



## LEGAL BULLETIN



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### Money Laundering in the Construction and Engineering Industry

by  
Kevin Roberts, Head of Legal Services (non-practising solicitor)

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The Construction and Engineering Industry is as vulnerable to money laundering as any other. Any individual or company is at risk of either being defrauded or becoming unwittingly involved in fraudulent activity in the form of illegitimate payment arrangements and VAT evasion. Recent changes to the law mean that the consequences for individuals and companies caught up in fraudulent activity, whether wittingly or not, are now more serious and far reaching than ever before.

All those involved in the Construction and Engineering Industry, including main contractors, sub-contractors and professionals, should be familiar with legislation that has been introduced over the last couple of years to combat money laundering. The Proceeds of Crime Act 2002 came into force in February 2003, the Money Laundering Regulations 2003 in March last year and the Serious Organised Crime and Police Act 2005 earlier this year.

There is a common misconception in the Construction and Engineering Industry that this legislation was introduced to tackle the activities of drug cartels and those involved in organised crime and that money laundering is limited to cash transactions. This is not the case. The definition of money laundering is wide and involves obscuring the origins of illegally obtained money in such a way that it has the appearance of having come from an entirely legitimate source. It is a crime to:

- Conceal, disguise, convert or transfer criminal property;
- Enter into or become involved in an arrangement which you know or suspect would make it easier for another person to acquire, retain, use or control criminal property; and
- Acquire, use or possess criminal property

Many of the transactions and activities that occasionally occur on construction and engineering projects will fall within the definition of “criminal conduct”, including cash-in-hand payments and VAT evasion, the payment of “sweeteners” and deliberate over or under charging. The proceeds or the money saved from these transactions and activities will be “criminal property” for the purposes of the money laundering legislation.

So what are the penalties under the money laundering legislation? An individual convicted of having conducted or been complicit in criminal conduct cannot hide behind the corporate veil of his company and will face up to 14 years in prison and/or a large fine. A conviction will also lead to confiscation proceedings which will involve a financial investigation into the previous six years of trading. In some circumstances this may involve the application of statutory assumptions that the gross profit of the company and any assets held by the individual or company represent the proceeds of crime which is then liable to be confiscated, unless the company can prove the legitimacy of every transaction.

Birmingham **Leeds** London **Nottingham** Purley **Milton Keynes**  
Email: kevin.roberts@haleys-ltd.com: Website: [www.haleys-ltd.com](http://www.haleys-ltd.com)

If you, or any of your employees, suspect money laundering but do nothing about it, you and/or they face the risk of being prosecuted. This is because any individual will be guilty of an offence if he or she suspects that any proposed transaction or arrangement will or is likely to lead to the acquisition, retention, use or control of criminal property by or on behalf of another person but they fail to report that proposed transaction or arrangement to the authorities.

So what should you do, for example, if you are asked by an employer or a main contractor to accept payment of monthly valuations or certificates partly or entirely in cash and/or you are offered cash in advance to pay for materials in your name? In the vast majority of cases, there will be an entirely innocent and legitimate explanation for such conduct but it might start to arouse suspicions.

You should either report your suspicions to the police, which is known under the Proceeds of Crimes Act 2002 as an "authorised disclosure". This will involve you contacting the National Criminal Intelligence Service at [www.ncis.gov.uk](http://www.ncis.gov.uk) to ask for their consent to the proposed transaction or arrangement. Consent can usually be obtained from NCIS within 7 days and in the meantime, you must not inform or "tip off" the other person or company you have reported to NCIS that a report has been made, which is itself criminal conduct for the purposes of the money laundering legislation.

**END**

Haleys are grateful to **Richard Nelson Business Defence Solicitors** for their kind assistance in the preparation of this Bulletin.

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**Kevin Roberts – Head of Legal Services (non-practising solicitor)/Associate Director**

**Peter Graham –Regional Director**

15 Wheeler Gate, Nottingham, NG1 2NA  
Tel: 0845 367 8820; Fax: 0845 367 8821