



**Hilary Reid**

**PROCEEDS OF CRIME:  
NOT JUST FOR THE FINANCIAL INSTITUTIONS**

Many of us by now have heard of the Proceeds of Crime Act (“POCA”) and of the global concern relating to moneylaundering. But for many, these are viewed as issues that concern financial institutions and criminals not everyday law abiding citizens.

If this is what you think, you could not be more wrong. True, POCA and moneylaundering are issues that financial institutions must be particularly concerned about, primarily in light of the specific regulatory procedures which are spelt out for the regulated sector concerning reporting obligations as well as understanding how to deal with forfeiture and restraint orders which can impact the security interest which the financial institution may hold.

The everyday law-abiding citizen must however also become familiar with POCA and the requirements concerning moneylaundering as these issues can also impact them.

The ordinary law-abiding citizen may have unwittingly received criminal property against which the Financial Investigation Division of the Ministry of Finance (“FID”) may seek to get a forfeiture order or a restraint order for that property to be forfeited to the crown or for persons to be prohibited from dealing with such property. It is important for such law-abiding citizen to know that recourse is available under POCA where the property was received for valuable consideration by a person acting in good faith and without notice. Quick action may however be necessary to safeguard the innocent person’s interest in the property.

As for moneylaundering, although the regulations to POCA which have so far been issued are directed only at the regulated sector, it is important to note that every day citizens, can generally only protect themselves from unwittingly committing acts of moneylaundering if they report their suspicions to the FID, police or customs officer. The definition of moneylaundering is wide, and a person will be found to have committed this offence if he:

- (a) engages in a transaction that involves criminal property;
- (b) conceals, disguises, disposes of or brings into Jamaica any such property; and
- (c) converts, transfers or removes any such property from Jamaica

and knows or has reasonable grounds to believe at the time he does any of the above, that the property is criminal property.

Further a person will commit an offence if he enters into or becomes concerned in an arrangement that he knows or has reasonable grounds to believe facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

Let us consider the example of an ordinary law abiding citizen who has entered into an arrangement to sell his house to another party and later becomes aware, before this sale is completed, of circumstances which lead him reasonably to believe that the other party was involved in moneylaundering activities. POCA makes it clear that in those circumstances, the ordinary law abiding citizen could be guilty of moneylaundering if he without more, proceeds to complete the sale.

There is however a very simple easy step which could be taken to avoid the commission of the offence. The Act provides that a person does not commit the offence of moneylaundering if he makes an "authorized disclosure" either before doing the act and after he has the appropriate consent, or after doing the act, if had intended to make the disclosure before but has a reasonable excuse for not doing so and the disclosure is made as soon as is reasonably practicable after doing the act.

Authorized disclosure is merely a disclosure to an authorized officer (FID, police or customs officer) or a nominated officer, in the case of the regulated sector. Although no form has as yet been prescribed for the making of disclosures by persons outside the regulated sector, a letter or some other similar step should suffice in the absence of such regulations.

“Appropriate consent” is either: (a) express consent given directly by the FID in response to an authorized disclosure to take whatever step is next contemplated by you, for example completion of your sale; (b) or will be deemed to have been given either by the end of the period of seven (7) days from receipt of the disclosure where no express notice is received that consent is refused, or by the end of the period of ten (10) days from express refusal of consent.

This therefore is an important protection for the ordinary law abiding citizen who happens to find himself involved in a transaction with someone who he has reasonable grounds to believe is engaged in moneylaundering activity. Such law-abiding citizen should make a report to the police, the FID or a Customs Officer setting out the transaction with which he is involved and the grounds of which he is aware which cause him to believe that the other person is involved in moneylaundering activity. If after seven (7) days, where the FID has not refused consent, or where they have refused consent, if after ten (10) days, no order has been obtained from the court prohibiting the transaction, the ordinary citizen will be able to proceed to complete his transaction without fear of himself committing an act of moneylaundering.

It is clear therefore that POCA and moneylaundering are issues not only for the financial sector but also for ordinary law-abiding citizens. Although the ordinary citizen does not have an obligation to report as is imposed on the regulated sector, the failure by the ordinary citizen to make a report could result in the commission of the offence of moneylaundering by the ordinary citizen which offence could easily have been avoided.

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