

CHAPTER II – MONEY LAUNDERING: AN OVERVIEW OF THE PROCESS

Introduction

Governmental interest in seeking to combat money laundering is, as we have seen, of relatively recent origin. Similarly, the term itself has entered the accepted vocabulary of diplomacy and legislative drafting only in the course of the last fifteen years. Although the terminology may be relatively recent, the concept is one of very long standing in relation to financially motivated criminal conduct. As McClean has stated:

From the point of view of the criminal, it is no use making a large profit out of criminal activity if that profit cannot be put to use. ... Putting the proceeds to use is not as simple as it may sound. Although a proportion of the proceeds of crime will be kept as capital for further criminal ventures, the sophisticated offender will wish to use the rest for other purposes. ... If this is to be done without running an unacceptable risk of detection, the money which represents the proceeds of the original crime must be "laundered", put into a state in which it appears to have an entirely respectable provenance.¹

This is not to say that all criminals will have the need to resort to elaborate schemes in order to create the perception of legitimacy of the source and ownership of wealth and property. Small-time criminals will rarely do so. As Evans has pointed out: "They deal in cash and avoid financial institutions as much as possible. Their criminal associates and suppliers expect cash and they pay cash for most living expenses."² Even in more significant ventures the perception of the need to engage in laundering activity will differ widely from country to country. Here the judgment of those involved as to the effectiveness of the local criminal justice system and the associated level of risk of detection and prosecution will be central considerations. For example, in jurisdictions which have effectively embraced modern law enforcement strategies in which the confiscation of the proceeds of crime is used both as a deterrent and as a form of punishment, money laundering schemes are likely to be resorted to with greater frequency than elsewhere. As has been pointed out:

As financial investigative and prosecutorial activity becomes more professional and effective, the more resources the criminal organisation tends to devote to lowering the risk of being traced and apprehended through the money trail and the risk of losing the criminal proceeds. ... Increased sophistication in prevention and control methods tends to be matched by increased sophistication in money laundering activities, until one side or the other reaches the point of diminishing returns.³

In much the same way considerable variations exist, both between countries and among sectors of criminality, as to the scope, complexity and sophistication of the money laundering schemes which are in fact resorted to. As the National Crime Authority of Australia was to note in a December 1991 report:

Money laundering schemes uncovered so far are generally unsophisticated but some of the very large cases involve the use of complex corporate structures and trusts as part of the laundering process. Most money laundering activity is carried out by the primary offender, not by "professional" launderers, although the use of corrupt or complicit individuals is often crucial to the success of money laundering schemes.⁴

On the other hand, organised crime and drug trafficking groups have created diverse and sophisticated systems with a global reach in order to protect and legitimise the vast profits which are generated by their activities. One Colombian cocaine "kingpin", Rodriguez Gacha, is reputed to have laundered approximately US\$130 million using eighty-two company and other accounts in sixteen countries located in Central and South America, the Caribbean, Asia and Europe. As a UN report has noted:

The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of organised and transnational crime, are its global nature, the flexibility and adaptability of its operations, the use of the latest technological means and professional assistance, the ingenuity of the operators and the vast resources at their disposal. In addition, a characteristic that should not be overlooked is the constant pursuit of profits and the expansion into new areas of criminal activity.⁵

It should be stressed, however, that while the international movement of criminal proceeds is a hallmark of laundering activities carried out by or on behalf of such powerful organised groups, it is by no means restricted to them. Indeed, the transnational movement of funds is a common feature of sophisticated laundering activities. For example, an early report carried out by the Ministry of the Solicitor General of Canada, based on an examination of actual police files, revealed that an international dimension was present in over 80% of those cases.⁶ While the evidence suggests that the Canadian figures may be higher, for a variety of reasons, than in some other jurisdictions, they do underline the fact "that crime, like much else, is increasingly international".⁷

There are sound reasons for resorting to such an international strategy. At one level, as the European Commission has noted, "[i]nternationalisation of economies and financial services are opportunities which are seized upon by money launderers to carry out their criminal activities, since the origin of funds can be better disguised in an international context".⁸ In addition, such mechanisms take advantage of the delays and inefficiencies which

confront regulators and the law enforcement community arising from such factors as differences in language and criminal justice systems. Finally, cross-border strategies reflect a natural displacement of activity from jurisdictions which have been active in addressing the issue, to countries and territories which possess no or insufficient anti-money laundering measures. As Savona and De Feo have remarked, launderers are motivated by the desire:

... to find and to take advantage of the weakest link in the global regulatory and enforcement chain, by shifting transactions, communications or assets to the country which has the weakest or most corruptible regulatory or police and prosecution authorities, the most restrictive bank and professional secrecy, or extradition, or asset seizure law, the most ineffective bank supervision, etc.⁹

Terrorist organisations, of course, are not primarily motivated by financial gain. None the less, as was pointed out in the previous chapter, they are faced with the need to develop and sustain an adequate financial infrastructure through which to support their activities. While in some instances the required income stream is generated from the commission of profit-generating crimes such as drug trafficking, kidnapping and extortion, funding may also include income derived from legitimate sources. As has been pointed out elsewhere: "A very effective means of raising funds that may eventually be used to finance terrorism is through community solicitation and fundraising appeals, often in the name of organisations with the status of a charitable or relief organisation."¹⁰ Notwithstanding such differences, the preponderant view in law enforcement circles has been that there are significant areas of similarity and overlap. In the words of a February 2003 study:

While terrorist groups may support themselves with funding from illicit and legitimate sources, they "process" these funds – that is, move them from the source to where they will be used – in much the same way that non-terrorist criminal groups launder funds. ... [E]xperts continue to find that there is little difference in the methods used by terrorist groups or criminal organisations in attempting to hide or obscure the link between the source of the funds and their eventual destination or purpose.¹¹

Accordingly, much of what follows is applicable both to money laundering, in its traditional proceeds-legitimation manifestation, and to terrorist funding activities. That said, there are aspects of the latter, including the relatively small size of the transactions typically involved, which make the effectiveness of countermeasures much more problematic. By way of illustration, "an examination of the financial connections between the September 11th hijackers and their overseas accounts showed that most of the individual transactions were small sums, that is, less than US\$10 000, and in most cases the operations consisted of nothing more than wire transfers".¹²