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ROBIN BOOTH, SIMON FARRELL QC,
GUY BASTABLE, AND NICHOLAS YEO

Money Laundering Law and Regulation

A Practical Guide

MONEY LAUNDERING LAW AND REGULATION

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ROBIN BOOTH
Partner, BCL Burton Copeland

SIMON FARRELL QC
Barrister, 3 Raymond Buildings

GUY BASTABLE
Partner, BCL Burton Copeland

NICHOLAS YEO
Barrister, 3 Raymond Buildings

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PREFACE

> They have but few laws, and such is their constitution, that they need not many. They do very much condemn other nations, whose laws, together with the commentaries on them, swell up to so many volumes; for they think it an unreasonable thing to oblige men to obey a body of laws, that are both of such a bulk, and so dark, that they cannot be read or understood by every one of the subjects.
>
> *Utopia by Sir Thomas More, 1516 (in the translation by Bishop Gilbert Burnet).*

The Proceeds of Crime Act 2002 consists mainly of provisions for the recovery of the proceeds of crime, measures aimed at stripping criminals of their ill-gotten gains. Most of the books on proceeds of crime reflect this emphasis: they deal primarily with restraint and confiscation in criminal proceedings and with civil recovery of criminal assets.

This book has a different emphasis and is more concerned with the activity of money laundering and the law intended to combat money laundering. It deals with the three serious and widely defined criminal offences of money laundering and with the considerable impact of these offences (whose mental element is, in practice, no more than suspicion) on ordinary law-abiding citizens. The money laundering offence under the Terrorism Act 2000 and the other terrorist property offences are also covered, both as substantive criminal offences and in the context of the disclosure provisions that are broadly equivalent to those in the Proceeds of Crime Act.

New or greatly extended powers of investigation and widely drawn offences, together with a much more proactive approach to tackling crime through the suspected proceeds of crime, have enormously increased the scale and frequency with which law enforcement activity impacts on individuals and businesses innocent of any criminal activity or intention. Any person carrying out a financial or property transaction, whether in a personal capacity or by way of business or professional services, may come to suspect that the property in question is criminal property. From the time that the suspicion arises, that person may well be committing an offence of money laundering and may need to make a consent report in order to escape from criminal liability.

The book also deals with the direct impact of current anti-money laundering measures on the many people who work in banks and financial services or in other businesses and professions now regulated for money laundering purposes and who are, therefore, subject to the regulatory requirements and restrictions intended to prevent and detect money laundering.

Accordingly, this book aims to provide detailed treatment of the law and regulation relating to money laundering: the criminal offences of money laundering, the disclosure regime and related disclosure offences, and the customer due diligence and other obligations created by the Money Laundering Regulations 2007. It does not cover the law relating to the recovery of the proceeds of crime through confiscation, civil asset recovery and other means such as taxation. It does, however, also deal with cash declaration and with the seizure, detention and forfeiture of cash, for the reasons noted below. The final chapter of the book, through a detailed scenario and commentary, considers how the new anti-money laundering law works out in practice.

A secondary purpose of the book is to cover those aspects of anti-money laundering law which may, at any time, suddenly and adversely affect companies and individuals (mainly, but not exclusively, those in the regulated sector), when they are carrying on their ordinary business, e.g. through the action of a bank in effectively freezing a bank account after making a consent report or through the exercise by a police or customs officer or border agency officer of the power to seize and detain cash. For this reason, cash seizure powers are included in the book and restraint orders are dealt with in the context of the scenario in the final chapter.

Strictly speaking, the book deals with the law of England and Wales, but the criminal law and other provisions in Part 7 of the Proceeds of Crime Act 2002 apply throughout the United Kingdom. The Terrorism Act 2000 (insofar as it is relevant to the subject matter of this book—mainly Part III of the Act) and the Money Laundering Regulations 2007 also apply throughout the United Kingdom. We have tried to state the law as at 1 November 2010.

A E Housman, a classical scholar as well as a poet, said that '... accuracy is a duty and not a virtue...'. If that is true with regard to the editing of a Latin author such as Manilius, it is surely no less true of a book that aims to set out the current state of a difficult and contentious area of law. Despite our efforts to comply with the duty of accuracy, however, it is all too possible that some errors may have escaped detection and correction; for any errors that remain, the authors must accept responsibility.

Robin Booth, Simon Farrell QC,
Guy Bastable, Nicholas Yeo
23 November 2010

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Selected sections of Chapter 4 of this work have been taken from the looseleaf *Smith, Owen and Bodnar on Asset Recovery, Criminal Confiscation, and Civil Recovery*, edited by Ian Smith, Tim Owen QC, and Andrew Bodnar (© Oxford University Press, 2007). The Third EU Money Laundering Directive is reproduced by kind permission of the Publications Office of the European Union (© European Union, 1995–2010, source: <http://eur-lex.europa.eu>). The FATF 40 Recommendations and FATF 9 Special Recommendations are reproduced by kind permission of the Financial Action Task Force (© FATF/OECD. All rights reserved). Every effort has been made to contact the copyright holders of the material reproduced here. However, the Publisher will be delighted to rectify any omission upon reprinting of this book.

The authors have good reason to be grateful to the publishers for their forbearance over the long period of gestation. We wish to thank all of the team at Oxford University Press for their help throughout the period from the time of the initial proposal to publication. We would like particularly to thank Faye Judges, whose persistence, patience and encouragement (plus editiorial pressure when needed) eventually brought the project to a conclusion, and Ela Kotkowska whose tact and determination at the production stage turned the finished work into a book.

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BCL Burton Copeland

Robin Booth
Guy Bastable

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Simon Farrell QC
Nicholas Yeo

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LIST OF ABBREVIATIONS

AML	anti-money laundering
ATCSA 2001	Anti-Terrorism, Crime and Security Act 2001
BBA	British Bankers' Association
BIS	Department for Business, Innovation and Skills

[Note that BIS also stands for the Bank for International Settlements - see Appendix 8, Useful Websites.]

CCAB	Consultative Committee of Accountancy Bodies
CCRC	Criminal Cases Review Commission
CDD	customer due diligence
CJA	Criminal Justice Act 1988
CPS	Crown Prosecution Service
CTF	counter terrorist financing
CTED	Counter Terrorism Committee Executive Directorate
DETI	Department of Enterprise, Trade and Investment
DNFBPs	Designated Non-Financial Businesses and Professions
ECHR	European Convention on Human Rights
EEA	European Economic Area
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSA	Financial Services Authority
HMRC	Her Majesty's Revenue and Customs
HMT	Her Majesty's Treasury
HO	Home Office
HVD	high-value dealer
ICAEW	Institute of Chartered Accountants in England and Wales
JMLSG	Joint Money Laundering Steering Group
LPP	legal professional privilege
LEA	law enforcement authority