

# Money Laundering – An Endless Cycle?

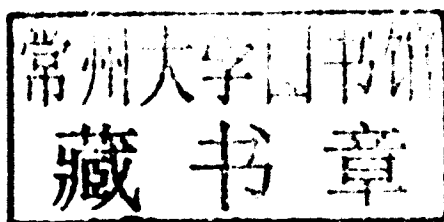
A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada

Nicholas Ryder

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### Dedication

The usual caveat applies for all errors and omissions in this book. There are two people I would like to thank who have helped me during the writing of this book, my wife Ruth and son Ethan. Without their unprecedented love and support this book would not have been possible. It is to them that I dedicate this book.

Dr Nicholas Ryder

# Preface

Money laundering is a global problem that demands an internationally coordinated response that is effectively administered by nation states. This monograph proposes a global money laundering policy which is divided into eight parts:

- 1 implementation of international legal AML instruments;
- 2 recognition and implementation of international best practices and industry guidelines;
- 3 adoption of a risk-based policy;
- 4 creation of competent AML authorities, which is divided into three parts:
  - a. primary agencies;
  - b. secondary agencies; and
  - c. tertiary agencies;
- 5 criminalisation of money laundering;
- 6 mutual legal assistance;
- 7 preventive measures; and
- 8 confiscation of the proceeds of crime.

In short, the monograph considers the extent to which the global money laundering policy has been implemented in the United States of America, the United Kingdom, Australia and Canada. This book offers a genuinely new direction in money laundering.

# Abbreviations

AML	anti-money laundering
ARA	Assets Recovery Agency
AUSTRAC	Australian Transaction Reports and Analysis Centre
CPS	Crown Prosecution Service
CTF	counter-terrorist financing
CTR	currency transaction reports
DEA	drug enforcement agency
EU	European Union
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
FINTRAC	Financial Transaction and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
FSA	Financial Services Authority
GPML	Global Program against Money Laundering
GPML	Global Programme against Money Laundering
IAIS	International Association of Insurance Supervisors
IMF	International Monetary Fund
IOSC	International Organization of Securities Commissions
KYC	know your customer
NAO	National Audit Office
NCA	National Crime Agency
NCIS	National Criminal Intelligence Service
RCMP	Royal Canadian Mounted Police
SAR	suspicious-activity report
SEC	Securities and Exchange Commission
SOCA	Serious Organised Crime Agency
UK	United Kingdom
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
US	United States of America

# Legislative tables

## Australia

Customs Act 1901  
United Nations Act 1945  
Insurance Act 1973  
National Crime Authority Act 1984  
Proceeds of Crime Act 1987  
Mutual Assistance in Criminal Matters Act 1987  
Financial Transaction Reports Act 1988  
Criminal Code Act 1995  
The Financial Transaction Reports (Amendment) Act 1997  
Australian Crime Commission Act 2002  
Anti-Money Laundering and Counter-Terrorism Financing Act 2006

## *Secondary legislation*

Mutual Assistance in Criminal Matters (Money Laundering) Regulations 1997  
Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002  
Anti-Money Laundering and Counter-Terrorism Financing Rules 2007  
Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008

## Canada

United Nations Act 1945  
Mutual Legal Assistance in Criminal Matters Act 1985  
Customs Act 1985  
Excise Act 1985  
United Nations Act Canada 1985  
Office of Superintendent of Financial Institutions Act 1987  
Proceeds of Crime (Money Laundering) Act 1991  
Seized Property Management Act 1993  
Mutual Legal Assistance in Criminal Matters Act 1995

Controlled Drugs and Substances Act 1996  
Corruption of Foreign Public Officials Act 1998  
Extradition Act 1999  
Proceeds of Crime (Money Laundering) Act 2000  
Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2001  
Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2006

*Secondary legislation*

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations  
2008

**United Kingdom**

Prosecution of Offences Act 1985  
Drug Trafficking Act 1986  
Drug Trafficking Offences Act 1986  
Criminal Justice Act 1988  
Criminal Justice (International Cooperation) Act 1990  
Criminal Justice Act 1993  
Drug Trafficking Act 1994  
Criminal Justice and Public Order Act 1994  
Proceeds of Crime Act 1995  
Human Rights Act 1998  
Financial Services and Markets Act 2000  
Terrorism Act 2000  
Proceeds of Crime Act 2002  
Crime International Co-operation Act 2003  
Serious Organised Crime and Police Act 2005  
Serious Crime Act 2007  
Criminal Justice and Immigration Act 2008

*Secondary legislation*

Money Laundering Regulations 1993  
Money Laundering Regulations 2003  
Money Laundering Regulations 2007

**United States of America**

Trading with the Enemy Act 1958  
Foreign Assistance Act 1961  
Comprehensive Drug Abuse and Prevention Act 1970  
Bank Secrecy Act 1970  
Controlled Substances Act 1970

Racketeering Influenced and Corrupt Organisations Act 1970  
Organized Crime and Control Act 1970  
Comprehensive Crime Control Act 1984  
Money Laundering Control Act 1986  
Anti-Drug Abuse Act 1988  
Anti-Money Laundering Act 1992  
Annunzio–Wylie Money Laundering Act 1992  
Money Laundering Suppression Act 1994  
Money Laundering and Financial Crimes Act 1998  
Civil Forfeiture Act 2000  
Uniting and Strengthening America by Providing Appropriate Tools to  
Restrict, Intercept and Obstruct Terrorism Act 2001  
Patriot Act 2001  
International Money Laundering Abatement and Financial Anti-Terrorism Act  
2001  
Sarbanes–Oxley Act 2002  
Intelligence Authorization Act 2004

## **International measures**

### ***European Union***

Council of Europe Convention on Laundering, Search, Seizure and Confiscation  
of the Proceeds from Crime and on the Financing of Terrorism 1990  
EU Protocol to the Convention on Mutual Assistance in Criminal Matters 2001  
Council of Europe Convention on Laundering, Search, Seizure and Confiscation  
of the Proceeds from Crime and on the Financing of Terrorism 2005

### ***United Nations***

UN Single Convention on Narcotic Drugs 1961  
UN Convention on Psychotropic Substances 1971  
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic  
Substances 1988  
UN Convention against Transnational Organised Crime 2000  
UN Convention against Corruption 2003

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# 1 Introduction

Economic crime is as old as the organised economy itself. Criminals invariably need to hide their bounty, but they also want to be able to retrieve and use it as they like.<sup>1</sup>

## 1.1 Money laundering – an introduction

The goal of a large number of criminal activities is to generate a profit for organised criminals, drug cartels and human traffickers. Money laundering is the illegal process or act by which these individuals or groups attempt to disguise, hide or distance themselves from their illegal activities. This process is crucial as it enables them to enjoy a criminal lifestyle by laundering the illegal proceeds of crime without jeopardising their source. The money laundering process has three recognisable stages – placement, layering and integration. At the placement stage of the money laundering process the money launderer seeks to position the proceeds of the illegal activity in the financial system. The money launderer normally attempts to break up the profit into smaller amounts so as to avoid any cash or currency transaction reporting obligations. This technique is referred to as smurfing, or structured payments. It is at this stage of the money laundering process that financial institutions and many other professions including for example estate agents, accountants and lawyers are susceptible to money laundering. The second stage, which is referred to as the layering process could involve a large number of financial transactions or conversions. The purpose of this phase of the money laundering transaction is to create as much distance between the initial placements of the proceeds of crime from their original source. It is during this stage that the money could be moved via the purchase of property or shares, or simply transferred to several different countries via the World Wide Web, thus making it increasingly difficult to detect. The final stage of the money laundering process is integration, and it is at this stage that the money reappears into the economy.

1 M. Pieth, 'International standards against money laundering', in M. Pieth and G. Aiolfi (eds.) *A Comparative Guide to Anti-Money Laundering – A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA*, Cheltenham: Edward Elgar, 2004, p. 3.

## 2 Money laundering – An endless cycle?

It is impossible to accurately determine the global extent of money laundering and estimates vary. For example, Financial Action Task Force (FATF) claims that the annual amount of money laundering is between \$590bn and \$1.5tn per year.<sup>2</sup> The United Nations (UN) Office on Drugs and Crime states that the figure was slightly higher, \$800bn to \$2tn. Conversely, the International Monetary Fund (IMF) estimated that the global amount of laundered money could be between 2 and 4 per cent of the world's gross domestic product. Morais took the view that 'it is very difficult to determine the precise magnitude of the money laundered globally on an annual basis'.<sup>3</sup> The calculation of its extent is also hampered because there is no visible data on the amount of money laundered. This has been referred to as the shadow economy, or a nation's unrecorded economic activity.<sup>4</sup> It has been argued that any 'economic analysis of money laundering is an area fraught with difficulty . . . [and] in the absence of hard statistical data; studies to date have had to employ indirect methods of estimation'.<sup>5</sup> Therefore, if these statistics are relatively accurate, money laundering poses a significant threat to the global economy and national security. Money laundering can occur in any country or city in the world, irrespective of a country's level of compliance with the global anti-money laundering (AML) legislative and preventive measures. Money launderers have learned to adapt and vary their techniques in response to the increased levels of international, regional and national AML legislative mechanisms. The scale of the problem is aggravated by a number of important factors such as the increasingly global nature of the financial markets, the inherent link between money laundering and the sale of illegal narcotic substances and the immeasurable number of money laundering mechanisms that exist. The relationship between money laundering and the sale of illegal narcotics is very well documented and it is often associated with the instigation of the 'war on drugs' by President Richard Nixon in the 1970s. This approach was subsequently followed by President Ronald Reagan in the 1980s. As a result of the US-led 'war on drugs' the international community implemented a plethora of legislative measures aimed at tackling money laundering. These measures were initiated by the UN in the form of the

2 Financial Action Task Force (n/d) *Money Laundering FAQ*. Available at: [www.fatf-gafi.org/document/29/0,3746,en\\_32250379\\_32235720\\_33659613\\_1\\_1\\_1\\_00.html#howmuchmoneyislaunderedperyear](http://www.fatf-gafi.org/document/29/0,3746,en_32250379_32235720_33659613_1_1_1_00.html#howmuchmoneyislaunderedperyear) (accessed 13 May 2011).

3 H. Morais, 'Fighting international crime and its financing: The importance of following a coherent global strategy based on the rule of law', *Villanova Law Review*, 2005, 50, 583–644, at 591.

4 R. Collins, 'The unknown unknowns – Risks to the banking sector from the dark side of the shadow economy', *Company Lawyer*, 2005, 26(3), 84–87, at 84.

5 There are traditionally two approaches towards calculating the extent of money laundering. The first is largely based upon assumption from macroeconomic data and secondly the financial information made available by anti-money laundering agencies. See J. Harvey, 'Compliance and reporting issues arising for financial institutions from money laundering regulations: A preliminary cost benefit study', *Journal of Money Laundering Control*, 2004, 7(4), 333–346, at 333.

UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which is more commonly referred to as the Vienna Convention. This was followed by several other measures including the UN Convention against Transnational Organised Crime, or Palermo Convention, and the UN Convention against Corruption. Additionally, the European Union (EU) introduced a series of legislative measures, the first of which, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was implemented in 1990. Furthermore, the EU has introduced three Money Laundering directives, which require each member state to implement a wide range of AML measures. Nonetheless, the terrorist attacks of September 11, 2001 resulted in a reinterpretation of money laundering by the international community and nation states. Reverse money laundering was viewed by President George Bush as a bigger threat to the United States of America (US) than money laundering, thus illustrating the threat posed by money laundering to a country's national security. This resulted in introduction of the USA Patriot Act (2001) and a wide range of new measures to tackle the threat posed by reverse money laundering. In addition to the international legislative measures introduced by the UN and EU, we have also seen an increase in the use of international best practices and industry guidelines. An example of such are the 40 Recommendations of the FATF, which have become the international AML benchmark on which countries are assessed to determine their level of compliance. Nonetheless, it is essential to note that these measures need to be incorporated into domestic legislation by nation states.

## **1.2 Rationale**

The aim of this book is to identify the global AML policy by incorporating a critical review of the international legislative measures of the UN and EU, the international best practices and the industry guidelines. This holistic approach has resulted in the identification of the global money laundering policy that can be divided into eight parts:

- 1 implementation of international legal AML instruments;
- 2 recognition and implementation of international best practices and industry guidelines;
- 3 adoption of a risk-based policy;
- 4 creation of competent AML authorities;
- 5 criminalisation of money laundering;
- 6 Mutual Legal Assistance;
- 7 preventive measures; and
- 8 confiscation of the proceeds of crime.

The book then seeks to provide a comparative analytical commentary of how and to what extent this policy has been incorporated into four jurisdictions:

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- 1 United States of America;
- 2 United Kingdom;
- 3 Australia; and
- 4 Canada.

### 1.3 Why the United States of America?

The US has adopted an aggressive stance towards money laundering and is the instigator of the 'war on drugs', which was the catalyst for the introduction of the Vienna Convention in 1988. Interestingly, the US AML policy pre-dates those of the United Kingdom (UK), Australia and Canada, and it can be traced back to the 1960s when the Department of Treasury became concerned about the link 'between illegal activities and offshore bank accounts'.<sup>6</sup> Furthermore, its legislative measures towards money laundering pre-date the international measures introduced by both the UN and the EU. It is impossible to precisely determine the amount of money laundered annually in the US, and estimates vary from \$100bn,<sup>7</sup> \$300bn<sup>8</sup> to \$500bn.<sup>9</sup> The US is at the forefront of the global fight against money laundering; which is not surprising given the amount of laundered money that is transferred through its banking system. Therefore, it will be interesting to see how one of the most susceptible countries to money laundering has implemented and administered the global money laundering policy, which it played such an integral role in implementing in the 1980s.

### 1.4 Why the United Kingdom?

The UK, like the US, has adopted an aggressive stance towards money laundering which pre-dates the measures introduced by the international community. Nonetheless, its legislative framework has been broadened to encapsulate the legislative measures introduced by the UN and the EU. Its membership of the EU provides an interesting and unique comparative opportunity on how it has implemented these measures in addition to those of the UN. The Financial Services Authority (FSA) reported that the level of laundered money annually in the UK is between £23bn and £57bn.<sup>10</sup> HM

6 T. Doyle, 'Cleaning up anti-money laundering strategies: Current FATF tactics needlessly violate international law', *Houston Journal of International Law*, 2002, 24, 279–313, at 287.

7 General Accounting Office, *Money Laundering: Needed Improvements for Reporting Suspicious Transactions Are Planned*, Washington, DC: General Accounting Office, 1995, p. 2.

8 M. Radomyski, 'What problems has money laundering posed for the law relating to jurisdiction?', *Coventry Law Journal*, 2010, 15(1), 4–12, at 6.

9 General Accounting Office, *Money Laundering: Extent of Money Laundering through Credit Cards Is Unknown*, Washington, DC: General Accounting Office, 2002, p. 1.

10 Financial Services Authority (n/d) *What Is Financial Crime?*. Available at: [/www.fsa.gov.uk/pages/About/What/financial\\_crime/money\\_laundering/faqs/index.shtml](http://www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/faqs/index.shtml) (accessed 12 May 2011).

Treasury offered a more conservative approximation of £10bn.<sup>11</sup> An important question that needs to be considered is what mechanisms are employed by criminal entities to launder the proceeds of crime of their illicit activity? One of the most common mechanisms of money laundering is to abuse the banking system, as graphically illustrated by the illegal transactions of General Sani Abacha. The UK's AML policy is influenced by the need to protect its banking sector and the City of London due to the contributions that each make to the economy. Therefore, it is at greater risk than other financial centres.<sup>12</sup> Indeed, the Department of State took the view that 'the UK plays a leading role in European and world finance and remains attractive to money launderers because of the size, sophistication, and reputation of its financial markets'.<sup>13</sup> The UK's money laundering policy is currently in a state of flux due to the election of its first Coalition Government in nearly a century. This represents both a challenging and rare opportunity to review the implementation of a global AML in the UK.

## 1.5 Why Australia?

Australia is one of the largest financial markets in the Asia-Pacific region, which makes it very susceptible to illicit financial activities. Australia introduced its first AML legislation in the 1980s, which included the Proceeds of Crime Act (1987), the Financial Transaction Reports Act (1988), the National Crime Authority Act (1984) and the Mutual Assistance in Criminal Matters Act (1987). Collectively, these were described as 'one of the leaders in counter money laundering laws',<sup>14</sup> and some aspects were 'groundbreaking'.<sup>15</sup> However, their deficiencies were demonstrated by a dramatic increase in the levels of money laundering activities. For example, according to the National Crime Authority, the extent of money laundered in Australia in 1989 was \$1.8bn.<sup>16</sup> In 1995, Australia's Transaction Reports and Analysis Centre (AUSTRAC) estimated that the figure had increased to \$4.5bn.<sup>17</sup> More recently, Sathye took the view

11 HM Treasury, *The Financial Challenge to Crime and Terrorism*, London: HM Treasury, 2007.

12 Financial Action Task Force, *Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism – United Kingdom*, Paris: Financial Action Task Force, 2007, p. 15.

13 United States Department of State, *Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes*, Washington, DC: United States Department of State, 2010, p. 223.

14 N. Morris-Cotterill, 'Money laundering update 2006', *Compliance Officer Bulletin*, 2006, 34(March), 1–35, at 2.

15 *Ibid.*

16 J. Cotton, 'Australia: taking stock of the financial reporting legislation – Senate Committee review and Government Response', *Journal of Money Laundering Control*, 1997, 1(2), 181–184, at 181.

17 *Ibid.*

that the figure is nearer \$11.5bn per year.<sup>18</sup> The FATF was highly critical of the minimal level of compliance with its 40 Recommendations which resulted in 'both embarrassments for the Australian government and with it international scrutiny on the Australian AML system'.<sup>19</sup> As a result, Australia has been described as one of the easiest places to launder money,<sup>20</sup> and as a money laundering jurisdiction of 'primary concern' by the Department of State.<sup>21</sup> Therefore, it is clear that Australia's initial AML measures were ineffective.<sup>22</sup> The Australian government responded by introducing the Anti-Money Laundering and Counter-Terrorism Financing Act (2006), the Anti-Money Laundering and Counter-Terrorism Financing Rules (2007) and the Anti-Money Laundering and Counter-Terrorism Financing Regulations (2008). Therefore, the introduction of these reforms presents an ideal opportunity to demonstrate the impact of the global AML strategy in Australia.

## 1.6 Why Canada?

Canada is an integral part of the international battle against money laundering. It introduced its first money laundering legislation in the late 1980s and concentrated on record-keeping requirements and the confiscation of the proceeds of criminal activity. Canada merged its money laundering and counter-terrorist financing laws following the terrorist attacks of September 11, 2001 by virtue of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2001). This measure is similar to the approach adopted in Australia and the US, but it can be contrasted with that in the UK, which retains separate legislation for money laundering and terrorist financing. Further amendments were introduced by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2006). Nonetheless, Canada is still susceptible to money laundering because its complicated financial system can easily be manipulated by money launderers, its long border with the US,<sup>23</sup> and the popularity of electronic banking.<sup>24</sup> The Department of State classified Canada as a 'primary money laundering concern' in 1998, but despite the introduction of a more

18 M. Sathye, 'Estimating the cost of compliance of AMLCTF for financial institutions in Australia', *Journal of Financial Crime* (2008), 15(4), 347–363, at 350.

19 C. McNeil, 'The Australian anti-money laundering reform in the international context', *Journal of International Banking Law and Regulation*, 2007, 22(6), 340–344.

20 A. Rosdol, 'Are OFCs leading the fight against money laundering?', *Journal of Money Laundering Control*, 2007, 10(3), 337–351, at 337.

21 United States Department of State above, n. 13.

22 E. Hunter, 'Australia', in M. Simpson, N. Smith and A. Srivastava (eds.) *International Guide to Money Laundering Law and Practice*, Haywards Heath: Bloomsbury Professional, 2010, p. 255.

23 D. Vernon, 'A partnership with evil: Money Laundering, terrorist financing and Canadian financial institutions', *Banking and Finance Law Review*, 2004, 20, 89–136, at 109.

24 L. Douglas, 'Canada', M. Simpson, N. Smith and A. Srivastava (eds.) *International Guide to Money Laundering Law and Practice*, Haywards Heath: Bloomsbury Professional, 2010, p. 445.

stringent AML legislative framework it still considers Canada to be a 'major money laundering country'.<sup>25</sup> The Canadian government estimated that the annual amount of money laundering was between \$5bn and \$17bn.<sup>26</sup> Therefore, an important question that needs to be considered is: what mechanisms are utilised in Canada to launder money? The most popular methods of money laundering are the use of nominees, the use of legitimate businesses and the use of structured payments.<sup>27</sup> The most popular method of money laundering is through its banking system.<sup>28</sup> It is important to note that this point has been made regarding the laundering of the proceeds of crime in the US, UK and Australia, thus providing an interesting comparative study.

## 1.7 Contents overview

This book is divided into seven chapters. The second chapter of the book reviews the international money laundering legislative measures introduced by the UN and EU and the international practices of the FATF to determine the global AML policy. This also includes reviewing the best practices and private sector guidelines including the Basel Committee on Banking Supervision, the Wolfsberg Group, the Offshore Group of Banking Supervisors, the Financial Stability Forum of Offshore Financial Centres, the International Organization of Securities Commissions and the Egmont Group of Financial Intelligence Units. In particular, this chapter highlights the important link between government, law enforcement agencies and the private sector in relation to combating money laundering. The third chapter concentrates on the US, which has a long history of tackling money laundering and how it has implemented the global policy as identified in Chapter 2. The next chapter investigates the level of compatibility demonstrated in the UK, whose AML measures often exceed those demanded by the international community. The fifth chapter deals with Australia, whose position in the Asia-Pacific region provides an interesting set of conclusions and recommendations. The penultimate chapter comments on the impact of global AML policy on the legislative provisions and policies adopted in Canada. The final chapter of this book presents the major findings of this analysis and provides suggestions for further research.

25 United States Department of State above, n. 13.

26 A. Kilgour and B. Bedard, 'Tracking funds: Canada's recent initiatives to combat money laundering and the financing of terrorism', *Journal of International Banking Law*, 2002, 17(5), 117–124, at 117.

27 S. Schneider, 'Money laundering in Canada: A quantitative analysis of Royal Canadian Mounted Police cases', *Journal of Financial Crime*, 2004, 11(3), 282–291, at 287.

28 Vernon above, n. 23, at 108.