



Cooley

What You Should Know About the UK Proceeds of Crime and Anti-Money Laundering Regime

Proceeds of Crime Act 2002. POCA is UK legislation providing for the restraint, confiscation, civil forfeiture and taxation of the benefit of criminal conduct or criminal assets. It also contains the UK's principal money laundering offenses and provisions for international cooperation, including enforcement of foreign confiscation and forfeiture orders. Similar legislation has been passed in most of the UK's Overseas Territories.

What Are the Proceeds of Crime? Property is "criminal property" if it is, or ultimately derives from, financial benefit from domestic or foreign criminal conduct (provided the type of conduct would also be illegal in the UK).

Confiscation of the Benefit of Criminal Conduct. Following conviction for an acquisitive offense, the court calculates the defendant's benefit from criminal conduct and the value of his or her available assets. A confiscation order is made for the lesser amount. If a defendant has a "criminal lifestyle," as defined in POCA, there is a rebuttable presumption that property obtained in the previous six years was acquired by criminal conduct.

Civil Recovery (Forfeiture). Law enforcement agencies, in the absence of a criminal conviction, can bring "civil recovery proceedings" to forfeit the direct or indirect proceeds of criminal conduct.

Money Laundering Offenses. Virtually anything done to or with "criminal property" is money laundering. It is an offense, without law enforcement consent, to conceal, disguise, convert, transfer "criminal property" or remove it from the UK, or to acquire, use or have possession of "criminal property." Significantly, it is also an offense to become "concerned in an arrangement" (such as a transaction) with knowledge or suspicion that it facilitates the acquisition, retention, use or control of "criminal property" by another person. Money laundering offenses are not confined to the proceeds of serious crime, nor do the proceeds need to be a minimum amount.

The "Arrangement Offense". A defendant can be concerned in a money laundering arrangement without actually handling

funds. It is an offense that could, for example, be committed by participants in M&A transactions or joint venture arrangements where bribes have been paid by a target company or JV partner to win contracts, or by an arm's length purchaser of an asset initially acquired through criminal means. It could also apply to legal or other advisors involved in those transactions.

Consent to Proceed. The UK has a regime for the reporting of knowledge or suspicion of money laundering. "Suspicious activity reports" can be filed with the UK's National Crime Agency notifying them of concerns and asking for consent to proceed with a transaction. Consent from the NCA is a defense to a money laundering charge. There are strict deadlines for law enforcement to assess a SAR.

The Regulated Sector and Its Reporting Obligations. The regulated sector includes, amongst others, most of the financial sector, accountants, lawyers, trust and company service providers, estate agents (realtors) and dealers in high-value goods. Individuals and entities in the regulated sector are required to report suspicions of money laundering to the NCA. A failure to do so can be a criminal offense. The obligation does not apply to lawyers receiving information in privileged circumstances.

Tipping-off. It is usually an offense for anyone making a SAR to inform its subject that a report has been filed, whether the subject is a customer or third party.

Money Laundering Regulations. These regulations require organizations in the regulated sector to implement and maintain appropriate and proportionate risk-based policies and procedures. That includes due diligence on customers and their beneficial owners, ongoing monitoring of business relationships, record-keeping and training of employees.

Please contact **James Maton**, a partner in our London office, at jmaton@cooley.com or **+44 207 556 4547**, if you require further assistance.

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2015 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, Dashwood, 69 Old Broad Street, London EC2M 1QS, UK. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.