

Anti-money laundering systems in the uk



Introduction

Money laundering is the term used to describe the process that disguises the (usually criminal) source of money.[1]The process of money laundering involves three recognisable stages. The first is the 'placement' stage when the proceeds of the crime, often in cash, are 'placed' into the financial system, for example, by being depositing in a bank. The second is the 'layering' stage whereby the proceeds are moved, usually through a series of transactions perhaps involving different entities, different assets, and different jurisdictions, in order to sever any audit trail and hence make tracing their origins harder. The third stage is 'integration' when the criminal resumes control of the proceeds, free from any link to their criminal source. An examination will be made of the statement that forms the subject matter of this essay. As an outline, this essay will contemplate the extent to which the United Kingdom's anti-money laundering regime seeks to address each stage of the process of money laundering. To conclude this essay will briefly reflect on the effectiveness of the UK regime. It must be emphasised that in an essay of this nature, large and complex topics will have to be reduced.

The UK regime

The Proceeds of Crime Act 2002

Banks and other financial institutions facilitate the three stages of money laundering and lend an air of respectability to the proceeds when they eventually reappear, therefore the financial and related sectors have always been positioned at the forefront of the drive to combat money laundering. The UK regime - which implements the EU Money Laundering Directives,

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FATF international standards and UN anti-terrorist financing measures, comprises three main components as far as banks are concerned.

First, there is the primary legislation, the Terrorism Act 2000 (TACT) and the Proceeds of Crime Act 2002 (POCA) which creates a number of ‘ money laundering’ and related offences. The so-called relegated sector[2] is subject to additional offences to encourage its co-operation in reporting suspicious activities and transactions.

Part 7 of POCA created three substantive money laundering offences, concealing[3], arrangements[4] and acquisition, use and possession[5]. The three offences are wide in a number of respects.

First, the three principal money laundering offences must be related to ‘ criminal property’[6] which is very broadly defined as *any* ‘ benefit’[7] from *any* criminal conduct in any part of the UK or ‘ would constitute an offence in a part of the UK if it occurred there’[8]. The meaning of criminal property has been the subject of a number of Court of Appeal decisions, most recently *R v Akhtar*[2011] EWCA Crim 146, a mortgage broker who had allegedly submitted dishonest claims for and on behalf of his co-defendants, was not guilty of entering into or becoming concerned in money laundering arrangements. Clarke LJ submitted that the natural and ordinary meaning of s328(1) is that the arrangement to which it refers must be one which related to property at the time when the arrangement begins to operate on it[9]. Criminal property has the same meaning in respect of all three principal money laundering offences as set out in s340: “ It does not embrace property which the accused intends to acquire by criminal conduct...

Property is not criminal property because the wrongdoer intends that it should be”[10]AkhtarfollowedR v Loizou[2005] EWCA Crim. 1579, where the court ruled that no offence under s327 was made as the property was not criminal at the point of transfer. To say that it extends to property which was originally legitimate but became criminal only as a result of carrying out the arrangement is to “ stretch the language of the Section beyond its proper limits”[11]. [analysis] [add facts of the case and relate to stages of ML)

R. v Afolabi == re. s329 mention some of the facts

Then conclude with test in Geary on part 7 and then further analysis on the extent of the act in stages of ML.

Scope -<http://www.criminallawandjustice.co.uk/clj-reporter/R-v-Geary-2010-EWCA-Crim-1925>

Arguments that “ criminal property” definition needs to be revised – Article:
A suitable case for treatment: money laundering and knowledge

Secondly, Liability arises if alleged money launderer knows – see online book discussion between Hudson and Forston page 11 and 12 –cases

Thirdly, Drafted to cover every conceivable offence –cases

Mens rea –cases

Supplementary money laundering offences – The ‘ failure to report’ offences
& Tipping off

As mentioned above banks and other financial institutions facilitate the three stages of money laundering, as such it is crucial to obtain the co-operation of
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those institutions who are essential for money laundering to occur at all.

Section 330 and 331 of POCA create two new offences of failing to make a 'required disclosure as soon as practicable' after suspicion of money laundering is or ought to have been aroused. The term 'required' qualifies the disclosure in order to emphasise that the failure to report is a criminal offence.

Slaughter and May - unregulated sector

The Terrorism Act 2000 and related provisions

The Money Laundering Regulations 2007

The Money Laundering Regulations 2007^[12] require 'relevant persons'^[13] to operate their business in accordance with specified systems and procedures designed to combat money laundering and the finance of terrorism. The potential criminal liability laid out by the Supplementary money laundering offences discussed above together with the regulatory requirements under the 2007 Regulations has caused the financial sector to introduce wide-ranging processes and procedures to ensure that its officers and employees fulfil these disclosure^[14] obligations and hence that they do not fall foul of the criminal sanctions.

The FSA Handbook

Problems posed to banks by money laundering control

Conclusion

I [student number] declare that this piece of work contains # words.

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Books

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The Law relating to financial crime in the United Kingdom / Karen Harrison and Nicholas Ryder

– Hudson, Law of Finance (first edition, 2009, Sweet & Maxwell)

– Encyclopaedia of Banking Law (available via Lexis Library)

– Paget’s Law of Banking (available via Lexis Library)

Legalisation

Proceeds of Crime Act 2002

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Money Laundering Regulations 2007/2157

Other

http://www.airant.it/pdf/MLB%20Sept%202011_0.pdf[Accessed 03 March 2014]

<http://www.criminallawandjustice.co.uk/clj-reporter/R-v-Akhtar-2011-All-ER-D-214-Jan>[Accessed 03 March 2014]

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<http://www.emeraldinsight.com/journals.htm?issn=1368-5201&volume=15&issue=2&articleid=17031335&show=html>[Accessed 05 March 2014]

Cases

Allen v Gold Reefs of West Africa [1900] 1 Ch. 656

[1]Ellinger, E. P. [2011] Modern Banking Law: Oxford University Press. pp92

[2]Including banks, financial entities regulated by the Financial Conduct Authority such as accountants, lawyers, estate agents, traders in high value goods, casino operators.

[3]s327 POCA 2002

[4]s328 POCA 2002

[5]s329 POCA 2002

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[6]POCA 2002, s. 340(3)

[7]See provisions extending the meaning of ‘ benefit’ in s. 340(5)-(8) (including pecuniary advantage’) and those as to ‘ property’ (s. 340(9)).

[8]No restrictions are placed on the ‘ predicate offence’, as long as the conduct generating the property is regarded as an offence in any part of the UK, thus it does not need to be an offence in the country in which it is committed.

[9] *R v Geary* [2010] EWCA Crim 1925

[10]Lord Justice Elias in *Amir and Akhtar*

[11]Lord Justice Moore-Bick in *R v Geary*

[12]S. I. 2007/2157 (as amended by S. I. 2007/3299 and S. I. 2009/209, in force on 15 December 2007 and replacing the 2003 Regulations.

[13] Reg 3 – Application of the Regulations

[14]More usually called ‘ reporting’.