

## **PREVENTION OF MONEY LAUNDERING**

*The latest modifications to the regulations on the prevention of money laundering impose a wide range of obligations on a higher number of businesses and professionals.*

Money laundering is in no way a new phenomenon, having taken place since the existence of monetary flows in capital markets. What is more recent is the general awareness that these criminal activities, like others, are a blight not just on the financial system but on society as a whole. Most jurisdictions have enacted or are enacting legislation to prevent money laundering and, as is to be expected, these legislative initiatives give rise to different interpretations on what constitutes money laundering and, thereby, what constitutes a criminal act in a particular jurisdiction. Whilst not ceasing to be a technical point this should not divert attention from what is really important: money laundering is illegal and harmful to society.

Money laundering consists of a process by which criminals try to get the income from their illegal activities to appear as if obtained in a licit manner. As an example, income from criminal activities are considered to be those from drug trafficking, from armed gangs, terrorist organisations or groups and from offences against Tax and Social Security laws.

Money launderers aim to carry out whatever apparently licit operations are necessary for the trail of the illicit origin of the money introduced into the commercial circuit to be lost.

With the aim of making this very difficult for such criminals very strict obligations have been established for “regulated persons”, all of them commercial activity operators, these varying in depth depending on how vulnerable their activities are to laundering operations. Accordingly, more complex obligations are established for financial system entities than for professionals or entrepreneurs in sectors such as property or the art and antiques trade.

There have been two directives on the prevention of money laundering issued for the European Union as a whole, Council Directive 1991/308/EEC of 10 June 1991 and European Parliament and Council Directive 2001/97/EC of 4 December 2001.

In Spain, following the guidelines set out by the European Union and the recommendations from FATF (Financial Action Task Force on Money Laundering), created in Paris in July 1989, the European legislation has been brought into the Spanish legal code in Law 19/1993 of 28 December on certain measures for the prevention of money laundering, developed into regulations under Royal Decree 925/1995 of 9 June. These regulations were modified by Law 19/2003 and by Royal Decree 54/2005 of 21 January, in line with the categorisation of the crime of receiving stolen property in Spain’s Criminal Code.

Spain’s legal code, in line with what has been established in the rest of the European Union and in the more than 138 territories that have adopted the FATF recommendations, has established a centralised

body for coordinating the tasks for preventing money laundering, the *SEPBLAC* (*Servicio Ejecutivo de Prevención del Blanqueo de Capitales* – Executive Service for the Prevention of Money Laundering), dependent on the Bank of Spain, along with a list of regulated persons and obligations, infringements and the penalties derived from breaching the regulations. When the regulations first came into effect, the regulated persons were mainly entities operating in the financial system. However, the Law 19/2003, with regulations under Royal Decree 54/2005 of 21 January and which came into effect on 22 April 2005, extended the scope of application of these regulations to regulated persons operating in economic circuits considered to be vulnerable to these illegal practices and who, therefore, are obliged to comply with the strict directives established in law since this Royal Decree came into effect.

This inclusion of new regulated persons was not without criticism from different sectors, questioning whether responsibility was being transferred from the public powers to certain professionals, traders and entrepreneurs who have less resources for handling these new obligations imposed on them by law. What is true, though, is that they already form part of our legal code, they are important for fighting these criminal activities and we have to comply with them.

Currently, the following are the regulated persons:

- Credit institutions
- Insurance companies authorised to execute life insurance
- Societies and value agencies
- Investment societies
- Managing societies of IIC and FP
- Managing societies of client portfolio
- Societies that issue credit cards
- Individuals or legal entities dedicated to managing transactions or money exchange
- Casinos
- Real Estate promotional activities, agencies, commission agents or intermediaries involved in the buy or sale of properties.
- Audit, external accountant or legal advisors
- Notaries, lawyers and attorneys
- Trade of jewellery and precious metal and stones
- Trade of art and antique dealers
- Philately and numismatics
- Transport of money
- International wire transfer
- Lottery commercialization in respect to payment operations

The obligations that have been established require the regulated persons to implement a series of procedures consisting of identifying the person who is a client or, in the case of entities, their legal representatives or ultimate owners. This consists of obtaining evidence including identification documentation, incorporation deeds, powers of attorney, organisation charts, corporate structures, etc., all aimed at getting the regulated person to know its client, identify it perfectly, know its business and to have no doubts as to the licit origin of its economic resources.

The analysis that has necessarily to result from the application of the procedures is aimed at helping the regulated person to identify and, where applicable, report operations suspected as being money laundering by reason of their origin, nature, complexity or lack of apparent economic or licit purpose. Depending on their size, the regulated persons are to have as internal control and notification body either the owner of the business, in the case of regulated entities with fewer than 25 employees, or an ad hoc created body for larger regulated persons, those with more than 25 employees, to be headed by the representative before the SEPBLAC and who is to be responsible for all communications with that body.

Finally, the regulated persons are under the obligation to train all their personnel in the area of preventing money laundering and to submit their procedures and internal bodies to an annual external review. In the case of regulated persons under the special regime this requirement may consist of one annual internal review and a triennial external review.

Our firm has been advising clients in various sectors on prevention of money laundering matters, developing the procedures and drawing up the manuals for their application, as well as developing and giving training courses to personnel and performing the external audits that have to be entrusted to experts in the field.