

DIRTY MONEY



Dirty Money

- Concern for policymakers and law enforcement agencies;
- Origins of contemporary policy found in the 1970s and 1980s;
- Widespread concern that ‘criminals’ were avoiding prosecution and/or conviction -> enjoying the proceeds of ill-gotten gains;
- Focus on ‘following the money’ emerged.

Dirty Money

- Anti-money laundering (AML)
- Confiscation of assets
- Counter-terrorist financing (CTF)

- Know your customer (KYC)
- Reporting suspicious activity reports (SARs)

- Impact on different sectors

Dirty Money – AML/CTF

- National level developments
- Supranational level developments
- EU
 - 5 x Money Laundering Directives (1991; 2001; 2005; 2015, 2019,)
 - ‘Serious and organised crime is driven by profit – tracing the illicit proceeds of crime back to the criminal networks is essential both to detect, prosecute and dismantle those networks and to seize and confiscate their criminal wealth’. (EU Commr, 2015)
- Financial Action Task Force (FATF) Recommendations
- UN
 - Particularly post-9/11
 - Security Council Resolutions (eg UNSCRS 1373; 1988; 1989; 2178)

Dirty Money – Confiscation of Assets

- Conviction based procedures
- Non conviction based procedures (civil forfeiture; non-conviction based asset confiscation; civil confiscation; civil recovery)
- Developments
 - EU: eg Framework Decisions 2005/212/JHA; 2006/783/JHA; Dir.2014/42/EU
 - Council of Europe: eg Strasbourg Convention 1990; Warsaw Convention 2005
 - UN: Palermo Convention; UNCAC
- Alternative approaches
 - Unexplained Wealth Orders (UWOs) – see UK Criminal Finances Act 2017
 - Illicit enrichment offences

- **‘it is not only illegal but BLATANTLY IMMORAL that so much wealth stolen from Africa is allowed to circulate freely in the economies of some of the world's wealthiest nations in Europe, the Americas, the Middle East and diverse offshore havens.’**
 - The Nairobi Declaration on International Obligations and on the Recovery and Repatriation of Africa’s Stolen Wealth (April 7, 2006).
- 2016 global Anti-Corruption Summit: the problem of ‘people stealing from poor countries and hiding that wealth in rich ones.’

Proceeds of Corruption

Targeting Kleptocrats and Their Money – International Focus

- **2003: United Nations Convention Against Corruption (UNCAC)**
- **2003: FATF mandatory requirements re foreign politically exposed persons (PEPs)**
- **2007: the Stolen Asset Recovery Initiative (StAR)**
- **2010: the Kleptocracy Asset Recovery Initiative**
- **2011: ‘we must ensure that corrupt officials do not retain illicit proceeds. When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid – they condemn their nations’ children to starvation and disease. To me, asset recovery isn’t just a global necessity – it’s a moral imperative.’ (US A-G Holder)**

- **2011: the Busan Partnership for Effective Development Co-operation**
- **2012: the Arab Forum on Asset Recovery**
- **2014: the Ukraine Forum on Asset Recovery.**
 - **'Asset recovery is essential in stopping those who have stolen assets from benefitting from their crimes, and in sending a strong message that there can be no impunity for those who carry out such illegal actions.'**
- **2016: global Anti-Corruption Summit**

BUT.....

- **the monetary value of assets recovered has tended to be low!**
- **Sharman (2017): ‘despite reforms, the odds are still stacked against successful asset recovery.’**

Grand Corruption

- **‘PEPs pose a high risk for money laundering by the very nature of their position; they have access to significant public funds and the knowledge and ability to control budgets, public companies and contracts. Corrupt PEPs may use that knowledge and ability to award contracts in return for personal financial reward, or simply to create structures to siphon money from government coffers.’**
 - FATF, Laundering the Proceeds of Corruption (FATF, 2011) p.9.





Laundrying Proceeds of Corruption

- Use of corporate vehicles and trusts
 - Use of Gatekeepers
 - Use of Domestic Financial Institutions
 - Use of Offshore/ Foreign Jurisdictions
 - Use of Nominees
 - Use of Cash
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- See: FATF, Laundrying the Proceeds of Corruption (FATF, 2011). FATF, Specific Risk Factors in Laundrying the Proceeds of Corruption: Assistance to Reporting Institutions (FATF, 2012).

ML in different sectors

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HOW??

Prevention and Disruption

- **What is currently being done? (and is it working?)**
- **What recent initiatives have been introduced? (and do they have the potential to have an impact?)**
- **Do we need to do more? (if so, what?)**
- **Should we stop AML altogether?**
- **Who should pay for AML?**
- **How should we punish those who facilitate ML?**
- **How much ££ is laundered each year?**

Consider:

- How do banks/lawyers/estate agents/art dealer facilitate ML?
 - why (if at all) is that a problem?
- Does AML work in this sector?
 - Why? Why not?
 - Are there any difficulties in the application of AML?
- What can/ should be done to improve AML efforts?
- What of 'secrecy' (eg beneficial ownership; shell companies; Scottish LLP)?
 - Why is that important (or not)?
 - Should the law be changed?
- Breaches of AML
 - If a professional breaches AML obligations, what should be done (punishment)?
 - Is a monetary fine sufficient?

CASE STUDY: SOLICITORS

- ML Regulations (ML Regs)
- ‘designated non financial businesses and professions’ (DNFBPs)
 - Eg banks, solicitors, art dealers, estate agents, accountants, etc
- The ‘regulated sector’
- **When a client approaches a solicitor in the regulated sector to undertake a transaction, for example conveyancing property, and the solicitor (or a member of staff) has any reason to suspect that all or part of that property (including cash) belonging to that client has been derived from any criminal conduct, then solicitor must comply with anti-money laundering laws and regulations.**

Consider (scenario A)

- John is a solicitor in a commercial law practice in London. He has been instructed by his client – James – to act on his behalf to buy a property, which is to be used to run a small business. Contracts have already been signed and completion is due two days from today.
- James arranges an appointment with John to seek advice about the proposed business as well as to discuss the proposed purchase. James has been a client of the firm for a long time, and there have never been any reasons to be suspicious about his business activities.
- James recently divorced from his wife; that divorce was handled by another solicitor in the firm. During the meeting between John and James, some information is provided that suggests that James might not have fully complied with his financial disclosure obligations in relation to the divorce settlement – though the money amount involved is likely to be quite small.
- What should John do?

Consider (scenario B)

- Julie is a solicitor in private practice at a local high street firm. She does criminal defence work, as well as practice in family law and conveyancing.
- For a number of years, Julie has acted on behalf of Jemima – mostly to defend her in the Magistrates' Court in relation to relatively minor criminal charges. She has also acted for Jemima in relation to drug dealing charges, for which she was convicted two years ago. Jemima avoided a prison sentence, but was given a fine and a community service order. Since then, Jemima has not been in any trouble with the police. For the last year, she has been working as a checkout operator at a local supermarket.
- Jemima has now decided to buy a flat and has approached Julie to carry out the conveyancing transaction for her. Julie is aware that Jemima's income is relatively low, but Jemima informs her that she has received an inheritance from an aunt who has recently died.
- What should Julie do?

Consider (scenario C)

- Bill is a solicitor, acting for Graham. Graham is selling a house (the purchaser is represented by Black and Co solrs). Graham is also buying another house (that seller is represented by Gray and Co solrs). On the day both transactions are due to complete, the expected payment from Black and Co does not arrive and nothing is heard from the purchaser's solicitor.
- Bill asks his assistant to telephone Black and Co to find out what is going on. Instead of being told the reason for the delay, the assistant is simply told that the solicitor dealing with the transaction is not available and no explanation is given. When Bill is told of this, he thinks it rather unusual and instructs his assistant to follow up the next day. He advises Gray and Co that there will be a delay as the expected completion of the sale of Graham's house has not yet taken place.
- Three days later the sale of Graham's house has not yet completed and it has been impossible to manage to speak with the solicitor at Black and Co or to receive any explanation from anyone there. Not surprisingly, Graham wants to know why the sale and purchase have not completed and is getting worried – a few days later he is getting very angry and demands that Bill does something about it. The solicitor at Gray and Co is also demanding an explanation and wants to know when it will take place.

Consider (scenario D)

- Hamish (solicitor) has a new client – Duncan. Duncan operates a couple of small off-licenses in a fairly run down part of the city. Hamish has not acted for Duncan before, and when he undertakes due diligence he quickly realises that Duncan's proposed business transaction involves an amount of money that is totally disproportionate to the legitimate income that could possibly come from the off-license businesses. He asks further questions, which he is entitled to do, but the answers only increase his suspicions.
- Hamish realises that he has no option but to make a SAR, and does so immediately. He also includes an application for consent to proceed with the transaction. Completion of the transaction is delayed, and Hamish quickly realises that Duncan's behaviour is unusual. Instead of demanding an explanation, Duncan instructs Hamish to cancel the transaction and to return the deposit to him.