

Sri Lanka Gets Tough on Money Laundering

Proceeds from crime can be easily concealed. Problems arise however, when the criminal wishes to spend his ill gotten gains without the fear of having to reveal its original source (*David A. Chaikin*). Thanks largely due to the ingenuity of the *Mafiosi*, this problem was solved by "Money Laundering". It is believed that this term was first used by the police in the United States in the 1920's at the height of the Great Depression, Prohibition and the golden era of organized crime. Mafia groups showed and active interest in acquiring launderettes, since it gave these groups a way of providing a legitimate appearance to money derived from criminal activity. Illicit proceedings were declared to be profits gained through these launderettes and were thus declared 'laundered', i.e. 'clean money' (*Guy Stassens*).

Today, anti money laundering measures are considered to be an extremely important aspect of the global war against narcotics, human trafficking, terrorism and other transnational crimes. Authorities worldwide have realized that they must make crime unprofitable and prevent criminals from recycling their money into the economy.

Sri Lanka too has finally come to terms with this problem and enacted the *Prevention of Money Laundering Act*. Presented by the Ministry of Finance and Planning, this Act seeks to prohibit money laundering and provide the necessary measures to combat and prevent it.

This Act applies to (a) a person who commits an offence under this Act whilst being resident in Sri Lanka; (b) an Institution which is used for the commission of an offence under this Act; and (c) an act which constitutes an offence which is committed in Sri Lanka.

A person is guilty of the offence of Money Laundering, if he has engaged directly or indirectly in any transaction relating to any property which is derived or realized, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity.

The offence also applies to situations where a person receives, possesses, conceals, disposes of or brings into Sri Lanka, transfers out of Sri Lanka or invests in Sri Lanka any property which is derived or realized, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity.

It must also be proved however, that the person knew or had reason to believe that such property was derived or realized, directly or indirectly from any lawful activity or from the proceeds of any unlawful activity.

A person found guilty of Money Laundering shall be liable to a fine not less than the value of the property in respect of which the offence is committed and not more than three times the value of the property in respect of which the offence is committed or to rigorous imprisonment for a period not less than five years and not exceeding twenty years or to both such fine and imprisonment. The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture.

The basic offence therefore, clearly targets any "property", which has been defined to include currency or asset of any kind whether movable, immovable, tangible or intangible, whether situated in Sri Lanka or elsewhere. Interestingly, this definition also includes legal documents or instruments in any form whatsoever including electronic or digital form, evidencing title to or interest in such assets. This definition is extremely wide and appears to be well thought-out, since the latest trend in global money laundering is hiding money, assets and documents of title in electronic and digital form.

The most important aspect of this offence is that the proceeds must be derived or realized from any "unlawful activity", which has been defined to include any act or offence under *inter alia*, the Poisons, Opium and Dangerous Drugs Ordinance; any law or regulation relating to the prevention and suppression of terrorism; the Bribery Act; the Exchange Control Act; certain offences under the

Banking Act; laws relating to transnational organized crime, cyber crime, human trafficking, offences against children and any offence which is punishable by death or with imprisonment for a term of seven years or more.

Once more the legislation has encompassed the widest possible range of offences, since the clever criminal mind is apt at finding imaginative and novel ways to commit crimes and derive profit from such activities.

This law may turn out to be quite severe in certain instances, since there is a presumption that unless the contrary is proved by a person, it is presumed that any property acquired by a person has been derived or realized from some unlawful activity or are the proceeds of any unlawful activity, if such property, being money, cannot be or could not have been part of the known income or receipts of such person or to which his known income has been converted. If such property is other than money, cannot be or could not have been property acquired with any part of his known income.

This Act also vests power with the Police to issue a Freezing Order preventing further acts of money laundering being committed, where there are reasonable grounds to believe that any person is involved in any activity relating to this offence. Such an Order may relate to any account, property or investment which may have been used or which may be intended to be used for money laundering. These Freezing Orders are valid for seven days, after which the Police must make an application to the High Court for any extension.

This Act also applies to acts of money laundering committed by a body of persons. In the event the offence is committed by a body corporate, then every director or other officers of that body shall be guilty of money laundering. The same applies to every partner in a partnership and to every member of an unincorporated body, such as an association or club. It is a defense however to show that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. Hence, with this Act coming into force, it becomes extremely important for directors and responsible officers of companies, partners of partnerships and officials and members of unincorporated bodies to regularly monitor and investigate any suspicious activities that may happen in their organizations. The stiff penalties that these persons face make it essential that a professional and organized system of monitoring the financial activities of an organization is put in place immediately.

Action against money laundering is an essential aspect of fighting crime. It is indeed surprising that Sri Lanka has taken such a long time to recognize this offence. Now that the law is in place, the next step would be to train and organize the law enforcement authorities to successfully implement this Act.