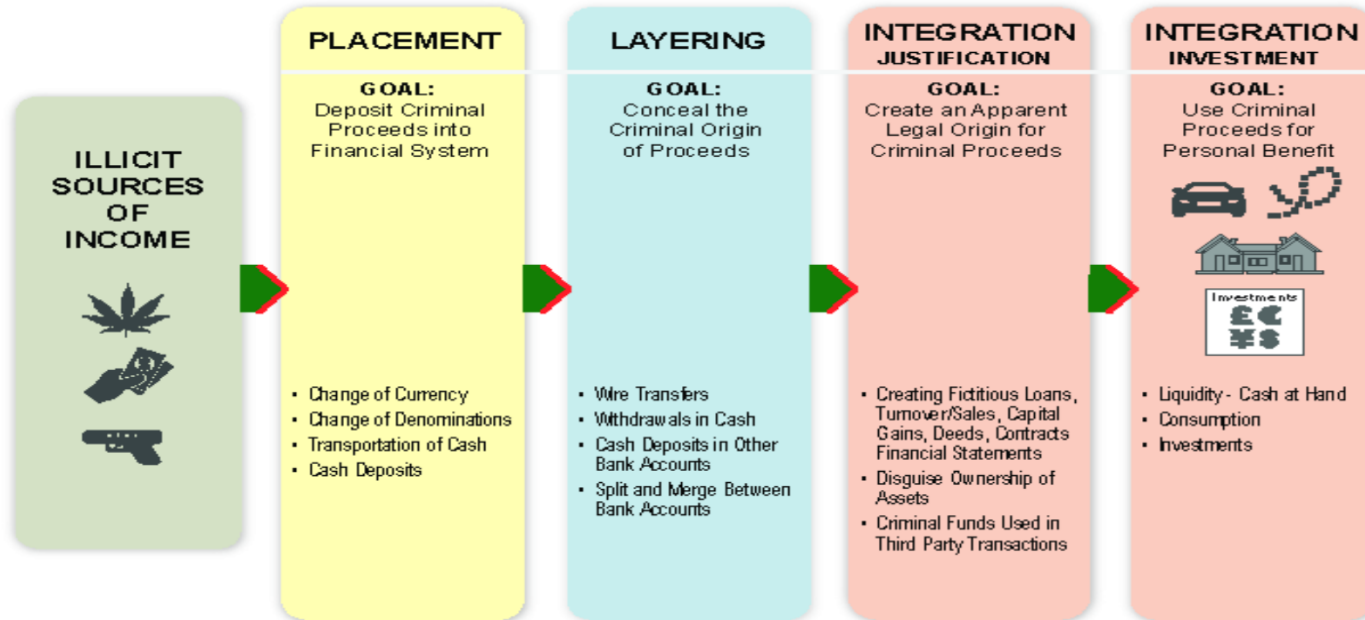
What is Money Laundering?

“the processing of [...] criminal proceeds to disguise their illegal origin” in order to legitimise the ill-gotten gains of crime

Origin: FATF (2019), “Money laundering”, www.fatf-gafi.org/faq/moneylaundering/ (accessed 1 January 2019).



Money Laundering Process



Section 28(1) Proceeds of Criminal Conduct Act 1997 (as amended)



He/she enters into or is otherwise concerned in an arrangement which he/she knows or suspects, facilitates whether by

- concealment
- removal from the Territory
- transfer to nominees or other means; the
 - acquisition
 - retention
 - use
 - control

Of the proceeds of criminal conduct by or of himself or herself or by or on behalf of another person

Section 28(2) Proceeds of Criminal Conduct Act 1997

(as amended) – DEFENCES - Disclosure



Person discloses to Reporting Authority suspicion or belief that any funds, investments or other property are derived from or used in connection with criminal conduct or discloses to the Reporting Authority any matter on which such a suspicion or belief is based -

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and
- (b) if he or she does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he or she does not commit an offence under this section if -
 - (i) the disclosure is made before he or she does the act concerned being an act done with the consent of a police officer in aid of a law enforcement function;
 - (ii) the disclosure is made after he or she does the act, but is made on his or her initiative and as soon as it is reasonable for him or her to make it; and
 - (iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned.

Section 28(3) Proceeds of Criminal Conduct Act 1997 (as amended) – Statutory Defence



In proceedings against a person for an offence under this section, it is a defence to prove -

- (a) that he or she did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he or she did not know or suspect that by the arrangement the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1)(b) of any property was facilitated as mentioned in that subsection; or
- (c) that he or she intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement, but there is reasonable excuse for his or her failure to make disclosure in accordance with subsection (2)(b).

Section 28(8) Proceeds of Criminal Conduct Act 1997 (as amended) - Sentences



A person who commits an offence under this section is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$250,000 or both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both.

Section 29(1) Proceeds of Criminal Conduct Act 1997

(as amended)



A person commits an offence if he or she (a) –

- acquires,
- transfers or
- uses any property or has possession of it which,

in whole or in part, directly or indirectly represents his or her proceeds of criminal conduct; or

(b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he or she –

- acquires,
- transfers or
- uses

that property or has possession of it.

Section 29(2 & 3) Proceeds of Criminal Conduct Act 1997 (as amended) – Statutory Defence



(2) It is a defence to a charge of committing an offence under this section, save under subsection (1)(a), that the person charged

- acquired,
- transferred or
- used the property or had possession of it,

for adequate consideration.

(3) For the purposes of subsection (2)

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his or her use or possession of the property.

Section 29(5) Proceeds of Criminal Conduct Act 1997

(as amended) – DEFENCES - Disclosure



(5) Where a person discloses to the Reporting Authority a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to the Reporting Authority any matter on which such a suspicion or belief is based –

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and
- (b) if he or she does any act in relation to that property in contravention of subsection (1)(b) he or she does not commit an offence under this section if –
 - (i) the disclosure is made before he or she does the act concerned being an act done with the consent of a police officer in aid of a law enforcement function; or
 - (ii) the disclosure is made after he or she does the act, but on his or her initiative and as soon as it is reasonable for him or her to make it; and
 - (iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned.

Section 29(9) Proceeds of Criminal Conduct Act 1997 (as amended) – DEFENCES - Disclosure



In proceedings against a person for an offence under this section, save under subsection (1)(b) it is a defence to prove that he or she intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5), but there is reasonable excuse for his or her failure to make the disclosure in accordance with paragraph (b) of that subsection.

Section 29(11) Proceeds of Criminal Conduct Act 1997

(as amended) - Sentences

A person who commits an offence under this section is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding, \$250,000 or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both.

Section 30 (1 & 2) Proceeds of Criminal Conduct Act 1997 (as amended)



- (1) A person commits an offence if he or she –
 - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of criminal conduct; or
 - (b) converts or transfers that property or removes that property from the Territory.

- (2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he or she
 - (a) conceals or disguises that property; or
 - (b) converts or transfers that property or removes it from the Territory, for the purpose of assisting any person to avoid prosecution for an offence to which this Act applies or the making or enforcement in his or her case of a confiscation order.

Section 30 (3A) Proceeds of Criminal Conduct Act 1997

(as amended) – DEFENCES - Disclosure

If a person does any act in relation to property which belongs to another person in contravention of subsection (2), he or she does not commit an offence under that subsection if he or she discloses that act and -

- (a) the disclosure is made before he or she does the act concerned, being an act done with the consent of a police officer in aid of a law enforcement function; or
- (b) the disclosure is made after he or she does the act, but on his or her initiative and as soon as it is reasonable for him or her to make it; and
- (c) he had a good reason for his or her failure to make the disclosure before he or she did the act concerned.

Section 30(4) Proceeds of Criminal Conduct Act 1997 (as amended) - Sentences



A person who commits an offence under this section is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding, \$250,000 or both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both.



Why Combat Money Laundering?

Vast sums of money accumulated through serious crimes eg Drug Trafficking, Human Trafficking, Arms Trafficking, Fraud, Corruption etc

- Serious threat to economy
- Threatens integrity of financial institutions
- Adverse effects on economic power and industry
- Increases costs for things such as insurance etc
- If left unchecked will corrupt society as it reduces public confidence in authority and law enforcement
- Threatens the reputation of professionals eg lawyers, accountants, real estate etc
- Allows criminals to start, maintain and develop activities within legitimate business communities
- Creates perception that crime is profitable



Between \$500 billion and 1 trillion worldwide is laundered every year.

General loss of morale within legitimate businesses.

Money-laundering and the financing of terrorism are global problems that threaten the security and stability of financial institutions and also lead to undermining economic prosperity.



Money Laundering Trends

Cryptocurrencies

- In a relatively short period of time, developed into a new payment method and as a means to store value.
- Financial transaction systems that are based on blockchain technology promise faster, cheaper and anonymous transactions.
- Speed and global availability of cryptocurrencies
- Limited regulations
- Lack of alignment to established financial intermediaries
- Potential to hide the true identity of the owners.



Trends (continued)

Funnel Accounts

- One or more bank accounts used for illegal funds
- deposited at one geographical location
- Gives criminals immediate access to the money via withdrawals in a different geographic location.

Offshore Bank Accounts

- Make it difficult to track money flows.
- Overly complex transactions or opaque ownership structures, including sequential or layered legal entities or trusts in multiple jurisdictions, including financial centres, persist.
- The purpose of these activities is to hide the origin of the funds and their beneficial owners.



Trends (Continued)

Professional Enablers

- For example attorneys, accountants, trust and company services providers, notaries, estate agents, etc.
- Traditionally planned and created structures, based on their clients' needs, whether for legitimate or criminal reasons. Their participation usually stops once the entities are formed and accounts opened.
- Some professional enablers move beyond just establishing money laundering or tax evasion vehicles to actively managing their criminal clients' illicit funds and providing money laundering as a service.

Third Party Money Laundering Groups (TPMLG)

- Arrangement whereby a criminal organisation makes use of a third party for the laundering of its criminally derived proceeds.
- TPMLG may establish complex and/or durable means of “processing” its clients' illicit funds, without exposure to or knowledge of the clients' predicate offences.
- The criminal organisation pays a fee or commission but otherwise does not have to deal with the efforts and risk associated with the money laundering activities, allowing it to focus on its criminal activities.



Money Laundering Indicators

INDIVIDUAL-

Unusual income

- No income or low income compared to normal cost of living
- Taxpayer appears to be living beyond their means

Unusual rise in net worth

- Inheritance from a criminal family member
- Unexplainable, unexplained or undocumented inheritance
- Voluntary disclosure by known criminals or their relatives
- Unexplainable, unexplained or undocumented gambling and lottery winnings

Unusual possession or use of assets

- A person with low income owns or uses expensive assets (e.g. car, boat, real estate, large amount of cryptocurrency)
- A person owns assets located abroad, usually not declared in their tax return



Money Laundering Indicators (continued)

Unusual Debt

- Obtaining a disproportionately high mortgage on a relatively low income
- Obtaining a loan from unidentified parties

Unusual Transactions

- Records or reports provided by (or available from) the FIU
- Buying high value assets (e.g. a house) on a relatively low income or without a loan or mortgage
- Buying high value assets far below market value
- Getting a disproportionately high mortgage on a relatively low income
- Taking part in a property flipping transaction with no real estate background
- Cash transaction with an unknown person (e.g. fictitious sale)
- Information from external sources (e.g. law enforcement, media)



R v Anwoir (2008)

Provides the current case law in relation to prosecuting money laundering. The court held that the prosecution can prove money laundering in two ways;

by showing that property derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful,

or

by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.



Building a Case for Money Laundering

1. Linking suspect to criminality
2. The existence or absence of any legitimate income
3. Establishing the assets



Bad Character.....

acquisitive crime / criminal associates /
covert meetings / anti surveillance tactics

Make a link to criminal conduct

Gateway Applications – HMRC, DWP

Evidence of known bank accounts with unusual activity – the layering process, unexplained credits and cash lodgements

Disparity between legitimate income and illegitimate income

Evidence of Expenditure / Wealth

Provable Lies

False Records

Does the transaction make commercial sense



Examples

Individual appears to be living beyond their means

A low family income usually indicates that there are limited opportunities for buying, owning or consuming expensive assets. Therefore, expensive items can potentially be purchased through additional income, and one of the options is through from crime. The following are brief examples of such discrepancies:

- A shareholder's financial contributions to a business are not in line with the income reported in the individual's tax returns.
- There is an accumulation of personal wealth when the only known source of funds is from a business source that cannot support it.
- An examination of personal bank records does not show that funds are available to support the lifestyle
- An individual uses offshore credit/debit cards and the source of funds to support the account cannot be identified.



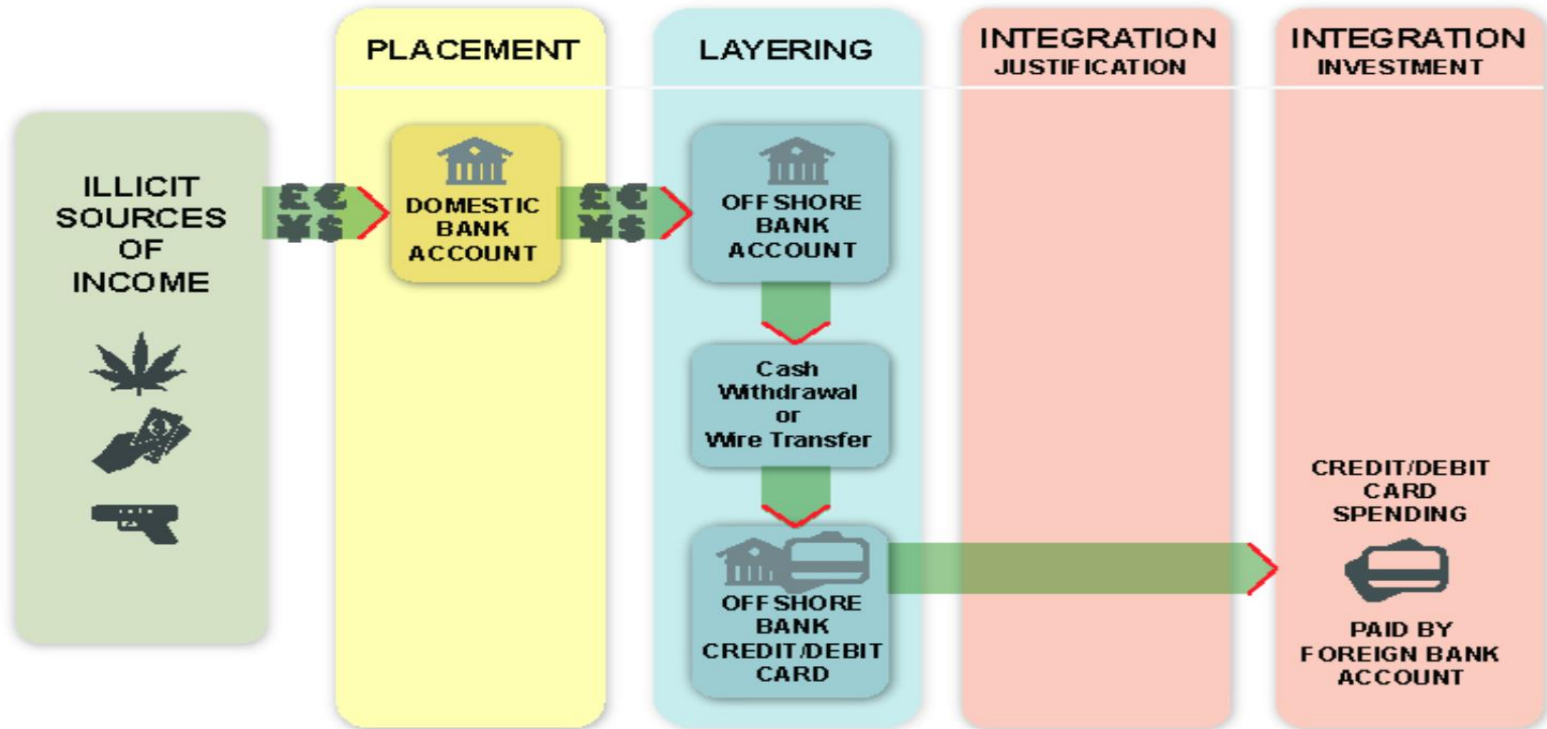
Examples-continued

Debit/credit cards

In the example in the next slide, the illegal proceeds are deposited into a domestic bank account. These funds are then transferred to an offshore bank account where the money can be withdrawn and used to fund a further offshore bank account which may be linked to a credit or debit card.

The foreign credit card can be used at any automated teller machine, point sale, or for online purchases or to make use of the criminal proceeds.

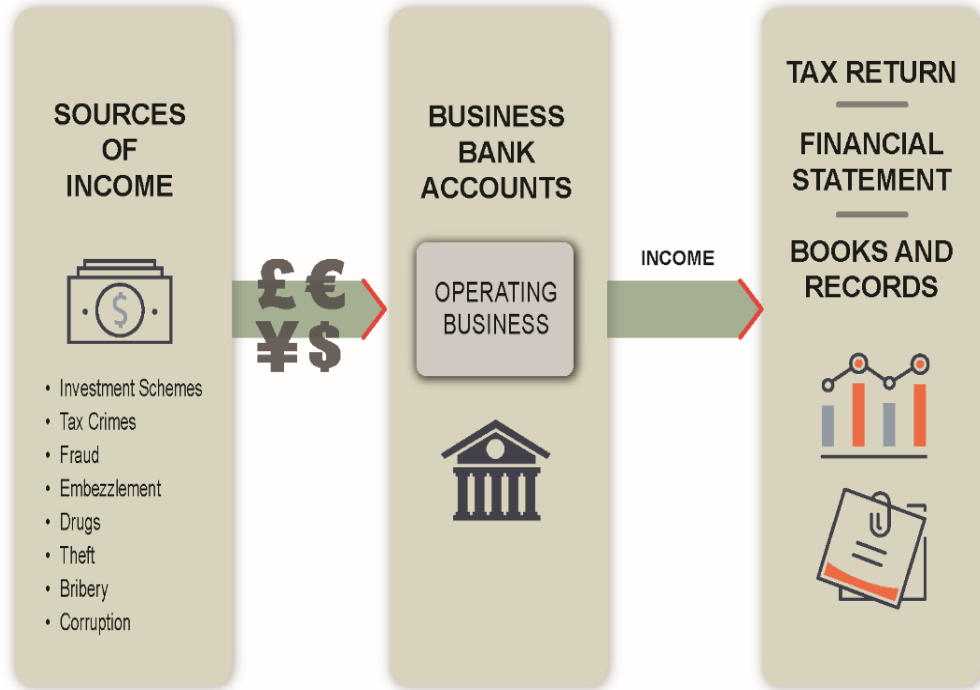
Other examples of this are 'pre paid' cards, eg Monzo or Revolut.





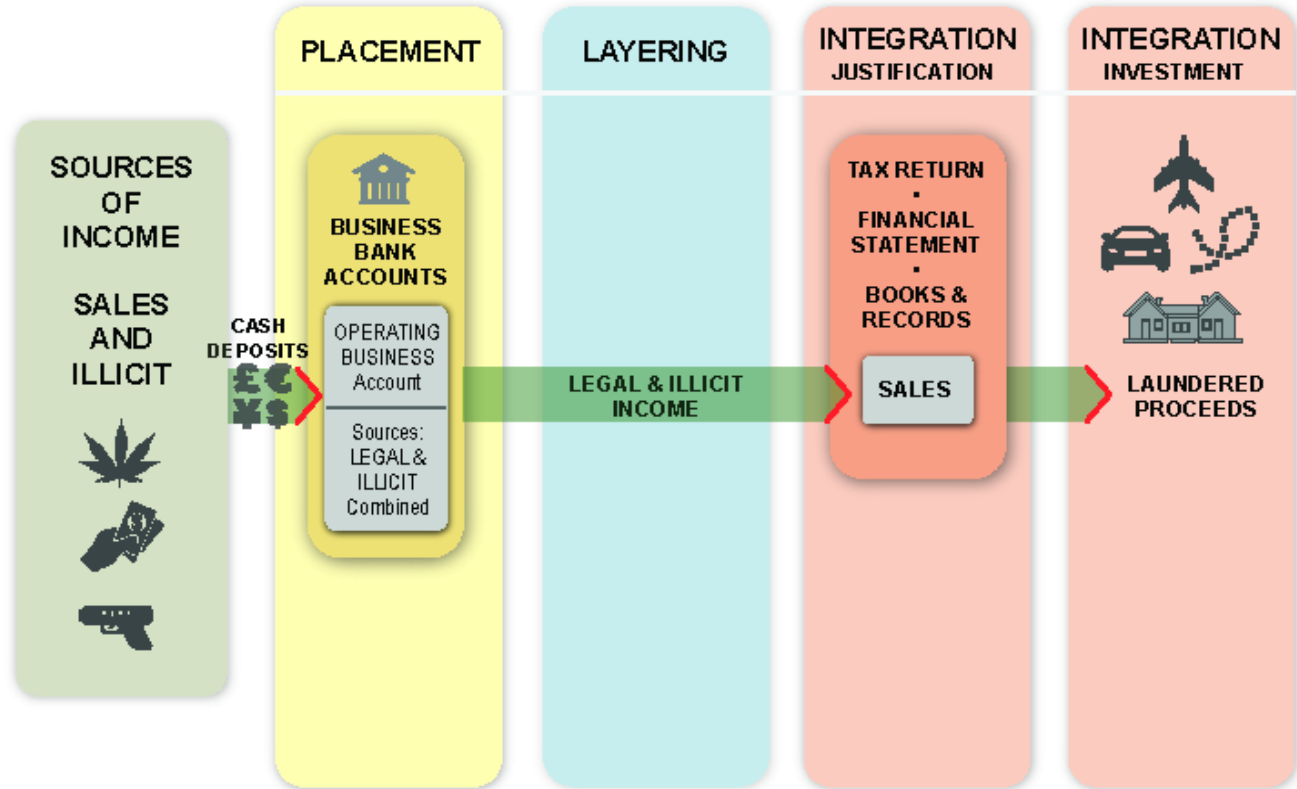
Examples (continued)

In this simple scheme the proceeds of crime are recorded as sales. Because the proceeds of crime are mostly cash, in many cases cash sales are fabricated so that clients and the origin of the money cannot be identified. Tax examiners, auditors and/or investigators should remain aware that a superficial examination of the information and records available may appear very straightforward and may not raise suspicion that money is being laundered.





The criminal deposits the illicit funds into the business bank account along with funds from genuine sales. The illicit funds are recorded in the books and records as if the money came from genuine turnover. The overstated income is reported in their tax returns. The company may not always have to pay corporate tax on this increased income if the company has trading losses available or where false deductions or a higher salary for the director (i.e. the criminal) are also created.





Fraud, Bribery and Corruption

‘Fraud’ is defined under the Criminal Code as:

- obtaining a pecuniary advantage by deception (Section 219); or
- dishonestly dealing, concealing or falsifying any account or record or document made or required for an accounting or other purpose (Section 221).

In addition, fraud may mean that theft has been committed. Under Section 203 of the Criminal Code, ‘theft’ is defined as the dishonest appropriation of property belonging to another with the intent of permanently depriving the other. Further, common law offences, such as conspiracy to defraud, may also be triggered. These laws are largely determined by English common law, the seminal authority being *Scott v Metropolitan Police Commissioner* ([1975] AC 819).



Bribery

There is no Bribery Act, however all relevant offences are contained within the Criminal Code sections 79 to 89 in Part IV of the code.

Includes officers in public service receiving property and benefits in return for favourable treatment in respect of services, goods, transactions, contracts and so on.

Also covers persons 'personating' those in office or authority in order to gain for themselves or others.

Penalties range from fines up to 3 years imprisonment.



FEED 4 Intelligence from Scotiabank

Adnan Hristov holds a company account in the name of X&N Medical Research and Supply. The account number 00992222 sort code 15-23-11.

An application for a loan was made pursuant to the Novel Coronavirus Aid Relief Act for US\$2million. This was to support the company as they had received a large order for ventilators and PPE equipment from Armenia. The arrangement was that the equipment was to be obtained from China and supplied to Armenia. This application was approved, and funds were dispersed into the above account on 4th May 2020. Sufficient evidence was supplied by the account holder to qualify for the loan. There were transfers to Bosna Bank in Bosnia and income from an account in Armenia. There also are a number of substantial cash deposits that do not appear out of the ordinary.

Adnan Hristov also has a personal account number 00881111 sort code 23-34-34. There is evidence of everyday living expenses.

Loan application available and account statements are available if a Production Order is served.

Any Questions?



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