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Money Laundering

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Money laundering is the process by which criminals attempt to conceal the illicit origin and ownership of the proceeds of their unlawful activities. By means of money laundering, criminals attempt to transform the proceeds from their crimes into funds of an apparently legal origin. If successful, this process gives legitimacy to the proceeds, over which the criminals maintain control. Money laundering can be either a relatively simple process, undertaken at the local or national level, or a highly sophisticated one that exploits the international financial system and involves numerous financial intermediaries in a variety of jurisdictions. Money laundering is necessary for two reasons: First, the perpetrator must avoid being connected with the crimes that gave rise to the criminal proceeds (known as predicate offenses); second, the perpetrator must be able to use the proceeds as if they were of legal origin. In other words, money laundering disguises the criminal origin of financial assets so that they can be freely used.

Money laundering has three stages: placement, layering, and integration. In the placement stage, the launderer introduces the illegal profit into the financial system. In the layering stage the launderer engages in a series of conversions or movements of the funds to distance them from their source. Finally, in the integration stage the funds reenter the legitimate economy.

Mechanisms, Methods, and Instruments

In each stage of the process, the money launderer can employ a variety of mechanisms and monetary instruments to disguise the illicit nature of the criminal proceeds. No single method exists: On the contrary, numerous techniques have been uncovered by police **[p. 1073 ↓]** investigations. As Beare and Schneider (1990: 304) have pointed out, the choice of money laundering method is limited “only by the imagination” of the criminal. Methods vary from the simple purchase of luxury items to more sophisticated techniques involving the transfer of the money through a transnational network of banks and other financial institutions.

To dispose of the illicit proceeds, the launderer may make use of financial or nonfinancial mechanisms—that is, institutions that (knowingly or otherwise) participate in the laundering process. The most frequently used method is to work through banking institutions, mainly in the first stage of money laundering. Besides banks, other sectors are used, notably financial inter-mediation (because of the higher interests on the capital invested), leasing (i.e., granting use or occupation of property during a specified period in exchange for a specified rent), and factoring (i.e., accepting accounts receivable as security for short-term loans). Other financial institutions, such as wire transfer companies and exchange offices, are also often used to launder ill-gotten gains. Finally, launderers are making increasing use of the gold market, casinos and gambling houses. The instruments used for money laundering operations also vary widely. Besides cash, the instruments most frequently used are stocks, life insurance policies, letters of credit, bank checks of all kinds, wire transfers, and precious metals.

In general terms, the laundering of small or episodic amounts of illicit proceeds requires a less sophisticated process than that used to launder larger amounts. The simplest money laundering methods are employed at the local or national level. One of the most common is the commingling of licit with illicit funds. The latter are disguised as part of a business turnover and may be claimed to be the proceeds of a legitimate business. This has the advantage of providing an almost immediate explanation for dirty money. Retail outlets like restaurants and supermarkets, which handle a great deal of cash, are popular mechanisms for this purpose.

When extremely large amounts of dirty money must be laundered, as in the case of serious transnational fraud, the territorial limits of a jurisdiction may prove too narrow, especially if an effective money laundering legislation is in place and law enforcement authorities have gained wide expertise in the investigation of economic crimes. In this case, criminals tend to direct their activities towards jurisdictions that offer anonymity, at the same time minimizing the risk of being identified and charged with the offense that generated the profits. They may therefore be attracted to a tax haven or off-shore jurisdiction, since these often have weak legislation providing a high level of anonymity, or to countries in Asia and Africa with money laundering regulations only recently enacted or not yet fully implemented, and therefore ineffective.

The first stage in the money laundering process is often the physical movement of the money abroad. This distances the money from the location where the predicate offense was committed. To this end, currency smuggling (that is, the physical transfer of money) often proves effective. Due to the absence of controls on the movement of capital across borders, it is still easy for criminals to ship illicit proceeds to a more favorable neighboring country. This they can do by using such sophisticated means as airplanes, ships, or automobiles, or simply by hiding the money in luggage or secret compartments. Once abroad the profits are introduced into the financial system. Launderers may decide to break large amounts of cash into smaller and less noticeable sums, which are then deposited in a bank account. Alternatively, they may purchase monetary instruments (checks, money orders, etc.), which are then collected and deposited in accounts at another location.

Once the money has been distanced from the place in which the predicate offense was committed, the layering stage begins. This involves a series of rapid and often sophisticated transactions intended to destroy the "paper trail," so that the law enforcement authorities find it difficult to identify the criminals or trace the illicit origin of the money being laundered. Launderers may decide to channel unlawful funds through investment instruments, or they may simply perform wire transfers through a series of accounts at various banks around the globe.

In the final (integration) stage of the money laundering process, criminals seek to bring the money back into the country in which they operate, and invest it in the legal economy. The real estate sector, for instance, can be exploited for this purpose. Investing illicit proceeds in real estate proves useful in the final stage of the laundering process, because property offers criminals a form of investment that can provide a guise of legitimacy and financial stability.

Law Enforcement

At the international level, the problem of controlling the profits of unlawful activities came to the fore in the late 1980s as part of the fight against drug **[p. 1074 ↓]** trafficking. Besides the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which provided for the first time that the laundering of proceeds from drug trafficking can be considered an autonomous crime, two international conventions currently address the issue: the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of

1990, and the recent United Nations Convention on Transnational Organized Crime of December 2000. Moreover, the Financial Action Task Force on Money Laundering, an intergovernmental body the purpose of which is the development and promotion of policies to combat money laundering, has enacted Forty Recommendations aimed at preventing the proceeds of crime from being used in future criminal activities and from affecting legitimate economic activities.

These various instruments set out a money laundering strategy consisting of two main components. The first is enhancing the effectiveness of criminal justice systems by criminalizing money laundering and providing for the seizure and confiscation of illicit proceeds. The second is the implementation of a series of preventative measures directed at credit and financial institutions and intended to increase the transparency of financial operations. These measures include the so-called know your customer rules (procedures for the identification of clients opening accounts or conducting financial transactions and the conservation of the relevant documentation for a reasonable amount of time), the reporting to national authorities of all transactions that are considered suspicious, and cooperation between financial institutions and national law enforcement agencies that may render investigations more effective.

This strategy has been fully enacted and implemented in the United States. The first piece of U.S. legislation enacted to identify cash movements was the Bank Secrecy Act of 1970. Another important item of legislation is the Money Laundering Control Act of 1986, part of the Anti-Drug Abuse Act of 1986, which made money laundering a federal crime. This legislation was amended several times until it achieved the form now outlined in Title 18 of the U.S. Code, in sections 1956 (Laundering of monetary instruments) and 1957 (Engaging in monetary transactions in property derived from specified unlawful activity). Moreover, a National Money Laundering Strategy, the first of five annual reports to be submitted to Congress, was issued in 1999. This strategy, prepared pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998, highlighted federal efforts to address the problem of money laundering in a coordinated and comprehensive manner. The objectives of the strategy to fight financial crime include combating money laundering by denying criminals access to financial institutions and strengthening enforcement efforts to reduce inbound and outbound movements of criminal proceeds.

Future Developments

Money laundering is a serious and increasing threat. It has devastating consequences for national security, since it provides funds for drug traffickers, arms dealers, and criminal groups, and on the financial system. Criminals can rely on dirty money to capitalize their legal entities with criminal proceeds, which distorts competition between legal and illegal enterprises. Despite efforts to implement measures to combat money laundering, the international community and individual countries are now confronted by new trends in money laundering activities that may make such measures outdated and ineffective.

Experience in the fight against money laundering shows that as the door closes, launderers enter through the window, finding new methods and countries wherein to launder their illicit proceeds. The introduction of strict and effective money laundering measures in many countries worldwide has engendered a displacement effect, whereby launderers look for friend-lier jurisdictions in which such measures have not yet been implemented, and for new money laundering methods. As soon as one sector of the financial system is regulated, criminals find new ways to exploit different sectors not yet protected. There are two current concerns. First, cyberlaundering, (i.e., money laundering through the Internet), and other computer crimes are perceived as a growing threat. Technological developments enable criminals to commit crimes and launder their proceeds from their home computers. Crimes can be committed in another country via computer, which raises serious jurisdictional problems for law enforcement authorities, and makes investigations longer and more complicated. Second, globalization and the integration of financial markets make it possible for criminals to find new money laundering schemes in tax havens and offshore centers. To exploit these opportunities, however, they require the services of professionals with expertise in financial matters, who can advise clients on the most appropriate procedures **[p. 1075 ↓] [p. 1076 ↓]** to avoid detection. Accountants and lawyers are often immune from money laundering regulations and may also be subject to a duty of confidentiality, which prevents them from informing the authorities of matters concerning their clients.

It is clear that legislation by itself is by no means enough to effectively combat money laundering. A comprehensive and integrated strategy is required. One of the main goals is to make crime less profitable by confiscating criminal proceeds. Moreover, international assistance is essential for the fight against money laundering operations increasingly undertaken at the transnational level. Bilateral agreements tailored to specific circumstances are the most effective means to accelerate investigative and judicial processes and overcome difficulties and delays.

Federal Law on Money Laundering

Sec. 1956. Laundering of monetary instruments

(a)

(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

- (A).
    - (i). with the intent to promote the carrying on of specified unlawful activity; or
    - (ii). with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
- (B). knowing that the transaction is designed in whole or in part—
    - (i). to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    - (ii). to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than 500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

with the intent to promote the carrying on of specified unlawful activity; or

knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

- (i). to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
- (ii). to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subpara-graph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subpara-graph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

- (A). to promote the carrying on of specified unlawful activity;
- (B). to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or
- (C). to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorised to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of -(1) the value of the property, funds, or monetary instruments involved in the transaction; or (2) $10,000.

United States Code, Title 18, Part 1, Chapter 95.

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See also

- Corporate Crime
- Drug Trafficking
- Smuggling

Further Reading

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