



**SUPPLEMENTARY ANTI MONEY LAUNDERING GUIDANCE
FOR INSOLVENCY PRACTITIONERS**

This is draft guidance pending approval from HM Treasury

APPENDIX F**F.1 Introduction**

- F.1.1 The legislation which comprises the UK anti-money laundering regime applies to persons who carry on business in 'the regulated sector' (the term 'regulated sector' used by schedule 9, POCA is identical in scope to the 'relevant persons' referred to in reg 3 of the 2017 Regulations). Both of these categories include persons acting as an Insolvency Practitioner (IP) within the meaning of section 388 of the Insolvency Act 1986 (IA86) or article 3 of the Insolvency (Northern Ireland) Order 1989 (IO89).
- F.1.2 Reg 8(c) specifically provides for IPs to be 'relevant persons' for these purposes. Reg 11(b) provides a definition of "IP" for the purposes of the 2017 Regulations. For the purposes of this Appendix, IP means any individual licensed as an IP, whether trading as a sole practitioner, in partnership with others or in an incorporated business.
- F.1.3 IPs should refer to the Main Body Guidance (the Guidance) for detailed information about the legislation and associated offences, and comprehensive guidance on compliance with the various requirements imposed by the legislation. This Appendix is concerned principally with matters that are particular to those acting as IPs.
- F.1.4 For the purposes of this appendix, a person is only acting as an IP in accordance with the definition provided in section 388 Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989. Those authorised as IPs often undertake activities outside of formal appointments (for example, acting as an LPA receiver, undertaking independent business reviews (IBRs), restructuring or advisory appointments or acting as a continuing money adviser under the Debt Arrangement Scheme) which may be other 'defined services' for the purposes of the 2017 Regulations. In these circumstances the relevant sectoral guidance should be followed. See paragraph 1.2 of the Main Body Guidance for further information.
- F.1.5 In cases where the ML regulations do not apply IPs may nevertheless consider it appropriate to undertake CDD and other checks.
- F.1.6 Reg 8(e) provides for trust or company services providers (TCSP) to be relevant persons for the purposes of the 2017 Regulations. The definition of a TCSP is provided by reg 12(2) and includes persons providing a registered office, business address, correspondence or administrative address or related services. An IP acting in their capacity as an office holder is understood to be a relevant person in their capacity as an IP and not as a TCSP, notwithstanding that the registered office of the entity in respect of which they have been appointed has been changed to that of the IP.
- F.1.7 As IPs undertake appointments with both solvent and insolvent entities, throughout this appendix reference to 'insolvent entity' should be read to include solvent entities where applicable.

F.2 Risk based approach

- F.2.1 Section 4 of the Guidance sets out details regarding the risk-based approach and the types of risk that might be present.
- F.2.2 The Guidance identifies five categories of risk: client risk, service risk, geographic risk, sector risk and delivery channel risk. These relate broadly to the client entity type, the nature of the service being provided, the location of assets or trading activities (including customers, suppliers and the control of the business), the nature of the client's business, and risks associated with the interface between the business and its client where the client is more remote than normal. IPs should consider the extent to which these categories of

risks apply in any particular insolvency appointment, having regard to the examples identified in APPENDIX E of the Guidance.

F.2.3 Additional examples of higher risk factors that may be encountered in the context of an insolvency appointment may include (but are not limited to):

Client risk factors	<ul style="list-style-type: none"> • Where the debtor, company officers or beneficial owners of the insolvent entity are the subject of a criminal investigation or civil recovery proceedings. • Where there have been cashflow issues in the business the IP should consider the possibility of fraud. • Where the debtor or the insolvent entity is a “relevant person” within the definition of reg 8 of the 2017 Regulations, particularly when it has not recognised this.
Service risk factors	<ul style="list-style-type: none"> • Where the insolvency proceedings will involve the realisation or distribution of assets of the insolvent entity. • Where the IP cannot withdraw once appointment has been made.
Geographical risk factors	<p>Where any of the following are within a country or countries identified as presenting high risk factors:</p> <ul style="list-style-type: none"> • the country of incorporation or residence of the client; • the location of the beneficial owner; • the location of assets or trading activities conducted; • the location into which payments may be made. <p>(See APPENDIX E of the Guidance)</p>
Channel risk factors	<ul style="list-style-type: none"> • Where there is no personal contact with the debtor or the directors or beneficial owners of the insolvent entity.

F.2.4 This list is merely illustrative and not exhaustive. IPs must take steps to identify risks, the severity of the threat presented by them and respond appropriately to them.

F.3 Customer Due Diligence

F.3.1 The provisions relating to Customer Due Diligence (‘CDD’) set out in the 2017 Regulations apply in situations where the person subject to the regulations (such as an IP) and their counterparty form, or agree to form, a ‘business relationship’. In the context of insolvency, there will always be a ‘business relationship’ between the IP and the debtor or entity over which they are appointed.

F.3.2 In carrying out CDD, IPs must adopt a risk-based assessment, based on the known facts about the entity, its ownership and the nature of any business or trading activities conducted by it, to consider the risks of the assets being the proceeds of crime or terrorist property. The risk-based approach means that where there is a higher risk of Money Laundering and Terrorist Financing (‘MLTF’), CDD procedures must go beyond mere identification checks and reasonable verification, and include other procedures such as adverse media checks on the business and those associated with it and any other measure that seem appropriate in the circumstances of the case, on a risk sensitive basis. Section 5 of the Guidance deals in detail with CDD.

Appendix C provides details of the documentation that should be obtained when client verification is required.

F.3.3 Reg 30 requires that CDD takes place before the establishment of a business relationship or the carrying out of the transaction. IPs should conduct CDD for example prior to:

- agreeing to act as liquidator or provisional liquidator of a solvent or insolvent company or LLP;
- agreeing to act as nominee in a company voluntary arrangement not preceded by another insolvency procedure;
- agreeing to accept an appointment as administrator or special administrator;
- agreeing to accept appointment as an administrative receiver (in Scotland, receiver);
- agreeing to act as nominee or supervisor in an individual voluntary arrangement;
- agreeing to act as a trustee (including interim trustee) in a bankruptcy, a sequestration or under a trust deed;
- accepting instructions to prepare, or assist in preparing, a proposal for a company or individual voluntary arrangement where appointment as nominee will be sought;
- agreeing to act as liquidator, provisional liquidator or administrator of an insolvent partnership;
- agreeing to act as trustee of a partnership under Article 11 of the Insolvent Partnerships Order 1994;
- agreeing to act as nominee or supervisor in relation to a partnership voluntary arrangement.

F.3.4 The process of identification, evaluation and response must be conducted prior to consenting to the insolvency appointment and on a risk sensitive basis, periodically throughout the appointment.

F.3.5 In very limited circumstances (for example a hostile appointment), it may not be possible to have completed the identification and verification procedures before taking office (reg 30(3)). An initial client identification and assessment of risk must be completed before consenting to act and reviewed subsequent to appointment. IPs should be mindful that the circumstances in which legislation permits an office holder to resign do not include an inability to complete client identification and verification procedures.

F.3.6 Where it is not possible to complete the CDD procedures before taking office, IPs should gather sufficient information to allow them to form a general understanding of the identity of the debtor, company officers or beneficial owners of the entity, including information about what the business did and where it traded, in order that that the risk of MLTF can be assessed. Information from online or subscription services may be a useful source of material for CDD, but IPs need to be satisfied that the information is reliable and up to date (see para 5.3.36 of the Guidance).

F.3.7 In cases where an IP is appointed without any prior contact with the debtor, company officers or beneficial owners of the insolvent entity (such as appointments made via a creditors' decision procedure where an alternative IP is nominated by the creditors, or an appointment made as a result of a creditor's petition), IPs should complete their CDD procedures as soon as is practicable on appointment (within five working days is considered a reasonable period). Much of the necessary information may be obtainable from the IP who assisted with convening the decision procedure, or where appropriate, from a prior office holder (for example by them providing certified copies of the necessary documentation). In the situation where management of the client entity are hostile, and unwilling to provide further information, the IP should review other sources of publicly available information to enable reasonable verification of the client within the required timescale.

Appointment by court, Secretary of State or Accountant in Bankruptcy

F.3.8 Where an IP is appointed by court order, by a decision or deemed consent procedure convened by the official receiver, the Accountant in Bankruptcy, or directly by the Secretary of State, without any prior involvement with the insolvent, some reliance can be placed on the order of appointment or the initial bankruptcy or winding-up order to evidence the identity of the insolvent as part of risk based procedures. This would apply to the following cases:

- Appointment as provisional liquidator by order of the court;
- Appointment as liquidator in a winding up by the court (whether by court order following an administration, via a decision procedure or deemed consent procedure convened by the official receiver or directly by the Secretary of State);
- Appointment as administrator or special administrator by order of the court;
- Appointment as administrative receiver (in Scotland, receiver) or special manager by order of the court;
- Appointment as trustee in bankruptcy (whether via a decision procedure or deemed consent procedure or meeting convened by the official receiver, the Accountant in Bankruptcy or directly by the Secretary of State).

F.3.9 Any such reliance on the court order, the notice of appointment or the initial bankruptcy or winding-up order does not remove the need to consider the identity of the beneficial ownership of the entity, or remove the need to consider whether ML activity may have taken place. The IP will also need to consider the potential MLTF risks that may arise throughout the course of the appointment. Other information will still need to be obtained to assess these risks properly.

Use of CDD conducted by third parties

F.3.10 IPs are permitted to rely on CDD conducted by certain third parties, rather than performing their own CDD. Where they do so IPs should have regard to paras 5.3.25 – 5.3.31 of the Guidance. In particular, the IP should still carry out a risk assessment and perform ongoing monitoring.

F.3.11 Where an IP is appointed administrative receiver (in Scotland, receiver) or administrator by a bank or other institution which is itself subject to the 2017 Regulations, the IP may be able to obtain copies of CDD undertaken by the bank or other institution for use in the IP's CDD. Again, this process should be completed as soon as is reasonably practicable. IPs must be satisfied that they have sufficient evidence of identity and enough information to assess the MLTF risks and must, therefore, conduct such further CDD as is necessary for these risks to be properly assessed. In the situation where management of the client entity are hostile, and unwilling to provide further information, the IP should review other sources of publicly available information, or electronic verification services to enable reasonable verification of the client.

Ongoing monitoring of business relationships

F.3.12 The 2017 Regulations require ongoing monitoring of business relationships, including additional CDD measures, to be adopted at appropriate times during the course of a business relationship on a risk-sensitive basis. Paragraphs 5.2.5-5.2.8 of the Guidance deal in more detail with trigger points which might give rise to the need for updated CDD.

F.3.13 In a formal insolvency where trading has ceased, it is likely that ongoing CDD may only be required in cases where the office holder becomes aware of suspicious activity or is concerned about the veracity of previous CDD information.

F.3.14 Where trading is continuing under the control of the IP, ongoing CDD should be undertaken to the extent dictated by the risk level identified. Additional CDD will also be required where the IP becomes aware that the previous CDD information was incorrect, or is no longer up to date.

CDD on purchasers of an entity's assets

F.3.15 In appointments where the IP becomes vested of the assets of the debtor, (bankruptcy in England & Wales and Northern Ireland and sequestration and trust deeds in Scotland), asset sales are conducted by the IP as principal. In such cases, the IP, being themselves a relevant person within the regulated sector, should apply the occasional transaction provisions and conduct CDD on the purchasers of assets for transactions amounting to 15,000 euros or more.

F.3.16 When appointed as a liquidator, administrator, administrative or other receiver, or supervisor of an IVA or CVA, an IP's business relationship is with the debtor or the entity over which they have been appointed, not with the purchasers of their assets.

F.3.17 Where an IP is appointed over an unregulated entity, the nature of the business of the debtor or entity does not change with the appointment of an IP, therefore, if the insolvent entity was not within the regulated sector prior to the appointment, it would not become a regulated entity simply by virtue of an IP being appointed. Therefore, an IP need not routinely carry out CDD on the purchasers of assets unless the business trades in goods, and those goods transaction(s) exceed the high value dealer (HVD) threshold (cash transactions over 10,000 euros). IPs should therefore consider whether the insolvent entity trades in goods by way of business such that a previously unregulated entity could become a HVD, thereby requiring supervision by HMRC. IPs should note that guidance on the HMRC website says "You must not accept or make high value cash payments until you have registered as a high value dealer".

F.3.18 IPs should ensure that where an agency is being used to sell assets, for example auctioneers, and where CDD is required to be carried out on the purchaser of assets, that arrangements are in place to fulfil the IPs CDD obligations. The IP should carry out CDD on the purchaser prior to a binding contract to sell being completed. Where the agent are themselves a regulated entity (for example an estate agent or solicitor) an IP may place reliance on the CDD conducted by the agent (subject to the comments at F3.8). The IP may authorise an agent to carry out CDD on their behalf, although the IP will remain fully responsible for compliance with the CDD requirements. Any authorisation or arrangements with agents to complete CDD on behalf of the IP should be documented in writing.

CDD on the payer of other funds

F.3.19 Where an IP receives other funds from a third party, for example a third party contribution in an IVA or a bankruptcy, the IP should carry out CDD on the third party and assess the associated MLTF risks. In an insolvency context, examples of factors which may be considered as part of the risk assessment would include:

- the relationship between the third party and the insolvent;
- the rationale for the third party contributing to the insolvent estate;
- the source of funds to the third party

CDD of the recipients of distributions and dividends

F.3.20 The payment of a distribution or dividend is not a business relationship for the purposes of the Regulations. The IP would not therefore usually be required to undertake CDD on these recipients. However the IP should consider on a risk based approach, whether they should check the Office of Financial Sanctions Implementation lists to ensure that they are not making payments to any parties subject to financial sanctions.

F.4 Appointments over regulated entities

F.4.1 Where an IP is appointed over an entity in the regulated sector then that entity remains subject to requirements of the MLTF regime. The entity's supervisor should be informed of the appointment. The IP should also take their own appropriate advice on who the relevant AML supervisory body will be for their activities in relation to the entity, given that there may be more than one interested AML supervisor (i.e. the IP's supervisor and the entity's supervisor).

F.4.2 Where an IP is appointed in an insolvency procedure over a relevant firm or sole practitioner, this would not make the IP a Beneficial Owner Officer or Manager ('BOOM') of that firm or sole practice for ML purposes. See F.7 below for further details on BOOMs.

F.5 Reporting suspicion of Money Laundering or Terrorist Financing

F.5.1 The definitions of money laundering, criminal property and criminal conduct are very broadly drawn. See section 2 of the Guidance for the scope of the offences and the property that may be covered. IPs should be mindful of the need to avoid the risk of being a party to a course of action that may be in breach of the Money Laundering legislation.

F.5.2 IPs must comply with the requirements relating to the reporting of suspected MLTF and consider obtaining consent where appropriate in relation to dealing with potential criminal property.

F.5.3 IPs may become aware, or may form a suspicion, that past activities of a company or individual to which they have been appointed constitute an offence under the Money Laundering legislation. Such knowledge or suspicion will trigger a reporting requirement. For detailed guidance on suspicion and reporting see section 6 of the Guidance.

F.5.4 Where an IP intends to realise assets, distribute assets (including in specie) or make any payment from an entity which they suspect include proceeds of crime, the IP should also consider whether they should submit a DAML SAR to the NCA, to obtain consent to proceed with the transaction. On the basis that cash is a fungible asset, any funds suspected of being proceeds of crime will taint all funds in that bank account, and therefore any distributions from that account may require consent to protect the IP from committing an offence under POCA 2002.

F.5.5 Note that the requirement to report relates to suspicion of **any** criminal activity resulting in proceeds regardless of who may have committed the offence or where it was committed if the conduct would have been criminal if undertaken in the UK.

F.5.6 In the absence of suspicion of fraud or dishonesty, the mere existence of a debt to HMRC will not trigger a reporting requirement. However where a client is deliberately delaying payment to HMRC, this could

become a refusal to pay the tax due. IPs should refer to section 9 of the supplementary AML guidance for tax practitioners.

The Privilege exemption

- F.5.7 Privilege is unlikely to be relevant to insolvency appointments. Where they believe it may be relevant, IPs should refer to the Guidance (paragraphs 6.2.23 to 6.2.32).

Tipping off

- F.5.8 The tipping off offence arises when a person discloses that a report has been made or may be made to the authorities, and the disclosure is likely to prejudice an investigation that might be conducted. For further information on 'tipping off' see section 6 of the Guidance.
- F.5.9 IPs should be careful to ensure that reports to creditors, or reports to third parties which might be liable to disclosure (such as those made under the Company Directors Disqualification Act 1986, Company Directors Disqualification (Northern Ireland) Order 2002 or the Bankruptcy (Scotland) Act 2016), do not contain anything that might constitute tipping off.
- F.5.10 An IP will not be tipping off in providing routine access to their case files to their RPB in the course of their ordinary monitoring activity. IPs should be careful to ensure that their working papers or other records required to be maintained under insolvency legislation do not contain a copy of any report that has been made under the Money Laundering legislation.

Where the insolvent is within the regulated sector

- F.5.11 Where an IP is appointed to a company, partnership or individual which is itself carrying on business within the regulated sector (e.g. 'external accountant', 'tax advisers', 'independent legal professionals', 'estate agent' or 'high value dealer') the IP will need to ensure that the insolvent's own internal systems in relation to ML reporting comply with the legislation and continue to function during the course of the insolvency. However, the IP will also have to report suspicions encountered during the course of their duties through the IP's own MLRO, in addition to through the insolvent entity's internal systems.

F.6 Obtaining consent to transactions involving potentially criminal property – Defence Against Money Laundering ('DAML') SARs

- F.6.1 A DAML request to the NCA is required where an IP engages in any arrangement that may facilitate activity involving suspected criminal property. Failure to do so would expose the IP to committing a money laundering offence. The NCA has seven working days (starting the day after submission of a report) in which to grant or refuse consent. If nothing is heard from the NCA by the end of this period consent is deemed to have been given. If within seven days the NCA gives notice of refusal, then consent is only deemed to have been given after a further 31 days ('the moratorium period') passes without any restraint order or civil recovery property freezing order being granted (unless notice is received that the moratorium period has been extended). See section 6.3 of the Guidance for applying for and receiving consent.
- F.6.2 The appointment of an IP may cause them to take control of tainted assets. If it is known or suspected prior to appointment that the assets are tainted, then a DAML SAR should be made prior to appointment. Where

this is not possible because of the urgent requirement to preserve assets or other similar reasons, a report and DAML request should be made as soon as practicable afterwards.

- F.6.3 IPs should bear in mind that, where they suspect the assets of a company or individual to which they have been appointed may be criminal property, selling those assets, or using the company's or individual's funds, without consent will constitute an offence.
- F.6.4 IPs should consider submitting a DAML SAR to the NCA that covers all distributions and payments the IP intends to make from the tainted assets. However, the IP should note that any such consent provided by the NCA in response to a DAML SAR may specify how the funds may be dealt with. If the IP has cause to change those dealings, or make additional distributions or payments, the IP will require further consent from the NCA via submission of a further DAML SAR.

F.7 Supervisory approval of Beneficial Owners, Officers and Managers

- F.7.1 Reg 7(b) of the 2017 Regulations provides that each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it, or regulated or supervised by it. An IP is supervised for MLTF purposes by the body that has granted their IP authorisation (their RPB). For High Value Dealers, the supervisor for MLTF purpose is HMRC. High Value Dealer is defined in Reg 14(1) (a) as a firm or sole trader who by way of business, trades in goods, and any transaction exceeds 10,000 euros in cash.
- F.7.2 Reg 11(b) of the 2017 Regulations defines "IP" to include any firm or sole practitioner so acting. Reg 26 of the 2017 Regulations requires that the BOOMs of relevant firms (which will include firms of IPs) or sole practitioners, be approved by the supervisory authority of the relevant firm or relevant sole practitioner. In mixed practices or practices with IPs authorised by multiple RPBs, an IP should ascertain from their RPB what their expectations are, the registration processes and what agreements are in place with other supervisory authorities in terms of supervision for money laundering purposes.