



**TB 30**

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## **MONEY LAUNDERING GUIDANCE**

### **1. INTRODUCTION**

This Guidance outlines the UK's anti-money laundering legislation and its potential application to loss adjusters. It is intended to provide general information but is not comprehensive. Loss adjusters in doubt as to their obligations should have regard to the underlying legislation and, if appropriate, take legal advice.

### **2. THE UK MONEY LAUNDERING REGIME**

The UK's anti-money laundering legislation is found in two principal sources:

- The Proceeds of Crime Act 2002 (as amended) ("**POCA**"). POCA defines what are money laundering offences, imposes a duty on individuals to report money laundering in certain circumstances and creates "tipping off" offences.
- The Money Laundering Regulations 2003 (the "**Regulations**"). These impose compliance requirements on certain types of businesses, mainly in the financial sector.

In addition, the Terrorism Act 2000 creates offences relating to dealings with terrorist funds, duties to report terrorism and related tipping off offences. There are also a number of other pieces of legislation which criminalise dealings with terrorist funds, or making funds available to terrorists, for example the Terrorism (United Nations Measures) Order 2001.



### 3. THE REGULATED SECTOR

The Regulations only apply to the "regulated sector" (also known as persons carrying out "relevant business"). Under POCA, although the main money laundering offences apply to all UK persons (i.e. anyone can be involved in assisting a criminal to launder his funds), there are special reporting duties which apply only to the regulated sector. Broadly, the regulated sector includes<sup>1</sup>: those engaged in financial services work (i.e. certain activities regulated under the Financial Services and Markets Act 2000); bureaux de change and money services businesses; estate agents; casinos; insolvency practitioners; businesses providing accountancy services, tax advice, audit services; legal services relating to financial or real estate transactions; services relating to the formation, operation or management of companies or trusts; businesses which deal in high value goods for cash; and certain activities listed in the Banking Consolidation Directive and set out in a Schedule to the Regulations.

None of the categories of relevant business expressly covers loss adjusting services and the traditional services provided by loss adjusters such as advising as to whether a loss falls to be covered by a particular insurance policy, the application of the limits of such policy and the reasonableness of a claim would appear to fall outside the regulated sector. However, loss adjusters who provide non-traditional services should consider whether such services might fall within the regulated sector. For example, where the services provided by a loss adjuster might be classed as the provision of accountancy services, tax advice, or legal advice on a financial or property transaction, the money laundering legislation will apply.

In addition, loss adjusters working within regulated firms (e.g. some insurance firms) may find that the firm applies an anti-money laundering policy to all areas of its business, regardless of whether or not the loss adjusting activities are technically within the regulated sector.

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<sup>1</sup> The full definition is set out at regulation 2(2) of the Regulations and Schedule 9 of POCA.



## 4. THE PROCEEDS OF CRIME ACT 2002

### 4.1 Money laundering offences

The money laundering offences created by POCA apply to everyone, whether or not they are within the regulated sector. Broadly, POCA criminalises all dealings with the proceeds of any crime. A person commits a money laundering offence under POCA by:

- concealing, disguising, converting, transferring criminal property or removing it from the jurisdiction;
- entering into or becoming involved in an arrangement which is known or suspected to facilitate the acquisition, retention, use or control of criminal property by another; or
- acquiring, using or having possession of criminal property,

knowing or suspecting that the property is or represents (directly or indirectly) a benefit from criminal conduct (POCA sections 327-329). The provisions are broadly drafted and are generally applicable to all loss adjusters.

### 4.2 Reporting duties

There are two distinct situations in which a person may need to report suspicions of money laundering to the UK law enforcement authorities:

#### 4.2.1 Reporting to obtain consent as a defence to a money laundering offence

It is a defence to the money laundering offences to obtain consent (generally in advance) to carry out an act prohibited by the offences.

Thus, if a person suspects that he/she has become involved in money laundering (e.g. if he/she has received or is going to receive criminal property, or if he/she is assisting someone else to deal with criminal property), he/she will generally need to make a report to the National Criminal Intelligence Service ("NCIS") and obtain consent to the prohibited acts. Consent may be given expressly or may be deemed to have been given after certain time limits expire. The relevant time limits are set out in section 336 of POCA.



#### 4.2.2. Additional reporting obligations imposed on the regulated sector

Persons working in the regulated sector have a further obligation to report information obtained in the course of their work which causes them to know, suspect, or have reasonable grounds to suspect that another person is engaged in money laundering. It is a criminal offence to fail to report when obliged to do so.

Where firms have a nominated officer (known as a money laundering reporting officer or "**MLRO**"), reports can be made to that person. The MLRO will in turn have an obligation to report to NCIS (and, if necessary, will obtain consent from NCIS before passing this consent on to the employee). Guidance on how to make a report is given on NCIS's website: [www.ncis.gov.uk](http://www.ncis.gov.uk).

Voluntary reports of money laundering suspicions arising in the course of a person's work (whether within the regulated sector or not) can also be made to NCIS under s.337 of POCA. All such reports are protected from any action for breach of client confidentiality.

#### 4.3 **Tipping off**

Where an internal (to the MLRO) or external report (to NCIS) has been made, it is a criminal offence under section 333 of POCA to make a disclosure to any other person which might prejudice any investigation which might be conducted following the report, i.e. to "tip off" the criminal. Under section 342 of POCA it is also an offence, where an officer is acting or proposing to act in connection with certain types of investigations, to make a disclosure which is likely to prejudice the investigation. It is also an offence to falsify, conceal, destroy or dispose of documents which are relevant to the investigation. These "tipping off" offences apply to everyone, whether or not they are within the regulated sector.

#### 4.4 **Relevance to loss adjusters**

Money laundering is traditionally thought of as comprising three stages:

- Placement – placing criminal property into the financial system;
- Layering – obscuring the origin of funds through a series of transactions; and
- Integration – investing the "cleaned" funds.



Loss adjusters may encounter criminal activity at the placement or layering stage.

In particular, loss adjusters may discover instances of claims fraud. An attempted but unsuccessful fraud will give rise to no criminal property and therefore does not raise money laundering issues (although it may still amount to a criminal offence, i.e. attempted fraud). However, a successful fraud will give rise to the proceeds of crime and the criminal will commit a money laundering offence. A loss adjuster who deals with the fraud or who handles the proceeds of the fraud would need to make a report and seek consent to avoid committing a money laundering offence under POCA. (Facilitating a fraud would, of course, have additional criminal and ethical implications.)

Alternatively, a criminal may purchase assets using the proceeds of crime and insure those assets (this may be an example of "placement"). If the assets are subsequently lost or destroyed and a claim is made on the policy, money laundering issues will arise for the loss adjuster if he/she suspects that he/she is facilitating the recovery of sums representing the proceeds of crime.

In the insurance context, money may also be laundered by a client taking out cover, followed by early cancellation and repayment of the premium, perhaps to a third party or another jurisdiction. The launderer benefits from this in that the repayment appears to come from a legitimate source. This is an example of "layering".

Loss adjusters who deal with payments on behalf of clients should also be aware of the risk that their accounts may be used for "layering" activities. Payments to high risk jurisdictions and/or unexplained payments to or from third parties may be "red flags" suggesting money laundering activity.

## **5. THE MONEY LAUNDERING REGULATIONS 2003**

The compliance requirements imposed by the Regulations apply only to persons working within the regulated sector. Broadly, these require such businesses to:

- identify their clients;
- maintain records of client identification and client transactions for specified periods;



- train their staff in the relevant provisions of the legislation and on how to recognise and deal with suspicious transactions.
- maintain procedures for the internal reporting of suspicions of money laundering, including appointing an MLRO; and
- establish such other procedures for internal control and communication as may be appropriate for the purpose of forestalling and preventing money laundering.

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