

## **Anti-Money Laundering Criminal Statutes (Federal)**

- a. What are the key elements of §§ 1956 and 1957 prosecutions and the differences between the two?
  - i. § 1956
    1. Three categories of offenses:<sup>1</sup>
      - a. Domestic money laundering (§ 1956(a)(1));
      - b. International money laundering (§ 1956(a)(2)); and
      - c. Government sting operations, involving property represented by a law enforcement officer to be the proceeds of illegal activity (§ 1956(a)(3))
    2. In general: § 1956 criminalizes, among other things, commercial transactions where goods or services are provided in exchange for “dirty money” with certain knowledge or intent.<sup>2</sup> § 1956 also prohibits transporting or transmitting “dirty” monetary instruments, including U.S. currency, into or out of the U.S. with certain knowledge or intent.<sup>3</sup>
    3. § 1956(a)(1): Deals with financial transactions involving the proceeds of some specified unlawful activity.<sup>4</sup>
    4. § 1956(a)(2): Deals with cross border transfers of monetary instruments or funds from a place in the U.S. to or through a place outside the U.S.<sup>5</sup>
    5. § 1956(a)(3): Deals with: (i) promoting or carrying on specified unlawful activities; (ii) concealment; or (iii) avoiding a transaction reporting requirement under state or federal law.<sup>6</sup>

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<sup>1</sup> *Module 8: The United States Law of Money Laundering and Forfeiture*, p. 3-4, Richard Duke.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

6. Elements of proof for § 1956 crimes:<sup>7</sup>

- a. First, knowledge that the property involved in a financial transaction comes from a specified unlawful activity;
- b. Second, the property involved must be the proceeds of a specified unlawful activity;
- c. Third, a financial transaction must occur; and
- d. Fourth, a prohibited activity must occur.

7. The prohibited activities include that:<sup>8</sup>

- a. The transaction will promote the carrying on of the specified unlawful activity;
- b. The transaction is designed to conceal or disguise the nature, location, source, control, or ownership of the proceeds; or
- c. The transaction is designed to avoid a transaction reporting requirement.

ii. § 1957

1. Two categories of offenses:

- a. The offense takes place in the U.S. or in the special maritime and territorial jurisdiction of the U.S. (§ 1957(d)(1)); or
- b. The offense takes place outside the U.S. and the person perpetrating the offense is a U.S. person (§ 1957(d)(2)).

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<sup>6</sup> Id.

<sup>7</sup> The Cocaine Cartel's Best Kept Secret The Black Market Peso Exchange; The Going Is Good, But For How Long, And At What Price?, 6 ILSA J Int'l & Comp L 685, 705-06, 2000.

<sup>8</sup> Id.

2. In General: § 1957 prohibits engaging in “monetary transactions” with “dirty money.”<sup>9</sup>
3. § 1957(a) involves engaging in a monetary transaction in criminally derived property of a value greater than \$ 10,000 that is derived from funds from some specified unlawful activity.<sup>10</sup>

iii. Differences between § 1956 and § 1957:

1. Contrary to § 1956, § 1957 requires that the conduct of money laundering by a foreign person involve a financial institution located in the U.S.
2. Also, contrary to § 1956, in a § 1957 prosecution, the U.S. government is not required to prove that the defendant knew that the offense from which the criminally derived property was derived was from specified unlawful activity.

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<sup>9</sup> See, supra note 1, at 21.

<sup>10</sup> See, supra note 1, at 21.