

Risk Management Briefing

Money laundering

November 2020

Development and construction can be an expensive business. Just consider, in 2020 the cost to build and fit out a standard three bedroom house probably starts from approximately £150,000 (excluding the cost of land). As such, development and construction is an industry which is relatively easily accessible, where individuals who have money obtained illegally can and will attempt to hide such monies. The process of hiding money and assets obtained illegally is generally known as money laundering¹ and money laundering is an illegal activity. The large amounts of money involved in construction can also make the giving or taking of bribes seem attractive, but note bribery is also illegal in the UK. The construction industry is a vital part of the UK economy typically accounting for 6-7% of the UK Gross Domestic Product each year² so quite reasonably we would not wish to see our industry influenced by illegal activity.

As consultants within the construction industry we have a moral duty to ensure that illegal activity is not supported but we also have a legal duty which if not carried out properly can result in fines and/or imprisonment. We also have a legal duty not to attempt to win work using corrupt means. The following is a reminder of the legal provisions that apply:

Money Laundering

The provisions that prohibit money laundering within the United Kingdom can be found within:

¹ Money laundering is the process of making illegally-gained proceeds (i.e., "dirty money") appear legal (i.e., "clean"). History of Anti-Money Laundering Laws United States Department of the Treasury. 30 June 2015.

² Construction 2025 HM Government July 2013

The Proceeds of Crime Act 2002 – A person commits an offence if they conceal, disguise, convert, transfer or removes criminal property from the United Kingdom.

The Terrorism Act 2000 – A person commits an offence if they enter into or become concerned in an arrangement that facilitates the retention or control by or on behalf of another person of terrorist property.

Fraud Act 2006 – Fraud is divided into three categories –

- Positive Fraud – Where a person makes a statement unjustly designed to make a gain or to cause a loss
- Negative Fraud – Where a person deliberately and unjustifiably withholds information with a view to securing a gain or to cause a loss.
- Abuse of position – Where a person has a position of trust or confidence and takes unjust advantage of the position.

Also of some importance is the Money Laundering and Terrorist Financing Regulations 2019³ which aims to stop criminals using professional services to launder money by requiring professionals to put measures in place to identify clients and monitor how they use their services. Construction professionals such as architects, engineers and surveyors are not named as professionals to which the Regulations apply.

If convicted of money laundering a maximum sentence of 14 years could apply.

How can you identify a potential Money Laundering Offence

A money laundering offence may not be easy to identify, but signs could include:

- Use by your Client of an offshore shell company
- Your Client originates from or operates in a High-Risk Country⁴
- Payments in cash
- Unexplained third-party investment in your Client or project
- Attempts to inflate costs on your project
- Finance for the project is from poorly regulated sources
- Your client frequently changes accountants

Examples of Recent Money Laundering Offences

- May 2016 - Two businessmen, who set up construction companies solely to fraudulently claim over £500,000 tax back on supplies for new build houses that were never built. Both were sentenced to two years in jail.
- Betfred fined £322,000 for failed source of funds checks. Betfred accepted £210,000 from a convicted fraudster who proceeded to lose £140,000 over 12 days in November 2017.

Bribery

³ Published 10 January 2020

⁴ The European Commission identifies Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Syria, Uganda, Vanuatu, Yemen, Ethiopia, Sri Lanka, Trinidad and Tobago, Tunisia, Pakistan, Iran, and Democratic People's Republic of Korea as High Risk Countries.

It is also illegal in the UK to procure business by using bribes. A bribe is where a person is persuaded to act in favour of another by a gift of money or other inducement. Bribery is prohibited in the UK by the Bribery Act 2010 which mandates that it is illegal to offer, promise, give, request, agree, receive or accept bribes. Note, the UK Bribery Act applies to UK companies wherever they do business in the world and overseas companies operating in the UK.

Sanctions for failure to comply with the Bribery Act are unlimited fines for companies and up to 10 years' imprisonment and/or unlimited fines for individuals. Company directors may also be disqualified from acting as directors for a period of up to 15 years. Certain sanctions may also follow in addition to those under the Bribery Act, such as prohibitions on entering into public contracts, the confiscation of assets under the Proceeds of Crime Act 2002 and, in some circumstances, the invalidation of contracts procured through bribery.

Recent Significant Bribery Cases

- February 2016 – Sweett Group PLC were fined £1.4 million and £851,152.23 (confiscation costs). In addition the Sweett Group were ordered to pay £95,031.97 in Serious Fraud Office costs. The Sweett Group were found to have failed to prevent an act of bribery to secure a contract to provide project management and cost consultancy services on a hotel in Dubai.
- R v Skansen Interiors Ltd (April 2018) – Skansen Interiors Ltd (SIL) won two office refurbishment tenders from DTZ in 2013 worth £6 million. SIL's former managing director paid bribes to a DTZ project manager in order to secure the contracts. This was discovered by SIL's new CEO and the matter was reported to the police and Action Fraud. SIL cooperated with the investigation but was also charged. A jury found that the controls in place at SIL were insufficient and therefore SIL was guilty.

How Can You Protect Yourself and Your Organization?

1. Know Your Client – Consider implementing a “Know Your Client” process. Solicitors and real estate agents are already required to do this. For a “Know Your Client” process you should attempt to gain information that allows you to verify the identity of your client, their suitability for a business relationship and any risks inherent in maintaining a business relationship.
2. Try to establish the true origin of your Client's funds.
3. Ensure that your bookkeeping is adequate and your auditing is effective.
4. Maintain Your Privacy – Do not share financial details with people or organisations you do not know well.
5. Educate your workforce on money laundering prevention.
6. Establish a formal anti-money laundering policy
7. Establish a formal anti-bribery policy. This should be done even if you are a very small organization.
 - a. With clear delegations of authority, separation of functions and avoidance of conflict of interests.
 - b. With detailed discipline procedures and sanctions for breaches of the anti-bribery rules
 - c. That allows and encourages whistle blowing
 - d. With regular review and evaluation of effectiveness.
8. Your top level management must be responsible and involved.

9. Avoid facilitation payments, they will be construed as being bribes.
10. Be careful with hospitality, gifts and promotional expenditure. These can be construed as being bribes

If you fail to act to protect yourself and your organization then you run the risk of being caught by the money laundering or anti-bribery legislation with the potential for significant fines, imprisonment and reputational damage.

This Risk Management Briefing is for information only, and insurance or legal advice should be taken to cover your particular circumstances.

This briefing was prepared by the CIC Liability Panel, chaired by Professor Sarah Lupton.

It is available at www.cic.org.uk

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