

Investing in Cannabis: UK money laundering considerations



Cannabis: Legal treatment in the UK

There are a growing number of investors exploring investments into the cannabis market. This briefing paper discusses UK money laundering considerations in relation to such investments.

This briefing paper does not consider any regulatory or civil liability risks such as public health risks or liabilities associated with cannabis products, nor does it consider the position on such products outside the UK.

Relevant legislation

The offences

Under the Proceeds of Crime Act 2002 (“**POCA**”), the primary offences are:

- **concealing, disguising, converting, transferring**, or the **removing** from the jurisdiction of , criminal property;
- **entering into or becoming concerned in** an arrangement which a person knows or suspects facilitates **the acquisition, retention, use or control of** criminal property by or on behalf of another person; and
- the **acquisition, use or possession** of criminal property.

The definitions of criminal property and criminal conduct significantly broaden the territorial scope of POCA (see below).

As it is an offence under the Misuse of Drugs Act 1971, to supply articles for the unlawful administration or preparation of any class of controlled drugs those involved in the sector do need to consider whether activities could give rise to this offence.

Territorial scope

“Criminal property” is property that constitutes a person’s benefit from criminal conduct where the alleged offender knows or suspects that it constitutes such a benefit (even if this is something other than the original

benefit obtained through criminal conduct). “Criminal conduct” is conduct which would constitute an offence in the jurisdiction in which it takes place or conduct which would constitute an offence in any part of the UK if it occurred in the UK.

Based on the above definitions, activities are capable of contravening POCA even if such activities are wholly lawful in the overseas jurisdiction where they are, in fact, carried out but are illegal within the UK. It is therefore necessary to assess the extent to which cannabis-related activities are legal within the UK.

Cannabis in the UK

The first step in any POCA analysis is to establish whether the relevant activities would be illegal if they took place within the UK.

Legal treatment of cannabis

In the UK, cannabinol, cannabinol derivatives (aside from dronabinol or its stereoisomers), cannabis and cannabis resin are Class B “controlled drugs” and it is an offence to cultivate, possess, produce, supply, import or export these products except under a Home Office licence or an exemption resulting from them being cannabis-based products for medicinal use in humans .

Licensing regimes in the UK

There are certain licences and regimes in the UK which permit particular cannabis products and/or use of those products. In particular:

- **THC:** The Home Office has a policy to permit licences to be granted for the growth of low (under 0.2%)-tetrahydrocannabinol (“THC”) hemp products (provided certain other conditions including a defined commercial end user, reliance on an approved seed type and a prohibition on using green materials (flowers and leaves) are met);
- **Medicinal Cannabis:** There is the possibility of the grant of a high THC cannabis cultivation licences for the cultivation and production of medicinal cannabis in the UK . There is a specific regime for Cannabis Based Products for Medicinal Use in Humans which

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focuses on the cultivation and processing being very tightly controlled and destined for use in medicinal cannabis that can only be lawfully prescribed by specialist doctors. The Medicinal Cannabis licencing regime is limited on the basis that it relates to the possession and use of these products in a medical context only and not the whole supply chain from cultivation onwards.

- **CBD:** Cannabidiol in its pure form is not a controlled drug in the UK which means that people can possess, produce, supply and import it. This has led to a widespread view that “CBD products” are legal. However, it is very difficult to isolate pure CBD and the Home Office advises “caution” in dealing with such products. In particular, the Home Office have stated that: *“If a CBD ‘product’ contained any controlled cannabinoids, unintentionally or otherwise (e.g. THC or THC-V), then it is highly likely that the product would be controlled.”* There are separate regimes including novel foods authorisations that may apply to ingested CBD and the tight restrictions on harvesting hemp flowers means that most CBD products are made with hemp cultivated outside the UK.

Impact of Licences on POCA

Recreational cannabis

Any investment in a recreational cannabis business carries a risk of contravening POCA. Accordingly, an investment would involve an exchange of “clean money” for property that is or represents the benefit of conduct that would be likely to be illegal if it had occurred in the UK.

Medicinal cannabis

Where an investment relates to solely to licenced medicinal products (i.e. there are no “side” recreational products), it is unlikely that any POCA issues will arise in respect of such investments.

THC / CBD products

Products purporting to be THC and CBD will require further analysis as to the exact form and constitution of those products. The position in relation to the legality of

such products in the UK is unclear and is developing. On a risk-based approach, the 0.2% THC limit, particularly where the CBD is derived from licenced industrial hemp production, could provide some degree of comfort as that appears to be a level at which enforcement action is unlikely. However, such an approach is not one that is necessarily compliant with the law as any detectable level of THC is technically unlawful.

Vaping and related devices

Devices for the administration of cannabis products (e.g. vape-pods) are only problematic if their supply in the UK would be illegal. As above, it is an offence to “administer” a controlled drug or to supply articles for the administration or preparation of a controlled drug. However, for this offence to take place, the defendant must believe that the article is to be used in circumstances where the administration is unlawful. Accordingly, where cannabis is legal in places the article is used, there would be no such belief and accordingly there would be no “criminal conduct” for the purposes of POCA.

FCA approach

The FCA have confirmed that the proceeds from recreational cannabis companies, even when they are located in those jurisdictions that have legalised it, are proceeds of crime under POCA. The FCA have therefore stated that they would not admit the securities of such companies to the Official List. However, this particular issue is pending a guidance consultation which will follow in due course.

POCA “consent” regime

Investors may seek to obtain a Defence Against Money Laundering (“**DAML**”) from the from the National Crime Agency before proceeding with a cannabis-related investment. If granted, this provides a complete defence against liability for the relevant POCA (money laundering) offences but not any other criminal offences.

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The process

A DAML can be requested by making an authorised disclosure under POCA setting out the activities which may amount to money laundering offences under POCA and requesting consent for such activities. The DAML should be time limited when it relates to ongoing business relationships or ongoing receipt of funds. Guidance from NCA suggests that such a time period would be up to 12 months.

Once a request is submitted, the NCA has a period of seven working days, starting on the first working day after the request is made, for consent to be granted. Consent will be granted where: (a) the NCA has positively granted consent by the end of this period, or (b) no express refusal has been issued (i.e. a deemed consent). It appears NCA are reluctant to grant express consent in most cannabis-related cases—so deemed consent after seven days is most commonly the outcome.

Effect of consent

Following either a positive or deemed consent from the NCA, the requester may proceed to carry out the activities included in the DAML request without committing a money laundering offence under POCA.

The DAML does not provide a consent to the carrying out of conduct that would amount to a non-money laundering offence but may, for example, be an offence under another statute or under another jurisdiction.

Effect of a refusal

In the event of a refusal by the NCA to grant a DAML, an initial moratorium period of 31 calendar days following notice of refusal would commence—such period may be extended upon an NCA application to the court. This time period allows the NCA time to investigate (and enforce where applicable) against the relevant criminal property.

If the moratorium period expires without any enforcement action, the requester will have the benefit of a DAML.

Key contacts



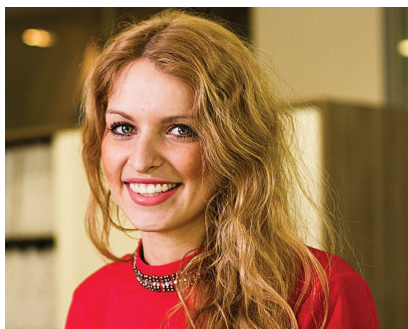
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