

## 7A: General insurers

***Note: This sectoral guidance is incomplete on its own. It must be read in conjunction with the main guidance set out in Part I of the Guidance.***

### ***Introduction***

- 7A.1 The intention of this guidance is to provide clarification for General Insurers as to their obligation to report suspicious activity under the Proceeds of Crime Act 2002 (POCA), comply with sanctions legislation and explain the new powers granted to H.M. Treasury under the Counter Terrorism Act 2008. General Insurers are not within the regulated sector, as defined under the Money Laundering Regulations 2007, but in certain circumstances they are required to report suspicious activity to the Serious and Organised Crime Agency (SOCA).
- 7A.2 Part 7 of POCA came into force on 24 February 2003. This sectoral guidance focuses on the obligations of general insurers and is designed to assist General Insurers in applying legislation consistently. The objective is to help general insurers refine their current practices and to identify whether they are complying with POCA.
- 7A.3 This guidance is not a replacement for detailed advice on specific activities and problems and it should not be regarded as a substitute for legal advice on any of the topics discussed. General insurers should, periodically, seek their own legal advice to ensure that their understanding of the legal framework is up to date.

### ***Proceeds of Crime Act and the Terrorism Act***

- 7A.4 The offences under POCA and the Terrorism Act relate to any activity involving criminal or terrorist property (including, sometimes, the criminal or terrorist act itself). This is a much broader definition than the commonly understood definition of money laundering (i.e., the movement, layering and concealment of criminal funds). A company, for example, can commit an offence under POCA by unwittingly facilitating an act of fraud.
- 7A.5 Obligations under POCA and the Terrorism Act, in practical terms, vary depending on which sector is seeking to apply them. General insurance is considered to be a low risk sector for both money laundering and the concealment or conversion of the proceeds of crime. General insurance is regarded as being at greater risk from fraudulent claims, rather than as a conduit for the proceeds of crime or money laundering. The majority of general insurance products do not, per se, offer obvious scope to be of use to money launderers. There is, however, scope for insurers to become unwittingly involved in criminal offences such as fraudulent claims or deliberately providing inaccurate information at inception, which may trigger provisions under POCA for suspicion reporting.

### ***Risk-based approach***

- 7A.6 The guidance on money laundering prevention in Part I, addressed to the wider financial sector is risk-based. It is recommended that general insurers also adopt a risk-based approach to their obligations under POCA and the Terrorism Act 2000.
- 7A.7 The implementation of risk management can be a simple process depending on the range of products on offer and should be linked to the profile of the customer. Insurers who also offer life products will already be aware of the requirement to carry out Customer Due Diligence (CDD). A general insurer

is not required to seek the equivalent level of information on their customers, but it is recommended that risk management be considered by non-life insurers at the earliest possible stage e.g., when a potential customer makes an approach or when a broker advises the insurer of a new customer, as well as when policies are renewed or claims are submitted, based on the information an insurer has. It requires the full commitment and support of senior management and the active co-operation across business units.

7A.8 General Insurers are advised to set a policy in relation to meeting their obligations under POCA and the Terrorism Act that is disseminated consistently across the company. Senior management needs to support internal policies, procedures and controls.

7A.9 General insurers should consider the following:

- Development of internal policies and procedures;
- Communication of those policies and procedures to all staff;
- Clear and written procedures in place to help staff identify the kinds of activities or customers that might arouse suspicion;
- Clear guidance to be given to all staff on the risk and implications of alerting potential or actual customers (or agents thereof) to the fact that a SAR has been submitted i.e. the "tipping off" provision of POCA;
- Clear guidance to be given to all staff on the risk and implications of failing to report their suspicions,
- Short reporting lines between front-line staff and a nominated officer;
- Record keeping: both of decisions made in the event of a suspicious claim being reported to evidence the making of the report and, in the event of a SAR not being made, the reasons why no notification was made;
- Screening procedures to ensure high standards on recruitment.
- Ongoing employee training to ensure employees recognise suspicious activities and understand the procedure in place internally to record suspicious activities;
- A system of testing compliance: this should be both independent and adequately resourced.

### ***Reporting Suspicious Activity***

7A.10 The main occasion when the requirements under the POCA will apply to general insurers is when processing claims. Nothing in POCA prevents the claims handler from properly challenging the information supplied by the customer. Information available to an insurer when processing a claim is limited, and the claimant usually controls access to this information. The job of a claims handler is in part to establish the facts of the claim.

7A.11 The offences in POCA relate to money laundering rather than attempted fraud. Paragraphs 6.43 – 6.47 in Part I of the JMLSG guidance specify when attempted frauds need to be reported to SOCA. Thus, the General insurer has to know or suspect, or have reasonable grounds to know or suspect, that there has been some benefit obtained by the fraudster, as the benefit represents criminal property.

7A.12 During the claims process there may be suspicion on the part of a member of the claims team that the customer may be embellishing their claim and there may be a number of challenges and procedures that will be followed until the claim is agreed or declined. Whilst this process is ongoing the customer may be attempting to commit a fraud, but this is not a reportable offence under POCA.

7A.13 However, if a claim has been accepted and agreed and the insurer has paid the claim and subsequently it is discovered that there are reasonable grounds to know or suspect that the claim was false, then the reporting provisions under POCA are met and the insurer must file a suspicious activity report (SAR) with SOCA as soon as practicable. This is because any payment made as a result of the claim is now classified as criminal property and must be reported to SOCA.

- 7A.14 General insurers do not have an obligation to appoint a nominated officer to deal with disclosures of SARs. However, POCA applies to both regulated and unregulated sectors and SARs can be made to SOCA by any industry representative. If insurance firms elect to appoint a single point of contact who would be regarded as a nominated officer, there are additional obligations in respect of reporting to SOCA and where consent may be required, after an internal report is made to him/her. In practice, this means an obligation to submit a SAR (see Part I, Chapter 6). Failure to do so may mean he/she will commit an offence under section 332 of POCA. From a practical perspective it is advisable for someone to coordinate a company's anti-money laundering procedures as well as administer obligations under POCA. This would give staff a contact that they can approach if they have any suspicions.
- 7A.15 If there is no nominated officer, employees should make disclosures to SOCA by way of a SAR. SARs can be submitted electronically or by post though SOCA is actively encouraging the use of the SAR Online system which can be found at [www.soca.gov.uk](http://www.soca.gov.uk).
- 7A.16 General insurers should note that in December 2008, the FSA imposed a fine on AON, in a Principle 3 action focused on risk assessment, in particular in relation to controls relating to bribery and corruption (see [www.fsa.gov.uk/pubs/final/aon.pdf](http://www.fsa.gov.uk/pubs/final/aon.pdf)).

### ***Financial Sanctions***

- 7A.17 Under the financial sanctions regime it is a criminal offence to make either funds or financial services available to the targets on the Financial Sanctions Consolidated List which are published and maintained by HM Treasury. Financial sanctions apply to all companies, irrespective of whether or not they are regulated. The guidance contained in Part I, paragraphs 5.3.41- 64 should be followed.
- 7A.18 Financial sanctions apply to all forms of payment and services offered. In respect of General Insurers this applies not only to the contract of insurance but could also apply to third party payments and providing replacement vehicles and articles. In relation to proliferation financing, the provision of insurance cover to shipments of goods which contravene related export controls could cause the insurer (or broker) to breach relevant legal and/or regulatory obligations. See Part II, sector 15: *Trade finance*, especially paragraph 15.28 and Annex 15-IV.
- 7A.19 General Insurers will also have to consider how their partners and brokers, including outsourcers, are mitigating this risk and who is responsible for ensuring that some form of monitoring is being undertaken to prevent payment to any listed person or entity.

### ***Counter Terrorism Act 2008***

- 7A.20 The Counter Terrorism Act was enacted on the 26<sup>th</sup> November 2008 and introduces additional obligations on firms in the fight against money laundering, terrorist financing and the proliferation of nuclear, radiological, biological or chemical weapons. Directions under this act can only be given by HM Treasury.
- 7A.21 There are four specific instances where this Act may be used but only two of the directions may be given to General Insurers. These are the directions in respect of **systematic reporting**, where a direction may require a firm to provide such information and documents as may be specified in the direction relating to transactions and relationships with designated persons. The direction will specify to whom the information and documents are to be provided and the period within or the intervals at which they are to be provided.
- 7A.22 The second direction relates to **limiting or ceasing business**. Such a direction may require a firm not to enter into or continue to participate in a specified transaction or specified description of

transactions or business relationships with a designated person or any transaction or business relationship with a designated person.

7A.23 Part I, section 5.8 provides further guidance on meeting obligations imposed under these directions.