

Whistleblowing Guidance

Guidance for IPs

1. In certain circumstances, an Insolvency Practitioner ('IP') may be required to report to the IPA if a client, insolvent or associate thereof has not complied with any law or regulation or if any other matters occur which give rise to a reporting obligation.
2. An IP shall ensure that they are aware of the requirements identified in the relevant legislation and regulatory framework that assist the IP in identifying matters that must be reported.
3. Failure to report may constitute an offence and could render an IP liable to fines or even imprisonment.
4. Where an IP becomes aware of a suspected or actual non-compliance with law or regulation, which gives rise to a statutory right or duty to report, they shall report this to the proper authority immediately.
5. Where an IP becomes aware of a suspected or actual non-compliance with law or regulation and concludes that it is a matter that must be disclosed in the public interest, the IP shall notify the relevant parties in writing of their view. Except in circumstances where there is a real risk that disclosure to those parties might prejudice any investigation or court proceedings or is proscribed by law (for example, in the UK where it might constitute the offence of "tipping off" – see below for further details) the IP shall make their report to the proper authority without delay and without first informing the relevant parties.

Circumstances indicating non-compliance with law or regulation

6. An IP shall have a general understanding of the laws and regulations that apply when dealing with an insolvent person or entity.
7. The laws and regulations may be specific to the insolvent's area of activity and include qualifications, licences or permits to carry on a particular activity. The following examples (a) & (b), highlight some circumstances where an entity may be in breach of a law or regulation under UK law:
 - (a) an entity whose main activity is waste disposal should hold the relevant licences to allow it to dispose of hazardous waste;
 - (b) an entity whose main activity is financial services work, such as investment business, should hold appropriate authorisation to undertake this type of activity;

Professional duty of confidence

8. Disclosure by an IP shall not constitute a breach of any obligation of confidence imposed by the fundamental principle of confidentiality provided that:
 - (a) disclosure is made in the public interest;
 - (b) disclosure is made to a proper authority; and
 - (c) there is no malice motivating the disclosure; or
 - (d) disclosure is made under compulsion of law.
9. An IP should take legal advice before making a decision on whether a disclosure of a suspected or actual non-compliance with law or regulation shall be made to a proper authority in the public interest.

Method of reporting

10. An IP making a disclosure of a suspected or actual non-compliance with law or regulation directly to a proper authority should ensure that their report includes:
 - (a) the name of the entity;
 - (b) the statutory authority under which the report is made;
 - (c) the context in which the report is made;
 - (d) the matters giving rise to the report; a request that the recipient acknowledge that the report has been received; and
 - (e) their name and the date on which the report was written.

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11. Where required by law to disclose confidential information as a result of The Money Laundering, Terrorist Financing & Transfer of Funds (Information on the Payer) Regulations 2017 ('MLR17'), an IP should always disclose that information in compliance with relevant legal requirements.
12. In some circumstances, an IP may consider disclosing information when not obligated to do so by law or regulation, because it is considered that disclosure would be in the public interest. When considering such disclosure, an IP should, where appropriate, follow the internal procedures of their employer or firm in an attempt to rectify the situation. If the matter cannot be resolved, an IP should determine the following:
 - (a) legal constraints and obligations;
 - (b) whether members of the public are likely to be adversely affected;
 - (c) the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;
 - (d) the possibility or likelihood of repetition;
 - (e) the reliability and quality of the information available; and

- (f) the reasons for the employer or firm's unwillingness to disclose matters to the relevant authority.
13. In deciding whether to disclose confidential information, the IP should also consider the following points:
- (a) when the employer or firm gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
 - (b) whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any;
 - (c) the type of communication that is expected and to whom it is addressed; in particular, an IP should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
 - (d) the legal or regulatory obligations and the possible implications of disclosure for the professional accountant in business
14. The IPA, if in receipt of confidential information from an IP will process that information in accordance with its responsibilities and duties as a regulatory and, in the case of disclosure pursuant to anti-money laundering or anti-terrorist legislation as a Supervisory Authority under MLR17.
15. Confidential information from IPA members or other IPs not regulated by the IPA can be sent to the dedicated e-mail address for confidential disclosures that will ensure that matters are dealt with anonymously. The email address is: amlwhistleblowing@ipa.uk.com
16. IPs are reminded of the provisions of The Statement of Insolvency Practice 1 and their obligation to report misconduct where other IPs are not complying with relevant legislation or regulations or whose actions may bring discredit to the profession.
17. Save in circumstances where disclosure is required by law, the IPA will engage with the provider of confidential information regarding its use in regulatory or disciplinary processes and endeavour to protect the identity of the provider.

Whistleblowing Guidance - public and third parties

18. The IPA welcomes disclosures from the public and third parties of alleged Money Laundering by members of the IPA who are licensed as IPs, general members of the IPA (fellow, ordinary or student members) or IPA Secretariat staff.
19. The IPA has set-up an email address which can be used to make a confidential disclosure to the IPA.
20. The address is: amlwhistleblowing@ipa.uk.com
21. Disclosures should provide as much detail as is available and at least the identity of the person against whom the allegation is being made and any documentary evidence or detail that would assist the IPA in carrying out relevant enquiries.
22. Disclosures to these e-mail addresses is restricted to the IPA's Single Point of Contact, his Deputies and the IPA's Money Laundering Officer.

23. Disclosures will be treated confidentially and the identity of the party making the disclosure will be kept anonymous and will not be shared with the individual against whom the allegation has been made, any other member of the IPA Secretariat or Committee who may consider any allegation, without the express consent and agreement of the party making the disclosure.
24. Disclosures will be dealt with by the IPA under our responsibilities as a Supervisory Authority under MLR17 and our duties as a regulator of insolvency matters.
25. Offences that may indicated Money Laundering include:
 - (a) Concealing, transferring, disguising or converting criminal property or removing such property from the UK
 - (b) Entering into, or becoming aware of arrangements which it is known would facilitate the acquisition or control of criminal property
 - (c) Acquiring or using or possessing criminal property
26. The IPA also supports disclosures to HMRC where the public believe that an IPA member is committing tax evasion or fraud or assisting with tax evasion or fraud. The HMRC tax fraud hotline is 0800 788 887. Disclosures to the HMRC hotline do not prevent a disclosure also being made to the IPA.

Tipping-Off

27. 'Tipping-Off' is a specific offence under the MLR17.
28. Tipping-off is reporting, informing or disclosing to the person whom an allegation has been received, or to a third party that a report of suspected Money Laundering has been made and/or that the person against whom an allegation is raised is being investigated.
29. All IPA staff and Committee members are subject to Money Laundering training and warned about the offence of tipping-off as any breach may lead to up to 5 years imprisonment, a fine or both.
30. Any member of the public or third party who is considering making a disclosure to the IPA should ensure that the disclosure is in the public interest and should seek their own independent legal advice on the disclosure.

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