

## **MONEY LAUNDERING – section x<sup>1</sup>**

[Insert into dishonesty compendium]

Within the ECSC, on the nine member states and territories there are different money laundering offences including receiving, possession, concealment, disguise, disposal, conversion, transfer or removal from the islands of the proceeds of crime or its acquisition, use or possession or the facilitation of arrangements for same. There are often different maximum sentences prescribed for these offences within member states and territories. For the purposes of this guideline, the expression ‘money laundering’ will be used to cover all of the foregoing ways of committing the offence, whether as conspiracy or a substantive offence.

### **STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A money laundering case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

---

<sup>1</sup> As at [date of publication].

## FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence.

### **CONSEQUENCE A      VALUE OF THE MONEY LAUNDERED**

- |                   |  |
|-------------------|--|
| <b>Category 1</b> | Above EC\$1m - starting point based on EC\$5m <sup>2</sup>           |
| <b>Category 2</b> | Above EC\$250,000 up to EC\$1m - starting point based on EC\$500,000 |
| <b>Category 3</b> | EC\$50,000 up to EC\$250,000 - starting point based on EC\$150,000   |
| <b>Category 4</b> | Up to EC\$50,000 starting point based on EC\$25,000                  |

### **CONSEQUENCE B      ASSOCIATION WITH UNDERLYING OFFENCE**

Money laundering is an integral component of much serious underlying criminality. Where it is possible to identify the underlying offence, the relevant sentencing guidelines for that offence should be regarded. Thus the assessment of harm is concluded by taking into account the level of harm associated with the underlying offence to determine whether it warrants upward or downward adjustment of the starting point within the range or, in appropriate cases, outside the range.

---

<sup>2</sup> The starting point is suggested for a sum, as shown, and adjusted up or down if the sum is more or less within the financial range shown.

## SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

### **SERIOUSNESS - level A - High**

- A leading role where offending is part of a group activity
- Abuse of position of trust
- Substantial links to, and influence on, others in a chain
- Involvement of others through pressure or influence.
- Expectation of substantial financial gain

### **SERIOUSNESS - level B - Medium**

- Other cases where category A characteristics and C are absent.
- A significant role where offending is a part of group activity.
- Operational or management function within a chain
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation

### **SERIOUSNESS - level C - Lesser**

- Performed limited function
- Acted under direction
- Involved by pressure, coercion, intimidation
- Very little, if any, awareness or understanding of the scale of operation
- Not motivated by personal gain
- An isolated, opportunistic act
- Very little or no planning
- No influence on those above in a chain

**THIRD STAGE**

Having determined the degree of culpability and harm find the starting point by consulting the grid below -

Maximum sentence is 'x'.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

<b>CONSEQUENCE - A (remembering to adjust for B)</b>	<b>SERIOUSNESS - A</b>	<b>SERIOUSNESS- B</b>	<b>SERIOUSNESS - C</b>
<b>Category 1</b>	SP 65% x Range 50-80% x	SP 50% x Range 35-65% x	SP 40% x Range 25-55%
<b>Category 2</b>	SP 50% x Range 35-65% x	SP 40% x Range 25-55% x	SP 35% x Range 20-50% x
<b>Category 3</b>	SP 30% x Range 20-40% x	SP 25% x Range 15-35% x	SP 20% x Range 10-30%
<b>Category 4</b>	SP 15% x Range 10-35% x	SP 10% Range 5-30%	SP 5% Range non-custodial - 25%

## FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

### **AGGRAVATING FACTORS** of offence

- Sophisticated nature of concealment and/or attempts to avoid detection
- Transactions/operations committed across borders
- Criminal activity conducted over sustained period of time
- Damage to third party such as loss of employment to legitimate employees
- Funding for terrorism
- Deliberately targeting a member state or territory to facilitate offence.
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger

### **MITIGATING FACTORS** of offence

- Lack of sophistication as to nature of concealment
- Activity originally legitimate

## **STEP 2**

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

### **AGGRAVATING FACTORS** of offender

- Previous convictions for a money laundering offence
- Recent or relevant convictions for other offences
- Offence committed whilst on bail

### **MITIGATING FACTORS** of offender

- Good character
- Physical or mental disability or ill-health where relevant in explaining offending
- Youth and/or lack of maturity where it explains offending
- Genuine remorse
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

## **STEP 3**

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will reduce if the plea is later, down to one-tenth for a plea on the day of trial.

## **STEP 4**

Adjust the figure on assessing totality if sentencing for more than one offence.

### **STEP 5**

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision<sup>1</sup>

### **STEP 6**

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets.

### **PASS THE SENTENCE**

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.