



Simone Bowie

Money Laundering – What the Average Citizen Needs to Know

Money laundering generally refers to the process whereby the origin of funds generated by unlawful means is concealed, so that it may appear that the funds are from a legitimate source. The Proceeds of Crime Act (“the Act”), which came into effect May 30, 2007, has expanded the scope of the law pertaining to anti-money laundering in Jamaica. Whereas much has been made of the implications for financial institutions and other members of the “regulated sector” arising from the passing of the Act, less has been said of the implications of the Act for the average citizen.

What is the Offence of Money Laundering?

There are three categories of offences under the provisions of the Act which describe money laundering. Firstly, a person commits the offence of money laundering where at the time he does an act, he knows or has reasonable grounds to believe that he is:

- (a) Engaging in a transaction that involves criminal property;
- (b) Concealing, disguising, disposing of or bringing into Jamaica any criminal property; or
- (c) Converting, transferring or removing any criminal property from Jamaica.

Criminal property means any property which constitutes a person's benefit from criminal conduct. Criminal conduct includes any act which would be an offence if committed in Jamaica, as well as conduct outside of Jamaica, which had it occurred in Jamaica would have constituted a crime.

Secondly, it is an offence under the Act for a person to enter into or become concerned in an arrangement which he knows or has reasonable grounds to believe facilitates the acquisition, retention, use or control of criminal property. Lastly, a person commits the offence of money laundering where that person acquires, uses or simply has possession of criminal property and knows or has reasonable grounds to believe that the property is criminal property.

It is important to note that persons will also have committed the offence of money laundering where they have for instance attempted, conspired, incited, or procured the commission of one or more of the acts described above.

Authorized Disclosure

A person will not have committed the offence of money laundering where he makes a disclosure in accordance with the Act of the matter or information which causes him to know, believe or have reasonable grounds for knowing or believing that someone is engaging in money laundering and he has or is deemed to have the appropriate consent to act. The person will also not be liable where he:

- (i) intended to make such a disclosure before doing the act and has a reasonable excuse for not doing so; and
- (ii) does make such a disclosure on his own initiative as soon as is reasonably practicable after doing the act.

This disclosure is to be made to the persons designated under the Act, which includes Constables, the Customs Office and the Asset Recovery Agency.

A person will also not be guilty of an offence in circumstances where he may prove that he acquired, used or had possession of the criminal property in good faith and without notice that the property is criminal property.

What are the Penalties under the Act?

A person who commits the offence of money laundering will be liable on conviction before a Resident Magistrate in the case of an individual, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding five years or to both. In the case of a body corporate, the prescribed penalty is a fine not exceeding five million dollars. Where convicted on indictment before a Circuit Court an individual will be liable to a fine or imprisonment for a term not exceeding twenty years or to both such fine and imprisonment. A body corporate will be liable to pay a fine.

What Precautions should you take?

Where persons know or have any reasonable grounds for believing that any property could constitute criminal property, they must disclose such information to the prescribed persons, failing which they will run the risk of being found guilty of money laundering. This ought to be borne in mind particularly when accepting large amounts of cash in transactions such as sales of land and motor vehicles. Persons should also be wary of receiving goods or valuables such as jewelry or electronics as forms of payment. We are each charged with the responsibility of satisfying ourselves, by conducting such due diligence as the reasonable man would be expected to undertake in similar circumstances, as to the source and legitimacy of property which may form part of transactions in which we may be involved. It may be wise to conduct your own background checks, using tools such as the internet, credit bureaus and reference letters to enquire into the legitimacy of entities and persons with whom you may be considering transacting business with.

Simone Bowie

Simone Bowie is an Associate at Myers Fletcher & Gordon and is a member of the firm's Commercial Department. She may be contacted at simone.bowie@mfg.com.jm