

Section 7: Economic Offenses

Article 134: Counterfeiting Money

Article 134.1: Definition of Offense

1. A person commits the criminal offense of counterfeiting money when he or she:
 - (a) makes counterfeit money;
 - (b) buys, receives, or offers to buy or receive counterfeit money;
 - (c) has in his or her custody or possession counterfeit money;
 - (d) introduces counterfeit money into the state;
 - (e) uses or deals with counterfeit money;
 - (f) sells counterfeit money; or
 - (g) passes or circulates counterfeit money as legal tender or puts it forth upon the market.
2. For the purposes of Article 134, counterfeit money includes:
 - (a) a false coin or false paper money that resembles or is apparently intended to resemble or pass for a current coin or current paper money;
 - (b) a forged banknote or forged blank banknote, whether complete or incomplete;
 - (c) a genuine coin or genuine paper money that is prepared or altered to resemble or pass for a current coin or current paper money of a higher denomination;

- (d) a current coin from which the milling is removed by filing or cutting the edges and on which new milling is made to restore its appearance;
- (e) a coin cased with gold, silver, nickel, or another metal that is intended to resemble or pass for a current gold, silver, nickel, or other metal coin; and
- (f) a coin or a piece of metal or mixed metals that is washed or colored by any means with a wash or material capable of producing the appearance of gold, silver, or another metal and that is intended to resemble or pass for a current gold, silver, or other metal coin.

Commentary

The counterfeiting of money in post-conflict states is often perpetrated. In some cases, this situation has necessitated a total change in the currency used in the state to prevent the use of large quantities of counterfeit money. Article 134 covers the making of both domestic and foreign counterfeit money.

Article 134.2: Penalty

1. The applicable penalty range for the criminal offense of counterfeiting money is one to five years' imprisonment.
2. The applicable penalty range for the criminal offense of counterfeiting money is two to ten years' imprisonment when the counterfeiting is of an amount of high value.
3. The court may impose a fine, as an alternative principal penalty, upon a person convicted of counterfeiting money where the applicable penalty range is one to five years' imprisonment.

Commentary

Paragraph 2: When deciding upon an appropriate penalty range for the criminal offense of counterfeiting money, the drafters thought it was preferable to provide two different ranges, depending on the value of the money counterfeited. Ordinarily, domestic legislation would include a defined amount, above which a person would be liable for a higher penalty range. The drafters of the MCC did not include a defined amount of money to differentiate between the applicable penalty ranges for the criminal offense of counterfeiting money. Instead, the term *high value* was used to differentiate between the applicable penalty ranges. If a state incorporates this provision into its criminal legislation, it should define *high value* in terms of its domestic currency.

Article 135: Money Laundering

Article 135.1: Definition of Offense

1. A person commits the criminal offense of money laundering when he or she:
 - (a) converts or transfers property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property;
 - (b) conceals or disguises the true nature, source, location, disposition, movement, ownership of, or rights with respect to property, knowing that such property is the proceeds of crime; or
 - (c) acquires, possesses, or uses property, knowing at the time of receipt that such property is the proceeds of crime.
2. An offense under Paragraph 1 is also established when a person was reckless or negligent to the origins of the proceeds of crime.
3. For the purposes of Article 135:
 - (a) *proceeds of crime* means any economic advantage derived from or obtained, directly or indirectly, from predicate offenses. It may consist of any property defined in Article 135(2)(b);
 - (b) *property* has the same meaning as in Article 1(8); and
 - (c) *predicate offense* means any criminal offense committed under the MCC or the applicable law and includes offenses committed both inside and outside the jurisdiction of [insert name of state].

Commentary

The criminal offense of money laundering seeks to penalize individuals who, having made gains from criminal activity, take measures—normally through a series of complex financial transactions—to make the money “clean” again and ready for use without raising the suspicion of the authorities. This is done through converting, transferring, concealing, or disguising the money. Money laundering is very closely linked to the activities of organized criminal groups. It is for this reason that the United Nations Convention against Transnational Organized Crime (Article 7) imposes an obligation on states parties to criminalize money laundering. A similar obligation is contained in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Article 3(b), and the Council of

Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism, Article 9.

The obligations contained in the United Nations Convention against Transnational Organized Crime go beyond criminalization and require states parties to take other measures to combat money laundering (Article 7), such as instituting comprehensive domestic regulatory and supervisory regimes for banks and nonbank financial institutions; ensuring that bodies tasked with combating money laundering can cooperate and exchange information at a domestic and international level; establishment of a financial intelligence unit to serve as a national center for the collection, analysis, and dissemination of information regarding potential money laundering; and the monitoring and detection of the movement of cash and appropriate negotiable instruments across borders. Similar obligations are contained in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. A full discussion of these obligations is outside the scope of this commentary. Reference should be made to the *Legislative Guide to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* and the explanatory report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The United Nations Office on Drugs and Crime runs the Global Program against Money Laundering. The program has produced several publications, including *An Overview of the UN Conventions and the International Standards Concerning Anti-Money Laundering Legislation*. It has also produced model money laundering legislation for common-law countries. The Commonwealth Organization has produced the Commonwealth Model Law for the Prohibition of Money Laundering and Supporting Documentation. In the fight against money laundering, leading international organizations have established the International Money Laundering Information Network. Government employees around the world can access the network, which includes an international database, reference documents, national legislation, and various model laws.

Reference should also be made to the Financial Action Task Force, an intergovernmental body whose purpose is to develop and promote national and international policies to combat money laundering and the financing of terrorism. The Asian Development Bank has produced an extensive publication entitled *Manual on Countering Money Laundering and the Financing of Terrorism*. The World Bank has a Web site devoted to combating money laundering and terrorism. Finally, the Egmont Group runs an informal network of international financial intelligence units that cooperate and share information, training, and expertise. This network would be useful for a state wishing to establish a financial intelligence unit to combat money laundering.

In addition to prevention measures and the criminalization of money laundering, many post-conflict states have established special anti-money laundering police units to work in a dedicated manner on money laundering, often in concert with a financial intelligence unit.

Paragraph 1(a): The wording of Paragraph 1(a) is based on Article 6(1)(a)(i) of the United Nations Convention against Transnational Organized Crime.

According to the *Legislative Guide to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (page 44), states must take legislative and other measures to establish money laundering as a criminal offense. The guide further states that the term *conversion or transfer* includes instances in which financial assets are converted from one form or type to another, for example, by using illicitly generated cash to purchase real estate or by the sale of illicitly acquired real estate, as well as instances in which assets are moved from one place or jurisdiction to another or from one bank account to another (paragraph 100). The *Interpretative Notes for the Official Records of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN document A/55/383/Add.1) states in paragraph 11 that “concealing or disguising” should be understood to include preventing the discovery of the illicit origins of property. Under Paragraph 1(a), the person who does the actual conversion or transfer, with the intention of concealing property that represents the proceeds of crime, may be held criminally responsible, as may any other person who helps the perpetrator of a criminal offense evade the consequences of his or her action by converting, disguising, or transferring the property.

Article 6(b)(ii) of the convention requires that the following grounds of criminal liability be included in domestic criminal legislation: participation, association with or conspiracy to commit, attempt, aiding and abetting, facilitation, and counseling. All these grounds of liability are covered in Section 10 (“Criminal Attempt”) and Section 11 (“Participation in a Criminal Offense”) of the General Part of the MCC. The term *counseling* is not used in the MCC, although it is subsumed in Article 29. Reference should be made to the commentary accompanying Article 29. The term *association* is covered in Article 28, “Participation in a Common Purpose.”

Paragraph 1(b): The wording of Paragraph 1(b) comes from Article 6(1)(a)(ii) of the United Nations Convention against Transnational Organized Crime. Similar language is used in Article 9(1)(b) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The *Legislative Guide to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (paragraph 105) points out that “the elements of this offense are quite broad, including the concealment and disguise of almost any aspect of or information about property.” It further states that the mental element required for proving a criminal offense under Paragraph 1(b) is less stringent than that required under Paragraph 1(a), as the former requires no need to prove that the purpose of the concealment or disguise is to frustrate the tracing of an asset or conceal its true origin (paragraph 106). The *Interpretative Notes for the Official Records of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN document A/55/383/Add.1) states in paragraph 11 that “concealing or disguising” should be understood to include preventing the discovery of the illicit origins of property.

Paragraph 1(c): The wording of Paragraph 1(c) comes from Article 6(1)(a)(ii) of the United Nations Convention against Transnational Organized Crime. Similar language is used in Article 9(1)(b) of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. Article 6(1)(a)(ij) of the United Nations Convention against Transnational Organized Crime (which is mirrored in

Paragraph 1(c)) criminalizes the recipient of the laundered property who acquires, possesses, or uses it. It further states that the requisite mental element that needs to be proven is less than that required in Paragraph 1(b). All that needs to be proven is the acquisition, possession, and use of property where the recipient knew at the time that the property represented the proceeds of crime.

Paragraph 2: This paragraph expands the potential scope of liability under Article 135 to situations where a person converts, transfers, conceals, disguises, acquires, possesses, or uses property that is the proceeds of crime, where the person knew or should have known that the property was the proceeds of crime. This is a requirement of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism (Article 9[3]). The wording used in Paragraph 2 is *reckless or negligent*. Reference should be made to Article 18, which discusses the scope and meaning of the terms *recklessness* and *negligence*.

Paragraph 3(a): This definition was taken from Article 1(a) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The United Nations Convention against Transnational Organized Crime, Article 2(e), and the United Nations Convention against Corruption, Article 1(e), also define proceeds of crime, although more narrowly. The definition in both United Nations conventions refers only to property derived from crime, rather than “any economic advantage,” wording contained in the Council of Europe convention. The Council of Europe definition and the MCC definition both include property but go much further. The explanatory report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism states, at paragraph 31, that “the definition of ‘proceeds’ was intended to be as broad as possible.”

Paragraph 3(b): Reference should be made to Article 1(8) of the MCC, which defines property, and its accompanying commentary.

Paragraph 3(c): The definition of predicate offense is an original definition. The term *predicate offense* means the underlying offense that generated the proceeds of crime that were then laundered. Article 6(2)(a) of the United Nations Convention against Transnational Organized Crime urges states parties to apply the criminal offense of money laundering to “the widest range of predicate offenses” and at a minimum to “include ... a comprehensive range of offenses associated with organized criminal groups.” In some states there are a limited number of predicate offenses for money laundering. This means that only the laundering of proceeds for certain serious criminal offenses, such as drug trafficking, trafficking in persons, and migrant smuggling, could be prosecuted. Under the MCC, there is no limitation on the predicate offenses in connection with which money laundering can take place. Paragraph 3(c) covers all the offenses under the MCC and under domestic criminal law in an effort to cast a wide net around those persons involved in money laundering and to comply with the convention.

It is important to note that a person may be determined to have perpetrated the criminal offense of money laundering even if the predicate offense has not been previously proven with a final conviction or judgment.

Article 135.2: Penalty

The applicable penalty range for the criminal offense of money laundering is three to fifteen years' imprisonment.