



## **Notice to Licensees issued under Section 22(3)(b) of the Alderney eGambling Ordinance, 2009**

**20th May 2010**

Licensees may find the following definition of what constitutes the proceeds of crime within the Bailiwick of Guernsey (which includes Alderney) useful when considering their AML/CFT obligations as set out in the Alderney eGambling Ordinance, 2009 and the Alderney eGambling Regulations, 2009.

### **MONEY LAUNDERING AND FINANCING OF TERRORISM TECHNIQUES AND METHODS**

#### **What is Money Laundering?**

Deception is the heart of money laundering: at its most basic level money laundering is deception by attempting to make assets appear to have been obtained through legal means with legally-earned funds or to be owned by third parties who have no relationship to the true owner.

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. From the perspective of the criminal, it is no use making a profit from criminal activities if that profit cannot be put to use. A proportion of the profit will often be re-invested into further criminal ventures, but criminals will often wish to use the rest for other purposes. If this activity is to be achieved without being detected the money must be 'laundered'. Money laundering can be described as the processing of criminal proceeds to disguise their illegal origin. Criminals seek to put their proceeds of crime into a state in which it appears to have an entirely respectable origin. If this act is carried out successfully it allows criminals to maintain control over their proceeds and ultimately to provide a legitimate cover for their source of income. Where criminals are allowed to use the proceeds of crime, the ability to launder such proceeds makes crime more attractive.

However, this does not mean that all criminals need to resort to elaborate schemes in order to create the perception of legitimacy of the source and ownership of their assets. Small-time criminals rarely do; they deal in cash and avoid financial institutions as much as possible. Even with regard to larger criminal activities the need to launder money will vary from jurisdiction to jurisdiction.

The money laundering process is generally made up of three stages:

- The placement stage where illegitimate funds find their way into the financial system via payment into legitimate accounts. For example, depositing cash in banks which ask no questions, using business entities that are cash intensive in

nature to commingle funds, buying precious metals/diamonds, or artwork/stamp collections;

- The layering stage which is used to disguise the audit trail between the funds and the original point of entry into the financial system. This is achieved by moving the funds around so that the origins of the money become obscured. For example, by transferring funds across borders, purchasing investment bonds, gambling at the race track or at casinos, and making use of foreign financial centres;
- The integration stage where funds are reintroduced as legitimate wealth to fund further activities or to acquire assets.

### **What is Financing of Terrorism?**

For terrorists, the acquisition of funds is not an end in itself but a means of committing a terrorist attack. With terrorist financing, it does not matter whether the transmitted funds come from a legal or illegal source. Indeed, terrorist financing frequently involves funds that, prior to being remitted, are unconnected to any illegal activity. Examples have occurred when legitimate funds have been donated to charities that, sometimes unknown to the donors, are actually fronts for terrorist organisations.

Tracking terrorist financial transactions arising from legitimate sources is more difficult than following the money trails of the proceeds of crime because of the often relatively small amount of funds required for terrorist actions and the range of legitimate sources and uses of funds. While many organised crime groups are adept at concealing their wealth and cash flows for long periods of time, their involvement in the physical trade of illicit drugs, arms, and other commodities, often exposes the revenues and expenditures connected to these illegal dealings. In contrast, terrorist attacks are in many cases comparatively inexpensive, and their financing is often overshadowed by the larger financial resources allocated for the group's political and social activities, making it more difficult to uncover the illicit nexus.

Identifying and disrupting the mechanisms through which terrorism is financed are key elements in the overall efforts to combat terrorism. As well as reducing the financial flows to terrorists and disrupting their activities, action to counter terrorist financing can provide vital information on terrorists and their networks, which in turn improves law enforcement agencies' ability to undertake successful investigations.

### **Example A: An expensive lunch for Mr B**

Ms Y is looking forward to lunch with her mother when a customer, Mr B, enters the jewellery shop in which she works. Ms Y offers to help Mr B, who advises her that he is on a cruise with his wife. He advises her that his wife owns little jewellery and that he wants to buy something expensive for her fortieth birthday. He and his wife are travelling alone on the holiday of a lifetime – a round the world cruise. He was not very forthcoming about the sights of the destinations the cruise ship had visited.

Mr B spends almost an hour making a decision and eventually decides to buy a highly expensive, collectable, limited edition pendant. As the pendant is being wrapped Mr B advises Ms Y that his wife will “break his legs” if she becomes aware of the true cost of the pendant. As a result, he proposes to purchase the pendant partly by cheque and partly by cash. This is acceptable to the shop manager, who makes a point of assisting her staff when dealing with customers looking at expensive items.

Ms Y’s mother treats her to lunch at a good restaurant. Ms Y is surprised to see Mr B also having lunch. He is in the company of a man and a woman. The woman is some way from her fortieth birthday and is wearing a few items of expensive jewellery. Ms Y sees that carrier bags from her own shop and another jewellery shop are on the floor next to the woman.

Immediately after lunch Ms Y discusses with the shop manager what she had seen in the restaurant and how the story provided by Mr B differed from her experience. Ms Y and the shop manager become suspicious and make a report to the financial intelligence unit. It transpired that Mr B and his two colleagues were the founders of an advertising agency and trafficked drugs at social occasions. They had been on the cruise ship for only two weeks and had used the cash proceeds from their trafficking to help buy expensive goods at most of the destinations they had visited.

### **Example B: Limited edition jewellery**

Expensive Jewellery Limited (EJL), a foreign firm active in a small jurisdiction, had noted that it was attracting an increasing number of very affluent customers. The owners of EJL considered that, in the same way there was a market in the jurisdiction for prestige, limited edition cars, there was also a market for very expensive, limited edition jewellery. As a consequence, EJL forged business links with a small number of leading London, Paris and New York firms to market high value jewellery.

Occasionally, selected customers were invited to the jurisdiction to attend viewings. Two years after it developed this new business line, EJL auctioned a necklace in which were set a number of diamonds. The necklace was sold for a sum in excess of £1 million to a buyer who was represented at the auction by his agent. It was agreed that the funds would be transferred to the account of the auctioneer the next day and once the funds had been received the necklace would be given to the agent.

The following morning the auctioneer telephoned his bank to ensure that the £1million had been transferred to his account. He was advised that the money had been received but payment had been made from different companies via three different banks in different jurisdictions. This information led the auctioneer to think that all was not quite right with this purchase.

The auctioneer made a disclosure to the local financial investigation unit. The unit reacted swiftly and the development of the intelligence in the disclosure uncovered that the agent and his client had drug trafficking convictions and were suspected of several frauds and laundering the proceeds of their and other frauds. When the

auctioneer arrived at the hotel later in the day to meet with the agent he was accompanied by two police officers who arrested the agent.

### **What is a suspicious transaction or activity?**

The [Criminal Justice \(Proceeds of Crime\) \(Restriction on Cash Transactions\) \(Bailiwick of Guernsey\) Regulations, 2008](#), (“the Regulations”) which came into force on 1st December 2008 restrict the sale or purchase of precious metals, precious stones or jewellery where the payment is made in cash and exceeds £10,000. A person who contravenes the restriction commits an offence and is liable, for a first offence, to a fine not exceeding £1,000 and, for a second or subsequent offence, to a fine not exceeding twice the value of the cash involved.

In addition to the above restriction imposed by the Regulations, the Disclosure (Bailiwick of Guernsey) Law, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 require persons to report suspicion of money laundering and the financing of terrorism to the Financial Intelligence Service (“the FIS”). These requirements to report suspicion of money laundering and the financing of terrorism extend to transactions and attempted transactions of any value. Even if you don't have proof that a transaction or activity or an attempted transaction or activity is linked to money laundering or terrorist financing, something about it may make you suspicious.

There are many different reasons why you or one of your employees might become suspicious about a transaction or activity or an attempted transaction or activity. Often it is just because it is something unusual for your business - perhaps a customer has tried to make an exceptionally large cash payment. Perhaps the customer behaved strangely or made unusual requests that didn't seem to make sense. Perhaps the transaction the customer wanted to make just did not add up commercially.

The legislation contains offences if dealers and individuals employed by dealers do not make a disclosure to the FIS where they have knowledge or suspicion of money laundering or terrorist financing or if they have reasonable grounds for knowing or suspecting money laundering or terrorist financing. In order to avoid committing an offence, unusual transactions must be looked at carefully to see if there is anything suspicious about them. Copies of the documents which must be used when making a disclosure of suspicion to the FIS can be found on its website at [www.guernseyfis.org](http://www.guernseyfis.org).

### **What are the proceeds of crime?**

At its most basic level money laundering is deception by attempting to make illegitimate funds appear to have been obtained through legal means – but what do we mean by illegitimate funds? In other words, what type of crime constitutes a predicate offence, i.e. the offence that has to be undertaken in order for the funds obtained by committing that offence to be considered as the proceeds of crime?

Under section 1(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 all offences that are indictable under the law of the Bailiwick

are considered to be predicate offences and therefore funds obtained by committing a predicate offence are considered to be the proceeds of crime?

Under Bailiwick law all offences are indictable except for some minor offences, which mainly concern public order and road traffic. Therefore, the range of predicate offences is extremely wide and includes the following:

- participation in an organised criminal group and racketeering;
- terrorism, including terrorist financing;
- trafficking in human beings and migrant smuggling;
- sexual exploitation, including sexual exploitation of children;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen and other goods;
- corruption and bribery;
- fraud and tax evasion;
- counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage taking;
- robbery or theft;
- smuggling;
- extortion;
- forgery;
- piracy; and
- insider trading and market manipulation.