

Understanding Responsibilities and International Cooperation in Combating Money Laundering in Belize

By Christopher Coye, MSc, LLB, CLE

As the international financial services industry has developed and become more sophisticated over the last couple decades, so have the responsibilities of the international financial services (IFS) practitioner, financial institutions and the regulatory authorities in Belize in combating criminal abuses of the industry, particularly in relation to money laundering, both domestically and internationally. These responsibilities are even further tested when international assistance and cooperation is requested.

Belize's legislature has enacted a number of relevant legislation over the years. These include the Money Laundering Prevention Act of 1996 and regulations made thereunder, the International Financial Services Commission Act and the IFS Practitioners (Code of Conduct) Regulations made thereunder, and more recently, the Financial Intelligence Unit Act.

The Money Laundering Prevention Act of 1996 was enacted at the same time and served as a complement to the International Banking Act. It introduced into Belize law the offence of money laundering. Through the Act, regulations and guidance notes made thereunder, it also introduced as a legal obligation on financial institutions (which now includes IFS practitioners) the now well-established Know Your Customer (KYC) principle. This is further supported by the said IFS Practitioners (Code of Conduct) Regulations. Primary emphasis has rightly been placed on this KYC principle, however, it is submitted that what is or what constitutes money laundering is also of vital importance for knowing and understanding the legal responsibilities and obligations of stakeholders.

Most of us have heard the term “money laundering” being used in various contexts and have our own subjective interpretation of what money laundering means.

The Financial Action Task Force (on its official website) explains that

“The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering [therefore] is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.”

The FATF continues that:

“Illegal arms sales, smuggling, and the activities of organised crime, including for example drug trafficking and prostitution rings, can generate huge sums. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimise” the ill-gotten gains through money laundering.

When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.”

Similarly, the Money Laundering (Prevention) Guidance Notes issued by the Central Bank of Belize describes money laundering as a popular term used to describe the methods by which “dirty money” – usually cash received from criminal activities – is processed through the financial system and converted into “clean money” making it difficult to trace to the person originating the

transaction or to the criminal origin of the funds. The Notes explain that a criminal's objective in laundering illicit proceeds is to:

Conceal the origin and the ownership of the funds; Change the form of the money to re-cycle it into the economy; and Control the movement of the funds to avoid detection.

This process usually occurs in the following three stages:

(a) The first is the *placement* of proceeds derived from criminal activity into the financial system. The objective of this is to convert funds from cash to a financial instrument, such as a bank account or insurance product.

(b) The second is *layering* or the separating of the illicit proceeds from its source by creating a complex layer of financial transactions designed to obscure the audit trail and sever the link with the original crime.

(c) Finally, there is *integration*, the process of attaching legitimacy to criminally derived proceeds so that no suspicion of its origins remains. If placement and layering have succeeded, integration schemes give the appearance of legitimizing the proceeds.

Undoubtedly, the foregoing are apt descriptions of the term money laundering, its objective and its normal process. They also exemplify how broadly the term money laundering can be interpreted or otherwise construed.

Compliance with the Money Laundering Prevention Act and Regulations thereunder as a result may seem to be both daunting and frightening especially in light of the fact that the burden of proof at least in relation to intent appears to be reversed in the proof of a money laundering offence. That is, directors, managers, secretaries, officers and employees of companies engaged in money laundering may also be personally guilty of a money laundering offence if they cannot adduce evidence to show that the offence was committed without their knowledge, connivance

or consent. It is neither inconceivable nor impossible that a teller or an officer handling opening of accounts with a bank or financial institution may be found guilty of a money laundering offence for receiving or accepting the proceeds of crime even though such person had no knowledge or did not connive or consent to facilitating the commission of money laundering simply because, based on an inference of the factual circumstances, she is deemed to have had reasonable grounds for believing the same to be proceeds of crime

In this regard, it becomes imperative for stakeholders to understand what “money laundering” means under Belize law.

Under the Money Laundering Prevention Act, the legal definition of “money laundering” under Belize law is more specific than the descriptions given by the FATF and as appears at first glance in the Notes. “Money laundering” means:

- (a) engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime; or
- (b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Belize any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime.

Importantly, the term “proceeds of crime” is specifically legally defined to mean:

“any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Belize or elsewhere; and shall include any property which is knowingly mingled with property that is so derived or obtained.”

A prescribed offence is also specifically legally defined under the Act as being an offence for the time being listed in the Second Schedule to the Act. Currently, the list of prescribed offences set out in the Second Schedule to the Act are:

1. Blackmail
2. Counterfeiting
3. Drug trafficking and related offences
4. Extortion
5. False accounting
6. Forgery
7. Fraud
8. Illegal deposit-taking
9. Robbery involving more than \$10,000.00
10. Terrorism
11. Thefts involving more than \$10,000.00
12. Arms trafficking, and
13. Kidnapping

Each of these offences is an offence under Belize's domestic legislation including but not limited to the Money Laundering Prevention Act and Belize's Criminal Code. It is submitted that each of these offences and the elements thereof would be construed according to Belize laws only. Moreover, as the Chief Justice stated in Supreme Court Action 310 of 2001, the Queen v James Gibson (which was consolidated with SCA 306 of 2001):

"It is a principle of law that generally, absent treaty obligations, the criminal laws of one country are not enforceable in another country."

It necessarily follows from these definitions then that the offence of money laundering can only be committed by a person if any one of the afore-mentioned prescribed offences as construed solely under Belize law were first

committed whether in Belize or elsewhere and the proceeds arising from any one or more of such specific crimes were sought to be laundered as defined. Where the proceeds of a crime not being one of the prescribed offences are laundered or otherwise sought to be laundered no offence of money laundering is committed. For example, tax evasion is not a predicate offence for the offence of money laundering to be committed. A person may therefore be actually committing tax evasion in Belize or outside Belize and using Belize's financial system to launder the proceeds of such crime. However, such 'laundering' would not amount to money laundering though a financial crime may have been committed and the powers of the Financial Intelligence Unit under the Financial Intelligence Unit Act may be invoked. It would seem then that as a matter of statutory construction, the offence of money laundering is narrower in scope under Belize law than described before.

The experience of the *Gibson* case underscores the importance of operating within the legal scope of Belize's anti-money laundering legislation in money laundering matters. In that case, the Chief Justice, among other things, held that Belize's bilateral Mutual Legal Assistance Treaty on Criminal Matters with the United States signed on the 19th of September, 2000, although unilaterally ratified by Belize on the 8th of January, 2001, did not form part of the law of Belize since it had not been ratified by the United States nor had instruments of ratification been exchanged although there was at that time provision under the Money Laundering Prevention Act for its automatic incorporation into Belize's domestic law once the treaty entered into force. As a result, restraint orders sought by the Director of Public Prosecutions in seeking to render assistance to the Federal Bureau of Investigations, US Department of Justice, in their investigation of various crimes under US law including money laundering were refused by the Chief Justice. It was also found in the interpleader application that the Supervisory Authority had no power to effect a freeze on

bank accounts of customers. Rather, it was held that the power to freeze property or assets in connection with the money laundering is vested in the Courts and then only on the application of the competent authority who is the Director of Public Prosecutions.

Since then and in the aftermath of September 11, along with certain amendments to strengthen the legislation as it relates to terrorism, the relevant sections of the Act have now been amended to imbue the Supervisory Authority with the power to freeze funds temporarily without an order of the court. Furthermore, the relevant section in the Money Laundering Prevention Act automatically incorporating mutual legal assistance treaties which Belize has entered into on a bilateral or multilateral basis into Belize's domestic law has been repealed. The outcome of this repeal is that, notwithstanding that the Belize-United States MLAT has since been ratified on the 23rd of January, 2003 and instruments of ratification have been exchanged on the 2nd of July, 2003 thereby causing the treaty to enter into force between the party states, this treaty does not form a part of Belize's law and cannot be invoked for investigating and prosecuting money laundering offences in Belize unless and until it has been incorporated into the law by legislation of the National Assembly. That is, as explained by Lord Oliver in the House of Lords decision in the English case of Maclaine Watson v Dept of Trade [1989] 3 All ER 523, at pp. 544-545, "the treaty does not extend to alter the law or confer rights on individuals or deprive individuals of rights which they enjoy under the domestic law without the intervention of Parliament" or in Belize's case the National Assembly.

In the more recent cases, Supreme Court Actions No. 72, 82 and 83 of 2004, Financial Intelligence Unit v Carib International Ltd. et. al, where the FIU sought to provide international assistance to the United States authorities in their criminal investigations of the Defendants therein for

offences involving illegal gambling, tax evasion, mail fraud, wire fraud and money laundering, an application for a freeze order by the FIU under the Money Laundering Prevention Act was once again refused by the Supreme Court on a narrow jurisdictional basis given that the Defendants had not been charged nor was there a definite time frame indicating when the Defendants would be charged for money laundering and other offences, whether in Belize or elsewhere. Notably, the question of the apparent absence of a prescribed predicate offence and the absence of the Belize-US MLAT incorporating legislation were both raised in argument however.

In light of these foregoing cases and the submitted legal positions, although it is certainly critical that there is due cooperation of financial institutions in combating money laundering, at the same time and at all times, financial institutions and regulatory authorities alike must be mindful of what the respective legal rights and obligations are and not seek to be overzealous or overreaching in cooperation or the facilitation thereof. Not only would such actions run the risk of unnecessarily exposing themselves to liability but other stakeholders and even the entire financial services industry may be adversely affected. With the help of the legislature in ensuring that appropriate legislation is in place for the protection and sustenance of the evolving international financial services industry, stakeholders in such industry, including the financial institutions and the regulatory authorities such as the FIU must work together in seeking to combat or otherwise protect against money laundering but in doing so all parties must respect and seek to ensure that they work within the four corners of Belize's legal framework.
