



Money Laundering guidance for foreign lawyers

This note is intended to confirm that lawyers from other jurisdictions who practise in the UK must comply with the reporting obligations under the UK's Proceeds of Crime Act 2002 ("POCA") regardless of any home country professional restrictions on breaches of confidentiality. The application of the reporting obligations is a matter of law, and will apply to all lawyers of other jurisdictions in relation to their activities in the UK.

The Law Society's rules of professional conduct support these obligations in relation to solicitors, registered European lawyers and their partners and staff. Principle 16.07 confirms that a solicitor's duty of confidentiality is varied by statutory provisions relating to money laundering. This principle confirms that although there are duties of client confidentiality in the UK, these duties are overridden by the legal reporting requirements under POCA (subject to the exemption from the reporting obligation in the provision for "professional legal advisers" in section 330(6) (b) and in the application of common law legal professional privilege to sections 327, 328 and 329).

European lawyers

Article 6.1 of the Establishment of Lawyers' Directive 98/5/EC, as implemented by Regulation 25 of the European Communities (Lawyers' Practice) Regulations 2000 (S.I.2000 No. 1119) confirms that a European lawyer practising in the UK under home professional title and registered with a UK professional body is subject to the rules of that professional body irrespective of any rules to which the lawyer is subject in his or her home member state.

Therefore a European lawyer registered with the Law Society of England and Wales needs to comply with Principle 16.07. The lawyer will also need to comply with the rules of the lawyer's own professional body to the extent that these are compatible with legal and professional obligations in the UK.

Dual qualified lawyers

Neither the Establishment of Lawyers Directive, nor the European Communities (Lawyers Practice) Regulations 2000, apply to dual qualified lawyers but lawyers in this category must comply with the professional conduct rules of both countries to the extent that the rules of the other professional body are compatible with legal and professional obligations in the UK, which include POCA and Principle 16.07.

Other lawyers

Although the Law Society's rules do not apply to lawyers who are not registered with the Law Society – for example, a firm of US attorneys based in London – the legal obligations under POCA will apply to their activities in the UK.

Guidance

This Guidance is intended to help solicitors, registered European lawyers and their partners and staff, manage any conflict between professional rules which they are subject to. However, the reporting obligations under POCA are a matter of law which is not altered by professional rules.

1. It is recommended that any foreign lawyer concerned about the conflict between their home professional rules and their duties under the UK's Proceeds of Crime Act 2002 should not accept appointment as a Money Laundering Reporting Officer/Nominated Officer, since such an appointment would require them to make money laundering reports externally, that is to the National Criminal Intelligence Service. Foreign lawyers may still need to make reports internally to their MLRO. It is, however, recognised that in some circumstances, as in the case of sole practitioners, it will not be possible for a lawyer to avoid the duty to make reports to NCIS.
2. It may be helpful, especially when dealing with overseas clients, for the solicitor to inform the client at the start of their business relationship that he will have to comply with the legal requirements under POCA. This should help to protect the solicitor from any criticism or civil claim.

3. The Law Society cannot give guidance as to the legal or professional position of foreign lawyers under their own law or professional rules.

Guidance on the requirements under POCA can be provided by: Professional Ethics, tel: +44 0870 606 2577.