

**PROSECUTION POLICY**  
**ON**  
**FINANCIAL CRIME**

**Issued by**  
**H.M. Attorney General**  
**for**  
**The Isle of Man**

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# **1 – Introduction**

- 1.1. This prosecution policy (“the Prosecution Policy”) sets out the specific decision making criteria to be applied when considering the prosecution of financial crime. Decisions to prosecute, whether it be a company or an individual, are taken by the allocated prosecutor after having applied specifically the prosecution code (the “Prosecution Code”) as approved and signed by the then Acting Attorney General Mr John Quinn QC MLC on the 7 March 2017.
- 1.2. Decisions as to whether prosecutions will take place must always be fair, transparent, consistent and principled.
- 1.3. The decision as to whether a prosecution will commence in any particular case is made by the individual prosecutor assigned to take responsibility for the case. All matters referred to Chambers will be allocated to an individual prosecutor by the Director of Prosecutions, commensurate with the prosecuting advocate’s own individual skills and ability (in relation to prosecuting financial crime matters) and will remain under the supervision of the Director of Prosecutions and, where necessary, the Attorney General, at an early stage of the criminal investigation.
- 1.4. The ultimate decision to prefer charges (or not) is always subject to review by the Attorney General. The Attorney General has the power to overrule a prosecutor’s decision not to prosecute and equally the Attorney General may direct a prosecutor not to proceed with a prosecution which has been commenced.
- 1.5. The Prosecution Code establishes the overarching framework within which this Prosecution Policy, settled by the Attorney General, operates.
- 1.6. IN DETERMINING WHETHER TO PROSECUTE IN ANY PARTICULAR CASE, THE PROSECUTOR WILL TAKE INTO ACCOUNT THE FOLLOWING OBJECTIVES AND CONSIDERATIONS:
  - (a) the Government’s commitment in its Programme for Government 2016-2021 to “Maintain our robust, zero tolerance stance” in respect of money laundering and the financing of terrorism and proliferation;
  - (b) the fact that prosecutions can (and will) be embarked upon even where it is clear the predicate offending has taken place outside of the Isle of Man. If the threshold to prosecute is met, stand-alone money laundering offending will be put before the Court;
  - (c) the purpose and objectives of the specific legislation under which a prosecution is being considered;
  - (d) the deterrent effect of enforcement of the criminal law relating to financial crime so as to protect the public and support ethical business practices, not only domestically on the Isle of Man but also internationally - see (b);

- (e) prosecution of a company should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees or indeed even their shareholders (it is acknowledged the prosecution of such individuals will provide a strong deterrent against future corporate wrong doing);
- (f) the standing and reputation of the Isle of Man as an International Finance Centre and applying the Attorney General's priority strategic aim (consistent with his Business Plan 2016 to 2019) using every opportunity, including civil and criminal procedures to ensure nobody can enjoy, or benefit from, the proceeds of crime.

## **2 – Key Aspects of the Prosecution Policy**

- 2.1 The purpose of this Prosecution Policy is to ensure that the principles and practices as to prosecutions of financial crime on the Isle of Man are underpinned by core prosecution values. A fundamental principle established by this policy is the need for the maintenance of "prosecutorial independence".
- 2.2 This Prosecution Policy must be read in conjunction with the Prosecution Code which, amongst other things, states that the prosecution should only be pursued where the prosecutor is satisfied that the two stage test for prosecution is met.
- 2.3 The two stage test for prosecution is met if (1) there is sufficient, reliable, admissible evidence to provide a realistic prospect of conviction ('the Evidential Test') and, subject to that being met and only if it is, (2) the prosecution is required in the public interest ('the public interest test').
- 2.4 The two stage test for prosecutions and the factors that should be taken into account in considering whether the test is met are more thoroughly set out in the Prosecution Code, which will be applied in conjunction with the following additional public interest factors (detailed below):
- 2.5 In making a Prosecution decision the following will be taken into account:
  - (a) **charging practice, plea acceptance and other issues**  
'Mixed cases' (where the author of the predicate offence can also be charged with laundering); this is an area where careful exercise of prosecutorial discretion is required, particularly with regard to the offences under s.141.

IT IS SUGGESTED THAT IN CONSIDERING WHETHER TO ADD MONEY LAUNDERING CHARGES GENERALLY THE FOLLOWING FACTORS SHOULD BE BORNE IN MIND:

- (b) Tynwald has decided money laundering offences are very serious carrying a maximum of 14 years. All the three principal money laundering offences potentially carry heavier penalties than most predicate offences. Theft, for instance, carries 10 years. Money laundering will therefore often be the most serious offence available.

- (c) The underlying offence ought normally to be proceeded with, as it represents the conduct which gives rise to the criminal proceedings.
- (d) Money laundering and the underlying criminality are separate offences. Money laundering activities should not be seen simply as 'part or parcel' of the underlying criminality. In these types of cases both offences (the underlying crime and the money laundering offence) will be capable of proof.
- (e) A money laundering charge ought to be considered where the proceeds are more than *de minimis* in any circumstances where the defendant who is charged with the underlying offence has done more than simply consume his proceeds of crime.
- (f) A charge under s.141 of possession of laundered proceeds, however, may not be necessary, for instance where proceeds were simply 'kept under the bed'. An application for confiscation of the actual benefit of the offence may be sufficient in those circumstances.
- (g) Where, however, there is any **significant attempt to transfer or conceal ill-gotten gains, money laundering should normally be considered as an additional charge**, in part because the purpose of the concealment will be to defeat or avoid prosecution and confiscation.
- (h) A careful judgement will need to be made as to whether it is in the public interest to proceed with the money laundering offence in the event of a plea to the underlying criminality by a defendant who is also indicted for laundering his **own** proceeds. The prosecutor should take into account whether the laundering activity involves such a significant attempt to conceal ill-gotten gains that a court may consider a consecutive sentence.
- (i) In a 'mixed' case, where the laundering is done by X on behalf of Y (the author of the predicate offence), it may be appropriate to proceed against Y for the underlying crime and X in relation to the laundering offence in the same indictment. This mirrors the position where a thief and handler are prosecuted in the same indictment in relation to the same stolen goods. Where the investigation has followed the money trail and there is sufficient *nexus* between the underlying offences and the money laundering then the case may benefit from being run together in one indictment, if it enables the prosecution to be presented in a clear and simple way.

#### ADDITIONAL PUBLIC INTEREST FACTORS TO BE CONSIDERED ON FINANCIAL CRIME

- 2.6 The more serious the offence, the more likely it is that prosecution will be necessary in the public interest. Indicators of seriousness in relation to financial crime include not just the value of any gain or loss but also the risk of harm to the public, to victims whether identified or not, shareholders, employees and creditors, and to the stability and integrity of financial markets and international trade.

- 2.7 Any history of similar conduct (including prior criminal, civil or regulatory enforcement actions against the suspect);
- 2.8 Failing to prosecute in circumstances where there have been repeated and flagrant breaches of the law may not be an appropriate response and may not provide adequate deterrent effect, and in particular when:
- (a) the conduct alleged is part of the established business practices of the company/individual;
  - (b) the company/individual have been previously subject to warning, sanctions or criminal charges and have nonetheless failed to take adequate action to prevent future unlawful conduct, or have continued to engage in the conduct;
  - (c) failure to report wrong doing within a reasonable time of the offending coming to light. The prosecutor will also need to consider whether it is appropriate also to charge the company officers (if indeed it is a company to be prosecuted);
  - (d) failure to report properly and fully the true extent of the wrong doing.

#### ADDITIONAL PUBLIC INTEREST FACTORS AGAINST PROSECUTION

- 2.9 A genuinely pro-active approach adopted by the Corporate Management Team/individual was adopted when the matter was brought to their notice, involving self-reporting of remedial actions, including the compensation of victims.
- 2.10 There has been a lack of history of similar conduct involving prior criminal, civil and regulatory enforcement actions against the company or individual.
- 2.11 The existence of a genuinely pro-active and effective corporate compliance programme.
- 2.12 The availability and use of civil or regulatory remedies, remedies that are likely to be effective and more fair.
- 2.13 The offending represents an isolated action by a company/individual, for example by a rogue director.
- 2.14 The offending is not recent in nature and the company in its current form is effectively a different body to that which committed the offences, for example it has been taken over by another company, it no longer operates in the relevant industry or market, all of the culpable individuals have left or have been dismissed or corporate structures or processes have been changed in such a way as to make a repetition of the offending almost impossible.

### **3 – Prosecution Decision Making & Processes**

- 3.1 All prosecutions, including those commenced without prior advice having been sought from the Attorney General's Chambers, must be approved by an individual prosecutor and peer reviewed by another prosecutor. In the event, if there is any disagreement between the two prosecutors, such dispute will be settled by the Attorney General prior to any decision. It is anticipated that criminal prosecution will be dealt with by senior prosecutors and as such, peer review of any advice or charging decision will ordinarily be carried out by the Director of Prosecutions or indeed the Attorney General.
- 3.2 In all prosecution decisions the individual prosecutor will:
- (a) make a full assessment of the evidence available, together with any further evidence which may be obtained to enable the Evidential Test to be met;
  - (b) act consistently and even-handedly in the conduct of a prosecution;
  - (c) make the decision whether to prosecute or not promptly and efficiently and without unnecessary delays or expense;
  - (d) consider the possibilities of and indicate, where appropriate, alternative measures of resolving the matter rather than prosecution;
  - (e) responsibly spend public funds in relation to the prosecution.

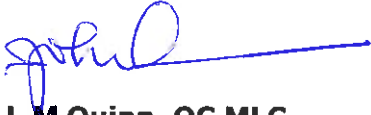
### **4 – Conclusion**

- 4.1 This Prosecution Policy on Financial Crime is designed to provide a consistent approach to all advice given relating to the prosecution of financial crime.
- 4.2 It is a policy that acknowledges financial crime being committed, at whatever level, on or off the Isle of Man is a serious matter and subject always to the Prosecution Code, financial crime will always be actively pursued.
- 4.3 Financial offending<sup>1</sup> on the Isle of Man will never be tolerated so as to not only reduce financial offending within our own domestic sectors/institutions but also beyond the shores of the Isle of Man.
- 4.4 This is a proactive, zero tolerance policy against individuals or institutions so as to combat financial crime (domestic or international) so as to protect the Isle of Man's reputation and secure its economic future.

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<sup>1</sup> Including predicate offences with associated money laundering or where appropriate stand-alone money

- 4.5 The policy is to be adopted to de-incentivise financial crime to reduce the cash flow of organised crime, to deter money launderers and to make it more difficult for criminals to legitimise their ill-gotten gains and above all, to protect the integrity of financial institutions both domestically and internationally.

A handwritten signature in blue ink, appearing to read 'J L M Quinn', with a long horizontal line extending to the right.

**J L M Quinn, QC MLC**  
**H.M. Attorney General**

Dated: 20<sup>th</sup> December 2017.