Countering money laundering

Money laundering has grown in recent years and is perceived to be a potential threat to the integrity of the world's banking system. This article[1] explains what money laundering is; why it should be countered; and describes various steps that have been taken in the United Kingdom and internationally to tackle the problem.

What is money laundering and how can it be countered?

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If done successfully, it also allows them to maintain control over those proceeds, and ultimately to provide a legitimate cover for their source of income. The full scale of money laundering is not known, but it is now believed to be large. One estimate (made by the Financial Action Task Force on Money Laundering—see page 422) suggests that as much as US$85 billion per year could be available for laundering from the proceeds of the sales of drugs alone in the United States and Europe.

There is no one method of laundering money. Methods can range from the purchase and resale of a luxury item (eg a car or jewellery) to passing money through a complex international web of legitimate businesses and 'shell' companies. Initially, however, in the case of drug trafficking and some other serious crimes, such as robbery, the proceeds usually take the form of cash: street level purchases of drugs are almost always made with cash.

Because the possession of large volumes of cash could arouse suspicions that they have an illegal source, criminals often physically move the cash from where it was acquired and gather it in locations where it is easier to disguise or misrepresent its source. Disguising the cash is done by changing it into another form of asset. The money launderer can try to do this in the country where the proceeds were acquired by depositing the cash in an account at a deposit-taking financial institution, by purchasing some other form of financial asset or by purchasing goods. Alternatively, the launderer can try to transport the cash to another country and dispose of it there.

If this 'placement' hurdle is overcome (see the box on page 420), the proceeds are no longer in the form of cash. The laundering process then continues through the 'layering' stage—the initial attempts at concealing the criminal source of the proceeds—towards the 'integration' stage where the funds are integrated into the legitimate financial system and assimilated with all other assets in the system.

The purpose of 'layering' is to separate the illicit proceeds from their criminal source by creating complex layers of financial transactions so as to disguise the audit trail. Provided cash placement is achieved successfully, 'layering' can make it extremely difficult for the law enforcement authorities to trace illegal proceeds. Electronic funds transfer systems help the layering process by enabling assets to be switched rapidly between accounts in different names and jurisdictions. Experience shows that, unless an audit trail can be established, it is exceptionally difficult to distinguish between legitimate and illegitimate wealth once assets have changed form and/or location a number of times. When this stage is reached the money launderer has achieved his objective and 'integration'—the provision of apparent legitimacy to criminally-derived wealth—has been achieved. Chart 1 provides examples of some of the routes used by launderers.

Efforts to combat money laundering largely focus on the points in the process where the launderer is most vulnerable to detection. Because of the money launderer's need to get rid of cash, deposit-taking institutions are particularly vulnerable to being used. Hence, many of the efforts to combat money laundering have concentrated on the procedures adopted by deposit-takers. In particular, during the last few years many countries have placed increasing emphasis on the importance of deposit-taking institutions 'knowing their customers'. In the United Kingdom, laundering the proceeds of drug trafficking or facilitating the retention or control of terrorist funds are criminal offences (see the Annex). The penalties attached to these offences have provided financial institutions with a powerful incentive to report suspicious transactions to the Financial Unit of the National Criminal Intelligence Service (formerly the National Drugs Intelligence Unit). Some other countries, including the United States and Australia, in addition to requiring reports to be made of suspicious transactions, also require all cash transactions in excess of a minimum threshold (normally $10,000 in the United States) to be reported.

The United Kingdom's system of reporting suspicious transactions is not limited to cash. Because the reporting of suspicions can also provide useful information on the

(1) Prepared by John Drage in the Bank's Banking Division.

'layering' stage of the money laundering process, the keeping of comprehensive transaction records by financial organisations is also an important weapon in efforts to counter money laundering. These are essential for establishing the audit trail. They can also provide useful information on the people and organisations involved in laundering schemes. Experience has shown that effective 'know your customer' and 'reporting suspicious transactions' policies require a considerable effort to be put into staff awareness and training programmes.

In addition to the placement of cash and the tracing of transfers within and from the financial system, a third point of vulnerability is cross-border flows of cash. Again some countries have requirements that all large international movements of currency—in the case of the United States in excess of $10,000—must be reported. In the United Kingdom, legislation has been introduced(1) to enable police and customs officers to seize cash being brought into or out of the United Kingdom, where they have reason to believe that the cash could be the proceeds of drug trafficking. Further details are provided in the Annex.

Efforts to counter money laundering in the UK financial sector

The fact that deposit-taking institutions are particularly vulnerable to use by money launderers means that the Bank, as the supervisor of institutions authorised under the Banking Act 1987, has maintained a keen interest in measures aimed at countering money laundering. Threats to the interests of depositors may arise from banks exposing themselves to direct losses from fraud—perhaps through failure to identify undesirable customers/counterparties—while even inadvertent association with criminals can result in adverse publicity that undermines public confidence in banks, and hence their stability.

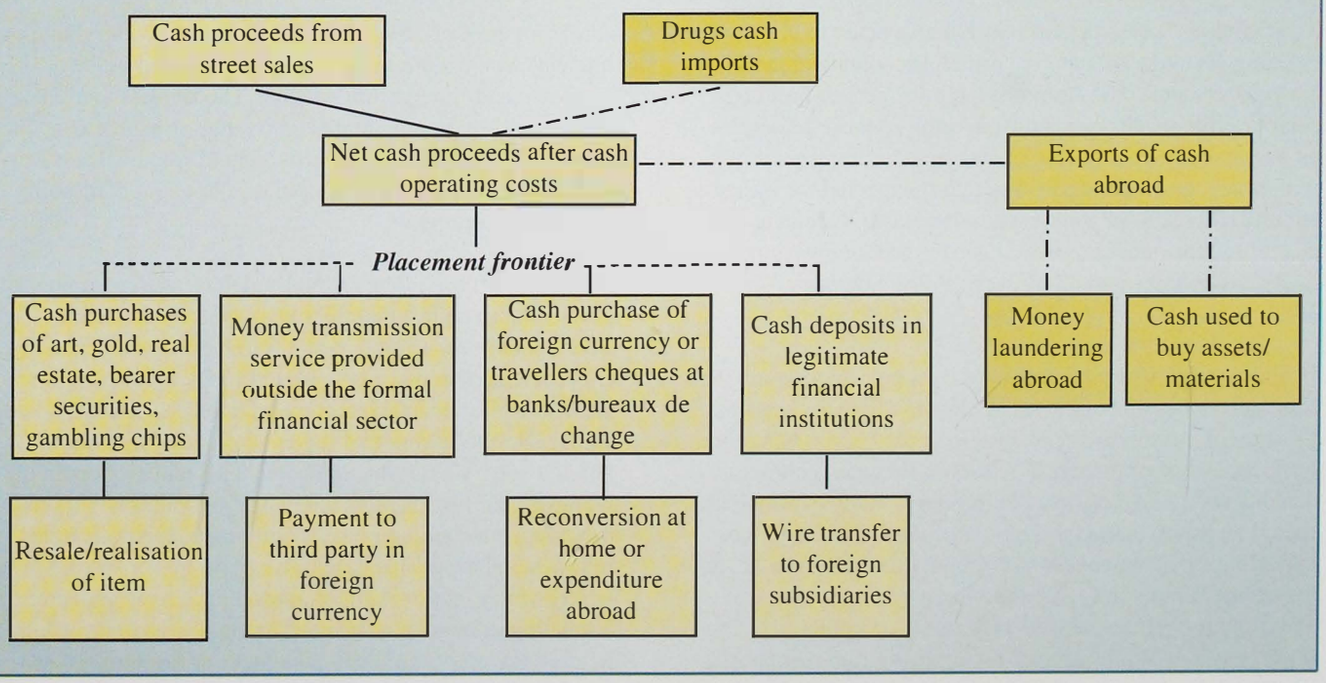
Thus, following agreement of the Basle Statement of Principles on Money Laundering (see page 421), the Bank announced in January 1989 that it expected banks to be able to demonstrate that they met the standards of best practice as set out in the Statement. In November 1989, the Bank reminded banks of these provisions and took the opportunity to make clear the statutory gateways for suspicion disclosure that then applied. That message also emphasised:

(i) that adherence to the Basle Statement of Principles would be tested as part of the regular reports on banks' systems undertaken under Section 39 of the Banking Act; and

(ii) that failure to install or maintain adequate systems relating to money laundering would be taken into account in considering whether the Banking Act's minimum criteria for authorisation continued to be met.

Set against that background, it was consistent with the Bank's response to subsequent initiatives to counter money laundering that the issuing of the Joint Money Laundering Group's Guidance Notes (described later in this section) was taken as the opportunity to advise UK banks of their supervisor's endorsement of that guidance and to point out that assessment of relevant systems and controls would be judged against meeting *at least* the standard set out in the Guidance Notes.

Chart 1
Some methods of laundering the proceeds of drug trafficking



(1) Part III of the Criminal Justice (International Co-operation) Act 1990.

Stages in the money laundering process

The Financial Action Task Force has developed the following framework to describe the money laundering process.

Common factors

While criminals use a wide range of methods in attempting to launder the proceeds of their criminal activities there are normally three common factors in laundering operations:

- launderers need to conceal the true ownership and origin of the proceeds;
- launderers need to maintain control of the proceeds;
- launderers need to change the form of the proceeds in order to shrink the huge volume of cash generated by the initial criminal activity.

Stages in the laundering process

The laundering process, regardless of the degree of complexity, is accomplished in three basic steps:

Placement stage—where cash derived directly from criminal activity (eg from sales of drugs) is first placed either in a financial institution or used to purchase an asset.

Layering stage—the stage at which there is the first attempt at concealment or disguise of the source of the ownership of the funds.

Integration stage—the stage at which the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system.

The three basic steps may occur as separate and distinct phases; they may occur simultaneously; or more commonly they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisation. The table below provides some typical examples.

Placement stage	Layering stage	Integration stage
Cash paid into bank (sometimes with staff complicity or mixed with proceeds of legitimate business).	Wire transfers abroad (often using shell companies or funds disguised as proceeds of legitimate business).	False loan repayments or forged invoices used as cover for laundered money.
Cash exported.	Cash deposited in overseas banking system.	Complex web of transfers (both domestic and international) makes tracing original source of funds virtually impossible.
Cash used to buy high value goods, property or business assets.	Resale of goods/assets.	Income from property or legitimate business assets appears 'clean'.

Choke points

In the course of examining the laundering process the Financial Action Task Force identified certain 'choke' points in the laundering process. These were defined as those points the launderer finds difficult to avoid and where he is more vulnerable to detection. The crucial choke points were identified as:

- entry of cash into the financial system;
- cross-border flows of cash; and
- transfers within and from the financial system.

The Building Societies Commission also acted to ensure that building societies adopted the principles contained in the Basle Statement. The Commission informed all building societies that it considered the adoption of these principles as being a necessary part of managing a building society with prudence and integrity and that it expected the systems necessary to achieve adherence to the Basle Statement to be covered in the annual reports made to the Commission under Sections 71 and 82 of the Building Societies Act 1986.

In addition to its responsibility for banking supervision, the Bank also has a more general interest in the maintenance of the integrity of the financial system in the United Kingdom. London, as one of the world's leading financial centres, offers a wide range of financial products many of which are traded on liquid markets. These attributes are likely to be appealing to the managers of criminal proceeds. Hence, the services available in London are likely to attract the attention of overseas as well as domestic criminal organisations. While deposit-taking institutions are most likely to be vulnerable at the 'placement' stage of the money laundering process, the providers of a much wider range of financial services are vulnerable to being used in the 'layering' and 'integration' stages. The Bank is anxious to ensure that London maintains its reputation as a 'clean' financial centre and that the providers of financial services in the United Kingdom adopt policies to avoid their being exploited by criminals.

In pursuit of these interests the Bank has taken a number of initiatives. In addition to the role played by the banking supervisors in ensuring that authorised banks have policies and procedures in place to counter money laundering, the Bank's Wholesale Markets Supervision Division has taken similar steps to ensure that the wide range of institutions which it supervises—the market-makers and brokers in the wholesale sterling, foreign exchange and bullion markets—also adopt appropriate policies and procedures to counter money laundering. The Bank also plays an active role in a variety of international and domestic initiatives aimed at combating money laundering. The Bank was involved in the drawing up of the Basle Statement of Principles (see page opposite) and more recently has participated, as part of

the UK delegation, in the International Financial Action Task Force (see page 422).

On the domestic front, in addition to carrying out its supervisory responsibilities, the Bank seeks to ensure that the potential impact on the day-to-day workings of financial organisations is fully taken into account when anti-money laundering legislation is being developed. As awareness of money laundering grew internationally, the Bank encouraged the establishment in the United Kingdom of the Joint Money Laundering Group—a forum with participants drawn from both the law enforcement and financial communities. The purpose of this Group was to develop Guidance Notes to raise the awareness in financial institutions of the obligations placed on them by the existing provisions in UK legislation on money laundering (see the Annex) and to offer more detailed guidance on how financial institutions could develop and implement anti-money laundering policies and procedures.

The British Bankers' Association, the Building Societies Association, the then National Drugs Intelligence Unit (now the National Criminal Intelligence Service Financial Unit), the Police and HM Customs & Excise all readily agreed to participate in the Group which is chaired by the Bank. The membership was subsequently extended to include representatives from the life insurance and investment services industries. The Group has produced three sets of Guidance Notes. Drawing heavily on the procedures already developed by some of the major banks and on the work of the Financial Action Task Force, these notes flesh out the Basle Statement of Principles and highlight the requirements imposed on financial institutions in the United Kingdom by existing legislation. The first set of Guidance Notes—for Banks and Building Societies—was issued in December 1990 and versions covering Insurance and Investment Business followed in July and September of 1991 respectively.[1] As the title indicates, the objective of the Notes is to provide guidance to financial institutions in formulating policies and systems which are appropriate to their own particular circumstances. They are not in themselves intended to be a comprehensive package of measures.

All three versions follow a common format and cover policies and procedures; verification of identity; record keeping; recognition and reporting of suspicious transactions to the investigatory authorities; and education and training. They also include descriptions of actual money laundering schemes that have been uncovered, examples of suspicious transactions and copies of the standard National Criminal Intelligence Service reporting format and feedback reports. The detailed content of each version, however, varies to fit the different working practices of the types of business covered by each set of Notes. The British Bankers' Association has produced a comprehensive training package (including a video tape) to supplement the Guidance Notes for banks and building societies.

International initiatives to counter money laundering

The increasing integration of the world's financial system, as technology has improved and barriers to the free movement of capital have been reduced, has considerably complicated the task of national law enforcement investigators in tracing and confiscating criminally-derived proceeds. Once money launderers have been able to place their criminally-derived cash proceeds into the financial system, they can move their assets rapidly between national jurisdictions. Because of this, the need for close international co-operation in countering money laundering has been recognised by many governments, and a number of agreements have been reached in international fora.

On the legal front a significant agreement is the *December 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* [2] (the Vienna Convention). It commits all countries that ratify it to introducing a comprehensive criminal law against laundering the proceeds of drug trafficking and to introducing measures to identify, trace, and freeze or seize the proceeds of drug trafficking. To date over fifty countries, including the United Kingdom, have ratified the Vienna Convention. Other international conventions with particular relevance to countering money laundering are the *European Convention on Mutual Legal Assistance* (ratified by the United Kingdom in 1991) and the recent *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ratified by the United Kingdom—the first country to do so—in September of this year).

On the financial front, the Committee on Banking Regulations and Supervisory Practices[3] issued the *Basle Statement of Principles on the prevention of criminal use of the banking system for the purpose of money laundering* in December 1988. This seeks to deny use of the banking system to those involved in money laundering by application of the following principles:

- *Know your customer:* banks should make reasonable efforts to determine the customer's true identity, and have effective procedures for verifying the bona fides of new customers (whether on the asset or liability side of the balance sheet).

- *Compliance with laws:* bank management should ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to and that a service is not provided where there is good reason to suppose that transactions are associated with laundering activities.

(1) All three versions are obtainable from the British Bankers' Association, 10 Lombard Street, London EC3V 9EL at a cost of £1 per copy.
(2) Narcotic drugs are derived from natural plants (eg coca bush, opium poppy, or cannabis plant) while psychotropic substances are based on manufactured chemicals.
(3) The Committee comprises representatives of the central banks and supervisory authorities of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States.

- *Co-operation with law enforcement agencies*: within any constraints imposed by rules relating to customer confidentiality, banks should co-operate fully with national law enforcement agencies including, where there are reasonable grounds for suspecting money laundering, taking appropriate measures which are consistent with the law.

- *Policies, procedures and training:* all banks should formally adopt policies consistent with the principles set out in the Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement.

More recently, the framework established by the Vienna Convention and the Basle Statement of Principles has been developed by the *Financial Action Task Force* (FATF). The FATF is now the main international forum focusing on combating money laundering. The Task Force was convened by the Heads of State or Government of the seven major industrial nations and the President of the Commission of the European Communities in July 1989. The FATF was asked to 'assess the results of the co-operation already undertaken to prevent the utilisation of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventative efforts'. In its first year of operation the membership was fifteen countries plus the European Commission. Its first report, published in April 1990, provided estimates of the scale of proceeds derived from drug trafficking; examined a variety of money laundering techniques; reviewed existing international agreements and national measures against money laundering; and contained forty detailed recommendations for further action. These covered the improvement of national legal systems, the procedures followed by financial institutions and the strengthening of international co-operation. The recommendations are summarised in the box opposite.

The FATF brings together experts from the fields of law enforcement, legal and financial policy making and financial practice and supervision. The membership now includes all OECD countries plus Hong Kong, Singapore, the Gulf Co-operation Council and the European Commission. Its efforts are currently directed at three main tasks:

- the co-ordination and supervision of efforts to encourage non-FATF member countries to adopt and implement the FATF recommendations;

- studying and exchanging information on the development of money laundering methods with a view to making recommendations as necessary to counter them;

- a system of self-reporting and mutual evaluation on the adoption and implementation of FATF recommendations by all members.

All the FATF members have agreed to participate in an annual self-evaluation process to measure their progress in implementing the FATF's forty recommendations and also to implement a process of mutual evaluation. An agreement was reached that each member would normally be evaluated by its peers on the progress it had made in implementing the forty recommendations three years after endorsing them.

The United Kingdom along with the other fourteen original members of the Task Force endorsed the recommendations in the Spring of 1990 and under the agreed rules would have been due for mutual evaluation in 1993. However, in the interests of getting the mutual evaluation process under way, the United Kingdom along with France, Sweden and Australia volunteered to be evaluated in the first half of 1992. For each evaluation examiners are selected with a blend of legal, financial and law enforcement expertise. The examination process involves the country concerned completing a comprehensive and standardised mutual evaluation questionnaire. This information is supplemented through interviews carried out by the examiners during an on-site visit. The FATF Secretariat then writes a confidential evaluation report reflecting the examiners' assessments.

The purpose of the exercise is to reach a clear and unbiased assessment of the extent to which the country being examined has implemented the FATF recommendations and of the areas in which further efforts may be warranted. The evaluation report itself remains confidential, but an executive summary is included in the FATF's published annual report.(1) In its evaluation of the United Kingdom the FATF noted that an effective system to combat money laundering had been developed based on close co-operation between the authorities and financial institutions. The published summary of the evaluation report on the United Kingdom is reproduced in the box on page 424.

After the completion of the first FATF report, the EC Commission drew on several of its recommendations to prepare the draft of a Directive *'on prevention of the use of the financial system for the purpose of money laundering'*. The final text of the Directive was approved by the Council of Ministers on 10 June 1991. The Treasury issued a consultation paper in May this year outlining how the UK Government planned to implement the Directive and seeking views from interested parties.(2) It noted that, while UK law and practice is to a considerable extent already in line with

(1) Copies are available from the FATF Secretariat, OECD, 2 rue Andre-Pascal, 75775 Paris, Cedex 16, France.
(2) While the deadline for offering comments on HM Treasury's Consultative paper has passed, copies of the paper are still available from Room 42/G HM Treasury, Parliament Street, London, SW1P 3AG.

Summary of the principal recommendations of the Financial Action Task Force

- Each country should take steps to implement fully the Vienna Convention and proceed to ratify it.
- Financial secrecy laws should be structured so as not to inhibit the detection of money laundering.
- Each country should as a minimum make laundering the proceeds of drug trafficking a criminal offence and organisations—not only their employees—should be subject to criminal liability.
- Measures to be introduced to facilitate the tracing, freezing, seizing and ultimately the confiscation of assets derived from drug trafficking or assets of corresponding value.
- Recommendations to be implemented on as broad a front as is practicably possible and not only in respect of banks.
- Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names. Identity to be verified and recorded.
- Transaction records should be maintained for at least five years to enable financial institutions to comply swiftly with information requests from the authorities and be sufficient to be used as evidence.
- Special attention to be paid to transactions which have no apparent economic or visible lawful purpose.
- Legal framework required to enable the reporting of suspicious transactions to the authorities and to provide protection from suit for breach of confidentiality.
- No tipping off of customers that a report has been/is being made to the authorities.
- Financial institutions to develop internal policies, procedures and controls including designation of a compliance officer and adequate screening procedures when hiring employees; an appropriate training programme; and an audit function to test the system.
- Give special attention to relationships with counterparties in countries which have not adopted sufficient measures to counter money laundering.
- To the extent that local laws permit financial institutions to ensure that measures are also adopted by branches and subsidiaries located abroad.
- Feasibility of measures to detect or monitor cash at external borders to be studied.
- Consideration to be given to the feasibility and utility of requiring all currency transactions above a minimum threshold to be reported.
- Non-cash payment methods to be encouraged.
- Financial Supervisors to ensure that institutions they supervise have adequate programmes to guard against money laundering.
- Financial Supervisors to co-operate with and offer expertise to enforcement authorities.
- Authorities to be designated to ensure that non-financial organisations that deal with large amounts of cash should also adopt policies to counter money laundering.
- Guidelines to be developed to assist financial institutions in recognising suspicious transactions.
- Measures should be taken to guard against the acquisition or control of financial institutions by criminals or their associates.
- Studies of cash flow patterns to be conducted.
- Collection and dissemination of information on money laundering techniques.
- Improved arrangements for cross-border sharing of information on suspicious transactions.
- Different national requirements should not be allowed to offset the ability or willingness of countries to provide each other with mutual legal assistance.
- Need for a network of bilateral and multilateral agreements to achieve the widest possible range of mutual assistance.
- Co-operative investigations spanning national jurisdictions to be encouraged.
- Expeditious action to be taken in response to requests by other countries to identify, freeze, seize and confiscate money laundering proceeds, or property of corresponding value.
- Procedures to be put in place to enable known money launderers to be extradited.

Executive summary of the mutual evaluation report on the United Kingdom's efforts to combat money laundering included in the FATF's 1991–92 annual report

As one of the world's most important and sophisticated financial centres, the United Kingdom is an obvious target for money launderers. It has a vital interest in maintaining a 'clean' reputation and therefore established at a very early state an effective legal and institutional system to combat money laundering.

Drug money laundering was made a criminal offence under legislation enacted in 1986 which also provided for the confiscation of the proceeds of drug crimes. This has been built on by further legislation. The UN Convention was ratified on 28 June 1991. The basic approach adopted by the United Kingdom is to concentrate resources on identifying and pursuing cases involving suspicious activities rather than the routine reporting of financial transactions. A key element of the United Kingdom system is the good co-operation both among the various enforcement authorities and between them and the financial institutions and supervisors, with a central clearing house dealing with disclosures of suspicious transactions from financial institutions. This provides an efficient and cost effective system within the available enforcement resources.

The United Kingdom also places great emphasis on developing awareness of money laundering activity through training and education. This has been underpinned by the publication of money laundering guidance notes for various financial sectors, drawn up jointly by the relevant trade associations, the Central Bank and the enforcement authorities.

The United Kingdom authorities recognise that, as money laundering techniques evolve and further experience is gained, amendments to the existing legal framework may be necessary. Currently preparatory work is being carried out to implement such of the provision of the EC Money Laundering Directive as are not already reflected in United Kingdom law. This will enable the authorities to apply basic customer identification and record keeping requirements to bureaux de change, which are increasingly being used for money laundering purposes but are not currently subject to regulation. It was suggested that the United Kingdom should also consider extending the scope of the money laundering offence to cover the proceeds of all serious crimes.

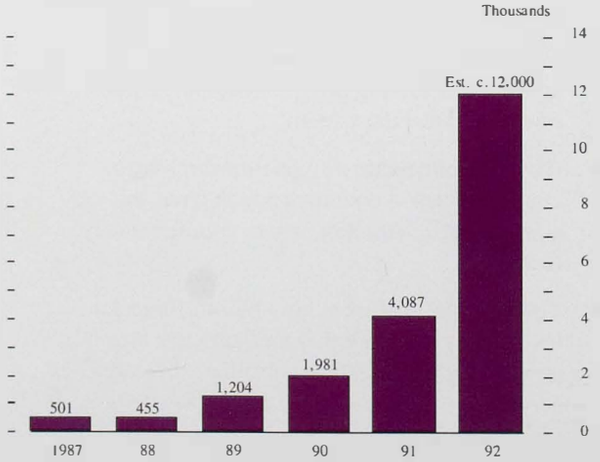
The FATF concluded that the United Kingdom continues to demonstrate a strong commitment to developing and maintaining an effective comprehensive system to combat money laundering. Its approach to the problem of laundering, based on close co-operation between the authorities and financial institutions, could serve as a model for other countries.

the provisions of the Directive, full implementation will entail an elaboration and extension of existing law, for which a mixture of primary and secondary legislation will be required.

Results in the United Kingdom

The work of the Joint Money Laundering Group—reinforced by the activities of the supervisory authorities—has led to a significant rise in the number of suspicion based reports made to the Financial Unit at the National Criminal Intelligence Service (see Chart 2). In 1989, the number of disclosures made nearly tripled compared with 1988. This probably reflected the publicity given by the Bank and the Building Societies Commission to the Basle Statement of Principles, together with the simultaneous efforts of the National Drugs Intelligence Unit (the fore-runner of the National Criminal Intelligence Service Financial Unit) to raise awareness among the financial community of the obligations placed upon them by the Drug Trafficking Offences Act and the Prevention of Terrorism (Temporary Provisions) Act. The next significant increase, to over 4,000 disclosures in 1991 compared with just under 2,000 in 1990, probably reflected the impact of the Guidance Notes. The further large increase this year in the number of disclosures being received by the National Criminal Intelligence Service is almost certainly because the British Bankers' Association training video is now being widely used in bank and building society branches throughout the country.

Chart 2
Number of suspicion based reports made to NCIS (calendar years)



The National Criminal Intelligence Service estimates that 5% of the disclosures received from financial institutions generate new cases and convictions that would not have occurred without the disclosure. Of these, approximately half do not involve the proceeds of drug trafficking or the funds of terrorist organisations but relate to the proceeds of other criminal activity (eg fraud, burglary or robbery).(1) A further 10% to 15% of disclosures add to pre-existing intelligence and 30% prove, after investigation, to be unconnected to crime. Although the enforcement authorities are unable to reach any conclusion as to whether or not the remaining 50% of the disclosures they receive are related to crime, their experience is that reports that are not of immediate interest are sometimes subsequently found to have links to new reports and are helpful in adding to intelligence on particular cases.

While disclosures made by financial institutions have played an important role in the development of cases against people responsible for the underlying criminal activity, only twenty-seven successful money laundering prosecutions have been brought under Section 24 of the Drug Trafficking Offences Act. Of these only two involved personnel from financial institutions. The Section 24 offence was formulated—using the subjective test of knowledge or suspicion—so as to avoid putting at risk counter staff and others who might inadvertently handle the proceeds of drug trafficking in the course of their ordinary duties, while at the same time trying to ensure that the prosecution does not have to surmount an impossible barrier to secure the conviction of those who launder drugs money with a clear idea of what they are doing.

Considerable progress has also been made in the field of mutual legal co-operation with overseas countries. Since the passing of the Drug Trafficking Offences Act in 1986, bilateral mutual legal assistance agreements or arrangements have been concluded with twenty-six countries, and so far 124 requests have been handled by the Central Authority in the Home Office (34 outgoing and 98 incoming). In the short period since the power to detain cash being brought into or out of the United Kingdom was introduced, over £500,000 has been detained in nineteen separate seizures.

The way forward

Much has been achieved in the past few years, both domestically and internationally, in developing measures to counter criminal abuse of the financial system. But there are no grounds for complacency. In the United Kingdom the next step will be the introduction of legislation to bring the EC Money Laundering Directive fully into effect (see page 422). The Criminal Justice Bill introduced into the House of Lords on 23 October, among other things, extends the scope of offences in connection with laundering the proceeds of drug trafficking to meet the requirements of the EC Directive. (The Bill also extends the range of crimes to which a money laundering offence attaches to all indictable crime and includes a number of measures to improve the working of the asset confiscation arrangements.) The Government plans to implement the remaining provisions of the Directive through secondary legislation. Updating the Guidance Notes, not only to reflect the forthcoming legislative developments but also to take into account the practical experience financial organisations have acquired from working with them, is another item on the agenda.

On the international stage, the FATF has agreed a programme to step up its mutual evaluation process and has developed an action plan to encourage a greater number of countries to adopt effective measures to counter money laundering. It is also looking at ways of further streamlining mutual legal assistance procedures and will continue to study more sophisticated laundering techniques with a view to making recommendations about how to counter them. One subject being looked at by the FATF (which is of particular interest to the Bank) is the use made by criminals of electronic payment and message systems.

A particular concern has been the number of electronic payment instructions that fail to include names and addresses of both senders and beneficiaries when these are not financial organisations.(2) SWIFT (the Society for Worldwide Interbank Financial Telecommunications) has responded to these concerns by broadcasting a message to all users of its system asking them to include these details in the messages they send. SWIFT is also co-operating with the FATF in studying what else might be done to improve the audit trail left by electronic payment and message instructions.

The increasing efficiency and integration of the world's financial system creates an environment that organised criminals are only too ready to exploit. Hence the need for measures to counter use of the financial system by criminals to be closely co-ordinated on an international basis. Nevertheless, crime—and drug trafficking in particular—will inevitably continue to generate large amounts of financial proceeds and criminals will have a continuing need to find ways of disguising the source of their income. However, if the increased emphasis given in recent years to identifying the proceeds of crime and to deterring criminals from using the financial system proves to be effective, then money laundering will become a more risky activity. The Bank intends to continue playing an active role in widening the arrangements—both in the United Kingdom and internationally—to deter and detect money laundering.

(1) Section 98 of the Criminal Justice Act 1988 affords protection from suit where disclosure is made of a suspicion or belief that property derives from, or is in connection with, an indictable offence, other than a drug trafficking offence.

(2) The issue is discussed in some detail in a paper the Bank submitted to the Treasury and Civil Service Committee. See House of Commons Treasury and Civil Service Committee First Special Report Session 1992–93 Banking Supervision and BCCI: the response of the Bank of England to the second and fourth reports from the Committee in session 1991–92.

Annex

The United Kingdom's existing legislative framework to counter money laundering

The first law in the United Kingdom explicitly to introduce an offence of money laundering was the *Drug Trafficking Offences Act 1986* (DTOA).[1] However, the Theft Act 1968 already contained a wide-ranging offence of dishonestly handling stolen goods. In addition, those who launder the proceeds of crime may in some cases commit an offence as accessories, conspirators or aiders and abetters in relation to the crime itself. Section 24 of the DTOA makes it an offence—for which the maximum penalty on conviction is fourteen years' imprisonment—for any person to assist another in disguising the true identity of drug trafficking proceeds. Section 24 further provides that the disclosure of a suspicion that funds or investments are derived from drug trafficking shall not constitute a breach of any obligations of confidentiality. Although disclosure of suspicious transactions is not explicitly mandatory under the Act, disclosure is encouraged by making it a defence to the charge of money laundeing.

The DTOA also contains extensive powers to trace, freeze, seize and confiscate the assets of drug traffickers. The provisions of Section 27 are significant in the money laundering context in that they enable material to be seized by the law enforcement authorities for the purpose of an investigation into drug trafficking 'notwithstanding' any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or 'otherwise'. This provision ensures primarily that banker/customer confidentiality considerations are not allowed to frustrate an investigation into drug trafficking.

Similar provisions to those under the DTOA exist under the *Prevention of Terrorism (Temporary Provisions) Act 1989*. More generally, although the *Criminal Justice Act 1988* does not contain a money laundering offence, nor does it require the disclosure of information to the authorities about crimes which are not reported to be drugs or terrorist related, Section 98 does afford protection from suit by customers for breaches of confidentiality where disclosure is made of a suspicion that property (in its widest sense) derives from, or is in connection with, an indictable offence.[2]

Part I of the *Criminal Justice (International Co-operation) Act 1990* (CJICA) contained the legalisation to enable the United Kingdom to ratify the European Convention on Mutual Legal Assistance. Part II widened the scope of the United Kingdom's provisions against money laundering to bring them fully into line with the definition contained in the Vienna Convention (see page 421), so as to enable the Government to ratify this Convention as well.

Part III of the CJICA is concerned with the import and export of cash (see page 419). It introduced new powers for customs and police officers to seize cash being brought into or out of the United Kingdom, where they have reason to believe that such money represents the proceeds of drug trafficking or is intended to be used in drug trafficking. The power operates in respect of consignments of cash of £10,000 or more. Additionally, the courts are empowered to order the confiscation of such cash, where they are satisfied, on the balance of probabilities, of the alleged link with drug trafficking. These measures overcome the difficulty of customs officers coming across large amounts of cash with no reasonable explanation for their import/export but, at the same time, with no hard evidence of links to drug trafficking, by allowing detention of the cash pending investigation. The measures are also carefully framed so as not to act as an impediment to the free movement of capital.

(1) The DTOA applies to England and Wales. Separate but very similar legal provisions for Scotland and Northern Ireland are contained in the Criminal Justice (Scotland) Act 1987 and the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.
(2) An indictable offence is a common law or statutory offence triable in a Crown Court.