

ANTI-MONEY LAUNDERING LAW IN THE TURKS AND CAICOS ISLANDS




Presented at JEI week by Madame Justice Carla Brown-Antoine JA and Mr Justice Mark Mohammed JA (of the Judiciary of Trinidad and Tobago)

17 September 2024



OBJECTIVES

- The participants will gain a greater understanding of anti-money laundering law in the Turks and Caicos Islands.
 - The participants will be able to identify money laundering offences and how they are proved.
 - The participants will have greater confidence in adjudicating on money laundering cases that come before them.
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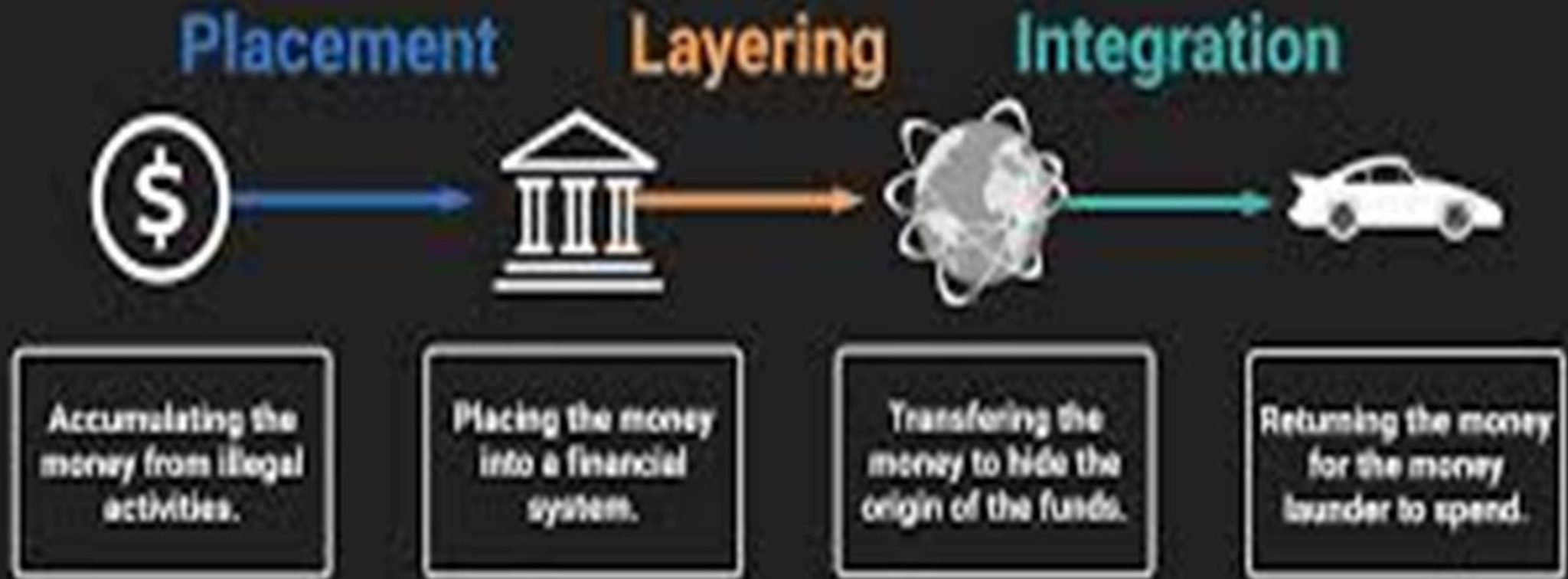
WHAT IS MONEY LAUNDERING?



MONEY LAUNDERING

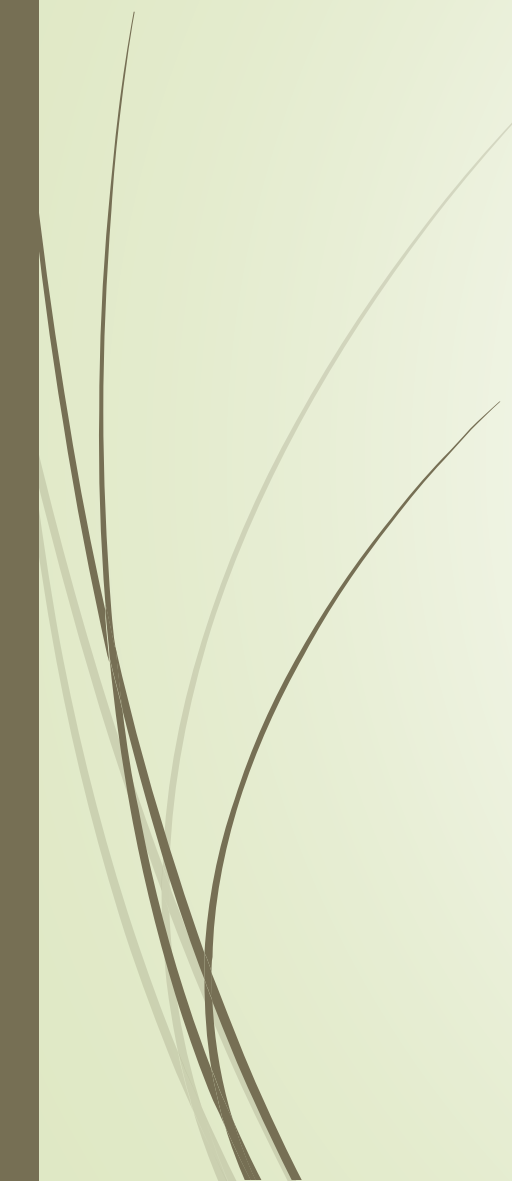
- Money laundering is the practice of disguising the origins of illegally-obtained money.
- It is the process by which the proceeds of crime are made to appear legitimate.
- The money involved can be generated by any number of criminal acts, including drug dealing, corruption, accounting fraud and other types of fraud, and tax evasion.
- The methods by which money may be laundered are varied and can range in sophistication from simple to complex.

Money laundering stages





WHAT IS PLACEMENT?

- This is the first stage in the washing cycle.
 - This is achieved by investing criminal money into the legal financial system by opening up a bank account in the name of unknown individuals, organizations and depositing the money in that account.
 - It may involve use of smurfing techniques through which the launderers make numerous deposits of amounts of money that are small enough to avoid raising suspicion.
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PLACEMENT EXAMPLES

- Loan Repayment(s) - Repayment of loans or credit cards with illegal proceeds.
- Gambling - purchase of gambling chips or placing bets on sporting events
- Currency - the physical movement of illegal currency or monetary instruments cross border
- Currency Exchanges – purchasing foreign currency with illegal funds through foreign currency exchanges
- Blending Funds - using a legitimate cash focused business to co-mingle dirty funds with the day's legitimate sales receipts.



WHAT IS LAYERING?

The purpose of layering is to disassociate the illegal monies from the source of the crime by purposely creating a complex web of financial transactions aimed at concealing any audit trail as well as the source and ownership of funds.

- By reason of their frequency, volume and complexity it resembles legitimate financial transactions

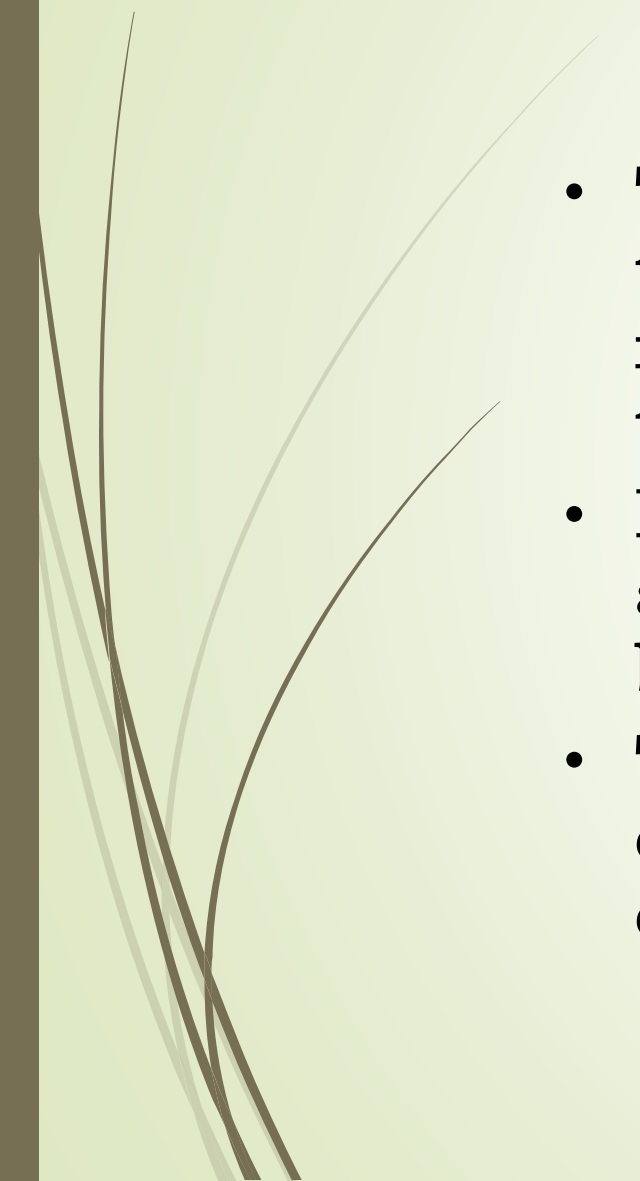


LAYERING EXAMPLES

- Money launderers begin by moving funds electronically from one account to another;
- They may also move funds electronically from one country to another;
- May divide funds into investments placed in financial products or overseas markets;
- Constantly moving investments around to elude detection;



WHAT IS INTEGRATION?

- This is the final stage in the process. It is at this stage that the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system.
 - Integration of the "cleaned" money into the economy is accomplished by the launderer making it appear to have been legally earned.
 - The profits may then be reinvested in the criminal enterprise, invested in other assets, or used to support an extravagant lifestyle.
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INTEGRATION EXAMPLES

Criminals may purchase :

Property;

Art work;

Jewellery;

High-end vehicles;

Private jets, yachts, boats;

Clothes;

Holidays.



ANTI-MONEY LAUNDERING LAWS IN THE TURKS AND CAICOS ISLANDS

PROCEEDS OF CRIME ORDINANCE CAP. 3.15 (POCO)

- **PART IV (sections 115 to 131)**
- **Money laundering offences are created by sections 124 to 129.**
- **Anti-Money laundering and Prevention of Terrorist Financing Regulations 2010 and 2011 Code**



MONEY LAUNDERING RISKS

- In the first National Risk Assessment (NRA) conducted by the Anti-money Laundering Committee established under section ... of the Act the risk of money laundering occurring in the Turks and Caicos Islands was assessed as Medium High.
 - The report was published in August 2017.
 - A second NRA was recently launched in July 2024.
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THE RISKS

- “The Turks and Caicos Islands has a number of characteristics that indicate that the threat of money laundering from international sources is real. The most common characteristics being an international financial services centre and high end Caribbean residential property market attractive to those wishing to acquire desirable assets of value.” (page 45 of NRA)
- “The domestic threat of internally generated money laundering is mainly based on low level drug crimes.” (page 45 of NRA)



Prosecutions for money laundering

- Several persons were prosecuted for money laundering following a Commission of Enquiry into allegations of corruption in 2009.
- At least one attorney was convicted of concealing the proceeds of criminal conduct.



MONEY LAUNDERING IN TURKS AND CAICOS

THREE PRINCIPAL OFFENCES

- ❑ Concealing, disguising, converting, transferring or removing criminal property
- ❑ Entering into or becoming concerned in an arrangement, knowing or suspecting that it facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person
- ❑ Acquiring, using or possessing criminal property

Section 124 of POCO

- **124.** (1) Subject to subsection (2), a person is guilty of an offence if he—
 - (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property; or
 - (e) removes criminal property from the Islands.



What does concealing and disguising mean?

Concealing or disguising criminal property includes concealing or disguising its

nature,

source,

location,

disposition,

movement or

ownership or any rights with respect to it.



What is criminal property (section 122)

Property which—

Constitutes a person's benefit from criminal conduct or represents such a benefit (in whole or part and whether directly or indirectly);

AND


The alleged offender knows or suspects constitutes or represents such benefit.



In relation to criminal conduct certain matters are immaterial

For the purposes of the section it is immaterial—

- who carried out the conduct;
- who benefited from it; or
- whether it occurred before or after 8 October 2007 (the date the Ordinance came into force).



What is a benefit? (section 5(4) and 122 (3))

- A person benefits from criminal conduct if he obtains property as a result of or in connection with the conduct.
- AND
- His benefit is the value of the property so obtained.



What is criminal conduct? Section 5(1)

- Criminal conduct is conduct which—
 - (*a*) constitutes an offence in the Islands; or
 - (*b*) would constitute an offence in the Islands if it had occurred in the Islands.



Elements of an offence under section 124

- The act of concealing, disguising etc
 - In relation to property
- Which was derived directly or indirectly from criminal conduct
- The defendant knew or suspected that the property was derived directly or indirectly from the conduct

Proving the property represents the proceeds of crime

➤ Anwoir (2008) 2 Cr Appeal R 36 (UK) para. 21

“there are two ways in which the Crown can prove the property derives from crime,

- a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or kinds is unlawful, or
- b) 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.”

Lord Justice Latham



Anvoir (explained)

- Essentially **Anvoir** states that prosecutors are not required to prove that the property in question is the benefit of a particular or a specific act of criminal conduct because such an interpretation would restrict the operation of the legislation.
- The prosecution need, as a minimum, to produce sufficient circumstantial evidence or other evidence from which an “irresistible inference” can be drawn, to the required criminal standard, that the property in question has a criminal origin.

In other words, there could be no reason for the circumstances other than a criminal one.



Anwoir followed in Gellizeau (2017) 91 WIR 301

- The St Vincent and Grenadines coastguard found a large sum of money hidden on a yacht docked off the coast of a Grenadian island. Financial investigations and direct evidence revealed that the yacht was in sold to the appellant. The appellant was, accordingly, convicted by the Chief Magistrate of two counts of money laundering: (a) concealing the proceeds of criminal conduct, contrary to s 41(1)(a) of the Proceeds of Crime and Money Laundering (Prevention) Act 2001a , and (b) transferring the proceeds into St Vincent and the Grenadines, contrary to s 41(1)(b) of the Act. The appellant appealed against his conviction to the Court of Appeal of the Eastern Caribbean Supreme Court, the main thrust of his appeal being (i) that the Chief Magistrate had erred in holding that the prosecution did not have to prove that the money found came from a precise source or crime, or the predicate offence.



Gellizeau continued

- ▶ The Chief Magistrate in the present case had correctly held that once the prosecution had produced cogent circumstantial evidence from which the proper inferences could be drawn to the required criminal standard that the property in question was the proceeds of crime, it would suffice to secure a conviction. There was no need to show or particularise the offence or offences which generated the proceeds of crime or the provenance offence. If the legislator had required the prosecution to establish a particular offence it would have clearly so stated and there was no need to read such words into s 41(1) of the Act. Accordingly, in money laundering offences, there was no need to prove the provenance offence; proof of a particular predicate crime was not an essential element of the offence. Accordingly, the appeal on ground 1 failed.




Re Assets Recovery Agency (Jamaica)(2015) 85 WIR 440

- This was an application for a Customer Information Order. (see POCO sections 140 to 144)
- The Assets Recovery Agency (Jamaica) appealed (Privy Council Appeal No 0036 of 2014) from the decision of the Court of Appeal of Jamaica dismissing its appeal from the decision of the judge refusing its ex parte application for a customer information order ('CIO') pursuant to ss 119–125 of the Proceeds of Crime Act 2007. The Privy Council considered in particular whether before a CIO could be made (i) in aid of money-laundering investigations, it was necessary that there should have been a conviction of somebody for the antecedent or 'predicate' offence which had caused the property to be criminal property;



Assets Recovery Agency (Jamaica) continued

- There can be no doubt that this means that before a substantive offence of money laundering can be committed, there must have been an antecedent (or 'predicate') offence committed by someone, which generated the criminal property concerned.
- So, for a prosecution for a substantive money laundering offence to succeed, the Crown must prove that such an antecedent offence was committed by somebody.
- Exactly which ... antecedent offence(s) is or are may be uncertain, but the inference that some antecedent offence(s) were committed may be sufficiently irresistible to amount to proof to the criminal standard.



Assets Recovery Agency (Jamaica)continued

- In such circumstances the Board held in *DPP v Bholah* [2011] UKPC 44, [2012] 4 LRC 375, [2012] 1 WLR 1737 that proof of a particular predicate crime is not necessary in order to prove a substantive charge of money laundering to the criminal standard. That decision, which was not brought to the attention of the Court of Appeal in this case, upheld similar decisions to the same effect in the Court of Appeal (Criminal Division) for England and Wales, for example *R v Anwoir* [2008] EWCA Crim 1354, [2008] 4 All ER 582, [2009] 1 WLR 980.



Arrangements (section 125)

A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the—

acquisition;

retention;

use; or

control,

of criminal property by or on behalf of another person.



What does this offence cover?

- This offence includes a wide range of activity involving those who launder on behalf of others, usually at **the layering and integration stages**.
- It can catch individuals who work in financial or credit institutions, accountants, lawyers or other professionals, who facilitate money laundering by or on behalf of others, in the course of their work.



Requirements under section 125

It requires a definite arrangement which D knows or suspects facilitates (and not just 'will or may facilitate') the acquisition of criminal property by or on behalf of another person, who must already be identified or at least identifiable

(Dare v CPS [2012] EWHC 2074 (Admin))

Squirrel Ltd v National Westminster Bank plc [2005] EWHC 664

"The purpose of s. 328(1) UK ACT) is not to turn innocent third parties . . into criminals.


It is to put them under pressure to provide information to the relevant authorities to enable the latter to obtain information about possible criminal activity and to increase their prospects of being able to freeze the proceeds of crime"



Elements of section 125 offence

The prosecution has to prove that:

- ☐ The defendant enters into or becomes concerned in an arrangement;
- ☐ Which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control;
- ☐ Of criminal property;
- ☐ By or on behalf of another person.



Section 126 Acquisition, Possession or use of Criminal Property

A person commits an offence if he—

acquires criminal property;

uses criminal property; or

has possession of criminal property.

It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration and he did not know or suspect that the property was criminal property.



Elements of section 126 offence

The prosecution has to prove:

- ☐ Acquisition, use or possession of criminal property;
and
- ☐ That the defendant had the necessary knowledge or suspicion that the property represented a benefit from criminal conduct.



Section 126 offence continued

The section does not distinguish between criminal property that represents the benefit of some other person's crime and that which represents the benefits of a crime which D has just committed.

A thief who uses or retains possession of property that has just been stolen (this being criminal property as defined) must therefore be guilty of an offence under 126 (1) (b) or (c).



Mens rea of the offence

- ☐ Dishonesty is not required, nor need D know or believe that the property in question is criminal property.
- ☐ Mere suspicion will suffice
(see definition of Criminal Property)



Case studies


ATM FRAUD IN GRENADA

- In late October 2016, an East Asian national arrived in Grenada from a Caribbean country. On November 7, 2016, information received led police (FIU) to carry out a search of his hotel room. That search revealed a large quantity of US and EC cash, one laptop computer, sixteen dummy ATM cards, one router, two flash drives, one external drive, one ATM card reader and two USB cables.



Facts continued

- The subject was interviewed under caution and he confessed to cloning ATM card holders' information onto dummy cards in his possession and using those cloned cards to make cash withdrawals from persons' accounts through ATMs in Grenada.
- It turned out that the subject was in Grenada and receiving information from an accomplice in East Asia who was stealing information from persons in that region who used ATMs. That information he then cloned onto the dummy cards he possessed and used the cards to make withdrawals at ATMs.



Result

- He was subsequently charged with fraud and money laundering offences. He pleaded guilty and was fined the sum of US\$7,361.33 on summary conviction. The fine was paid, and he was deported from Grenada as ordered by the Court.



Any questions?

Thank you for your attention and participation