

PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING) – ARUN DISTRICT COUNCIL'S, AND YOUR OWN PERSONAL, RESPONSIBILITIES

PURPOSE

These notes are important. They are designed to help you familiarise yourself with the legal and regulatory requirements relating to money laundering, as they affect both the organisation and you personally.

WHAT IS MONEY LAUNDERING?

Money laundering is the term used for a number of offences involving the proceeds of crime or terrorist funds. The following acts constitute the act of money laundering:-

- concealing, disguising, converting, transferring or removing criminal property from the UK
- to enter into, or becoming concerned in, an arrangement in which someone knowingly or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- acquiring, using or possessing criminal property.

Although the term 'money laundering' is generally used when describing the activities of organised crime (for which the legislation and regulations were first and foremost introduced), to most people who are likely to come across it or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

'Criminal property' is defined very widely in the law relating to money laundering. It includes not only the proceeds of crime committed by somebody else, but also possession of the proceeds of an individual's own crime (for example, the retention of monies from non-payment of income tax). It does not matter how small the amount of money involved is. It also includes the proceeds of crimes that take place abroad.

WHAT LAWS EXIST TO CONTROL MONEY LAUNDERING?

In recent years, new laws have been passed which shift significantly the burden for identifying acts of money laundering away from government agencies and more towards organisations and their employees. They prescribe potentially very heavy penalties, including imprisonment, for those who are convicted of breaking the law. These laws are important and, for those who wish to refer to them, and we hope you will, a list of them appears at the end of these notes, together with a list of useful websites.

WHAT IS THIS ORGANISATION'S POLICY ON MONEY LAUNDERING?

Our policy is to do all we can to prevent, wherever possible, the organisation and its staff being exposed to money laundering, to identify the potential areas where it may occur and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. We cannot stress too strongly, however, that it is every member of staff's responsibility to be vigilant.

The organisation has nominated Alan Peach (Head of Finance & Property) to be responsible for anti-money laundering measures within the organisation.

WHAT ARE THE MAIN MONEY LAUNDERING OFFENCES?

There are three principal offences – concealing, arranging and acquisition/use/possession.

Concealing is where someone knows, or suspects, a case of money laundering but conceals or disguises its existence. **Arranging** is where someone involves himself or herself in an arrangement to assist in money laundering. **Acquisition** (etc.) is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.

There are also two 'third party' offences – failure to disclose one of the three principal offences and 'tipping-off'. **Tipping off** is where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

All the money laundering offences may be committed by an organisation or by the individuals working for it.

LEGISLATION AND REGULATIONS RELATING TO MONEY LAUNDERING

The Proceeds of Crime Act 2002, Part 7

The Terrorism Act 2000

The Money Laundering Regulations 2007

PROCEEDS OF CRIME ACT 2002

Money laundering has the objective of concealing the origin of money generated through criminal activity. Legislation has given a higher profile to the need to report suspicions of money laundering. The Proceeds of Crime Act (POCA) 2002 established the main offences relating to money laundering. In summary, these are:-

- concealing, disguising, converting, transferring or removing criminal property from the UK (s.327)

- being concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention use or control of criminal property (s.328)
- acquiring, using or possessing criminal property (s.329).

These apply to all persons in the UK in a personal and professional capacity. Any person involved in any known or suspected money-laundering activity in the UK risks a criminal conviction. Other offences under the POCA include:-

- failure to disclose money-laundering offences
- tipping off a suspect, either directly or indirectly
- doing something that might prejudice an investigation – for example, falsifying a document.

THE TERRORISM ACT 2000

This act made it an offence of money laundering to become concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism, or resulting from acts of terrorism. All individuals and businesses in the UK have an obligation to report knowledge, reasonable grounds for belief or suspicion about the proceeds from, or finance likely to be used for, terrorism or its laundering, where it relates to information that comes to them in the course of their business or employment

THE MONEY LAUNDERING REGULATIONS 2007

Organisations pursuing relevant business (especially those in the financial services industry regulated by the FSA) are required to appoint a nominated officer and implement internal reporting procedures; train relevant staff in the subject; establish internal procedures with respect to money laundering; obtain, verify and maintain evidence and records of the identity of new clients and transactions undertaken and report their suspicions. In December 2007 the UK Government published the Money Laundering Regulations 2007, which replaced the Money Laundering Regulations 2003.

LOCAL AUTHORITIES

Public service organisations and their staff are subject to the full provisions of the Terrorism Act 2000 and may commit most of the principal offences under the POCA, but are not legally obliged to apply the provisions of the Money Laundering Regulations 2007. However, as responsible public bodies, they should employ policies and procedures which reflect the essence of the UK's anti-terrorist financing and anti-money laundering, regimes. Accordingly this Council will do the following: -

- a) evaluate the prospect of laundered monies being handled by them
- b) determine the appropriate safeguards to be put in place
- c) require every person engaged in treasury management to make themselves aware of their personal and legal responsibilities for money laundering awareness

- d) make all its staff aware of their responsibilities under POCA
- e) appoint a member of staff to whom they can report any suspicions. This person is the Head of Finance & Property
- f) in order to ensure compliance is appropriately managed, this Council will require senior management to give appropriate oversight, analysis and assessment of the risks of clients and work/product types, systems for monitoring compliance with procedures and methods of communicating procedures and other information to personnel
- g) the officer responsible for the creation and monitoring the implementation of a corporate anti-money laundering policy and procedures is the Head of Finance & Property and it shall be a requirement that all services and departments implement this corporate policy and procedures.

PROCEDURES FOR ESTABLISHING IDENTITY/AUTHENTICITY OF LENDERS

It is not a requirement under POCA for local authorities to require identification from every person or organisation it deals with. However, in respect of treasury management transactions, there is a need for due diligence and this will be effected by following the procedures below.

Either:-

The Council does not accept loans from individuals

Or

It is no longer Council policy to accept loans from individuals, although it did in the past (*if applicable - and has a small, immaterial residue of loans still on its books*).

All loans are obtained from the PWLB, other local authorities or from authorised institutions under the Financial Services and Markets Act 2000. This register can be accessed through the FSA website on www.fsa.gov.uk.

When repaying loans, appropriate procedures will be followed to check the bank details of the recipient.

Or (if the Council accepts loans from individuals)

Before accepting loans from individuals, the Council will confirm the identity of the lender.

METHODOLOGIES FOR IDENTIFYING DEPOSIT TAKERS

In the course of its treasury management activities, the Council will only lend money to, or invest with, those counterparties that are on its approved lending list. These will be local authorities, the PWLB, Bank of England and authorised deposit takers under the Financial Services and Markets Act 2000. The FSA register can be accessed through their website on www.fsa.gov.uk.

All transactions will be carried out by CHAPS for making deposits or repaying loans.

WHAT ARE THE IMPLICATIONS FOR THE ORGANISATION AND IT'S STAFF?

The organisation has accepted the responsibility to ensure that those of its staff who are most likely to be exposed to money laundering can make themselves fully aware of the law and, where necessary, are suitably trained. The organisation has also implemented procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the National Criminal Intelligence Service (NCIS).

The consequences for staff of committing an offence are potentially very serious. Whilst it is considered most unlikely that a member of staff would commit one of the three principal offences, the failure to disclose a suspicion of a case of money laundering is a serious offence in itself, and there are only very limited grounds in law for not reporting a suspicion.

Whilst stressing the importance of reporting your suspicions, however, you should understand that failure to do so is only an offence if your suspicion relates, in the event, to an actual crime.

WHAT ARE THE PENALTIES?

Money laundering offences may be tried at a Magistrate's Court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison, or both. In a Crown Court, fines are unlimited and sentences from two to 14 years may be handed out.

WHAT SHOULD I DO IF I SUSPECT A CASE OF MONEY LAUNDERING?

You should report the case immediately to Alan Peach, either using a form he will give to you or, if you prefer, in a discussion. Alan Peach will decide whether the transaction is suspicious and whether to make a report to the NCIS. There is no clear definition of what constitutes suspicion – common sense will be needed. If you are considered likely to be exposed to suspicious situations, you will be made aware of these by your senior officer and, where appropriate, training will be provided.

SUMMARY

Robust money laundering procedures are essential if this organisation and its staff are to comply with our responsibilities and legal obligations. It falls to you as a member of the organisation's staff, as well as to the organisation itself, to follow these procedures rigorously.