



POLICY - MONEY LAUNDERING OFFENCES

PREAMBLE

Money laundering, in all its forms, is a serious and prevalent global offence. It can also cause serious reputational damage to the Cayman Islands if carried out within the jurisdiction.

The commitment of the Cayman Islands to the fight against global money laundering can be demonstrated by the robust use of the criminal justice system, and the civil recovery regime, to deprive offenders of the proceeds of money laundering.

A pro-active approach to the investigation and prosecution of such cases, and the pursuit of criminal proceeds, are primary objectives. In line with international standards, as set out in FATF Recommendation 30, law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences, and major proceeds-generating offences (whether committed within or outside the jurisdiction).

The Cayman Islands is committed to prosecuting all money laundering offences including offences committed by legal persons. If the evidential test is met, it will seldom not be in the public interest to prosecute, particularly in cases that appear to fall within the scope of the risks identified in jurisdictional threat/risk profiles relating to the Cayman Islands and its status as a major international financial centre (e.g. laundering the proceeds of foreign predicate offences). If the evidential test is not met, civil recovery should always be considered.

Assignment of Counsel

1. Once an investigation into a potential money laundering offence has been opened by the R.C.I.P.S., the Customs and Border Control Service, or the Anti-Corruption Commission, the DPP will be notified as soon as reasonably practical, and within no more than 48 hours. The DPP will provide any immediate advice as and when necessary.
2. Within seven (7) days thereafter the responsibility for providing advice and assistance to the investigation will be assigned to Crown Counsel 1 (Financial Crime) ("CC1FC"), or Crown Counsel 1 (Fraud) ("CC1F"), as directed by the DPP.
3. Within 14 days thereafter Counsel assigned must seek a case conference with the investigating officer (unless an earlier conference is requested by the investigator).
4. For each investigation Counsel assigned will keep a log of the following:
 - a. conferences held;
 - b. notes from the meeting;
 - c. recommended actions;
 - d. results from the actions;
 - e. pre-charge advice; and
 - f. applications made (and the outcome).
5. If, at any stage of an investigation, a request is made for advice / assistance in relation to the making of a restraint order or account monitoring order, assigned counsel will treat such a request with the utmost urgency.
6. Any charging advice requested at the conclusion of the investigation will be provided, where practicable, by Counsel assigned at the investigative stage. Once a file has been submitted for a charging decision, assigned Counsel will give the file the highest priority.

7. In the event that criminal charges are not to be pursued, assigned Counsel will consider whether civil recovery proceedings may nevertheless be instigated and advise accordingly.

Applicable Legislation / Potential Offences

8. All Counsel assigned are expected to be familiar with the offences set out in the Proceeds of Crime Law (2020 Revision), as well as the specific investigative / preventative powers set out therein.
9. All Counsel assigned are required to consider the appropriateness of money laundering charges in any charging advice provided.
10. Money laundering is defined in the Proceeds of Crime Law (2020 Revision) as an act that constitutes an offence under section 133, 134, or 135 of that Law.
11. A charge of money laundering must be considered in any case in which a defendant, charged with a predicate offence, has done more than simply expend the proceeds of his crime (where the proceeds are more than *de minimis*).
12. Where there is evidence of disguising, converting, transferring the proceeds of crime (or attempting so to do), or evidence of arranging to facilitate (under section 134) a charge is likely to be authorised.
13. Where a money laundering charge is authorised, the case will be assigned to Crown Counsel I who will take conduct of the file until the conclusion of the proceedings, unless, in the view of the DPP, the charge can properly be dealt with by more junior counsel.
14. Money laundering offences all carry a maximum sentence of 14 years imprisonment or a fine or both. In the event of conviction, Counsel will ensure that the Courts are fully aware of the seriousness of offending of this nature, and that the sentencing guidelines for money laundering offences are brought to the attention of the court.

Parallel Financial Investigations

15. If there appears to be scope to conduct further investigations into the finances of a suspect / defendant over and above those of direct relevance to an offence, Counsel must advise in writing as to the necessity of a parallel financial investigation. Such advice must be given, and followed up, in every case in which a money laundering charge is authorised.
16. All major proceeds-generating cases involving allegations of money laundering should be subject to parallel financial investigations. Such investigations should trace what happened to the proceeds of the offence for the purposes of asset recovery. This involves identifying not only the direct proceeds but also the indirect proceeds, any instrumentalities, and any associates of the suspect / defendant who may be involved in the laundering process (or received a tainted gift).
17. In respect of all money laundering / major proceeds-generating offences, law enforcement and prosecutors should ensure that investigations are actively pursued where the allegations appear to fall within the scope of the risks identified in the National Risk Assessment and the targeted risk assessments of 2019/2020. Such cases, when identified, should be given priority for investigation, prosecution and asset recovery.

Civil Recovery

18. In the event that Counsel does not provide positive charging advice, they must consider whether civil recovery proceedings may be brought, and provide written advice accordingly. Civil recovery may be appropriate in cases where:
 - a. the only known criminality is overseas, and there is no extra-territorial jurisdiction to pursue a criminal case in the Cayman Islands;
 - b. there is no identifiable living suspect who is within the jurisdiction or realistically capable of being brought within the jurisdiction;
 - c. proceeds of crime can be identified but cannot be linked to any individual suspect or offence;

- d. a law enforcement authority considers that an investigation could not generate sufficient evidence to create a realistic prospect of conviction;
 - e. a criminal investigation has been conducted but the prosecuting authority considers that there is insufficient evidence to create a realistic prospect of conviction; or
 - f. a prosecution has been conducted but has not resulted in a conviction.
19. Where a conviction is possible, a civil recovery might better serve the overall public in the following circumstances:
- a. where there is an urgent need to take action to prevent or stop offending which is causing immediate harm to the public, even though this might limit the availability of evidence for a future prosecution;
 - b. it is not practicable to investigate all of those with a peripheral involvement in the criminality, and a strategic approach is taken in order to achieve a manageable and successful prosecution;
 - c. where a better deployment of resources to target someone with significant property which cannot be explained by legitimate income;
 - d. the offender is being prosecuted in another jurisdiction and is expected to receive a sentence that reflects the totality of the offending, so the public interest does not require a prosecution in the Cayman Islands.

Training

20. All Counsel will be provided with annual training in the areas of money laundering, civil recovery, restraint and confiscation.

Statistics

21. CC1FC and CC1F will maintain statistics in relation to investigations covered by this policy document. The statistics will record the following:
- a. local enquiries;

- b. international enquiries;
- c. investigative court orders;
- d. civil recovery;
- e. asset tracing or freezing;
- f. joint investigation;
- g. predicate offence;
- h. predicate tax offence;
- i. 3rd party ML;
- j. standalone ML;
- k. any offending by a legal persons; and
- l. liaison with supervisor or regulator re. AML breaches.

24th January 2020