

MONEY LAUNDERING (4(j))

The Cayman Islands are an international global financial services centre. These Sentencing Guidelines therefore recognise the great importance of both deterrence and denunciation in imposing sentences for money laundering offences.

A. PROCEEDS OF CRIME LAW (2017 REVISION)

144. (10) Money laundering is an act which –
- (a) constitutes an offence under section 133, 134 or 135;
 - (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
 - (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or
 - (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the Islands.

[Sections 133-135 create offences arising from the concealment, disguise, conversion, transfer or removal from the Islands of “criminal property” or its (or the facilitation of arrangements for the) acquisition, use or possession.]

144. (1) ...
- (2) Criminal conduct is conduct which -
- (a) constitutes an offence in any part of the Islands; or
 - (b) would constitute an offence in any part of the Islands if it occurred there.
- (3) Property is criminal property if -
- (a) it constitutes a person's benefit from a criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and
 - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit, and includes terrorist property.

See also the Terrorism Law (2017 Revision) and the Money Laundering Regulations (2015 Revision).

B. MONEY LAUNDERING

For the purposes of this guideline, money laundering is those activities by which criminal proceeds are sanitised to disguise their illicit origins. This is most likely to include one or more of the following three stages:

- Placement - the process of getting criminal money into the financial system;
- Layering - the process of moving money in the financial system through complex webs of transactions, often via offshore companies;
- Integration - the process by which criminal money ultimately becomes absorbed into the economy, such as through investment in real estate.

STEP ONE – Determining the offence category

Culpability

Particularly demonstrated by one or more of the following

A – High culpability

- Transactions across jurisdictions or countries
- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Criminal activity conducted over sustained period of time

B – Medium culpability

- Other cases where characteristics for categories A or C are not present
- A significant role where offending is part of a group activity

C – Lesser culpability

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of extent of criminal activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.

A – VALUE OF THE MONEY LAUNDERED

Category 1 Above CI\$1m – starting point based on CI\$5m

Category 2 Above CI\$250,000 up to CI\$1m - starting point based on CI\$500,000

Category 3 CI\$51,000 up to CI\$250,000 - starting point based on CI\$150,000

Category 4 Up to CI\$50,000 - starting point based on CI\$25,000

B – ASSOCIATION WITH UNDERLYING OFFENCE

Money laundering is an integral component of much serious criminality. Where it is possible to identify the underlying offence, regard should be given to the relevant sentencing levels for that offence.

To complete the assessment of harm, the court should take into account the level of harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range or, in appropriate cases, outside the range.

STEP TWO – Starting point and category range

HARM	CULPABILITY		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	8 years' custody	6 years' custody	4 years' custody
Category 2	Starting point	Starting point	Starting point
	7 years' custody	5 years' custody	3 years' custody
Category 3	Starting point	Starting point	Starting point
	5 years' custody	3 years' custody	18 months' custody
Category 4	Starting point	Starting point	Starting point
	3 years' custody	18 months' custody	6 months' custody
	Category Range	Category Range	Category Range
	7-13 years' custody	5-10 years' custody	3-6 years' custody
	Category Range	Category Range	Category Range
	6-10 years' custody	4-8 years' custody	2-6 years' custody
	Category Range	Category Range	Category Range
	4-8 years' custody	2-6 years' custody	6 months-4 years' custody
	Category Range	Category Range	Category Range
	2-6 years' custody	6 months-4 years' custody	Community Based Sentence-2 years' custody

In determining sentence for money laundering offences where the offender has also committed offences that have created the money that is the subject of the charges, it will be particularly necessary to consider whether the total sentence is just and proportionate to the overall offending behaviour.

See the laminated insert for the Sentencing Process to be followed. Offence specific guidelines only set out those aspects of particular relevance to the offence but all other appropriate information must also be considered.

The potential aggravating and mitigating factors (see laminated insert) should only affect the sentence if they have not already been incorporated in the assessment of culpability above.

A case of particular gravity, reflected by multiple features of both culpability and harm in step one, should normally merit upward adjustment from the starting point before further adjustment for the aggravating or mitigating features as set out below.

Factors increasing seriousness

- Failure to respond to warnings about behaviour
- Offences committed across borders
- Blame wrongly placed on others
- Damage to third party for example loss of employment to legitimate employees
- Offender travelled to Cayman Islands specifically in order to facilitate offence
- Attempting to conceal or dispose of evidence once the offender became aware that investigations were being made by the authorities

Factors reducing seriousness

- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Activity originally legitimate