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A Briefing Guide to

Money Laundering and How to Respond to Allegations

RAHMAN RAVELLI

Money Laundering and How to Respond to Allegations

Anyone facing a money laundering investigation needs to seek expert legal representation immediately.

Such an investigation has to be handled by those with the experience and expertise to robustly challenge the authorities on points of law and evidence. That is the only way to secure the outcome that you are entitled to.

Money laundering investigations can be far from simple for anyone who is facing one. The appropriate legal representation is essential when it comes to ensuring that you react and respond in the right way to the questions asked and the demands placed on you.

Such an investigation may well involve a number of law enforcement agencies – often from more than one country – as well as huge amounts of potential evidence, a series of lengthy and intensive interviews and the closest possible scrutiny of a company or individual's premises and financial affairs. It is not a situation that can be managed by those who are unfamiliar with this area of law.

Rahman Ravelli wins awards and is praised in the most important legal guides for its work in this field. We manage money laundering investigations for clients from the first hint of allegations through to the conclusion of a case. Our lawyers have a strong track record in such cases. They are constantly working on money laundering cases that are among the largest and most complex in the world.

Money laundering allegations can involve numerous countries, multiple legal jurisdictions and various business sectors. They may often be complex and, as a result, require speed of thought and legal expertise from those who want to challenge them. We devise those challenges.

Types Of Money Laundering

Money laundering is the disguising of the origins of the proceeds of crime – the "cleaning" of wealth that has been obtained from illegal activity. It can be committed by someone with their own proceeds or by someone handling someone else's proceeds.

Money laundering schemes can differ in their complexity. They may involve varying numbers of individuals or chains of companies. They may be based in just one country or be cross-border and utilise a system of offshore accounts. But they are all

carrying out the same activity: making it difficult for anyone to identify and prove that the wealth in question has been gained from crime.

If we take the UK as an example, the Crown Prosecution Service (CPS) views money laundering as involving one of three processes:

Placement - the process of getting criminal money into the financial system.

Layering - moving money in the financial system through complex webs of transactions, often via offshore companies.

Integration - the process by which criminal money is absorbed into the economy through activities such as investment in real estate.

The Proceeds of Crime Act 2002

In the UK, money laundering allegations relating to after 24th February 2003 are covered by the Proceeds of Crime Act 2002 (POCA); sections 327-329.

There are three main offences created by POCA which carry penalties of up to 14 years imprisonment.

Section 327
Concealing, disguising, converting or transferring criminal property or removing it from the jurisdiction. This is the section that prosecutors favour when they are seeking a conviction of an individual for self-laundering.

Section 328
Entering into, or becoming concerned in, an arrangement to facilitate the acquisition, retention, use or control by or on behalf of another person of criminal property knowing or suspecting that the property is criminal property. This is likely to be used where the alleged launderer is not said to be the principal offender in the criminal conduct.

Section 329
Acquiring, using or having possession of criminal property. This will often be used to prosecute an 'end user' - the person who buys a major item such as a car or house from a criminal.

There are exceptions to all three charges where the person concerned makes an "authorised disclosure" to the relevant authorities but this is really to protect banks and other businesses from committing what would otherwise be an offence when dealing with criminal property.

The Act is clear that certain businesses, in what is called the regulated sector, are under a duty to inform the police of any customer they believe is laundering criminal cash through their business. Failing to meet this obligation can see professional individuals facing prosecution for falling foul of the Act. This is explained fully in the section titled Suspicious Activity Reports and the Regulated Sector.

This can also happen to companies which, like individuals, will require specialist legal help.
General Counsel

The Notion of Criminal Property

At the core of all three POCA offences is the notion of 'criminal property'. The prosecution must prove that the property - whether it is cash, a house, a car or any other asset - is 'criminal property'. This is defined at s340(3) of the Act as property which represents a benefit from criminal conduct, either directly or indirectly, in whole or in part, so long as the launderer 'knows or suspects' that the property represents such a benefit. The prosecution has to show that the launderer committed the relevant act knowing or suspecting that the property derived from criminal conduct.

Challenging Money Laundering Allegations

Any company or individual that wants to challenge money laundering allegations has to leave no stone unturned in order to prove their innocence.

Our solicitors seek all the evidence and apply for full disclosure of all the material that has been obtained by investigating authorities; regardless of whether or not they intend to submit it as evidence. We then use all available information to rebut any prosecution inferences. This is done by challenging the evidence that the prosecution wants to use or by using the same material to support our client's case. We may also use forensic accountants and other expert witnesses to explain why certain transactions that are being investigated were carried out.

In money laundering cases, we make it our goal to use all the relevant expertise to make the allegations being made appear less credible than the investigating agencies want them to be. The reasons behind certain cash flows and the timing of them can be explained in a way that counters the inferences of laundering being made by the authorities.

It is important to remember that the authorities in such cases are looking for one thing only: information or material that can boost their attempt to secure a conviction for money laundering. In their attempts to gain what they are looking for they may well overlook equally important facts or evidence that could disprove the allegations.

This is why an internal investigation can be the important first step when any money laundering investigations are made. Corporate Investigations It can determine both the strength of the allegations and the best way to proceed.

At Rahman Ravelli, we make it our aim to locate all available material and use it to put forward the most robust, intelligent counter-arguments to prosecution claims. As an example, we may seek assistance from an accountant or auditor with expertise in a particular business area to explain why it is not unusual that the cash flows that are under investigation are common in certain types of businesses at certain times. This could be done by referring to other, similar businesses or by establishing an audit trail that may have been missed or ignored by the investigating law enforcement agency.

Rahman Ravelli seeks out, examines and utilises all available facts, material and expertise to assess, challenge and dismantle

money laundering allegations, piece by piece.

Prevention Of Money Laundering

We have talked so far about how to respond when allegations of money laundering are made. But at Rahman Ravelli, we also provide advice to corporates on how they can prevent money laundering.

Whatever business sector or country a company or organisation functions in, taking steps to prevent money laundering is essential.

In its simplest terms, this involves:

- Assessing the risk of criminal behaviour
- Introducing the most appropriate measures to prevent it
- Making sure those measures are properly enforced
- Reviewing the effectiveness of such measures and, when necessary, revising them
- Failing to take these steps will make any organisation more vulnerable to money laundering. It will also leave it with less scope for challenging allegations if and when the authorities start investigating. This will be the case wherever an investigation is carried out.

Money laundering is not an issue that is unique to certain countries. An increasing number of nations are now taking a tougher stance on money laundering.

To take a high-profile example, the Fourth EU Money Laundering Directive came into force in 2017. This places more obligations on banks and other financial institutions, removes certain customers' exemption from due diligence checks, demands greater scrutiny of people and organisations from "high risk" countries and requires increased transparency on beneficial ownership. It makes it more imperative than ever before that financial organisations across Europe leave no stone unturned when it comes to money laundering prevention.

A Fifth EU Money Laundering Directive has already been adopted by the European Parliament. This will reduce risks associated with virtual currencies, improve safeguards for financial transactions between countries deemed to be high risk and boost EU member states' access to bank account registers and financial data.

These Directives are certainly not the only examples of loopholes that allowed money laundering being tightened – and increased legal obligations being placed on those in business to prevent it. Preventing money laundering involves more than a one-off action. Proper, well thought-out procedures will massively reduce the chances of a company unwittingly becoming involved in money laundering. And even if money laundering does still happen, the company will have a strong defence against the allegations if it can demonstrate that it did everything possible to prevent it.

Rahman Ravelli is regularly called upon by a wide range of organisations to advise and implement measures that will reduce the risk

of money laundering. A system of checks and precautions, procedures for raising suspicions and staff training offer little scope for the money launderer.

But it is important that the measures introduced are the right ones and are properly conducted.

Suspicious Activity Reports (SARs) And The Regulated Sector

If your business is regulated by the Money Laundering Regulations you are under a legal obligation to try to identify any activity linked to money laundering or terrorist financing that may involve any part of your company. If you do know or suspect any such activity, you should be notifying the National Crime Agency (NCA) by sending it a Suspicious Activity Report (SAR).

The NCA receives and analyses SARs and uses them to identify the proceeds of crime. It counters money laundering and terrorism by passing on important information to law enforcement agencies so they can take action.

The Money Laundering Regulations cover the regulated sector. The regulated sector refers to the firms that are legally obliged to implement systems of work to detect and prevent money laundering activity. They are part of the financial services community and are regulated by the Financial Services Authority (FSA). Businesses providing banking and related financial services, dealers in high-value commodities, trust or company service providers, estate agencies and accountancy service providers are all in the regulated sector.

The requirement for such companies to send a SAR may initially seem a straightforward obligation. But it can produce circumstances where you require advice. For example, a financial institution, such as a bank or building society, will have to consider whether it needs the permission of the NCA to proceed with a suspicious transaction. Going ahead with that transaction without the required NCA consent could cause legal problems for those involved, as we outline below.

Filing a SAR

Suspicious activity could take a number of forms, depending on the circumstances. It could be that a customer tried to make an unusually big cash deposit or wanted to attach conditions to a transaction that appeared strange. A transaction may not seem to make commercial sense or the frequency or nature of a series of transactions may give cause for concern. Whatever the nature of the activity that may appear strange to a company, if the company is covered by the Money Laundering Regulations it is under an obligation to file an SAR.

Companies covered by the Money Laundering Regulations must appoint a nominated officer. This officer must be notified whenever someone within the company has a suspicion about a transaction or other activity. The nominated officer must then decide whether the incident is worthy of sending a SAR to the NCA.

Obligations under the SAR Regime

If the nominated officer suspects money laundering or terrorist financing, they should (in most circumstances) suspend the transaction. But if it is either impractical or unsafe to suspend the transaction, they should allow it to go ahead and then make the SAR as soon as possible afterwards.

Under the SAR regime, a company must consider whether it needs a defence against money laundering charges from the NCA before it proceeds with a suspicious transaction or activity. A company learns if it has been granted a defence by the NCA when the NCA replies to the SAR.

If the company receives no reply from the NCA within seven working days - and it believes it has correctly reported the activity – it can assume a defence is granted and it can let the transaction go ahead. If the company receives a reply that says it does not have permission to proceed, the NCA then has a further 31 calendar days to take action. If the company has not heard from the NCA after the 31 days, it can proceed with the transaction – it will not be committing an offence. Since 31 October 2017, an application can be made to Crown Court by the NCA to increase the 31-day period by a further 31 days at a time, up to a maximum period of 217 days.

The 31-day period does not apply to terrorist financing cases. In such cases, a company will not have a defence until its request is granted by the NCA.

It is in such situations where companies covered by the Regulations may require legal advice. They may have to consider carefully whether they need a defence against money laundering charges from the NCA before they proceed with a suspicious transaction or activity. The NCA will let the company know if it has been granted a defence to a money laundering charge after it has received the SAR. If the suspicious activity has been reported correctly and no reply is sent to the company from the NCA within seven working days, the company can assume a defence has been granted. If the company receives a reply from the NCA saying it does not have permission to proceed, the NCA then has a further 31 calendar days to take action. But if the NCA makes no further contact with the company within those 31 days, the company can proceed with the transaction knowing that it is not committing an offence.

The SAR regime can be an effective tool against money laundering. But those covered by the Money Laundering Regulations have to ensure they meet their legal obligations. Equally importantly, they have to ensure that their working practices are fit for purpose when it comes to making SARs.

Staff have to be trained in the relevant legislation and to know what signs may indicate a suspicious transaction. There should be proper reporting channels so that the nominated officer is quickly alerted to all suspicions. And the officer must know precisely who to report to and how to conduct discussions with the NCA.

The Money Laundering Regulations are mandatory. If you are subject to the Money Laundering Regulations you have to comply with all aspects of them. If you are unsure how

to you must seek advice and assistance from those that can introduce the procedures necessary to ensure compliance.

Further Information Orders

If the NCA receives a SAR from someone in the regulated sector and believes it needs to know more in order to establish whether money laundering has been committed it can apply to a magistrates court for a Further Information Order (FIO).

FIOs were established by Section 12 of the Criminal Finances Act. A FIO requires the subject of it to supply specific information that is relevant to the inquiry. The FIO specifies how and within what time limit the information should be provided. Failure to comply with the order can result in a £5,000 fine.

In granting a FIO, the court must be satisfied that the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started.

Statements made by a person in response to a FIO cannot be used against them in criminal proceedings. Legally professionally privileged information cannot be the subject of a FIO.

Information Sharing

In 2016, the Joint Money Laundering Intelligence Taskforce (JMLIT) was set up between UK law enforcement agencies and vetted staff from major financial institutions. Its aim was to share information and encourage greater understanding of the threat posed by money laundering. A year later, the Criminal Finances Act was passed; Section 11 of which enables a person working in the regulated sector to request information from and share information with others in the sector. Section 11 also enables the NCA to request that a regulated person shares information with another regulated person.

JMLIT and Section 11 make it more likely that information on suspected money laundering will now be exchanged more frequently - and possibly quicker - between law enforcement agencies and those in the regulated sector. Those in the regulated sector are now under an increased obligation to share information – and this may even prompt more investigations. Those who give and receive such information may use it to make a joint SAR. A joint SAR must be submitted within 84 days of the NCA being notified of the regulated persons' sharing of information.

When information sharing is conducted between regulated persons, the NCA must be notified about:

a disclosure request being made
the person to whom the request was made
the identity (if known) of any person suspected of being involved in money laundering that is the subject of the information sharing request
any information that the person giving the notification would be obliged to give if making a disclosure for the purposes of Section 330 POCA 2002 – their duty to report a suspicion that a person is involved in money laundering
Unexplained Wealth Orders – The Latest Weapon In The Battle Against Money Laundering

The proceeds of crime regime is far wider than the issues that we have outlined here in relation to money laundering. And it should be noted that Civil Recovery proceedings can be a consequence of a money laundering investigation.

A recent development in civil recovery and a key aspect of the Criminal Finances Act 2017 is the unexplained wealth order (UWO). UWOs are an attempt by the authorities to tackle the problem of money laundering in the UK. They can be used by the Serious Fraud Office, National Crime Agency, Crown Prosecution Service, Director of Public Prosecutions, HM Revenue and Customs and the Financial Conduct Authority.

A UWO is an order of the High Court that places certain requirements on the respondent that must be met within a certain amount of time. Unexplained Wealth Orders

The subject of a UWO must disclose their exact interest in a particular property explain how they obtained it and give details of any trust that a property is held in, as well as details of the trustees. UWOs have been introduced to help the authorities force people they suspect of money laundering to account for the source of their wealth.

It is worth noting, however, that UWOs cannot be used in all situations. They can only be granted where an individual is a politically exposed person (or connected to a politically exposed person) from outside the European Economic Area or is suspected of being involved in serious crime. There must be reasonable cause to believe the individual holds property worth more than £50,000 and that their lawfully-earned income would have been insufficient to acquire the property.

The UWO Process

The UWO process involves a court imposing an interim freezing order in connection with the property to prevent anything being done with it until the proceedings have been completed.

An interim freezing order is an injunction which prevents a party from disposing of or dealing with specified assets for a set period, usually until a judgement is enforced. It can be made in respect of domestic assets or for assets outside the UK (a worldwide freezing order). The High Court has jurisdiction to grant a freezing order under Section 37 of the Senior Courts Act 1981.

If an individual fails to comply with a UWO without reasonable excuse, the property can be considered for civil recovery under Part 5 of the Proceeds of Crime Act 2002 (POCA). If an individual does comply with a UWO, the authorities have 60 days to decide what enforcement or investigations need to be taken regarding the property.

Enforcement of a UWO is arguably weighted against the individual as it assumes that there has been criminal activity. As a UWO is a civil law device, the authorities only have to show that a crime was committed on the balance of probabilities rather than beyond reasonable doubt. The onus is, therefore, on the individual to show that this was not the case. This means that the burden of proof is now on the accused, not the accuser. For this reason alone, anyone suspected of money laundering

has to obtain the right legal representation at the first suggestion of a UWO and / or an investigation. Such representation can determine what scope there is for challenging either the validity of a UWO or its precise terms.

The Importance Of An Intelligent Response To Money Laundering Allegations

Money laundering is a major issue for law enforcement agencies both in the UK and abroad. As we have explained, there are different types of money laundering and an investigation can involve a number of agencies and various countries.

Its prevention has to be considered a priority by those who have a legal obligation to do so and those who face money laundering allegations have to respond in the most intelligent and appropriate way.

A money laundering investigation can touch on many other areas of law and involve many different parties and authorities. Any subject of such an investigation has to seek representation from those with a recognised pedigree in what is a very challenging and multi-faceted area of the law.

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