



2010 GUIDANCE NOTES
FOR SOLICITORS ON
ANTI-MONEY
LAUNDERING
OBLIGATIONS



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'2018 AML Guidance', published in November 2018, provides supplemental guidance for solicitors about the changes introduced by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018. The entirety of the 2010 Guidance Notes remain extant, except for Chapters 4, 5 and 10, which have been replaced by 2018 Guidance. The absolute minimum number of amendments have been made to existing guidance. Sections 2 and 4 of 2018 AML Guidance are new and provide guidance about the new business and customer risk assessment obligations.

'2018 AML Guidance' is available now to download from our dedicated AML webpage - <http://www.lawsociety.ie/aml/> - please use your login to access the AML webpage which is in the members' area.

CHAPTER 1

INTRODUCTION

1.1 This chapter provides an overview of the anti-money laundering (AML) obligations of solicitors together with an examination of the substantive offence of money laundering. It considers how the AML regime was conceived and eventually applied to solicitors. Because the AML obligations have been consolidated in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“the 2010 Act”), with all pre-existing provisions being repealed, it is easier for the profession to access in one place all of the relevant provisions pertaining to their obligations. The core AML provisions contained in the 2010 Act are reviewed in this chapter. The new concept of directions, orders and authorisations, provided for under the 2010 Act are also summarised.

What is money laundering?

1.2 The term “money-laundering” means the process whereby the identity of ‘dirty money’ representing the proceeds of criminal conduct is changed (‘washed’) through apparently-legitimate transactions and processes, so that the money appears to originate from a legitimate source. In recent years, concerted efforts have been made on a world-wide basis to restrict the circumstances in which illegal proceeds can be laundered through legitimate business. This has primarily taken the form of legislation, creating specific new criminal offences and placing obligations on service-providers to identify clients, to maintain records and report suspicious transactions.

What is AML?

1.3 AML is the term used to describe a set of controls which require bodies who might be targeted by money launderers to introduce measures to prevent money laundering and to report suspicious transactions. It is basically a set of legislative duties, which prescribe the conduct of some professions in the provision of services so as to prevent the misuse of these services as money laundering vehicles.

1.4 The first international instruments to adopt a preventive AML strategy – the FATF 40 recommendations and the First EU Money Laundering Directive – applied only to banks and credit institutions.

1.5 Since 1994, all financial institutions in the State have been subject to the provisions of the Criminal Justice Act 1994, as amended, in terms of its requirements to (a) identify clients, (b) maintain records, and (c) report suspicious transactions. Following the 1998 G8 summit, attention in the fight against money laundering began to focus on “gatekeepers”. Gatekeepers are the intermediaries, (including professionals) who are targeted, usually unwittingly, to help launder the proceeds of crime. The FATF report on Money Laundering Typologies 2000-2001 expanded on the role of ‘gatekeeper’ professionals in facilitating money laundering.

1.6 The Second Money Laundering Directive, passed in the wake of the events of 11th September 2001, placed a legislative imperative on EU Member States to extend the AML

regime to lawyers arising from a belief that legitimate businesses, such as solicitors' firms, were being used to launder the proceeds of crime and fund terrorism. The AML regime introduced mirrored the system already applicable to the financial services sector, with some exemptions for the safeguarding of legal professional privilege.

1.7 By virtue of the Second EU Directive on Money-Laundering and the Criminal Justice Act (Section 32) Regulations 2003, all solicitors were bound by the 1994 Act obligations, subject to certain exemptions. For the purposes of the legislation, the provisions are applied to 'designated persons', which include solicitors. Similar references in these Guidance Notes will include solicitors.

1.8 The 1994 Act brought into effect a completely new approach to solicitor/client relationships. Prior to the 2010 Act, solicitors' anti-money laundering (AML) obligations were located in Sections 31, 32, 57, 57A and 58 of the Criminal Justice Act, 1994, as amended by the Disclosure of Certain Information for Taxation and Other Purposes Act, 1996, the Criminal Justice (Miscellaneous Provisions) Act, 1997, the Criminal Justice (Theft and Fraud Offences) Act, 2001, the Central Bank and Financial Services Act, 2003 and the Criminal Justice (Terrorist Offences) Act, 2005.

1.9 The duties comprised of obligations to verify the identity of clients¹, make reports to police and tax authorities in relation to suspicious client activity² and introduce measures to combat money laundering³. The AML regime just described has applied to solicitors in Ireland since September 2003.

1.10 The Third Money Laundering Directive⁴, passed in 2005, was finally enacted in Ireland in May 2010 with the signing of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 by the President. It introduces a number of new concepts such as the obligation to monitor client behaviour on an ongoing basis using a risk-based approach, which will be examined in these Guidance Notes.

1.11 During the legislative process of the 2010 Act, the Society made submissions and lobbied on behalf of the profession in relation to the Heads of the Bill, and during both First and Second Dáil and Seanad Debates.

1.12 The principal provisions affecting solicitors are now contained in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

How is the AML regime applied to solicitors?

1.13 The terminology used in AML is to refer to persons who are obliged to implement measures under the Act as "designated persons". This term includes solicitors who are referred to as "relevant independent legal professionals" under section 25(1)(d). The definition of "relevant independent legal professionals" describes the legal services that are covered by AML regime, which replicates Article 2(3)(b) of the 3rd Directive.

¹ Section 32(3) of the 1994 Act

² Section 57(1)

³ Section 32(9A)

⁴ 2005/60/EC

What are the key provisions of the Act affecting solicitors?

1.14 Every solicitor should be acutely aware of the criminal offences created by the 2010 Act and how he/she might unwittingly become involved in the offences governed by that Act.

1.15 The relevant sections of the Act, are –

- 7 - which sets out the offence of money-laundering,
- 17 - which details the ‘Directions’ regime,
- 25 - which applies the AML regime to solicitors
- 33 - 40 - which contain the CDD measures to be undertaken,
- 42 - which imposes an obligation to report suspicious transactions,
- 54 and 55 - which specify internal policies and procedures, training and record keeping obligations and
- 49 - which creates the offence of tipping off

1.16 All solicitors should familiarise themselves with the content of each of these sections.

An introduction to the legislation

1.17 The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, transposes the requirements of the Third Money Laundering Directive, and repeals aspects of the Criminal Justice Act, 1994 (as amended) which are detailed in Schedule I of the legislation.

1.18 The key features of the legislation are as follows:

- The obligation on designated persons (including solicitors) to apply Client Due Diligence (CDD)⁵ procedures to their clients in specific circumstances, which not only require the initial identification and verification of identity, but also require the ongoing monitoring of the business relationship with clients for suspicions of money laundering and terrorist financing;
- The obligation to also identify and take risk-based and adequate measures to verify (where applicable) the beneficial owners of clients;
- The application of the CDD obligations on a risk-based approach to provide for better allocation of resources in the fight against money laundering and the financing of terrorism;
- In line with the risk-based approach, the legislation outlines the circumstances when both enhanced and simplified client due diligence procedures should be applied to specified client types;
- Designated persons are permitted to rely on third parties to meet the CDD requirements with the exception of the obligation for ongoing monitoring of the business relationship. However, ultimate responsibility for ensuring compliance with the full CDD obligation still resides with the designated person which relies on a third party;
- Designated persons covered by the legislation are obliged to promptly report suspicions of money laundering or terrorist financing to the Gardaí and Revenue Commissioners.
- A new concept of ‘Directions’ relating to investigations;

⁵ As these notes are intended for solicitors, the term ‘client’ will be used when referring to due diligence concepts and duties instead of ‘customer’.

- Monitoring by the competent authority; and
- Finally, obligations on designated persons in relation to record-keeping, staff training and the maintenance of appropriate procedures and controls pertaining to the obligations imposed by the legislation.

What is Client Due Diligence?

1.19 The imperatives of the CDD measures generally include obligations to

- verify a client’s identity, which cannot be done on a risk sensitive basis
- verify the identity of beneficial owners and understand control structures on a risk sensitive basis
- obtain information on the purpose and intended nature of the business relationship
- conduct ongoing monitoring

What is the risk-based approach?

1.20 To understand CDD better, it is helpful to understand the concept of the risk-based approach.

1.21 The risk-based approach means that designated persons will focus their resources on the areas of greatest risk. The legislation allows designated persons, including solicitors, to apply aspects of the client due diligence requirements on a risk-sensitive basis depending on the type of client, business relationship, product or transaction.

1.22 A designated person has the option to employ the verification procedures during the course of the business relationship, instead of prior to its establishment, where it can be shown that prior verification would “interrupt the normal course of business” and where there is “no real risk ...of money laundering or terrorist financing” in operation. The designated person must be able to demonstrate that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

1.23 The possibility of being used to assist with money laundering and terrorist financing poses risks for solicitors’ firms, including:

- criminal and disciplinary sanctions for firms and individual solicitors
- civil actions against the firm as a whole and individual partners
- damage to reputation leading to a loss of business

1.24 These risks must be identified, assessed and mitigated, just as a solicitor would do for all business risks facing their firm. If a solicitor knows his/her client well and understands their instructions thoroughly, the solicitor will be better placed to assess risks and spot suspicious activities. Applying the risk-based approach will vary between firms. While a solicitor can, and should, start from the premise that most clients are not launderers or terrorist financiers, the solicitor should assess the risk level particular to his firm and implement reasonable and considered controls to minimise those risks.

1.25 Solicitors are not expected to be detectives and should

- make a reasoned assessment of the risks
- take reasonable steps to conduct CDD
- use their judgement and discuss issues with colleagues
- document what they find
- be able to demonstrate that they undertook due diligence and took reasonable steps to protect the firm

What are the categories of client due diligence (CDD)

1.26 There are three categories of CDD:

(a) Simplified – section 34

1.27 The legislation prescribes certain types of client and certain types of products that fall into the simplified CDD category (referred to in the legislation as exemptions) on the basis that they are very low risk or are designated persons. Simplified client due diligence (SCDD) means that a solicitor does not have to identify, or to verify the identity or obtain information on the purpose or intended nature of the business relationship of a client or where relevant the beneficial owner of a client. This applies where the client falls into one of the specific categories of client that are considered to present a low risk of money laundering or terrorist financing. The solicitor must obtain sufficient information about the client to satisfy himself that the client meets the criteria for SCDD to be applied to it. Section 34 lists those who qualify.

(b) Enhanced – sections 37 and 39

1.28 The legislation prescribes certain situations, usually involving ‘politically exposed persons’ (PEPs) which place clients in the enhanced CDD category. However, under section 39, the legislation also permits designated bodies to apply enhanced CDD measures in circumstances where their own assessment of risk concludes that the client presents a higher risk of money laundering or terrorist financing. Section 37 (4) details the enhanced measures to be undertaken.

(c) All other categories – sections 33 - 35

1.29 All other clients fall within the ‘standard’ CDD category, requiring the four CDD measures outlined at paragraph 1.19, but the legislation allows designated persons to determine the extent of the application of these CDD measures on a risk sensitive basis (except for the obligation to verify identity which cannot be done on a risk-sensitive basis though the extent of the verification exercise can depend on the risk category – see paragraph 5.8). While non-face-to-face contact is not described as “enhanced”, there are additional CDD requirements laid out for such situations in the legislation.

What does reliance on Third Parties mean?

1.30 The legislation permits designated persons to rely on third parties to complete part of their client due diligence requirements. However, responsibility for meeting the CDD obligations still rests with the designated person, even where it has relied upon a third party.

The legislation is unclear in relation to some key aspects of such an arrangement. First, the legislation is unclear whether a third party could refuse to allow itself to be relied upon. Secondly, a designated person may not be made aware that a third party has ceased to have a business relationship with a client. As a result, solicitors should be cautious in relying on third parties as they will remain liable for any failure to comply notwithstanding their reliance on the third party.

What is the reporting obligation?

1.31 Section 42(1) requires a designated person to report to the Garda Síochána and the Revenue Commissioners any knowledge or suspicion they have that another person is engaged in money laundering or terrorist financing. The 2010 Act introduces a new concept of “reasonable grounds to suspect”. In addition to imposing a legal obligation to make a report when there is a suspicion or actual knowledge of money laundering or terrorist financing, the legislation requires a report to be made when reasonable grounds exist for knowing or suspecting that a person is engaged in money laundering or terrorist financing. This introduces an objective test of suspicion – designated persons will not be able to rely on an assertion of ignorance or naivety where this would not be reasonable to expect of a person with their training and position. Of interest to solicitors will be section 46(1), which removes the requirement to make a report/disclose information where that information is subject to legal privilege.

What is the tipping off offence?

1.32 The tipping off offence is replicated in section 49 of the 2010 Act and prevents a designated person from making any disclosures likely to prejudice any ongoing or future investigation. Section 51(3) contains a specific defence for legal advisers.

What are the obligations in relation to internal policies and procedures, training?

1.33 Solicitors’ firms are required to adopt policies and procedures in relation to their legal business to prevent and detect money laundering and terrorist financing. Such procedures should include:-

- Risk Assessment & Risk Management
- Internal Controls & Compliance Management
- Client Due Diligence
- Identification & Verification
- Third-party Reliance
- Record-keeping
- Reporting & Tipping off
- Training

What are the obligations in relation to record-keeping?

1.34 [Section 55](#) requires firms to keep records evidencing the procedures applied and information gathered by the firm in relation to each client for 5 years.

How do directions, orders and authorisations operate under the Act?

1.35 Part 3 of the legislation introduces a new concept which provides for Gardaí to give directions to designated persons, including solicitors, in relation to transactions. Practitioners may be directed not to carry out a transaction by a member of the Garda Síochána or a District Court Judge for up to 28 days. In addition section 23 provides that a member of the Garda Síochána not below the rank of superintendent may, by written notice, authorise a person to engage in an act prohibited under section 7(1) (money laundering occurring in the State) if the member is satisfied that the act is necessary for the investigation of an offence.

Are there any exemptions for solicitors from the provisions of the 2010 Act?

1.36 A number of significant exemptions from the 2010 Act regime exist for solicitors. These exemptions are set out below.

1.37 Firstly, the AML obligations only arise where a solicitor participates in certain types of legal work. This work is specified in the definition of the term **“relevant independent legal professional”** contained in section 24(1) as a barrister, solicitor or notary who carries out any of the following services:

“(a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

- (i) buying or selling land or business entities;
- (ii) managing the money, securities or other assets of clients;
- (iii) opening or managing bank, savings or securities accounts;
- (iv) organising contributions necessary for the creation, operation or management of companies;
- (v) creating, operating or managing trusts, companies or similar structures or arrangements;

(b) acting for or on behalf of clients in financial transactions or transactions relating to land;”

Accordingly, legal activities falling outside these categories are exempt.

1.38 Secondly, solicitors are exempt from the obligation to make a suspicious transaction report where legal privilege exists. See paragraphs 8.16 – 8.22.

1.39 Thirdly, where a solicitor makes a suspicious transaction report, he is permitted to immediately cease to act for that client. This action will not be regarded as a tipping off offence under the Act as a defence exists under section 53 of the Act where the person can prove that (a) the person was a legal adviser, (b) the solicitor merely informed the client that he would no longer provide the required service, (c) the solicitor did not provide the service, and (d) the solicitor made a report to the authorities.

Do the obligations arise when providing independent advice?

1.40 The obligations may also arise in circumstances where a solicitor is giving independent advice, either to (a) a party to, or (b) a person affected by a relevant transaction, even though the solicitor may not be conducting the transaction him/herself.

What is the source of these Guidance notes?

1.41 These Guidance Notes have been drafted by the Society's Working Group on Money Laundering Legislation. Certain aspects of these Guidance Notes reflect advices published for financial institutions and the Society acknowledges the valuable assistance provided by those Notes in its preparation of its Guidance for solicitors. Regard was also had to the advice published for solicitors in England and Wales.

What is the objective behind these Guidance Notes?

1.42 The purpose of these Guidance Notes is to provide recommendations as to good practice. They do not constitute a legal interpretation of the Act. Because the obligation to make a suspicious transaction report is based on a subjective test in each particular set of circumstances (i.e. is the transaction suspicious?), the assessment as to whether the reporting obligation arises must be made by each solicitor, in conjunction with the firm's Money Laundering Reporting Officer. However, by way of assistance to practitioners, the Society has included a non-exhaustive list of indicators of potentially suspicious circumstances in Chapter 9 of these notes.

What is the scope of these Guidance notes?

1.43 Under section 107(3) of the Act, in determining whether a solicitor has taken all reasonable steps and exercised all such due diligence, a court may "have regard to any guidelines applying in relation to the person that have been approved by the Minister under this section". In addition, nothing in section 107(3) "limits the matters that a court may have regard to in determining whether a defendant took all reasonable steps and exercised all due diligence to avoid committing an offence". Accordingly, compliance with these Guidance Notes is **strongly recommended** for all solicitors and their employees.

1.44 As the profession's experience of compliance with the requirements of the legislation grows, these Guidance Notes will evolve and be revised over time to take account of issues and difficulties encountered by practitioners in their day-to-day practice. Up-to-date Guidance Notes will be available in the members' area of the Society's website in the AML section and practitioners will be advised if there are any changes or updates.

Checklist of 'actions' for solicitors

1.45 Appendix 1 of these Guidance Notes contains a list of recommended actions by solicitors to assist them to comply with their AML obligations.

CHAPTER 2

MONEY LAUNDERING AND TERRORIST FINANCING

What is money laundering?

2.1 The relevant provisions are set out below, which deal in turn with the following:-

- (a) The **conduct** that will be regarded as money laundering
- (b) The relevance of **location** for the purposes of the offence
- (c) The meaning of **property** for the purposes of the offence, and
- (d) The concept of **the proceeds of criminal conduct**

(a) Conduct

2.2 Section 7(1) of the Act provides as follows:

“A person commits an offence if –

a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

- (i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;
- (ii) converting, transferring, handling, acquiring, possessing or using the property;
- (iii) removing the property from, or bringing the property into, the State,

and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.”

(b) Location

2.3 In relation to territoriality, solicitors should refer to sections 8 and 9 of the 2010 Act.

(c) Property

2.4 Under section 2(1),

““Property” means “all real or personal property, whether or not heritable or moveable, and includes money and choses in action and any other intangible or incorporeal property”.

(d) Proceeds of criminal conduct

2.5 Section 6 provides that:

““Criminal Conduct” means—

- (a) Conduct that constitutes an offence; or
- (b) Conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State.”

2.6 “Proceeds of criminal conduct” means “any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part and whether that criminal conduct occurs before, on or after the commencement of this Part.”

2.7 Money laundering is commonly understood to refer to the processes by which criminals pass the proceeds of their criminal activity through legitimate financial systems to make the money appear to be ‘clean’ or unrelated to crime. The legal definition of money laundering in the legislation is much broader than this traditional concept of money laundering, as it includes acquiring, possessing or using the proceeds of criminal activity, including possessing the proceeds of one’s own crime. As a result, the mere possession, acquisition or use of property, knowing that such property is derived from criminal activity is sufficient for the offence of money laundering to arise, even where the objective is not to ‘cleanse’ the asset, e.g. handling stolen goods. The scope of the offence is further increased by the very wide definition of property set out above and the fact that the legislation contains no *de minimis* provision. Property may take any form, including in money or money’s worth: securities, tangible property and intangible property. As a result, not just proceeds generated by criminal activity are caught by this definition but also:

- Benefits (e.g. in the form of saved costs) arising from a failure to comply with a regulatory or legal requirement where that failure is an offence, (e.g. benefits obtained from tax evasion); and,
- Benefits obtained through bribery or corruption, including benefits (such as profit or cash flow) from contracts obtained by these means.

2.8 For a money laundering offence to be committed, not only must it constitute a person’s benefit from a crime, but the alleged offender (i.e. the person alleged to be laundering property) must know that the property constitutes such a benefit. This means that if a person has made an innocent error, even if such an error resulted in benefit and constituted a crime, then no money laundering offence has arisen. Generally speaking, knowledge is likely to include:

- Actual knowledge;
- Shutting one’s mind to the obvious;
- Deliberately refraining from making enquiries, the results of which one might not care to have;
- Deliberately deterring a person from making a report, the content of which one might not care to have;
- Knowledge of circumstances which would indicate the facts to an honest and reasonable person; and
- Knowledge of circumstances which would put an honest and reasonable person on enquiry and failing to make the reasonable enquiries which such a person would have made.

2.9 Tax offences are not in a special category; the proceeds of a tax offence, like the proceeds of the other examples of criminal activity, may be the subject of money laundering offences under the legislation. Consequently, where the suspicion arises in the course of the business relationship that the client is evading tax, an obligation to report arises. However, in fulfilling its requirements under the legislation a designated person may, unless there are suspicious activities indicating the contrary, reasonably assume that a client has discharged his/her tax liabilities. There is no positive obligation on the solicitor to verify whether the client has or has not done so.

2.10 Solicitors should be conscious that, even in circumstances where there is an exemption from their AML obligations as a designated body, solicitors and barristers remain bound by the other provisions of the legislation which prohibit money-laundering.

2.11 “Criminal conduct” is defined as including conduct “which constitutes an offence”. For the purposes of the legislation, the proceeds of criminal conduct includes not only the proceeds of drug dealing, racketeering and terrorism, but also tax evasion, social welfare fraud and other criminality. Accordingly, assets that have been purchased with untaxed income represent the proceeds of criminal conduct.

2.12 Practitioners should be particularly careful where they act to transfer property, even between spouses, if there are suggestions that the assets have been purchased with untaxed income or if the solicitor or barrister has other reasons for believing that the assets have been so acquired. A solicitor or barrister who advises on or effects such a transaction could commit the offence of money-laundering. The legislation does not require actual knowledge on the part of the solicitor or barrister that the assets are ‘tainted’. The test is recklessness. The legislation does not contain any *de minimis* provision and an asset is considered ‘tainted’ even if only a small proportion of the funding arose from untaxed income and regardless of the length of time that has elapsed since the asset was acquired.

2.13 Where the transfer of such ‘tainted’ assets is being ruled or ordered by the court, practitioners should ensure that the court is fully aware of the provenance of the assets or of any suggestion of funding, whether in whole or in part, from untaxed income. A failure to disclose to the court a fact relating to the status of such property could amount to concealment on the part of the practitioner.

2.14 Where the transfer of such ‘tainted’ assets is being sought by agreement of the parties, without the intervention of the court, a practitioner should not complete any such transaction until the client has regularised the situation in respect of those assets. If a client refuses to do so, the solicitor should cease to act. Penalties for money-laundering offences include imprisonment for up to 14 years.

2.15 It is clear that there are significant legal consequences for both solicitors and barristers flowing from the substantive criminal offences contained in the Act.

What is terrorist financing?

2.16 It is important to distinguish between:

a) Terrorist financing, as it is addressed in the legislation and which involves client due diligence and the making of suspicious transaction reports; and

b) EU Regulations, which contain specific restrictive measures to be directed against persons and entities. The requirement to monitor against various sanctions lists is not included within the legislation or indeed, these Guidance Notes. Please refer to the Government Departments (Finance and Justice) websites for various Statutory Instruments to identify current sanctions lists or designated states.

2.17 “Terrorist financing” means an offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005, and is summarised as follows:

“A person is guilty of an offence if, in or outside the State, the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part in order to carry out—

a) An act constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that it is listed in the annex to the Terrorist Financing Convention, or

b) An act (other than one referred to in paragraph (a) —

i. That is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and

ii. The purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do, or abstain from doing, any act.”

2.18 There can be considerable similarities between the movement of terrorist property and the laundering of criminal property; some terrorist groups are known to have well established links with organised criminal activity. However, there are two major differences between terrorist property and criminal property more generally:

- Often only small amounts are required to commit individual terrorist acts, thus increasing the difficulty of tracking the terrorist property; and
- Terrorists can be funded from legitimately obtained income, including charitable donations, and it is extremely difficult to identify the stage at which legitimate funds become terrorist property.

Terrorist organisations can, however, require quite significant funding and property to resource their infrastructure. They often control property and funds from a variety of sources and employ modern techniques to manage these funds, and to move them between jurisdictions. In combating terrorist financing, the obligation on designated persons is to report any suspicious activity of their clients to the authorities. This supports the aims of the law enforcement agencies in relation to the financing of terrorism, by allowing the placing of a direction or court order not to carry out any specified service or transaction for clients where there are reasonable grounds for suspecting that such property could be used to finance terrorist activity and depriving terrorists of this property as and when links are established between the property and terrorists or terrorist activity.

CHAPTER 3

THE ANTI-MONEY LAUNDERING (AML) REGIME AND SOLICITORS

What is AML?

3.1 AML is the term used to describe a set of controls which require bodies who might be targeted by money launderers to introduce measures to prevent money laundering and to report suspicious transactions. The AML regime is contained in Part 4 of the Act.

Who is affected by the 2010 Act?

3.2 The terminology used in Act is to refer to persons who are obliged to implement measures under the Act as ‘designated persons’. This term includes solicitors.

3.3 Sections 24(1) and 25 provide that-

“Designated person” means any person, acting in the State in the course of business carried on by the person in the State, who, or that is—

- a) A credit institution, including credit unions and An Post;
- b) A financial institution;
- c) An auditor, external accountant or tax adviser;
- d) *A relevant independent legal professional;*
- e) A trust or company service provider;
- f) A property service provider;
- g) A casino;
- h) A person who effectively directs a private members’ club at which gambling activities are carried on, but only in respect of those gambling activities;
- i) Any person trading in goods, but only in respect of transactions involving payments to the person in cash of a total of at least €15,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other); or
- j) Any other person of a prescribed class.

How are solicitors designated by the Act?

3.4 The term “**relevant independent legal professional**” is defined, in section 24(1), as a barrister, solicitor or notary carrying out specific services. The services listed replicate Article 2(3)(b) of the Directive and are set out at paragraph 1.37 of these Guidance Notes.

3.5 A solicitor is defined in section 24(1) as a practising solicitor.

3.6 For the avoidance of doubt, the provisions of the 2010 Act apply to all solicitors, whether in private practice or working either as in-house or public sector solicitors. While it is likely that the work of in-house and public sector solicitors will fall outside the definition of relevant independent legal professional, solicitors should be conscious that the Act does not provide any exemptions from AML duties in terms of categories of solicitors.

When do the client due diligence obligations of the legislation apply?

3.7 Under section 33(1) of the Act:-

A designated person shall carry out CDD:

- a) Prior to establishing a business relationship with the client;
- b) Prior to carrying out for or with the client, a single transaction, or a series of transactions that are, or appear to be linked to each other, or prior to assisting the client to carry out such a single transaction or series, if—
 - i. The designated person does not have a business relationship with the client, and
 - ii. The total amount of money paid by the client in the single transaction or series is greater than €15,000.
- c) Prior to carrying out any service for the client, if the person has reasonable grounds to believe that there is a real risk that the client is involved in, or the service sought by the client is for the purpose of, money laundering or terrorist financing; or
- d) Prior to carrying out any service for the client if the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information previously obtained by the person for the purposes of verifying the identity of the client.

3.8 A business relationship, in relation to a solicitor and a client of the solicitor, means a business, professional or commercial relationship between the solicitor and the client that the solicitor expects to be ongoing.

What is the situation regarding existing clients?

3.9 For clients in relation to whom the solicitor was exempted from verifying identity on the grounds that they were clients prior to the solicitor coming within the scope of the Criminal Justice Act, 1994, (i.e. 15th September, 2005) it should be acceptable for the solicitor to manage any risk of money laundering and terrorist financing through ongoing monitoring. Due to the long standing relationship between the solicitor and the client, retrospective wholesale verification of identification is unlikely to enhance client due diligence, especially given the practical issues to which it would give rise. However, solicitors should consider whether verification of identity would be warranted on a risk-sensitive basis.

3.10 For clients whose identity was established under section 32 of the 1994 Act prior to its repeal, CDD measures under the 2010 Act should be applied if the solicitor has reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained for identification verification.

3.11 Section 33(1)(d) requires CDD to be applied to existing clients prior to carrying out any services, where there are doubts concerning previously obtained client identification data.

3.12 These obligations can present significant practical problems for solicitors particularly in obtaining and verifying new identification information in relation to existing clients. The need to apply CDD to existing clients should arise from the solicitor's ongoing monitoring process where particular circumstances arise on a risk-based approach in accordance with the legislation.

3.13 The following circumstances in relation to existing clients should give rise to concerns about previously obtained client identification data:-

- A solicitor's risk-based assessment of its business indicates that the client in question falls into a higher than standard risk category;
- A solicitor has a suspicion that the client may be involved in money laundering or terrorist financing;
- Where the client had previously only entered into an occasional transaction with the solicitor and CDD information had not been collected and the client now commences a "business relationship";
- A client requests the solicitor to provide a new professional service which is considered to present a higher risk to the solicitor.

Communicating with clients

3.14 While not specifically required by the legislation, it could be useful for solicitors to tell their clients about their statutory obligations. Clients are then generally more willing to provide required information when they see it as a standard requirement. For this purpose, you may wish to provide your client with a copy of the Society's Money Laundering Client Care Leaflet which explains your statutory obligations. Copies can be obtained from the Law Society.

CHAPTER 4

THE RISK-BASED APPROACH

What does the risk-based approach mean?

4.1 The risk-based approach means that designated bodies focus their resources on the areas of greatest risk. The legislation allows designated persons, including solicitors, to apply aspects of the client due diligence requirements on a risk-sensitive basis depending on the type of client, business relationship, product or transaction. A designated person has the option to employ the verification procedures during the course of the business relationship, instead of prior to its establishment, where it can be shown that prior verification would “interrupt the normal course of business” and where there is “no real risk ...of money laundering or terrorist financing” in operation. The designated person must be able to demonstrate that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

What is the purpose of the risk-based approach?

4.2 The risk-based approach is the foundation upon which the new legislation is based, and is what distinguishes it in the main from the money laundering and terrorist financing regimes established by earlier pieces of legislation. By providing for a risk-based approach, the legislation enables solicitors to ensure that measures to mitigate money laundering and terrorist financing are commensurate to the risks identified. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention.

4.3 The legislation does not oblige solicitors to apply CDD on a risk-based approach. However, by not doing so, solicitors will not be able to apply reduced CDD measures to clients and may lose out on the resource benefits arising as a result. Note that enhanced CDD and simplified CDD still apply even where the risk-based approach is not followed. The discretion in relation to a risk-based approach only applies to clients not falling into these categories.

4.4 The possibility of being used to assist with money laundering and terrorist financing poses risks for solicitors’ firms, including:

- criminal and disciplinary sanctions for firms and individual solicitors
- civil actions against the firm as a whole and individual partners
- damage to reputation leading to a loss of business

4.5 These risks must be identified, assessed and mitigated, just as a solicitor would do for all business risks facing their firm. If a solicitor knows his/her client well and understands their instructions thoroughly, the solicitor will be better placed to assess risks and spot suspicious activities. Applying the risk-based approach will vary between firms. While a solicitor can, and should, start from the premise that most clients are not launderers or terrorist financiers, the solicitor should assess the risk level particular to his firm and implement reasonable and considered controls to minimise those risks.

4.6 No matter how thorough a solicitor's risk assessment or how appropriate his/her controls, some criminals may still succeed in exploiting a solicitors' firm for criminal purposes. But an effective, risk-based approach and documented, risk-based judgements on individual clients and retainers will enable firms to justify their position on managing the risk, should any issues subsequently arise.

Why is it difficult to apply the risk-based approach to terrorist financing obligations?

4.7 The application of a risk-based approach to terrorist financing is a difficult concept, as it differs from a risk-based approach that can be applied to detecting and identifying potential money laundering and other suspicious activity.

4.8 Funds that are used to finance terrorist activities do not necessarily derive from criminal activity and, therefore, activities related to terrorist financing may not exhibit the same traits as conventional money laundering or fraud. Similarly, transactions associated with the financing of terrorists may be conducted in very small amounts, which in applying a risk-based approach may be the very transactions that are frequently considered to be of minimal risk with regard to money laundering. In addition, the actions by terrorists may be overt and outwardly innocent in appearance, such as the purchase of materials and services (i.e. commonly held chemicals, a motor vehicle, etc.) to further their goals, with the only covert fact being the intended use of such materials and services purchased.

4.9 Should terrorist financing have a connection with other money laundering activity, a risk-based approach should help to suppress terrorist financing by providing the means for designated persons to identify and report such activity to government authorities.

When can the risk-based approach be applied by solicitors?

4.10 The 2010 Act permits a risk-based approach to compliance with client due diligence obligations. This approach does not apply to reporting suspicious activity, because the 2010 Act lays down specific legal requirements not to engage in certain activities and to make reports of suspicious activities once a suspicion is held. The risk-based approach still applies to ongoing monitoring of clients and retainers which enables solicitors to identify suspicions.

How can a risk-based approach be implemented?

4.11 Solicitors who adopt the risk-based approach should assess their money laundering/terrorist financing risk and decide how they will manage it. Solicitors should choose to carry out this assessment, having regard to the legal services they provide, their client base and their geographical area of operation. There is no requirement, or expectation, that a risk-based approach must involve a complex set of procedures; the particular circumstances of the firm will determine the most appropriate approach. The business of many solicitors, their services and client base, can be relatively simple, involving few services, with most clients falling into similar categories. In such circumstances, a simple approach, building on the risk the services present, may be appropriate for most clients, with the focus being on those clients who fall outside the 'norm'. In this case clients can be easily grouped and allocated to categories without the need for an individual assessment.

4.12 How a risk-based approach is implemented will also depend on the firm's operational structure. Whatever approach is considered most appropriate to the firm's money laundering/terrorist financing risk, the broad objective is that solicitors should know who their clients are, understand the purpose and intended nature of the business relationship, know what they do, and appreciate the risk that they may be involved in money laundering or terrorist financing. The profile of their behaviour will build up over time, allowing the solicitor to identify activities that may be suspicious.

How to assess your firm's risk profile?

4.13 This depends on your firm's size, type of clients, and the practice areas engaged in. You should consider the following factors:

(1) Client demographic

4.14 A firm's client demographic can affect the risk of money laundering or terrorist financing. Factors which may vary the risk level include whether a firm:

- has a high turnover of clients or a stable existing client base
- acts for 'politically exposed persons' (PEPs)
- acts for clients without meeting them
- practices in locations with high levels of acquisitive crime or for clients who have convictions for acquisitive crimes, which increases the likelihood the client may possess criminal property
- acts for clients affiliated to countries with high levels of corruption or where terrorist organisations operate
- acts for entities that have a complex ownership structure
- can easily obtain details of beneficial owners of their client or not

(2) Services and areas of law

4.15 Some services and areas of law could provide opportunities to facilitate money laundering or terrorist financing. For example:

- complicated financial or property transactions
- providing assistance in setting up trusts or company structures, which could be used to obscure ownership of property
- payments that are made to or received from third parties
- payments made by cash
- transactions with a cross-border element

4.16 Simply because a client or a retainer falls within a risk category does not mean that money laundering or terrorist financing is occurring.

4.17 Chapter 9 provides more information on warning signs to be alert to when assessing risk.

(3) Assessing individual risk

4.18 Determining the risks posed by a specific client or retainer will assist in applying internal controls in a proportionate and effective manner.

4.19 Solicitors should consider whether:

- a client is within a high risk category
- they can be easily satisfied the CDD material for the client is reliable and allows the solicitor to identify the client and verify that identity
- the solicitor can be satisfied that he/she understands their control and ownership structure
- the retainer involves an area of law at higher risk of laundering or terrorist financing
- the client wants the solicitor to handle funds without an underlying transaction, contrary to the Solicitors' Accounts Regulations
- there are any aspects of the particular retainer which would increase or decrease the risks

4.20 This assessment will help a solicitor to adjust their internal controls to the appropriate level of risk presented by the individual client or the particular retainer. Different aspects of the CDD controls will meet the different risks posed:

- If a solicitor is satisfied that he/she has verified the client's identity, but the retainer is high risk, the solicitor may require fee earners to monitor the transaction more closely, rather than seek further verification of identity.
- If the solicitor has concerns about verifying a client's identity, but the retainer is low risk, the solicitor may expend greater resources on verification and monitor the transaction in the normal way.

4.21 Risk assessment is an ongoing process both for the firm generally and for each client, business relationship and retainer. In a solicitor's practice it is the overall information held by the firm gathered while acting for the client that will inform the risk assessment process, rather than sophisticated computer data analysis systems. The more a solicitor knows his/her clients and understands his/her instructions, the better placed he/she will be to assess risks and spot suspicious activities.

How can a risk assessment be conducted?

4.22 Firms should decide on the appropriate approach in the light of their business and structure. The solicitor should adopt an approach that starts at the type of legal service being provided. The solicitor should start with an assessment of the risks of money laundering inherent in the legal service being provided, with the overlay being the assessment of the client, taking account of any geographical considerations relating to the client, or the transaction. A risk-based approach starts with the identification and assessment of the risk that has to be managed.

4.23 For some clients, a comprehensive risk profile may only become evident once the business relationship has begun; making monitoring of client activities and on-going reviews a fundamental component of a reasonably designed risk-based approach.

4.24 Money laundering risks may be measured using various categories. The most commonly-used risk criteria are: country or geographic risk; client risk; and transaction/services risk.

4.25 The following paragraphs outline circumstances within the various categories that may suggest a heightened risk of money laundering or terrorist financing.

(1) Country/Geographic Risk

4.26 Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering risks. Country risk does not automatically equate to a client being from a particular country. While a client may not be from a particular country, they may have business interests in or relations with a country that may place the client in a higher risk category. Factors that may result in a determination that clients from a particular country pose a higher risk include:

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (“UN”);
- Countries identified by credible sources, e.g. FATF or the EU Commission, as lacking appropriate money laundering laws and regulations;
- Countries identified by credible sources as providing funding or support for terrorist activities; and
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.

(2) Client Risk

4.27 Determining the potential money laundering risks posed by a client is critical to the development of an overall risk framework. The following characteristics of clients may indicate a higher risk of money laundering:

- Significant and unexplained geographic distance between the solicitors’ firm and the location of the client;
- Frequent and unexplained movement of legal work to different solicitors’ firms;
- Frequent and unexplained movement of funds between various geographic locations;
- Where there is no commercial rationale for the client engaging in the transaction;
- Requests to associate undue levels of secrecy with a business relationship;
- Situations where the origin of wealth and/or source of funds cannot be easily verified, or where the audit trail has been deliberately broken and/or unnecessarily layered;
- The unwillingness of corporate clients to give the names of their real owners and controllers;
- Clients where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interests;
- Cash (and cash equivalent) intensive businesses for example: money services businesses (e.g. remittance houses, currency exchange houses, casas de cambio, bureaux de change, money transfer agents and bank note traders or other businesses offering money transfer facilities);
- Casino-like activities, betting and other gambling related activities;

- Businesses that while not normally cash intensive generate substantial amounts of cash for certain transactions;
- Unregulated charities and other unregulated “not for profit” organisations (especially those operating on a “cross-border” basis);
- Dealers in high value or precious goods (e.g. jewel, gem and precious metals dealers, art and antique dealers and auction houses, estate agents and real estate brokers);
- Use of intermediaries within the relationship who are not subject to adequate anti-money laundering regulation and who are not adequately supervised; and
- Clients that are Politically Exposed Persons (PEPs)

4.28 Many clients, by their nature or through what is already known about them by the solicitors’ firm, carry a lower money laundering or terrorist financing risk. For example:

- Clients who are employment-based or with a regular source of income from a known source which supports the activity being undertaken;
- Clients with a long-term and active business relationship with the solicitors’ firm; and
- Clients represented by those whose appointment is subject to court approval or ratification (such as personal representatives).

(3) Transaction/Service Risk

4.29 An overall risk assessment should also include determining the potential money laundering risks presented by the legal services offered by a solicitors’ firm. Solicitors need to be mindful of money laundering typologies not specifically being offered by solicitors, but that make use of the solicitor’s services to deliver the result, e.g. debt collection. Particular care should be taken in relation to:

- Requests for services intended to render a client anonymous;
- Transactions which allow/facilitate use by third parties; and
- E-mail/Internet contacts that facilitate easy non-face to face access.

(4) Variables That May Impact Risk

4.30 A solicitor’s risk-based approach may take into account some risk variables that may increase or decrease the perceived risk posed by a particular client, including;

- The size of a transaction to be undertaken. Unusually large transactions, compared to what might reasonably be expected of clients with a similar profile, may indicate that a client not otherwise seen as higher risk may need to be treated as such. Conversely, low value transactions involving a client that would otherwise appear to be higher risk might allow for a solicitor to treat the client as lower risk. However, in the latter case, solicitors should be conscious of the fact that, in respect of terrorist financing, low value transactions are often a common feature and it is often the repetitive nature of such transactions that is suspicious;
- The regularity or duration of the relationship. Long-standing relationships involving frequent client contact throughout the relationship may present less risk from a money laundering perspective;

- The familiarity with a country, including knowledge of local laws, regulations and rules, as well as the structure and extent of regulatory oversight, as the result of a solicitor's own operations within the country; or
- The use of intermediate corporate vehicles or other structures that have no apparent commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency. The use of such vehicles or structures, without an acceptable explanation, increases the risk.

What is the importance of having formal written policies and procedures in place?

4.31 Section 54 provides that each solicitors' firm should adopt written policies and procedures to prevent money laundering and terrorist financing, including the following:

- Assessment and management of risks of money laundering or terrorist financing;
- Internal controls, including internal reporting procedures for suspicious transactions;
- Procedures to identify large/complex transactions and unusual patterns and any other activity that is likely to be related to money laundering or terrorist financing;
- Measures to be taken to prevent transactions that favour or facilitate anonymity;
- Monitoring, communication and management of compliance with the policy and procedures; and
- Ongoing training for all staff.

4.32 Policies and procedures should be reviewed on an annual basis.

4.33 It is recommended that a formal written policy and procedure document should be tailored depending on the nature and size of the firm and should include:

(1) Guiding principles

- a statement of the culture and values to be adopted and promulgated throughout the firm towards the prevention of money laundering and the financing of terrorism;
- a statement of commitment to ensuring that the legislation is not used to unreasonably deny access to legal services;
- a commitment to ensuring that clients' identities will be satisfactorily verified before the firm accepts them;
- a commitment to the firm knowing its clients appropriately - both at acceptance and throughout the business relationship - through taking appropriate steps to verify the clients' identity and business, and their reasons for seeking the particular business relationship with the firm;
- a commitment to ensuring that staff are trained and made aware of the law and their obligations under it, and to establishing procedures to implement these requirements; and
- recognition of the importance of staff promptly reporting their suspicions internally.

(2) Risk mitigation approach for each legal department, as applicable

- a summary of the firm's approach to assessing and managing its money laundering and terrorist financing risk;
- allocation of responsibilities to specific persons and functions;

- a summary of the firm's procedures for carrying out appropriate identification and monitoring checks on the basis of their risk-based approach; and
- a summary of the appropriate monitoring arrangements in place to ensure that the firm's policies and procedures are being carried out.

CHAPTER 5

CLIENT DUE DILIGENCE

What is client due diligence?

5.1 As outlined already at paragraph 1.26, there are three categories of client due diligence – (a) simplified, (b) enhanced and (c) ‘standard’.

(a) Simplified (section 34) - The legislation prescribes certain types of client and certain types of products that fall into the simplified CDD category (referred to in the legislation as exemptions) on the basis that they are very low risk and designated persons.

(b) Enhanced (sections 37 and 39) - The legislation prescribes certain situations, usually involving ‘politically exposed persons’, which place clients in the enhanced CDD category. However, the legislation also requires designated bodies to apply enhanced CDD measures in circumstances where their own assessment of risk concludes that the client presents a higher risk of money laundering or terrorist financing. Section 37(4) details the enhanced measures to be undertaken.

(c) ‘Standard’ (sections 33 – 35) - All other clients fall within the standard CDD category, requiring the four CDD measures outlined below at paragraph 5.2, but the legislation allows designated persons to determine the extent of the application of these CDD measures on a risk sensitive basis (except for the obligation to verify identity which cannot be done on a risk-sensitive basis though the extent of the verification exercise can depend on the risk category – see paragraph 5.8). While non-face-to-face contact is not described as “enhanced”, there are additional CDD requirements laid out for them in the legislation.

What are the ‘standard’ CDD obligations?

5.2 Under sections 33-35 of the 2010 Act, Client Due Diligence (CDD) is defined as comprising the four following obligations:

(1) Identifying the client and verifying the client's identity on the basis of documents, data or information obtained from a reliable and independent source;

(2) Identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the firm is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the client;

(3) Obtaining information on the purpose and intended nature of the business relationship;

(4) Conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the

transactions being conducted are consistent with the firm's knowledge of the client, the business and risk profile, including, where necessary, the source of funds.

Generally, how should CDD be applied?

5.3 Under Article 20 of the Third Directive, firms are also required to “pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose”.

5.4 Firms should take a combination of appropriate steps, on the basis of their assessment of the money laundering/terrorist financing risk that each client, or class/category of client, presents:

- For all clients, determining exactly who the client is and appropriately verifying that client's identity; and
- For higher risk clients, obtaining appropriate additional information to understand the client's circumstances and business – including, where appropriate, the source of wealth and the purpose of specific activities - and the expected nature and level of activities; and keeping such information current and valid. While some of this information may be obtained at the outset of the business relationship, much of it will be gathered by the firm through ongoing monitoring of the business relationship which will afford the firm an increasing understanding of the client's activities and the patterns of those activities.

What are the four ‘standard’ CDD obligations?

(1) Identifying the client and verifying the client's identity

What does identification mean?

5.5 Identification is simply the process whereby a solicitor obtains from a client the information s/he considers necessary to know who the client is. The identity of an individual has a number of aspects: e.g. name (which of course may change), date of birth etc.. Other facts about an individual accumulate over time (the so-called electronic “footprint”): e.g., family circumstances and addresses, employment and business career, contacts with the authorities or with designated persons, physical appearance. The identity of a corporate client is a combination of its constitution, its business, and its legal and ownership structure.

What does verification mean and what sources of evidence can be used?

5.6 Verification is the process through which the solicitor establishes that the information obtained in relation to the client's identity is correct on the basis of satisfactory evidence provided by the client or obtained by the solicitor him/herself.

5.7 Evidence of identity can take a number of forms. Evidence of identity can be obtained in documented or electronic format. In respect of individuals, “identity documents”, such as passports and driving licences, are often the best way of being reasonably satisfied as to someone's identity. It is, however, possible to be reasonably satisfied as to a client's identity based on other forms of confirmation, including, in appropriate circumstances, written or

otherwise documented assurances from persons or organisations that have dealt with the client for some time. Recommendations of the Society as to best practice identity documents are set out in Chapter 6.

5.8 The quantity of evidence required to verify a client's identity is dependent upon the risk category to which the client has been allocated by the solicitor.

5.9 Verification is possible using either documentary or electronic format, or a combination of both where appropriate. This guidance is not intended to suggest that documentary verification must be corroborated by electronic verification or vice versa. Examples of risk-based identification and verification procedures are included in Chapter 6.

5.10 There is no prohibition on the acceptance of faxed or scanned copies of documentation.

5.11 Where the interaction with the client is on a face-to-face basis, the solicitor should have sight of the original document(s) and appropriate details should be recorded.

5.12 In cases where a client produces non-standard documentation to meet the identification and verification requirements, the solicitor may consider instituting enhanced monitoring arrangements over the client's activities utilising a risk-based approach.

When must identification and verification be undertaken?

5.13 The verification of the identity of the client and, where applicable, the beneficial owner, must, subject to the exceptions referred to below, take place prior to the establishment of a business relationship or the carrying out of a transaction or service.

5.14 Verification of the identity of the client and, where applicable the beneficial owner, may be completed during the establishment of a business relationship if:

- This is necessary not to interrupt the normal conduct of business; and
- There is no real risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after the initial contact.

5.15 The assessment of when it might be appropriate for a solicitor to establish a business relationship in accordance with the paragraph above is a matter for each solicitor, according to the nature of the services being provided. However, where a solicitor enters into a business relationship in advance of verification of identity, he/she should be extremely careful regarding the acceptance of any funds from the client, including the return of any funds transferred by the client to the solicitor prior to the completion of verification.

What are the requirements where contact is non face-to-face?

5.16 Where a client approaches a solicitors' firm remotely (by post, telephone or over the internet), it is recommended that the solicitor carry out non face-to-face verification, either electronically, and/or by reference to documents in accordance with the requirements below.

5.17 Where the client has not been physically present for identification purposes, section 33(4) suggests by way of examples that one or more of the following measures should be undertaken:

a) Ensuring that the client's identity is established by additional documents, data or information,

Examples of a):

- Telephone contact with the client prior to the commencement of the business relationship on a home or business number which has been verified (electronically or otherwise).
- Communicating with the client at an address that has been verified (such communication may take the form of a direct mailing of documentation/terms of engagement to him, which, in full or in part, might be required to be returned completed or acknowledged without alteration);
- Electronic verification via a commercial agency where electronic verification has not been used to originally verify the client.

b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by another designated body covered by the legislation;

c) verification of the client's identity on the basis of confirmation received from an acceptable third-party that the client is, or has been, a client of that third-party;

d) ensuring that one or more of the following transactions is carried out through an account in the client's name with an acceptable institution that is a credit institution:

i. the first payment made by the client to the solicitor for the provision of a service;

ii. in the case of a financial transaction or a transaction relating to land, the first payment made by the client in respect of the transaction.

5.18 The extent of the CDD in respect of non face-to-face clients will depend on the type of transaction or service requested and the assessed money laundering risk presented by the client. There are some circumstances where the client is typically not physically present which would not in itself increase the risk attaching to the transaction or activity. A solicitor should take account of such cases in developing their systems and procedures. Where third parties are relied upon to carry out CDD and meet the client, this may be viewed as face-to-face identification for the purposes of the solicitor's risk assessment.

5.19 Additional measures would also include assessing the possibility that the client is deliberately avoiding face-to-face contact. It is therefore important to be clear on the appropriate approach in these circumstances. Solicitors should be particularly wary where they are approached to provide a service, e.g. debt collection, which subsequently does not proceed but it is proposed that the debt will still be 'collected' through the solicitor's client account and a fee deducted by the solicitor.

What is electronic verification?

5.20 A number of commercial agencies which access many data sources are accessible online by designated persons, and may provide a composite and comprehensive level of electronic verification through a single interface. Such agencies use databases of both positive and negative information, and many also access high-risk alerts that utilise specific data sources to identify high-risk conditions, for example, known identity frauds or inclusion on a sanctions list. At the time of writing, these agencies are primarily British-based, although the Society understands that an Irish-based agency is being established. An online database search from one of the British-based agencies currently costs £6stg plus VAT.

5.21 Positive information (relating to full name, current address, date of birth) can prove that an individual exists, but some can offer a higher degree of confidence than others. Such information should include data from robust sources - where an individual has to prove their identity, or address, in some way in order to be included, as opposed to others, where no such proof is required. Negative information includes lists of individuals known to have committed fraud, including identity fraud, and registers of deceased persons. Checking against such information can reduce the risk of impersonation fraud.

5.22 Before using a commercial agency for electronic verification, it is advisable that firms become satisfied that information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate and they should document the outcome of this assessment.

5.23 In addition, a firm may wish to confirm that a commercial agency has processes that allow the enquirer to capture and store the information they used to verify an identity.

5.24 Given the higher risk of exposure to impersonation when using electronic verification, solicitors should also undertake one or more of the following checks:

- Telephone contact with the client prior to the commencement of the business relationship on a home or business number which has been verified (electronically or otherwise), or a “welcome call” to the client before the business relationship starts, using it to verify additional aspects of personal identity information that have been previously provided during the taking of initial instructions;
- Communicating with the client at an address that has been verified (such communication may take the form of a direct mailing of terms of engagement documentation to him, which, in full or in part, might be required to be returned completed or acknowledged without alteration).

What about using electronic verification providers?

5.25 This will only confirm that someone exists, not that your client is the said person. Solicitors should consider the risk implications in respect of the particular retainer and be on the alert for information which may suggest that the client is not the person they say they are. Solicitors may choose to mitigate risk by corroborating electronic verification with some other CDD material. When choosing an electronic verification service provider, solicitors should look for a provider who:

- has proof of registration with the Data Protection Commissioner's Office to store personal data
- can link a user to both current and previous circumstances using a range of positive information sources
- accesses negative information sources, such as databases on identity fraud and deceased persons
- accesses a wide range of 'alert' data sources
- has transparent processes enabling the solicitor to know what checks are carried out, the results of the checks, and how much certainty they give on the identity of the subject
- allows the solicitor to capture and store the information used to verify an identity.

5.26 When using electronic verification, solicitors are not required to obtain consent from the client, but clients should be informed that such checks may take place.

5.27 Where verification is to be undertaken using electronic verification, it is recommended that the designated person uses as its basis the client's full name and date of birth or full name and current address.

How can the identity of different types of clients be verified?

5.28 Chapter 6 contains the Society's recommendations as to how solicitors can best meet their obligation to verify the identity of a wide variety of clients on the basis of varying types of documents.

(2) Identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity

What is the obligation to identify beneficial owners?

5.29 Section 24 provides that the term "beneficial owner" has the meaning assigned to it by sections 26 to 30. These sections define the term "beneficial owner" in the context of various types of entities as follows:

- Beneficial owner in relation to bodies corporate – section 26
- Beneficial owner in relation to partnerships – section 27
- Beneficial owner in relation to trusts – section 28
- Beneficial owner in relation to estates of deceased persons – section 29
- Other persons who are beneficial owners – section 30.

5.30 If identification of the ultimate beneficial owner is not possible for whatever reason, consideration must be given to making a report to the Gardaí and the Revenue Commissioners.

5.31 For incorporated entities (other than other designated bodies and listed companies and subsidiaries of listed companies), the solicitor should take risk-based and adequate measures to verify the identity of beneficial owners provided by the client where the beneficial owner owns a shareholding of more than 25% (the identity of the beneficial owners can also be provided by the client or independently). It is therefore a matter for the solicitor to identify the most appropriate method for verifying who the beneficial owners are, taking account of

its assessment of the money laundering or terrorist financing risk presented by the client. Some possible options include:

- Requesting from the client documentary evidence from an independent source detailing the beneficial owners (e.g. a certified copy of the company's share register);
- Searches of the relevant company registry; and
- Electronic searches either direct or via a commercial agency for electronic verification.

5.32 It is recommended that the identity of individuals provided by the client as the beneficial owner are verified in accordance with the recommendations for individuals outlined in Chapter 6.

5.33 In the case of clients that are individuals, the solicitor can assume that the individual is acting for himself unless, in the course of the business relationship or in undertaking any activities for the client it becomes apparent the client is acting for another person. In this case, the solicitor should undertake the identity and verification checks as outlined in Chapter 6 according to the nature of the beneficiary.

5.34 It is not necessary for solicitors to identify or take risk-based and adequate measures to verify the beneficial owners of incorporated entities that are admitted to trading on a regulated market in the EEA as defined in EC Communities (Markets in Financial Instruments Directive) Regulations 2007 or an equivalent market in a jurisdiction. (For example, the Official List of the Irish Stock Exchange is a regulated market. However, the Irish Stock Exchange's IEX market is not a regulated market, neither is the London Stock Exchange's AIM market). Such markets should be treated on a risk-based approach.

5.35 In the case of incorporated entities that are unquoted public companies or are subject to registration and regulation by a statutory regulator or private companies that are well known, reputable organisations, with long histories in their industries and substantial public information about them, it will be reasonable for the solicitor to be satisfied as to the beneficial owner on the basis of written confirmation provided by the client.

5.36 It is not necessary for solicitors to identify and take risk-based and adequate measures to verify the beneficial owner of special purpose companies dedicated to the securitisation of assets or other financing transactions that are owned or established by another designated person, (e.g. credit institution, financial institutions or law firm) provided written confirmation of beneficial ownership (or intended beneficial ownership when it is envisaged to transfer the residue of a transaction to a Revenue Commissioner approved charity) is obtained from another designated person.

5.37 If the solicitor's firm is unable to satisfy itself concerning the identity of the beneficial owner of any client, on the basis of the verification methods that it considers appropriate given the nature of the client, then it should not enter into a transaction or commence or maintain a business relationship for that client (section 33(8)) and it should consider whether it should make a report to the Gardaí and the Revenue Commissioners (under section 42(4)). A solicitor may be exempt from making a report where legal privilege exists. Chapter 8 provides guidance on this reporting exemption for solicitors.

(3) Obtaining information on the purpose and intended nature of the business relationship

What is the obligation to obtain information on the purpose and nature of the business relationship?

5.38 The obligation to obtain information from a client on the purpose and nature of the business relationship is one that must be applied to all clients with whom a solicitor is entering into a business relationship. However, in most cases, this will be self-evident given the nature of the transaction being undertaken or service being provided or may be easily clarified by discussing with the client what they are seeking from the relationship.

5.39 Where a solicitor proposes to enter into a business relationship with a client and the solicitor's assessment of the risk associated with the client or with the nature of the transactions or services to be provided to the client indicate a higher than standard risk of money laundering or terrorist financing, then the solicitor should obtain the following information during the establishment of the business relationship:

- Nature and details of the business/occupation/employment of the client;
- The expected source and origin of the funds to be used in the transaction;
- The various relationships between signatories and with underlying beneficial owners; and
- The anticipated level and nature of the activity that is to be undertaken through the relationship.

5.40 A key aspect of understanding the purpose and nature of the business relationship is to collect information on clients, in particular those in higher risk categories. Over time, the solicitor should develop a greater understanding of the business or nature of the activities undertaken by the client. While it is necessary to obtain information on the purpose and nature of the business relationship at the outset of the relationship, the reliability of this profile will only increase over time as the solicitor learns from experience what the client is about.

(4) Conducting ongoing monitoring

How can ongoing monitoring of the business relationship be conducted?

5.41 The obligation to monitor clients applies to those clients with whom the solicitor has established a business relationship as defined.

5.42 The objective of the ongoing monitoring obligation imposed by the legislation is first, to identify activities of clients during the course of the business relationship which are not consistent with the solicitor's knowledge of the client, or the purpose and intended nature of the business relationship, and which need to be assessed for the possibility that the solicitor may have grounds to report a suspicion of money laundering or terrorist financing. Secondly, to ensure, on the basis of that assessment, that the documents, data or information held about the client are kept up-to-date. Records should be kept up-to-date based on information gathered during the normal course of business.

5.43 Solicitors are not required to:

- conduct the whole CDD process again every few years
- conduct random audits of files
- suspend or terminate a business relationship until they have updated data, information or documents have been updated, as long as the solicitor is still satisfied he/she knows who the client is, and keeps under review any request for further verification material or processes to get that material
- use sophisticated computer analysis packages to review each new client file for anomalies.

5.44 Ongoing monitoring will normally be conducted by fee earners handling the client file, and involves staying alert to suspicious circumstances which may suggest money laundering, terrorist financing, or the provision of false CDD material.

5.45 For example, a solicitor may have acted for a client in preparing a will and purchasing a modest family home. They may then receive instructions to purchase a holiday home, the value of which appears to be outside the means of the client's financial situation as had been previously been advised in earlier transactions. While a solicitor may be satisfied that he/she still knows the identity of the client, as a part of ongoing monitoring obligations it would be appropriate in such a case to ask about the source of the funds for this purchase. Depending on the client's willingness to provide such information and the answer they provide, a solicitor would need to consider whether he/she was satisfied with that response, wanted further proof of the source of the funds, or needed to discuss making a report to the MLRO, or consider making a report to the authorities.

5.46 To ensure that CDD material is kept up-to-date, solicitors should consider reviewing it:

- when taking new instructions from a client, particularly if there has been a gap of over three years between instructions
- when a firm receives information of a change in identity details

5.47 Relevant issues may include:

- the risk profile of the client
- whether the solicitor holds material on transactional files which would confirm changes in identity
- whether electronic verification may help to find out if the client's identity details have changed, or to verify any changes

5.48 Simplified client due diligence (SCDD) means that a solicitor does not have to identify, or to verify the identity or obtain information on the purpose or intended nature of the business relationship of a client or, where relevant, the beneficial owner of a client. This applies where the client falls into one of the specific categories of client set out below that are considered to present a low risk of money laundering or terrorist financing. The solicitor must obtain sufficient information about the client to satisfy itself that the client meets the criteria for SCDD to be applied to it.

Who qualifies for SCDD?

5.49 The following categories of client qualify for SCDD:

- A credit or financial institution that carries on business in the State, or another member state, or a designated place supervised or monitored for compliance with equivalent requirements.
- A company listed on a Regulated Market (e.g. the Irish Stock Exchange Official List). SCDD may be applied to a majority owned subsidiary of a listed company, on a risk-based approach. For non-listed companies, a risk-based approach to CDD should be applied.
- Beneficial owners of money held in trust in a solicitor's client account or in other client accounts held by notaries or other legal providers within the EU or in a non-EU jurisdiction designated by the Minister (see section 34(2)).
- Irish public authorities
- certain insurance policies, pensions or electronic money products
- a non-Irish public authority which:
 - is entrusted with public functions pursuant to the treaty on the European Union or the Treaties on the European Communities, or Community secondary legislation
 - has a publicly available, transparent and certain identity
 - has activities and accounting practices which are transparent
 - is accountable to a community institution, the authorities of an EEA state or is otherwise subject to appropriate check and balance procedures

5.50 Examples of institutions falling into this category include the European Central Bank, The European Investment Bank, the European Environment Agency etc. A list of EU agencies can be found at: http://europa.eu/about-eu/institutions-bodies/index_en.htm.

5.51 A list of countries that the Irish government accepts have anti-money laundering requirements equivalent to the money laundering directive is to be made available. Check the Department of Finance and Justice websites for this and other AML advice.

What is enhanced client due diligence?

5.52 Sections 37 - 39 of the 2010 Act apply. In situations which, by their nature, give rise to a higher risk of money laundering or terrorist financing, all designated persons, including solicitors, are obliged to undertake client due diligence measures above and beyond normal measures, i.e. Enhanced Client Due Diligence (ECDD).

5.53 The extent of additional information sought, and of any monitoring carried out in respect of any particular client, will depend on the money laundering or terrorist financing risk that is assessed to present to the solicitor or firm.

5.54 The legislation prescribes two specific circumstances when enhanced due diligence measures must be applied.

- In respect of a correspondent banking relationship (not of relevance to solicitors' obligations); or

- In respect of a business relationship or transaction with a non-resident ‘politically exposed person’ (PEP).

5.55 Aside from these specific examples, section 39 provides that, where solicitors identify other high risk scenarios, then ECDD measures must be applied. In these circumstances, where a solicitor considers that a client presents a higher than standard risk of money laundering or terrorist financing, and enhanced due diligence is therefore necessary, increased monitoring of the client’s activities may be a more appropriate alternative, based on the solicitor’s risk assessment, to further identification and verification of the client additional to those applied to normal risk clients. Where a solicitor can demonstrate that the monitoring procedures and/or systems that they have put in place are robust and are capable of effective monitoring, then it may be appropriate to apply enhanced monitoring to a client rather than additional identification and verification measures.

Who is a PEP?

5.56 The legislation (section 37) requires designated persons to apply enhanced measures to PEPs that are resident outside of Ireland but not PEPs resident in Ireland. Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to firms as their position makes them vulnerable to corruption. This risk also extends to members of their immediate families and to known close associates. PEP status itself does not, of course, incriminate individuals or entities. It does, however, put a client into a higher risk category. Under the definition of a PEP, an individual ceases to be so regarded after he has left office for one year.

5.57 Under section 37(10), a PEP is an individual who is or has been entrusted with prominent public functions, or an immediate family member, or a known close associate of such a person. The definition includes persons holding a prominent position in European Union and international bodies such as the UN, World Bank or IMF.

5.58 Public functions exercised at levels lower than national should normally not be considered prominent. However, when their political exposure is comparable to that of similar positions at national level, solicitors should consider, on a risk-based approach, whether persons exercising those public functions should be considered as PEPs. Prominent public functions include:

- Heads of state, heads of government, ministers and deputy or assistant ministers;
- Members of parliaments;
- Members of supreme courts, of constitutional courts or of other high level judicial bodies whose decisions are not generally subject to further appeal, except in exceptional circumstances;
- Members of courts of auditors or of the boards of central banks;
- Ambassadors, charges d’affaires and high-ranking officers in the armed forces; and

- Members of the administrative, management or supervisory boards of State-owned enterprises (other than in respect of relevant positions at Community and international level).

5.59 These categories do not include middle-ranking or more junior officials.

5.60 Immediate family members include:

- Parents;
- Spouse;
- Equivalent spouse;
- Child;
- Spouse of a child;
- Equivalent spouse of a child; and
- Any other family member of PEP.

5.61 Persons known to be close associates include:

- Any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person who is a PEP; and
- Any individual who has sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a person de facto who is a PEP.

5.62 Having to obtain knowledge of such a relationship does not presuppose active research by the solicitor in order to obtain knowledge of such a relationship.

What do I have to do if my client is a PEP?

5.63 Under section 37, solicitors are required to take the following steps prior to establishing a business relationship with a client or carrying out a transaction:

- Have appropriate risk-based procedures to determine whether a client or beneficial owner, being a client or beneficial owner residing outside the State, is a PEP;
- Obtain MLRO approval prior to establishing a business relationship with such a client;
- Take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and
- Conduct enhanced ongoing monitoring of the business relationship.

5.64 The steps taken by a solicitors' firm to identify a PEP's source of funds and to monitor the ongoing business relationship should be in accordance with the ECDD measures outlined below.

5.65 The nature and scope of a particular solicitors' firm will generally determine whether the existence of PEPs in their client base is an issue for the firm, and whether or not the firm needs to screen all clients for this purpose. In the context of this risk analysis, it would be appropriate if the firm's resources were focused in particular on transactions and/or services that are characterised by a high risk of money laundering.

5.66 Establishing whether individuals or legal entities qualify as PEPs is not always straightforward and can present difficulties. Where solicitors need to carry out specific checks, they may be able to rely on an internet search engine, or consult relevant reports and databases on corruption risk published by specialised national, international, non-governmental and commercial organisations. If there is a need to conduct more thorough checks, or if there is a high likelihood of a solicitor having PEPs as clients, subscription to a specialist PEP database may be the only adequate risk mitigation tool.

5.67 Obtaining approval from the MLRO for establishing a business relationship does not imply obtaining approval from the partners, but from the immediately higher level of authority to the person seeking such approval.

5.68 Clients may not initially meet the definition of a PEP. The solicitor should, as far as practicable, be alert to public information relating to possible changes in the status of its clients with regard to political exposure.

How can PEPs be identified?

5.69 Solicitors are not required to conduct extensive investigations to establish whether a person is a PEP, but should have regard to information that is in their possession or publicly known.

5.70 To assess a firm's PEP risk profile, a solicitor should consider the firm's existing client base, taking into account the general demographic of that client base, and how many clients are currently known to be a PEP.

5.71 If the risk of a firm acquiring a PEP as a client is low, a firm may simply wish to ask clients as a matter of course whether they fall within any of the PEP categories. Where they say no, a solicitor may reasonably assume the individual is not a PEP unless anything else within the retainer, or that a solicitor otherwise becomes aware of, gives rise to a suspicion that they may be a PEP.

5.72 Where a firm has a higher risk of having PEPs as clients or a solicitor has reason to suspect that a person may actually be a PEP contrary to earlier information, the solicitor should consider conducting some form of electronic verification. Firms may find that a web-based search engine will be sufficient for these purposes, or may decide that it is more appropriate to conduct electronic checks through a reputable international electronic verification provider.

5.73 It should be noted that the range of PEPs is wide and constantly changing, so electronic verification will not give 100% certainty. Solicitors should remain alert to situations suggesting the client is a PEP. Such situations include:

- receiving funds in the retainer from a government account
- correspondence on official letterhead from the client or a related person
- general conversation with the client or person related to the retainer linking the person to a PEP
- news reports suggesting the client is a PEP or linked to one.

5.74 Where a solicitor suspects a client is a PEP but cannot establish that for certain, the solicitor may decide on a risk-sensitive basis to apply aspects of the enhanced due diligence procedures, as provided for in section 39.

CHAPTER 6

IDENTIFICATION AND VERIFICATION

6.1 Sections 33-35 of the 2010 Act contain a two-pronged obligation to (a) identify clients, and (b) verify that identification.

6.2 The legislative obligation to ‘identify and verify’ extends to those clients for whom the solicitor performs any of the legal services contained in the definition of “relevant independent legal professional”.

“relevant independent legal professional” is defined in section 24(1) as a barrister, solicitor or notary who carries out any of the following services:

“(a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

- (i) buying or selling land or business entities;
- (ii) managing the money, securities or other assets of clients;
- (iii) opening or managing bank, savings or securities accounts;
- (iv) organising contributions necessary for the creation, operation or management of companies;
- (v) creating, operating or managing trusts, companies or similar structures or arrangements;

(b) acting for or on behalf of clients in financial transactions or transactions relating to land;”

6.3 A risk-based approach cannot be adopted for identification and verification measures.

6.4 While solicitors are not obliged by the legislation to identify, or perform any of the other CDD measures, on clients when the services provided to them fall outside of the AML regulated areas, the Society is of the view that best practice and risk management requires solicitors to identify **all** clients to whom they wish to provide any legal service. As a consequence the Society recommends that solicitors should identify all clients and verifying their identification documents.

What form of identification is required?

6.5 The general principle is that a solicitor should establish satisfactorily that he is dealing with a real person or organisation (natural, corporate or legal) and obtain identification evidence sufficient to establish that the client is that person or organisation.

6.6 The solicitor should obtain satisfactory evidence that a person of that name lives at the address given, that the client is that person or, if the client is a company, that the company has identifiable owners and that its representatives can be located at the address provided.

6.7 Solicitors are required to keep copies of the supporting evidence for 5 years after the relationship has ended with the client.

6.8 Obviously, different criteria will apply for individuals, companies, Irish and non-Irish residents and for persons with whom it is not possible to have face-to-face identification.

What constitutes appropriate documentation?

6.9 The legislation requires clients to be identified on the basis of documents, data or information obtained from a reliable and independent data source. The Society has outlined below the relevant documents to be obtained depending on the nature of the client.

Resident Private Individuals (face-to-face)

6.10 As far as possible, there should be face-to-face contact with the prospective client. Solicitors should obtain evidence of their name and permanent Irish address. In addition, date of birth should normally be sought and recorded.

6.11 It is anticipated that many firms will choose to identify their clients through the approach of ‘one plus one’ (one piece of photographic evidence and one piece of evidence of address), as recommended in earlier Guidance Notes. It is important to note that documents differ in their integrity, reliability and independence. Some are issued after due diligence on an individual’s identity has been undertaken; others are issued on request, without any such checks being carried out. There is a broad hierarchy of documents:

- Documents issued by Government Departments and Agencies, or by a Court with a photograph;
- Documents issued by Government Departments and Agencies, or by a Court without a photograph;
- Documents issued by other public sector bodies or local authorities;
- Documents issued by regulated designated persons in the financial services sector;
- Documents issued by other designated persons subject to the Directive or to comparable legislation; and
- Documents issued by other sources, e.g. internet printouts.

Typical Approach to Verification of Documentation:

6.12 The ‘one-plus-one’ approach would meet the identification and verification obligations by requiring one item from the following list of photographic IDs and one item from the following list of non-photographic IDs. Depending on the risk assessment of the client, additional ID verification may be advisable in certain circumstances.

6.13 Photographic ID

- Current Passport (Irish or International);

- Current photo card driving licence;
- Current National Identity Card;
- Current Identification form with photo signed by a member of the Gardaí (ML10);
- Social Welfare card with photo ID;
- GNIB card accompanied by letter from Office of Minister for Integration (signed and stamped); and
- National Age card (free of charge for social welfare recipients).

6.14 Non Photographic ID

- Current documentation/cards issued by the Revenue Commissioners showing the name of the person and their PPSN;
- Current documentation/cards issued by the Department of Social Protection showing the name of the person and their PPSN;
- Instrument of a court appointment (such as liquidator, or grant of probate);
- Current local authority document e.g. refuse collection bill, water charge bill (including those printed from the internet);
- Current bank statements, or credit/debit card statements, issued by a regulated financial sector designated person in the Ireland, EU or comparable jurisdiction (including those printed from the internet);
- Current utility bills (including those printed from the internet);
- Current Household/motor insurance certificate and renewal notice; and
- Medical card for over 18s with intellectual disability.

6.15 And in cases where the above could not be reasonably expected, the following would suffice:

- Examination of the electoral register (including online version);
- Examination of a local telephone directory or available street directory;
- Confirmation of identity by employer; and
- Garda Síochána community age card.

6.16 The above is not an exhaustive list. It is up to each firm to consider the amount of risk involved in determining whether they will accept other forms of client identification in line with the legislative obligation to verify identification on the basis of documents, data or information “obtained from a reliable and independent data source”.

6.17 Passports, national identity cards and travel documents should be current, i.e. unexpired. Letters or statements should be of a recent date, i.e. within 12 months. When verified, documents should be originals. In case of need, consideration should be given to verifying the authenticity of the document with its issuer. Solicitors should take reasonable care to check that documents offered are genuine (i.e. not obviously forged) and, where these incorporate photographs, that these correspond to the presenter.

Non-Resident Private Individuals (Face-to-Face)

6.18 The identity of prospective clients who are not normally resident in the State but who wish to use the services of an Irish solicitor should be established using procedures which are, as far as possible, similar to those used to establish the identity of persons resident here (see paragraphs 6.12 – 6.17 above).

6.19 For those prospective non-resident clients where face-to-face contact is made, the verification of an address may present difficulties. However passports, national identity cards or other documents containing a photograph and signature issued by a reliable source should normally be available and be copied and the relevant reference numbers should be recorded.

Business conducted by Post, Telephone, or Electronically (Non-Face-to-Face)

6.20 Any mechanism (e.g. post, telephone, or electronic) that avoids face-to-face contact between a solicitor and a prospective new client inevitably poses challenges for client identification. Legal services conducted on the Internet adds a new dimension to risks and opens up new mechanisms for fraud and money laundering. The identification measures adopted and the information received should achieve, as far as possible, the underlying objective, which is that the solicitor should take reasonable measures to establish and verify the identity and address of the person to whom he proposes to provide the service. Solicitors should refer to the information contained in Chapter 5 in relation to non-face-to-face identification.

Corporate Entities

6.21 The establishment of the identity of clients who are not natural persons raises special problems because of the legal nature of corporate personality and the complexity of their activities and organisational structures. It is, however, generally recognised that the use of companies, even when fronted by legitimate trading companies, are the most likely vehicles for large scale money laundering. Particular care should be taken to verify the legal existence of corporates and to ensure that any person purporting to act on behalf of the company is fully authorised to do so. The principal aim here is to look behind the corporate entity to identify those who have ultimate control over the business and the company's assets, with particular attention paid to any shareholders or others who inject a significant proportion of the capital or financial support. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purpose and that it is not merely a 'brass-plate company' where the controlling principals cannot be identified.

6.22 Firms should obtain the following information in relation to incorporated entities:

- Full name;
- Registered number;
- Registered office address in country of incorporation; and
- Principal business address.

6.23 And in addition for private companies and unlisted companies:

- A list of names of the directors; and

- The names of beneficial owners with greater than 25% of the shares or voting rights or who otherwise exercise control (section 26).

6.24 Firms should verify the identity of the corporate from either a search of the relevant company registry (equivalent country registries should be accessed) or a copy of the company's Certificate of Incorporation.

6.25 Beneficial ownership should be identified and then verified on a risk-based approach.

6.26 Solicitors' firms should also undertake procedures to satisfy themselves that any person representing the incorporated entity is legally entitled to do so. Receipt of a properly authorised power of attorney or equivalent, empowering the individual to act on behalf of the corporate body, would suffice.

6.27 In applying higher than standard due diligence to incorporated entities, solicitors' firms should focus on private companies. However, for private companies that are well known, reputable organisations, with long histories in their industries and substantial public information about them, the standard evidence may well be sufficient to meet the firm's obligations.

6.28 For other private companies that a firm has categorised as higher risk, the following measures should be undertaken:

- Verify the beneficial owners on a risk-based approach;
- Verify the identity of one Director of the company and one individual with authority to act on behalf of the company in accordance with the requirements for individual clients above, or;
- Verify the identity of two Directors in accordance with the requirements for individual clients.

6.29 Extra care must be taken in the case of companies with capital in the form of bearer shares, because in such cases it is difficult to identify the beneficial owner(s). Solicitors should adopt procedures to establish the identities of the holders and material beneficial owners of such shares and to ensure that they are notified whenever there is a change of holder and/or beneficial owner.

6.30 As a minimum, these procedures should require a solicitor to obtain an undertaking in writing from the beneficial owner which states that immediate notification will be given to the solicitor if the shares are transferred to another party. Depending on its risk assessment of the client, the solicitor may consider it appropriate to have this undertaking certified by an accountant, lawyer or equivalent, or even to require that the shares be held by a named custodian, with an undertaking from that custodian that the solicitor will be notified of any changes to records relating to these shares and the custodian.

Pension schemes

6.31 Pension schemes are deemed to be low risk primarily due to the long-term nature of the product. The following is a list (although not exhaustive) of suitable identification evidence for pension schemes:

- A letter of registration issued by the Pensions Board and the accompanying Scheme Trace Report may suffice as it will detail the names and addresses of the trustees involved. Such reports are available at short notice via email from the Pensions Board;
- For Irish pension schemes, a copy of the original approval from the Revenue Commissioners is considered a satisfactory verification of identity; and
- For non-Irish pension schemes it is recommended that verification of identity be undertaken in accordance with the recommendations in these Guidance Notes applicable to the Scheme's legal form.

Charities

6.32 Charities should be treated for AML purposes according to their legal form. If they are an incorporated body then they should be treated as per paragraphs 6.21 – 6.30 above. Where they are a trust, then they should be treated as per paragraphs 6.35 to 6.43.

6.33 The Revenue Commissioners also maintain a register of charities for tax exempt status purposes and this register is available for review on its website. Solicitors should check the status of the charity with the Revenue and record any CHY number (charity tax reference number). In addition, the Charities Act 2009 provides for the establishment of the Charities Regulatory Authority, when the relevant sections are commenced, which will be obliged to maintain a register of charities. Solicitors should check the status of registration and record all relevant details. A solicitor may also wish to verify the charity's existence through searches of equivalent registers in other jurisdictions, where appropriate. As with companies and trusts, solicitors should also request a properly authorised power of attorney or equivalent from the charity empowering the individual to act on behalf of the charity.

6.34 Non-profit organisations and charities have been used to divert funds for terrorist and other criminal activities and, as a result, firms should be mindful of the possible dangers that unregistered charities present.

Other trusts, foundations and similar entities

6.35 There is a wide diversity in terms of size, purpose, transparency, accountability and geographical scope in relation to trusts. A solicitor's due diligence in relation to trustees, trusts, foundations and similar entities will vary depending upon the outcome of risk assessment. The following information should be obtained to identify the client:

- Full name of the trust, foundation or other similar entity;
- Nature and purpose of the trust, foundation or other entity (e.g., discretionary, fixed interest, bare);
- Country of establishment;
- Names and addresses of all trustees or equivalent persons in relation to foundations or other entities;
- Copies of any and all instruments establishing and governing the trust, foundation or other similar entity

6.36 The solicitor should verify the identity of the client by verifying the identity of **all** trustees and **any** person who is empowered to give instructions to the solicitor in accordance with the procedures outlined for individuals above. Solicitors should undertake procedures to satisfy themselves that any person representing the trust is legally entitled to do so.

6.37 Where a trustee is itself a regulated entity (or a nominee company owned and controlled by a regulated entity), or a company listed on a regulated market, or other type of entity, the identification and verification procedures that should be carried out should reflect the standard approach for such an entity.

6.38 The solicitor should also identify beneficial ownership and on a risk based approach verify identity to the extent necessary to ensure that the solicitor has reasonable grounds to be satisfied that the person knows who the beneficial owner is (see paragraph 5.29). On a risk-based approach it is also necessary to understand the ownership and control structure of the entity or arrangement concerned. See section 33 (2) of the 2010 Act.

6.39 Trusts with less transparent and more complex structures, with numerous layers, may pose a higher money laundering or terrorist financing risk. Also, some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering. In respect of trusts in the latter category, the solicitor's risk assessment may lead it to require additional information on the purpose, funding and beneficiaries of the trust.

6.40 Solicitors should make appropriate distinction between those trusts that serve a limited purpose (such as inheritance tax planning), or have a limited range of activities and those where the activities and connections are more sophisticated, or are geographically based and/or with financial links to other countries.

6.41 Where a situation is assessed as carrying a higher risk of money laundering or terrorist financing, the solicitor may need to carry out a higher level of verification: **either** by searching an appropriate register maintained in the country of establishment, **or** by obtaining a very detailed briefing on the nature and purposes of the structure from a regulated person in that jurisdiction.

6.42 Other information that might be appropriate to ascertain for higher risk situations includes:

- Donor/settlor/grantor of the funds (except where there are large numbers of small donors);
- Place of any business/activity;
- Nature of any business/activity; and
- Location of any business/activity (operating address).

6.43 Following its assessment of the money laundering risk presented, the solicitor may also decide to verify the identities of any or all persons connected with the trust, foundation or other entity by reference in particular to the persons identified as part of the consideration of beneficial ownership (see paragraph 5.29).

Partnerships and unincorporated businesses

6.44 In accordance with its risk assessment, the solicitor should consider verifying the identities of at least one partner and at least one of those authorised to act on behalf of the partnership in accordance with the standard requirements for individuals above.

6.45 The following should be obtained:

- Name of Partnership;
- Address of Partnership;
- Nature of business/activity;
- Location of business/activity (operating address);
- Names of Partners;
- Names of Beneficiaries;
- Verify the identity of one Partner; and
- Verify the identity of one individual authorised to act on behalf of the partnership.

Clubs and Societies

6.46 Clubs and Societies should be treated for AML purposes according to their legal form, e.g. if they are an incorporated body then they should be treated as per paragraphs 6.21 – 6.30 above. The following information should be obtained about the client:

- Full name of the club/society;
- Legal status of the club/society;
- Purpose of the club/society;
- Names of all officers;
- Verify the identity of one of the officers of the club and society and one of the individuals who has authority to give the solicitor instructions; or
- Verify the identity of two of the officers of the club and society in accordance with the requirements for individual clients.

Public sector bodies, governments, state-owned companies and supranationals

6.47 Designated bodies should obtain the following information about clients who are public sector bodies, governments, state-owned companies and supranationals and which do not meet the definition of public authorities to whom simplified CDD is applied as set out in Chapter 5:

- Full name of the entity;
- Nature and status of the entity [e.g., overseas government, treaty organisation];
- Address of the entity;
- Name of the home state authority; and
- Names of directors (or equivalent).

6.48 Solicitors should take appropriate steps to understand the ownership of the client, and the nature of its relationship with its home state authority and should:

- Verify the identity of one director of the entity in accordance with the requirements for individual clients above and verify the identity of one individual entitled to instruct the solicitor on behalf of the entity, in line with the requirements for individuals above; or,
- Verify the identity of two directors of the entity in accordance with the requirements for individual clients.

When non-standard documents are available

6.49 Most clients will be able to provide standard documents, and this will normally be a firm's preferred option. This section contains a non-exhaustive and non-mandatory list of documents which are capable of evidencing identity for special cases who cannot meet the identification and verification requirements. These include:

<u>Client</u>	<u>Document(s)</u>
Social Welfare recipients	<p>It may be possible to apply standard identification procedures. Otherwise current versions of the following may be used:</p> <ul style="list-style-type: none"> ▪ Entitlement letter from the Department of Social and Family Affairs; ▪ Identity Confirmation Letter issued by the Department of Social and Family Affairs; ▪ Social welfare card with photo issued by the Department of Social and Family Affairs; ▪ National Age card (free of charge for social welfare recipients); or ▪ A letter on headed paper signed and stamped by statutory or non-statutory sectors such as employers, community welfare officers, social welfare officers, social workers, MABS, minister of religion, teacher, community employment scheme supervisor, money advisor, justice of peace, peace commissioner, managers of community development and voluntary organizations, FAS and CE Schemes, etc.
Those in care homes/sheltered accommodation/refuge	<p>It may be possible to apply standard identification procedures. Otherwise:</p> <ul style="list-style-type: none"> ▪ Letter from care home manager/manager of sheltered accommodation or refuge confirming name and address (i.e. care home) or name and date of birth; ▪ Letter from an employer if the person is in employment, confirming that the individual is in paid employment or ▪ A letter on headed paper signed and stamped by statutory or non-statutory sectors such as employers, community welfare officers, social welfare officers, social workers, MABS, managers of community development and voluntary organizations, FAS and CE Schemes, etc.

Those on probation	<p>It may be possible to apply standard identification procedures. Otherwise:</p> <ul style="list-style-type: none"> ▪ A letter from the client's probation officer confirming name and address or date of birth.
Prisoners	<p>It may be possible to apply standard identification procedures. Otherwise, a letter from the governor of the prison confirming name and home address or date of birth.</p>
Economic migrants	<p>It may be possible to apply standard identification procedures. Otherwise:</p> <ul style="list-style-type: none"> ▪ Temporary Residency Card; ▪ National Immigration Bureau Card or foreign documentation (e.g. National ID card); ▪ International passport; or ▪ A letter on headed paper signed and stamped by statutory or non-statutory sectors such as employers, community welfare officers, social welfare officers, social workers, MABS, minister of religion, teacher, community employment scheme supervisor, money advisor, justice of peace, peace commissioner, managers of community development and voluntary organizations, FAS and CE Schemes etc. <p>Further information on work permits for non EEA nationals can be found at:</p> <p>http://www.entemp.ie/labour/workpermits/and http://www.citizensinformation.ie</p>
Refugees/Asylum seekers	<p>It may be possible to apply standard identification procedures. Otherwise:</p> <ul style="list-style-type: none"> ▪ GNIB card¹ accompanied by a letter from Government Department coordinating resettlement programme (Office of the Minister for Integration). The letter should state the date the person was admitted as a programmed refugee and should have a copy of a photograph printed on the letter (all current applications include a photograph). The letter and photocopy should be stamped with an official stamp of the Department and signed by a person at HEO or above level. Requirement for a photo should be waived for persons admitted to the State prior to 2007; or ▪ A copy of an International Committee of the Red Cross or other travel document issued by the Government of the country of origin (many refugees admitted under the resettlement programme use these documents) accompanied

by a letter from the Office of the Minister for Integration stating it is a true copy of the document. The copies should be signed and stamped by the official copying them.

- Letters issued to the person from Government Departments.

Members of the Travelling Community

Members of the Travelling Community should be able to produce standard identification evidence; if not, they may be in a particular special case category.

- A check with the local authority, which has to register travellers' sites, may be used as appropriate identification.
- An official paper from a financial institution, signed and stamped by a person in a position of responsibility e.g. solicitor, accountant, doctor, minister of religion, teacher, social worker, community employment scheme supervisor, money advisor, justice of peace, peace commissioner, etc.

Persons without standard documents, in care homes, or in receipt of pension

It may be possible to apply standard identification procedures. Otherwise:

- A current entitlement letter from the Department of Social and Family affairs.

Those without the capacity to manage their financial affairs

It should be possible to apply standard identification procedures. Otherwise:

- Current medical cards for over 18s with an intellectual disability;
- Current entitlement letters/statements/benefit books from Government departments (e.g. Department of Social and Family Affairs/Revenue); or
- Electoral Register Search for those registered.

6.50 As already stated, passports, national identity cards and travel documents should be current, i.e. unexpired. Letters or statements should be of a recent date, i.e. within 12 months. When verified, documents should be originals. In case of need, consideration should be given to verifying the authenticity of the document with its issuer. Solicitors should take reasonable care to check that documents offered are genuine (not obviously forged), and where these incorporate photographs, that these correspond to the presenter.

CHAPTER 7

RELIANCE ON THIRD PARTIES TO UNDERTAKE DUE DILIGENCE

7.1 Section 40(3) of the legislation permits designated persons to rely on third parties to complete part of their client due diligence requirements. However, responsibility for meeting CDD obligations still rests with the designated person, even where it has relied upon a third party, by virtue of section 40(5). Section 40(1) specifies relevant third parties.

7.2 Reliance has a very specific meaning and relates to the process under the Act where a solicitor relies on another regulated person to conduct CDD. The solicitor remains liable for any failure in the client being appropriately identified.

7.3 The legislation is unclear in relation to some key aspects of the ‘reliance’ arrangement. First, the legislation is unclear whether a third party could refuse to allow itself to be relied upon. Secondly, a designated person may not be made aware that a third party has ceased to have a business relationship with a client. As a result, solicitors should be cautious in relying on third parties as they will remain liable for any failure to comply notwithstanding their reliance on the third party.

7.4 The Society recommends that solicitors should ask what CDD enquiries have been undertaken to ensure that they actually comply with the Act, because the solicitor will remain liable for non-compliance. This is particularly important when relying on a person outside Ireland, and solicitors should be satisfied that the CDD has been conducted to a standard compatible with the Third Directive, taking into account the ability to use different sources of verification and jurisdictional specific factors. It may not always be appropriate to rely on another person to undertake the CDD checks and solicitors should consider reliance as a risk in itself.

For what purpose can third parties be relied upon?

7.5 Under section 40(3), a solicitor may rely upon the fact that certain third parties have already undertaken due diligence measures in relation to a client that the third party has introduced to it. However, the solicitor retains responsibility for ensuring that its client due diligence obligations have been met.

7.6 In addition, a solicitor must undertake ongoing monitoring of all clients including where it has relied upon a third party to meet its other client due diligence obligations.

What parties can be relied upon?

7.7 In Ireland, you can rely on a “relevant third party” which is defined by section 40(1) as

- a) A person, carrying on business as a designated person in the State—
- i. that is a credit institution;
 - ii. that is a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services);
 - iii. who is an external accountant or auditor and who is also a member of a designated accountancy body;
 - iv. who is a tax adviser and who is also a member of a designated accountancy body, the Irish Taxation Institute or the Law Society of Ireland;
 - v. who is a relevant independent legal professional; or
 - vi. who is a trust or company service provider, and who is also a member of a designated accountancy body or of the Law Society of Ireland or authorised to carry on business by the Central Bank and Financial Services Authority of Ireland; or
- b) A person carrying on business in another Member State who is supervised or monitored for compliance with the requirements specified in the Third Money Laundering Directive,⁶ and is—
- i. a credit institution authorised to operate as a credit institution under the laws of the Member State;
 - ii. a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services) and authorised to operate as a financial institution under the laws of the Member State; or
 - iii. an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the other Member State; or
- c) A person who carries on business in a place designated under section 31 of the legislation, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Third Anti-Money Laundering Directive, and is
- i. a credit institution authorised to operate as a credit institution under the laws of the place;
 - ii. a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides foreign exchange, or money transmission, services) authorised to operate as a financial institution under the laws of the place; or
 - iii. an external accountant, auditor, tax advisor, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

⁶ (A person will only be supervised in accordance with the Third Directive if the Third Directive has been implemented in the EEA state. You can check on the International Bar Association's website on the progress of implementation across Europe.),

What oversight of third parties must be undertaken?

7.8 Responsibility for meeting CDD obligations rests with the solicitor, even where it has relied upon a third party. The solicitor may wish to detail in its formal written policy document when it considers it appropriate to rely upon third parties to undertake CDD on its behalf.

7.9 Matters that should be considered include:

- Whether third parties should be relied upon where the money laundering or terrorist financing risk is considered to be higher than standard for the client in question;
- Whether only third parties in certain jurisdictions should be relied upon;
- Whether only certain types of third party are relied upon e.g. regulated financial institutions and other registered lawyers; and
- Where third parties are relied upon to carry out CDD and meet the client, whether this will be viewed as face-to-face identification for the purposes of the solicitor's risk assessment.

7.10 The policy should also set out the measures that the firm undertakes to satisfy itself that the particular third parties in question can be relied upon, including:

- The regulatory status of the third party and any adverse publicly available information regarding its compliance standards;
- The experience the solicitor has previously had in relying on the third party, in particular the promptness with which information relating to the identity of a client is provided on request; and
- Where appropriate the solicitor may be in a position to undertake a review of the third party's own AML policies and procedures and level of compliance with the legislation's obligations. This should be considered where the solicitor relies upon a third party in order to meet its CDD obligations in relation to a large number of clients.

7.11 Under section 40(4), where a solicitor relies upon a third party, he/she should obtain confirmation from the third party recognising that the solicitor is relying upon the third party for the purposes of meeting its CDD obligations (except for ongoing monitoring). A solicitor should consider whether it is appropriate to rely upon a third party which has in turn relied upon another third party to meet its CDD obligations.

7.12 Under section 40(4), a third party which is an Irish designated person must, if requested by the solicitor relying on it:

- Make available, as soon as practicable, to the solicitor which is relying on it relevant information about the client which the third party obtained when applying CDD measures; and
- Immediately forward to the solicitor which is relying on it relevant copies of any identification and verification data and other relevant documents on the identity of the client or beneficial owner which the third party obtained when applying those measures.

7.13 Irish solicitors who rely upon third parties which are not Irish designated persons should obtain confirmation from the third party that it will provide the information set out in the paragraph above, as soon as practicable on request.

7.14 The agreement that the solicitor makes with the third party may contain the following information:

- Confirmation that the third party acknowledges that the solicitor is relying upon it for CDD purposes other than monitoring;
- The regulations which they adhere to; and
- Confirmation of the third party's understanding of its obligation to make available, on request, copies of the verification data, documents or other information.

What effect can reliance have on the obligation to conduct ongoing monitoring?

7.15 A solicitor cannot rely upon a third party to undertake ongoing monitoring on its behalf. As a result, the solicitor must obtain sufficient information in relation to the client to undertake the necessary monitoring according to the solicitor's own assessment of the risk presented by the client or the services being provided to the client. This information should be sourced by the solicitor directly or it may be sourced from appropriate third parties. However, while it will be possible to obtain the necessary information about the client from the third party, the solicitor will not have to verify that information if satisfied that it can rely on the CDD measures undertaken by the third party.

What record keeping obligations exist in terms of reliance?

7.16 The solicitor should confirm with the third party that the third party will keep the identification and verification data and other relevant documentation on the identity of the client and that it accepts the obligation to provide information as soon as practicable on request. Where a third party ceases to exist, the solicitor should endeavour to obtain all the identification and verification data from that third party. Where this is not possible, the solicitor is advised to obtain the necessary data from the client.

How can clients be 'passported' between jurisdictions?

7.17 Many firms have branches or affiliated offices ('international offices') in other jurisdictions and will have clients who utilise the services of a number of international offices. It is not considered proportionate for a client to have to provide original identification material to each international office. Some firms may have a central international database of CDD material on clients to which they can refer. Where this is the case, solicitors should review the CDD material to be satisfied that CDD has been completed in accordance with the Third Directive.

7.18 If further information is required, solicitors should ensure that it is obtained and added to the central database. Alternatively, solicitors could ensure that the CDD approval controls for the database are sufficient to ensure that all CDD is compliant. Other firms may wish to rely on their international office to simply provide a letter of confirmation that CDD requirements have been undertaken with respect to the client. This will amount to reliance only if the firm can be relied upon under the terms of section 40 and the CDD is completed in accordance with that section.

7.19 Finally, firms without a central database may wish to undertake their own CDD measures with respect to the client, but ask their international office to supply copies of the verification material, rather than the client themselves. This will not be reliance, but outsourcing. It is important to remember that one international office may be acting for a client who is not a PEP in that country, but will be when they are utilising the services of another office. As such, firms will need to have in place a process for checking whether a person ‘passported’ into one office is a PEP and, if so, undertake appropriate enhanced due diligence measures. Irish-based fee-earners will have to undertake their own ongoing monitoring of the retainer, even if the international office is also required to do so.

CHAPTER 8

REPORTING AND TIPPING OFF

Who does the reporting obligation apply to?

8.1 The reporting obligation applies to all staff in a solicitor's office. [Section 41](#) provides that, for the purposes of the reporting obligation, a reference to a designated person (including solicitors) includes "a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person."

How and when does the statutory obligation to report arise?

8.2 Section 42(1) requires a designated person to report to the Garda Síochána and the Revenue Commissioners any knowledge or suspicion they have that another person is engaged in money laundering or terrorist financing.

"42.—(1) A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds."

(a) What are the designated legal services?

8.3 A solicitor is a designated person for the purposes of the provision of specific legal services as provided in the definition of "relevant independent legal professional":

"relevant independent legal professional" is defined in section 24(1) as a barrister, solicitor or notary who carries out any of the following services:

"(a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

- (i) buying or selling land or business entities;
- (ii) managing the money, securities or other assets of clients;
- (iii) opening or managing bank, savings or securities accounts;
- (iv) organising contributions necessary for the creation, operation or management of companies;
- (v) creating, operating or managing trusts, companies or similar structures or arrangements;

(b) acting for or on behalf of clients in financial transactions or transactions relating to land;”

(b) What is meant by “knows”?

8.4 Having knowledge means actually knowing something to be true. In a criminal court, it must be proven that the individual in fact knew that a person was engaged in money laundering. That said, knowledge can be inferred from the surrounding circumstances; so, for example, a failure to ask obvious questions may be relied upon by a jury to imply knowledge. See *Queensland Bacon PTY Ltd v. Rees [1966]* and *Da Silva [2006] EWCA Crim 1654*.

(c) What is meant by “suspects”?

8.5 Suspicion is personal and subjective and falls short of proof based on firm evidence. British and Australian case law suggests that suspicion is a state of mind more definite than speculation, but falls short of knowledge based on evidence. The Courts have defined suspicion as:

- “Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking”⁷
- “A degree of satisfaction not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not”⁸
- “Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation”⁹
- “A suspicion that something exists is more than mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a slight opinion, but without sufficient evidence”¹⁰
- “It seems to us that the essential element in the word “suspect” and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice”¹¹

8.6 A transaction which appears unusual is not necessarily suspicious. So the fact that a transaction appears unusual is, in the first instance, only a basis for further enquiry, which may in turn require judgment as to whether it is suspicious. A transaction or activity may not be suspicious at the time but, if suspicions are raised later, an obligation to report then arises. A member of staff who considers a transaction or activity to be suspicious would not be expected either to know or to establish the exact nature of any underlying criminal offence, or that the particular funds or property were definitely those arising from a crime or terrorist financing.

8.7 A non-exhaustive list of indicators of potentially suspicious circumstances is contained in Chapter 9.

⁷ *Hussein v Chong Fook Kam [1970] AC 942, 948*

⁸ *Corporate Affairs v Guardian Investments [1984] VR 1019*

⁹ *Walsh v Loughman [1992] 2 VR 351*

¹⁰ *Queensland Bacon Pty Ltd v Rees (1966) 115 CLR 266 at 303*

¹¹ *Da Silva [1996] EWCA Crim 1654*

(d) What is meant by “has reasonable grounds to suspect”?

8.8 In addition to imposing a legal obligation to make a report when there is a suspicion or actual knowledge of money laundering or terrorist financing, the legislation (section 42(3)) requires a report to be made when reasonable grounds exist for knowing or suspecting that a person is engaged in money laundering or terrorist financing. This introduces an objective test of suspicion – solicitors and their staff will not be able to rely on an assertion of ignorance or naivety where this would not be reasonable to expect of a person with their training and position. The test would likely be met when there are demonstrated to be facts or circumstances, known to the solicitor or member of staff, from which a reasonable person engaged in a business subject to the legislation, would have inferred knowledge, or formed the suspicion, that another person was engaged in money laundering or terrorist financing. Staff within solicitors’ offices need to be able to demonstrate that they took reasonable steps in the particular circumstances, in the context of a risk-based approach, to know the client and the rationale for the transaction, or instruction.

8.9 A solicitor will be regarded as not having reasonable grounds to know or suspect that another person has committed an offence on the basis of having received information until the solicitor has scrutinised the information in the course of reasonable business practice.

8.10 “Reasonable grounds” should not be confused with the existence of higher than normal risk factors which may affect certain sectors or classes of persons. For example, cash-based businesses or complex overseas trust and company structures may be capable of being used to launder money, but this capability of itself is not considered to constitute “reasonable grounds”.

8.11 Existence of higher than normal risk factors require increased attention to gathering and evaluation of client information, and heightened awareness of the risk of money laundering in performing professional work, but do not of themselves require a report of suspicion to be made. For “reasonable grounds” to come into existence, there needs to be sufficient information to advance beyond speculation that it is merely possible someone is laundering money, or a higher than normal incidence of some types of crime in particular sectors.

8.12 It is important that solicitors do not turn a blind eye to information, but make reasonable enquiries such as a professional with their qualifications, experience and expertise might be expected to make in such a situation within the normal scope of their assignment or client relationship, and draw a reasonable conclusion such as should be expected of a person of their standing. A healthy level of professional scepticism should be maintained and, if unsure of the action that should be taken, consult with the appropriate person in accordance with the firm’s internal reporting process. If in doubt, staff should err on the side of caution and make a report through the firm’s internal reporting process.

8.13 Reasonable grounds for suspicion could also arise when Client Due Diligence (CDD) measures cannot be applied (section 42(4)). A solicitor may be deemed to have reasonable grounds to suspect money laundering or terrorist financing where they are unable to identify and verify a client’s identity or identify and verify a beneficial owner’s identity or obtain sufficient information about the nature and purpose of a transaction from a client. In such circumstances, the obligation to report should be considered, taking account of the firm’s risk-based assessment of its money laundering and terrorist financing risks. As required by

the legislation, where a solicitor cannot satisfy his/her CDD obligations in accordance with the risk-based approach in relation to a client, then he/she should not carry out a transaction for that client or enter into a business relationship with the client or should terminate any business relationship already established. This should be sufficient in addressing the situation in most circumstances. However, where the failure to satisfy CDD obligations arises in relation to a client that the solicitor would consider to be higher than standard risk, then the solicitor should also consider making a report to the Gardaí and Revenue Commissioners.

When should a report be made?

8.14 Section 42(2) provides that a report should be made “as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.” Hence, a report should be made before proceeding with a service or transaction once it is established that such a report is required. Section 42(7) prohibits solicitors from proceeding with a suspicious transaction or service connected with a report or the subject of a report prior to making a report unless it is not practicable to delay or stop the transaction or service or the solicitor forms the reasonable opinion that failure to proceed might make a client suspicious that a report may be or may have been made or that an investigation may commence or already be in being. Solicitors should also refer to paragraph 8.31 in this regard. However, section 42(8) states that section 42(7) does not authorise a person to proceed with a service or transaction if they have been directed or ordered otherwise.

What is the obligation to report transactions with designated places?

8.15 In addition, section 43 requires that a report shall be made to the authorities in **any** circumstances in which a designated person provides a service or carries out a transaction that is connected with a designated place. Section 32(1) provides that the Minister for Justice may make orders designating places which do not have adequate procedures in place for the detection of money laundering or terrorist financing. Section 32(2) provides that places subject to a decision adopted by the European Commission and in force, under Articles 40(4) and 41(2) of the Third Money Laundering Directive can be regarded as having been designated. The Society recommends that solicitors should check whether a jurisdiction is designated under section 32 when providing services connected with jurisdictions outside of the EU.

Are there exemptions for solicitors from having to make a report?

8.16 Of interest to solicitors will be section 46(1) which removes the requirement to disclose information where that information is subject to legal privilege.

8.17 If a professional adviser considers that the information or other matter on which his knowledge or suspicion is based came to him in privileged circumstances, he is obliged to apply the reporting **exemption** and so has no discretion to make a money laundering report. In such circumstances, he should consider whether he should continue to act.

8.18 Nothing requires the disclosure of information that is subject to legal privilege. This means that communications between a legal adviser and client are not to be disclosed without the consent of the client.

8.19 Whether or not the reporting exemption applies needs to be considered carefully, including a consideration as to whether the solicitor was working in privileged circumstances when the particular information or other matter came to him. This is an important consideration, as a solicitor may be providing a variety of services to a client, not all of which may create a reporting exemption for this purpose. Accordingly, it is strongly recommended that a careful record is maintained of the origin of information considered when a decision is made on the applicability or otherwise of the reporting exemption. It is recommended that the reasons for the conclusion reached as to whether the exemption applies are carefully documented. If the solicitor decides it does apply, he must act in accordance with the exemption. If in doubt, it is recommended that a solicitor would seek independent legal advice.

What is meant by confidentiality?

8.20 A solicitor is professionally and legally obliged to keep the affairs of clients confidential and to ensure that his/her staff do likewise. The obligations extend to all matters revealed to a solicitor, from whatever source, by a client, or someone acting on the client's behalf.

8.21 In exceptional circumstances, this general obligation of confidence may be overridden. However, certain communications can never be disclosed unless statute permits this either expressly or by necessary implication. Such communications are those protected by legal professional privilege.

What is meant by legal privilege?

8.22 For comprehensive information in relation to legal professional privilege, solicitors may wish to refer to Healy, J, *Irish Laws of Evidence*, (Ireland: Thomson Round Hall, 2004), Chapter 13, and McGrath, D, *Evidence*, (Ireland: Thomson Round Hall, 2005), Chapter 10.

Who should a report be made to?

8.23 Reports in relation to money laundering/terrorist financing suspicions are to be made to:

An Garda Síochána
Detective Superintendent
Financial Intelligence Unit (FIU)
Garda Bureau of Fraud Investigation
Harcourt Square, Dublin 2
Tel: + 353 1 6663714
Fax: +353 1 6663711

Revenue Commissioners
Suspicious Transactions Reports Office
Block D
Ashtowngate
Navan Road, Dublin 15
Tel: +353 1 8277542
Fax: +353 1 8277484

8.24 A report is made by sending a completed standard reporting form called an ML 1 Form (see Appendix 2) by post to both An Garda Síochána and the Revenue. In urgent cases, telephone contact can be made between 9am-5pm and/or, if necessary, an STR can initially be sent by fax and followed up by posting in the original.

What are the Law Society’s reporting obligations?

8.25 The Act also imposes a statutory obligation on the Law Society to make a report to the Garda Síochána and the Revenue Commissioners where it suspects that a solicitor has not complied with his/her obligation to identify clients, maintain records, introduce procedures to detect and prevent money laundering, provide training to employees or report a suspicious transaction to the authorities (section 63(2)). Please see Chapter 13 in relation to monitoring obligations for further details.

What information should be disclosed in a report?

8.26 When a solicitor decides that a report should be made, section 42(6) provides that the following information should be contained in the report:-

- “a) The information on which the designated person’s knowledge, suspicion or reasonable grounds are based;
- b) The identity, if the designated person knows it, of the person who the designated person knows, suspects or has reasonable grounds to suspect has been or is engaged in an offence of money laundering or terrorist financing;
- c) The whereabouts, if the designated person knows them, of the property the subject of the money laundering, or the funds the subject of the terrorist financing, as the case may be; and
- d) Any other relevant information.”

8.27 The authorities have devised a standard form called an ML 1 Form which is contained in Appendix 2.

How can the making of a report affect the solicitor-client relationship?

8.28 Clearly, once a solicitor makes a report to the authorities in relation to his/her client, the fundamental element of trust upon which the solicitor/client relationship is based is fatally affected. While section 49 prohibits any person who knows that a report has been made from making “any disclosure which is likely to prejudice the investigation”, the Society was advised by the Minister for Justice, Equality and Law Reform, Michael McDowell SC, on the basis of advice from the Attorney General, Rory Brady SC, in relation to an earlier formulation of the tipping off offence (contained in section 58 of the 1994 Act, as amended) that “this does not prohibit a solicitor from informing his or her client that he or she was ceasing to act for the client or, indeed, that he or she was ceasing to act for a client because he or she was unhappy with any transaction in which the client was involved” (see Appendix 3). Accordingly, the Society recommends that a solicitor who has made a report under section 42 should immediately cease to act for that client and should not maintain the solicitor/client

relationship for any purpose, including any purpose that might be proposed by the authorities to whom the report is made.

8.29 Solicitors should, however, be mindful in this regard of the new power contained in section 23 of the 2010 Act where a member of the Garda Síochána not below the rank of superintendent can authorise them to complete a transaction that would amount to a criminal offence under section 7.

8.30 Save in exceptional circumstances, the Society strongly recommends that a solicitor should cease to act upon forming a suspicion that a money laundering offence is being committed, whether or not a reporting obligation has arisen and regardless of the legal service being provided. While section 23 provides that a member of the Garda Síochána not below the rank of superintendent can authorise a solicitor to continue to act, solicitors should be aware of the ethical difficulties of acting in cases where it is probable, if not inevitable, that the solicitor will be called as a prosecution witness against their own client. Solicitors should also bear in mind the provisions of section 42(7) which permit solicitors to proceed with a service or transaction in certain circumstances, once it is established that a report is required. However the Society further strongly recommends that a solicitor should exercise extreme caution before reaching a decision to so proceed and in particular having regard to the ethical difficulties referred to above.

Is there any liability attaching for the making of a report?

8.31 Section 47 provides that the disclosure of information in accordance with the obligation to make a report shall not be treated, for any purpose, as a breach of any restriction imposed by any other enactment or rule of law on disclosure. The protection contained in section 47 covers a disclosure made by the person or any other person on whose behalf the disclosure was made.

8.32 Similarly, section 83 provides protection for the Law Society in relation to reports made by the Society under section 63(2).

8.33 Section 112 provides that any disclosure to a member of the Garda Síochána or any other person who is concerned in the investigation or prosecution of an offence of money laundering or terrorist financing of information made in good faith shall not be treated for any purpose as a breach of any restriction on the disclosure of information imposed by any other enactment or rule of law.

8.34 A report made in good faith by a solicitor or staff member does not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislation, regulatory or administrative provision, and does not involve the solicitor or staff member in liability of any kind. However, it is important to be aware that any unreasonable or malicious reports not made in good faith which cannot demonstrate reasonable grounds exposes the solicitor or his firm to a risk of liability.

8.35 Solicitors should remain vigilant for any additional activities undertaken by, or instructions from, any client in respect of which a disclosure has been made, and should submit further reports to the Gardaí and/or Revenue Commissioners, as appropriate. The legislation does not impose a prohibition on providing further services to clients about whom

a report has been made. However, the making of such a report should feed into the firm's risk-based assessment.

How do internal reporting procedures operate?

8.36 Although section 42 of the Act imposes an obligation on individual solicitors and their employees to report suspicions to the Garda Síochána and the Revenue Commissioners, the Act also provides at section 44 that such reports may be made "in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of the section".

8.37 The Society **strongly recommends** that every solicitors' firm should establish an internal reporting procedure and appoint a senior individual to whom all solicitors and employees should make reports of any suspicions. This individual (in these Guidance Notes referred to as the Money Laundering Reporting Officer) would have the required knowledge of the legislation and training in this area to assess the situation and act accordingly.

What is the role of the Money Laundering Reporting Officer?

8.38 The Money Laundering Reporting Officer (MLRO) will have the responsibility in a solicitors' firm for communicating reports of suspicious transactions to the Garda Síochána and the Revenue Commissioners and will provide the liaison between the solicitors' firm and the Garda Síochána and the Revenue Commissioners. The person should be sufficiently senior to command the necessary authority. In a firm comprising a sole practitioner or a sole principal, the Society recommends that the sole practitioner/sole principal should themselves assume the role of MLRO.

8.39 The MLRO will have a significant degree of responsibility and should be familiar with all aspects of the legislation. Where a colleague/employee makes a report of a suspicious transaction, the MLRO will need to be satisfied that **all** of the criteria for making a report have been met. He/she will then have to determine whether the information or other matters contained in the transaction report give rise to a knowledge or suspicion that a client is engaged in money laundering.

8.40 In making the latter judgement, the MLRO should consider all other relevant information available within the firm concerning the person or business to whom the initial report relates. This may include a review of other transaction patterns, the length of the relationship and referral to identification records held. If, after completing this review, the MLRO decides that all of the criteria have been met and that the initial report gives rise to a knowledge or suspicion or reasonable grounds to suspect an offence of money laundering, he/she must disclose this information to the Garda Síochána and the Revenue Commissioners.

8.41 The determination of whether or not to report to the Garda Síochána and the Revenue Commissioners implies a process with at least some formality attached to it. It does not necessarily imply that the MLRO must give reasons for negating, and therefore not reporting, any particular matter but, for best practice purposes, internal procedures should require that written reports are submitted to the MLRO and that he/she should record his/her determination in writing.

What procedures should be in place for reporting suspicions to the MLRO?

8.42 Reporting lines for suspicions should be as short as possible, with the minimum number of people between the person with the suspicion and the MLRO. The purpose should be to ensure speed, confidentiality and easy accessibility to the MLRO. Firms should ensure that all colleagues and other employees are aware of the reporting lines and of any changes that arise. The relevant procedures and copies of the Internal Reporting Form should be circulated to all colleagues and employees.

8.43 Colleagues may enquire or consult with each other in order to understand the nature and background to a transaction without necessarily giving rise to the need to make a report to an MLRO, unless they are not satisfied with the clarification they receive.

8.44 A sample Internal Reporting Form is set out at Appendix 4.

What does tipping off mean?

8.45 Section 49 prohibits, at subsections (1) and (2), a designated person (including solicitors) from making any disclosures likely to prejudice any ongoing or future investigation. The prohibition covers information obtained in the course of carrying on business as a designated person that a report has been or is required to be made or that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed.

8.46 The prohibition applies to any person acting, or purporting to act, on behalf of a solicitor's firm, including any agent, employee, partner, director or other officer, or any person engaged under a contract for services with the solicitor.

8.47 Under the legislation, solicitors must not disclose to the client concerned or other third persons that a report has been made to the Gardaí in relation to suspicions of money laundering or terrorist financing or that any investigation is being, or may be, carried out in relation to those suspicions if it is likely to prejudice the investigation.

What defences are available to an offence of tipping off?

8.48 A number of defences are available in different circumstances.

8.49 Section 50 provides that it is a defence for a solicitor charged with a tipping off offence under section 49 to prove that the disclosure was to a client of the solicitor, the solicitor was directed or ordered under section 17 not to carry out any service or transaction in respect of the client and this fact was the extent of the disclosure. Accordingly, it is permissible for a solicitor to inform his client of the fact that he has been directed not to carry out a service, but to say nothing further to that client. It is also a defence if the disclosure was solely to the effect that the solicitor had been directed by An Garda Síochána or ordered by a judge of the District Court not to carry out a service.

8.50 Section 51 provides, at subsection (1), that it is a defence to an alleged offence under section 49 for an accused to prove that they were acting in a specific capacity listed in paragraph (a), (an agent, employee, partner etc..) and that they made the disclosure to another person acting in a similar capacity. Section 51(2) provides a defence to such proceedings

where a person can prove that the disclosure was made by a credit or financial institution to another such institution situated in a Member State or designated place (section 31) and both institutions belonged to the same group.

8.51 Section 51(3) will be of interest to solicitors as it provides a defence where the person was a legal or relevant professional adviser at the time of the disclosure.

8.52 Section 52 provides a defence for a person listed in subsection (1) (including legal advisers) in proceedings for a section 49 offence where they can prove that the disclosure related to a current or former client, a transaction or service involving the person and the institution or adviser and the disclosure was made to prevent money laundering or terrorist financing. The institution or adviser to whom the disclosure was made must also have been situated in a Member State or designated place (section 31) and both the institution/adviser making and receiving the disclosure must have been subject to equivalent duties of professional confidentiality and the protection of personal data.

8.53 Section 53 provides further defences to a person against whom proceedings are being taken for an offence under section 49.

8.54 Disclosure to the client should entail an actual intention on behalf of the solicitor to inform the client that a report has been made or confirming to them that a report has been made where so questioned. Refusing to undertake transactions or to provide services should not be considered to be tipping off.

8.55 Whether to terminate a relationship is essentially a commercial decision, and solicitors should be free to make such judgements where they have money laundering or terrorist financing suspicions about a client. However, a solicitor should consider liaising with the investigating Garda to consider whether it is likely that termination would alert the client or prejudice an investigation in any other way.

8.56 Solicitors may wish to obtain legal advice where there are concerns about tipping off. This may have particular relevance where a document referring to the subject matter of a report is to be released to a third party. Typical examples of documents released to third parties which might give rise to concerns about tipping off include:

- Communications to clients of the intention to withdraw services
- Requests for information arising from a change of solicitor.

8.57 It may be helpful for solicitors on occasion to seek advice from the Gardaí and/or the Revenue Commissioners on matters of concern in relation to the tipping off provisions. However, they should be aware that these authorities are not able to give advice on, and are not entitled to dictate, how professional relationships should be conducted.

CHAPTER 9

SUSPICIOUS TRANSACTIONS

Why should solicitors be conscious of suspicious circumstances?

9.1 A solicitor who is monitoring his/her relationship with clients should be alert for indicators which might raise suspicions, not simply to ensure compliance with the reporting obligation but also for a number of other important reasons:

- To ensure that the solicitor does not unwittingly commit the substantive offence of money laundering or terrorist financing
- To ensure that the CDD measure to verify identity is satisfactorily complied with and determine whether a reporting obligation arises from an inability to complete CDD
- To comply with the CDD measure to obtain information on the purpose and intended nature of the business relationship
- To comply with the CDD measure to conduct ongoing monitoring

What are Money laundering typologies?

9.2 It is important that staff are appropriately made aware of changing behaviour and practices amongst money launderers and those financing terrorism. As well as their regular series of publications on the typologies of financial crime, FATF's Guidance for Financial Institutions in Detecting Terrorist Financing issued on 24 April 2002, contains an in-depth analysis of the methods used in the financing of terrorism and the types of financial activities constituting potential indicators of such activities. These documents are available at www.fatf-gafi.org.

9.3 Solicitors can keep their awareness of money laundering typologies up-to-date by regularly checking the Society's AML web area located in the members' area of the website. In addition, updates will be provided regularly in the Society's eZine.

What are common indicators of potentially suspicious transactions?

9.4 Sufficient training will need to be given to all relevant staff to enable them to recognise when a transaction is unusual or suspicious, or when they should have reasonable grounds to know or suspect that money laundering or terrorist financing is taking place. The set of circumstances giving rise to an unusual transaction or arrangement, and which may provide reasonable grounds for concluding that it is suspicious, will depend on the client and the transaction or service in question.

9.5 Solicitors should be cautious about the following:

- Activities which have no apparent purpose, or which make no obvious economic sense (including where a person makes an unusual loss), or which involve apparently unnecessary complexity;

- The use of non-resident accounts, companies or structures in circumstances where the client's needs do not appear to support such economic requirements; and
- Where the activities being undertaken by the client, or the size or pattern of transactions is, without reasonable explanation, out of the ordinary range of services normally requested or is inconsistent with the experience of the designated person in relation to the particular client.

9.6 Because money launderers are always developing new techniques, no list of examples can be fully comprehensive; however, some key factors may heighten a client's risk profile or give solicitors cause for concern. Clearly, solicitors should be sensible in their approach to matters and should not jump to unwarranted conclusions on the basis of the existence of any one or more of the following factors.

(a) Excessively obstructive or secretive client

- Client does not want correspondence sent to home address.
- Client appears to have dealings with several solicitors in one area for no apparent reason.
- Client repeatedly uses an address but frequently changes the names involved.
- Client is accompanied and watched.
- Client shows uncommon curiosity about internal systems, controls and policies.
- Client has only vague knowledge of the amount of a deposit.
- Client presents confusing details about the transaction.
- Client over-justifies or explains the transaction.
- Client is secretive and reluctant to meet in person.
- Client is nervous, not in keeping with the transaction.
- Client is involved in transactions that are suspicious but seems blind to being involved in money laundering activities.
- Client's mobile, home or business telephone number has been disconnected or there is no such number when an attempt is made to contact client.
- Client is involved in activity out-of-keeping for that individual or business.
- Client insists that a transaction be done inordinately quickly.
- Inconsistencies appear in the client's presentation of the transaction.
- Client appears to have recently established a series of new relationships with different financial entities.
- Client attempts to develop close rapport with staff.
- Client uses aliases and a variety of similar but different addresses.
- Client uses a PO Box or General Delivery address, instead of a street address when this is not the norm for that area/type of business
- Client offers you money, gratuities or unusual favours for the provision of services that may appear unusual or suspicious
- Client advises that a third party will pay legal fees where this would not be normal practice
- Client seeks to pay legal fees in cash
- Client seeks to avoid providing identification information for a group of companies for which he/she is acting as agent by instructing a solicitor to identify only the agent

(b) Client has unusual level of knowledge of AML requirements

- Client attempts to convince employee not to complete any documentation required for the transaction.
- Client makes enquiries that would indicate a desire to avoid reporting.
- Client has unusual knowledge of the law in relation to suspicious transaction reporting.
- Client seems very conversant with money laundering issues.
- Client is quick to volunteer that funds are “clean” or “not being laundered.”

(c) Client is reluctant or vague in relation to identity documents

- Client provides doubtful or vague information.
- Client produces seemingly false identification or identification that appears to be counterfeited, altered or inaccurate.
- Client refuses to produce personal identification documents.
- Client only submits copies of personal identification documents.
- Client wants to establish identity using something other than his or her personal identification documents.
- Client refuses or appears particularly reluctant, to provide the information requested without reasonable explanation.
- Client’s area of residence is not consistent with other profile details, such as employment.
- Client provides an address that is vague or unusual – e.g., an accommodation agency, a professional registered office or a trading address
- Client’s supporting documentation lacks important details such as a phone number.
- There are inordinate delays in client presenting corporate documents.
- All identification presented is foreign or cannot be checked for some reason.
- All identification documents presented appear new or have recent issue dates.
- Identification documents are out of date.

(d) Purpose of instructions, legal services and transactions are unclear

- Transaction seems to be inconsistent with the client’s apparent financial standing or usual pattern of activities.
- Transaction appears to be out of the ordinary course for industry practice or does not appear to be economically viable for the client.
- Transaction is unnecessarily complex for its stated purpose.
- Activity is inconsistent with what would be expected from declared business.
- Transaction involves non-profit or charitable organisation for which there appears to be no logical economic purpose or where there appears to be no link between the stated activity of the organisation and the other parties in the transaction.

(e) Transactions involve unusual levels of funds

- Client seeks to conduct large transactions with cash.
- Client seeks to lodge cash or bank drafts with solicitor’s client account ‘pending’ decisions as to which transaction to pursue.
- Client starts conducting frequent cash transactions in large amounts when this has not been a normal activity for the client in the past.
- Client conducts a transaction for an amount that is unusual compared to amounts of past transactions.

- Client asks you to hold or transmit large sums of money or other assets when this type of activity is unusual for the client.

(f) Transactions involving areas outside Ireland

- Client and other parties to the transaction have no apparent ties to Ireland.
- Transaction crosses many international lines.
- Transaction involves foreign currency exchanges that are associated with subsequent wire transfers to locations of concern, such as countries known or suspected to facilitate money laundering activities.
- Transaction involves wire transfer of funds to or through locations of concern, such as countries known or suspected to facilitate money laundering activities.
- Transaction involves a country known for highly secretive banking and corporate law.
- Transaction involves a country where illicit drug production or exporting may be prevalent, or where there is no effective anti-money-laundering system.
- Transaction involves a country known or suspected to facilitate money laundering activities.

(g) Transactions related to offshore business activity

- Transaction involves loans secured by obligations from offshore banks.
- Transaction involves loans made to or from offshore companies.
- Transaction involves an offshore ‘shell’ bank whose name may be very similar to the name of a major legitimate institution.
- Transaction involves unexplained electronic funds transfers by client on an in-and-out basis.
- Transaction involves use of letters-of-credit and other method of trade financing to move money between countries when such trade is inconsistent with the client’s business.

(h) Property transactions

- Client arrives at a closing with a significant amount of cash.
- Client purchases property in the name of a nominee such as an associate or a relative (other than a spouse).
- Client does not want to put his or her name on any document that would connect him or her with the property or uses different names on Offers to Purchase, closing documents and deposit receipts.
- Client inadequately explains the last minute substitution of the purchasing party’s name.
- Client negotiates a purchase for market value or above asking price, but seeks to record a lower value on documents, paying the difference “under the table”.
- Client seeks to sell property below market value with an additional “under the table” payment.
- Client pays initial deposit with a cheque from a third party, other than a spouse or a parent.
- Client pays substantial down payment in cash and balance is financed by an unusual source or offshore bank.
- Client purchases personal use property under corporate veil when this type of transaction is inconsistent with the ordinary business practice of the client.
- Client purchases property without inspecting it.

- Client purchases multiple properties in a short time period, and seems to have few concerns about the location, condition, and anticipated repair costs, etc. of each property.
- Client pays rent or the amount of a lease in advance using a large amount of cash.

Unusual instructions

9.7 Instructions that are unusual in themselves, or that are unusual for a firm for the client, may give rise to a cause for concern.

9.8 Taking on work which is outside a firm's normal range of expertise can be risky because money launderers might seek to use such firms to avoid answering too many questions. Solicitors should be wary of instructions in niche areas of work in which a firm has no background, but in which the client claims to be an expert.

9.9 If the client is based a long way from the solicitor's offices, consider why the firm has been instructed. For example, has the firm been recommended by another client or is the matter based near the firm? Making these types of enquiries makes good business sense as well as being a sensible anti-money laundering check.

Changing instructions

9.10 Instructions or cases that change unexpectedly might be suspicious, especially if there seems to be no logical reason for the changes.

9.11 The following situations could give rise to a cause for concern:

- A client deposits funds into the solicitor's client account but then ends the transaction for no apparent reason.
- A client tells the solicitor that funds are coming from one source and at the last minute the source changes.
- A client unexpectedly asks the solicitor to send money received into the client account back to its source, to the client or to a third party.

Unusual retainers

9.12 Solicitors should be wary of:

- Disputes which are settled too easily as this may indicate sham litigation.
- Loss-making transactions where the loss is avoidable.
- Settlements paid in cash, or paid directly between parties – eg., cash passed directly between purchasers and vendors without adequate explanation, which could indicate mortgage fraud or tax evasion is taking place.
- Complex or unusually large transactions.
- Unusual patterns of transactions which have no apparent economic purpose.

Use of client accounts

9.13 Client accounts should only be used to hold client money for legitimate transactions for clients, or for another proper legal purpose. Money-launderers will seek to route 'dirty'

money through a solicitor's client account in order to 'clean' it, either by asking for the money to be returned or by purchasing a clean asset with the funds.

Why is it important to establish a policy on handling cash?

9.14 Large payments made in actual cash may also be a sign of money laundering. It is good practice to establish a policy of not accepting cash payments above a certain limit or at all.

9.15 Clients may attempt to circumvent such a policy by depositing cash directly into a solicitor's client account at a bank. Solicitors should avoid disclosing client account details as far as possible and make it clear that electronic transfer of funds is expected.

9.16 If a cash deposit is received, a solicitor will need to consider whether there is a risk of money laundering taking place and whether it is a circumstance requiring a report to the authorities.

Why is it important to monitor the sources of funds?

9.17 Solicitors should monitor whether funds received from clients are from credible sources. For example, it is reasonable for monies to be received from a company if the client is a director of that company and has the authority to use company money for the transaction.

9.18 However, if funding is from a source other than the client, a solicitor may need to make further enquiries, especially if the client has not informed the solicitor what they intend to do with the funds before depositing them into the account. If a solicitor decides to accept funds from a third party, perhaps because time is short, he/she should ask how and why the third party is helping with the funding.

9.19 Solicitors do not have to make enquiries into every source of funding from other parties. However, solicitors must always be alert to warning signs and in some cases will need to get more information.

9.20 In some circumstances, cleared funds will be essential for transactions and clients may want to provide cash to meet a completion deadline. Solicitors should assess the risk in these cases and ask questions if necessary.

Why is important to exercise care when disclosing client account details?

9.21 Solicitors should think carefully before disclosing client account details. Doing so could allow money to be deposited into the client account without their knowledge. If a solicitor needs to provide client account details, he/she should ask the client where the funds will be coming from. Will it be an account in their name, from Ireland or abroad? Solicitors should consider whether they are prepared to accept funds from any source about whom they have concerns.

CHAPTER 10

INTERNAL PROCEDURES

10.1 Section 54 requires solicitors' firms to adopt policies and procedures in relation to the their business to prevent and detect money laundering and terrorist financing.

10.2 Under the section, solicitors' firms are obliged to put in place the following policies and procedures to assist in forestalling and preventing operations relating to money laundering:

- Risk Assessment & Risk Management
- Internal Controls & Compliance Management
- Client Due Diligence
- Identification & Verification
- Third-party Reliance
- Record-keeping
- Reporting & Tipping Off
- Training

10.3 Senior management has an important role to play in implementing a solicitor's AML approach. A law firm's internal systems should include allocation to a partner of overall responsibility for the establishment and maintenance of effective AML systems and controls and, where appropriate given the scale of and nature of the firm, the appointment of a person with adequate seniority and appropriate professional training and experience as responsible for the internal and external reporting process. However, it is not a legal requirement to appoint a person to either of these posts. In some firms, depending on complexity, it may be appropriate for the same person to fulfill both roles. Some firms may also consider it appropriate to appoint a person to the role of MLRO with responsibility on a day-to-day basis for maintaining the firm's AML systems and processes aside from reporting.

10.4 The systems and controls should also cover:

- Appropriate training on money laundering and terrorist financing to ensure that staff are aware of, and understand, their legal and regulatory responsibilities and their role in handling criminal property and money laundering/terrorist financing risk management;
- Appropriate provision of regular and timely information to senior management relevant to the management of the firm's money laundering/terrorist financing risks;
- Appropriate documentation of the firm's risk management policies and risk profile in relation to money laundering, including documentation of the firm's application of those policies;
- Appropriate measures to ensure that money laundering risk is taken into account in the day-to-day operation of the firm, including in relation to:
 - the development of new services;
 - the taking-on of new clients; and,
 - changes in the firm's business profile.
- Appropriate documented internal reporting procedures to ensure prompt reporting of suspicions of money laundering and terrorist financing.

10.5 The effectiveness of the procedures and recommendations contained in these Guidance Notes depends on the extent to which staff in solicitors' firms appreciate the background against which the legislation has been enacted. Relevant staff should be made aware of their statutory obligations and that they may be personally liable for failure to report information in accordance with internal procedures. All relevant staff should be encouraged to become familiar with the requirements of the Act and to provide a prompt report to the designated Money Laundering Reporting Officer (MLRO) of any suspicious transactions.

10.6 The importance of "knowing your client" for money laundering prevention purposes should be emphasized within firms. Staff should be made aware, not only of the need to know the true identity of the client, but also the need to know enough about the type of business activities expected in relation to that client at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a client's transactions or circumstances that might constitute criminal activity.

How can internal controls be implemented and compliance monitored?

10.7 The level of internal controls and extent to which monitoring needs to take place will be affected by:

- a firm's size
- the nature, scale and complexity of its practice
- its overall risk profile

10.8 Issues which may be covered in an internal controls system include:

- the level of staff permitted to exercise discretion on the risk-based application of the Act, and under what circumstances
- CDD requirements to be met for simplified, standard and enhanced due diligence
- when outsourcing of CDD obligations or reliance will be permitted, and on what conditions
- how the firm will restrict work being conducted on a file where CDD has not been completed
- the circumstances in which delayed CDD is permitted
- when cash payments will be accepted
- when payments will be accepted from or made to third parties
- the manner in which disclosures are to be made to the MLRO

10.9 Monitoring compliance will assist solicitors to assess whether the policies and procedures the firm has implemented are effective in forestalling money laundering and terrorist financing opportunities within the firm. Procedures to be undertaken to monitor compliance may involve:

- random file audits
- file checklists to be completed before opening or closing a file
- a log of situations brought to the MLRO's attention, queries from staff and reports made
- reports to be provided from the MLRO or compliance officer to senior management on compliance
- how to rectify lack of compliance, when identified

- how lessons learnt will be communicated back to staff and fed back into the risk profile of the firm.

What level of staff awareness is required?

10.10 All employees involved in the day-to-day business of a solicitors' firm should be made aware of the policies and procedures in place in their firm to prevent money laundering.

How does the role of the Money Laundering Reporting Officer operate?

10.11 While the legislation does not require designated persons to appoint a person to the role of MLRO, it is the **strong recommendation** of the Law Society that, at a minimum, every solicitors' firm should appoint an MLRO. The role of an MLRO is an important one, for reasons such as consistency and quality of decision making and reporting, control over the provision of information, avoidance of disclosure prohibited by the legislation, evidence of the firm meeting its obligations in court proceedings and for the protection of staff.

10.12 The MLRO will have the responsibility for communicating reports of suspicious transactions to the Garda Síochána and the Revenue Commissioners and will provide the liaison between the firm and the Garda Síochána and the Revenue Commissioners. The position within the organisation of the person appointed as MLRO will vary according to the size of the firm and the nature of its business, but he or she should be sufficiently senior to command the necessary authority. As part of the firm's internal procedures the MLRO may delegate some responsibilities to other members of staff. It is recommended that each firm should prepare a detailed specification of the role and obligations of the MLRO.

10.13 The MLRO has a significant degree of responsibility and should be familiar with all aspects of the relevant legislation. He/she is required to determine whether the information or other matters contained in the transaction report he/she has received give rise to reasonable grounds for knowledge or suspicion that a client is engaged in money laundering.

10.14 The relationship between the MLRO and the member of executive management allocated overall responsibility for the establishment and maintenance of the firm's AML systems is one of the keys to a successful AML regime. It is important that this relationship is clearly defined and documented, so that each knows the extent of his, and the other's, role and day-to day responsibilities.

10.15 The MLRO should have the authority to act independently in carrying out his/her responsibilities.

How does the role of the Compliance Officer operate?

10.16 It is also the Society's strong recommendation that each firm should appoint a Compliance Officer with responsibility for establishing and documenting the firm's policies and procedures, ensuring compliance with the firm's obligations and organising training for the relevant staff.

CHAPTER 11

RECORD KEEPING

11.1 Under section 55, solicitors are obliged to keep certain documents and information for use in any investigation into, or analysis of, possible money laundering or terrorist financing by the Gardaí or Revenue Commissioners, or by the Law Society.

11.2 A firm's records system should outline what records are to be kept, the form in which they should be kept and how long they should be kept.

What is the legislative obligation to keep records?

11.3 Section 55(1) requires solicitors to keep records evidencing procedures applied and information obtained by them in compliance with their CDD obligations in relation to each client.

11.4 The form of records to be maintained is outlined by section 55(2) and includes originals or copies of all documents used for the purposes of complying with CDD obligations including verifying identification of clients and beneficial owners, where appropriate.

11.5 Solicitors are obliged to retain records evidencing the history of services and transactions for each client by virtue of section 55(3).

11.6 The length of time for which documents should be retained is specified by section 55(4) as being for a period of not less than 5 years after:

- The date on which the solicitor ceases to provide a service to a client or the date of the last transaction for the client, whichever is the later - for documents required to evidence CDD measures taken by a solicitor.
- The date on which a particular transaction is completed or discontinued, the date on which a series of transactions with or for or on behalf of a client are completed or discontinued, or the date on which a particular service for or on behalf of a client is completed or discontinued - for documents required to evidence the history of services or transactions carried out in relation to the client.

11.7 Section 55(4) specifies the location where records should be maintained as at an office or other premises in the State.

11.8 Sections 55(5) and 55(6) extend record retention obligations in relation to verification of identity documents and transaction history documents to those files already created and retained under the existing 1994 Act obligations, until the 5-year term expires.

11.9 Solicitors who cease to practice before the expiry of a record retention obligation in relation to a client for either identity verification or transaction history documentation will

continue to be bound by the record retention obligations by virtue of section 55(9) until the expiry of the 5 year term in relation to each client.

11.10 Section 55(7) allows files to be maintained, wholly or partly, in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

How can records be used as evidence in criminal proceedings?

11.11 Under the Criminal Evidence Act 1992, information contained in a document is admissible as evidence in criminal proceedings. The 1992 Act includes in the definition of a document “a reproduction in permanent legible form, by a computer or other means (including enlarging), of information in non-legible form”. Information in non-legible form includes “information on microfilm, microfiche, magnetic tape or disk”.

11.12 Possible formats in which records can be retained therefore include one or more of the following, although the list is not exhaustive:

- By way of original documents;
- By way of photocopies of original documents;
- On microfiche;
- In scanned form; or
- In computerised or electronic form.

What record keeping systems and procedures are required?

11.13 Solicitors should keep either a copy of verification material, or references to it. Records should be kept for five years after the business relationship ends or the occasional transaction is completed. Solicitors should consider holding CDD material separately from the client file for each retainer, as it may be needed by different solicitors within your firm. Depending on the size and sophistication of a firm's record storage procedures, solicitors may wish to:

- scan the verification material and hold it electronically
- take photocopies of CDD material and hold it in hard copy with a statement that the original has been seen
- accept certified copies of CDD material and hold them in hard copy
- keep electronic copies or hard copies of the results of any electronic verification checks
- record reference details of the CDD material sighted

11.14 The option of merely recording reference details may be particularly useful when taking instructions from clients at their home or other locations away from the office.

11.15 The types of details it would be useful to record include:

- any reference numbers on documents or letters
- any relevant dates, such as issue or expiry
- details of the issuer or writer
- all identity details recorded on the document

11.16 Where a solicitor is relied upon by another person for the completion of CDD measures, the solicitor must keep the relevant documents for five years from the date on which they were relied upon.

Why is it important to keep risk assessment notes?

11.17 Solicitors should consider keeping records of decisions on risk assessment processes of what CDD was undertaken. This does not need to be in significant detail, but merely a note on the CDD file stating the risk level the solicitor attributed to a file and why the solicitor considered s/he had sufficient CDD information.

11.18 For example:

“This is a low risk client with no beneficial owners providing medium risk instructions. Standard CDD material was obtained and medium level ongoing monitoring is to occur.”

11.19 Such an approach may assist firms to demonstrate they have applied a risk-based approach in a reasonable and proportionate manner. Notes taken at the time are better than justifications provided later.

What records should be kept?

11.20 Solicitors should keep all original documents or copies admissible in court proceedings. Records of a particular transaction, either as an occasional transaction or within a business relationship, must be kept for five years after the date the transaction is completed. All other documents supporting records must be kept for five years after the completion of the business relationship.

Why is important to keep records of suspicions and disclosures?

11.21 It is recommended that solicitors keep comprehensive records of suspicions and reports.

11.22 Such records may include notes of:

- ongoing monitoring undertaken and concerns raised by fee earners and staff
- discussions with the MLRO regarding concerns
- advice sought and received regarding concerns
- why the concerns did not amount to a suspicion and a report was not made
- copies of any reports made
- conversations with Gardaí, Revenue, law enforcement, insurers, supervisory authorities etc regarding reports made
- decisions not to make a report to Gardaí and Revenue which may be important for the MLRO to justify his position.

11.23 Solicitors should ensure records are not inappropriately disclosed to the client or third parties to avoid offences of tipping off and prejudicing an investigation, and to maintain a good relationship with clients. This may be achieved by maintaining a separate file, either for the client or for the practice area.

CHAPTER 12

TRAINING

What is the statutory obligation to provide training to staff?

12.1 Section 54(6) requires solicitors' firms to provide AML training to relevant staff in two areas:

- (1) The instruction of staff on the law relating to money laundering and terrorist financing, and
- (2) The provision of ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity has been identified.

12.2 The importance of "knowing your client" for money laundering prevention purposes should be emphasized within firms. Staff should be made aware, not only of the need to know the true identity of the client, but also the need to know enough about the type of business activities expected in relation to that client at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a client's transactions or circumstances that might constitute criminal activity.

What staff should receive training?

12.3 Relevant staff are those involved in the conduct of the firm's business, which can include partners, assistant solicitors, trainees, legal executives, clerks, secretaries and receptionists. Solicitors should conduct an assessment of those who should receive training by reference to all those who deal with clients, handle funds or otherwise assist with compliance. Consider fee earners, reception staff, administration staff and finance staff, because they will each be differently involved in compliance and so may have different training requirements.

What are the penalties for employers and staff?

12.4 Section 54(8) contains the penalties for failing to train staff which includes imprisonment up to 5 years. Law firms should ensure that appropriate training is conducted and documented.

12.5 Relevant staff should be made aware of their statutory obligations and that they may be personally liable for failure to report information in accordance with internal procedures. All relevant staff should be encouraged to become familiar with the requirements of the Act and to provide a prompt report to the designated Money Laundering Reporting Officer (MLRO) of any suspicious transactions.

12.6 If the firm has failed to provide training, this is an offence on the part of the firm. The fact that the firm has failed to provide appropriate training may provide a defence for the relevant staff who have failed to make a report, in the sense that the test (of being required to

report if there are “reasonable grounds” for knowledge or suspicion as well as actual knowledge and suspicion) may in effect be removed in such circumstances. This test relates to the fact that a solicitor will not be able to rely on an assertion of ignorance or naivety where this would not be reasonable to expect of a person with their training and position.

What form should training take?

12.7 The content of training provided to staff will need to be adapted by individual solicitors’ firms for their own needs. There is no standard way to conduct staff training for money laundering purposes. The training should be tailored to meet the needs of the firm, depending on the size and nature of the firm and the available time and resources. In determining whether a training programme meets the necessary requirements, solicitors should have regard to the firm’s risk profile and the level of involvement certain staff have in ensuring compliance.

12.8 Training can take many forms and may include:

- face-to-face training seminars
- completion of online training sessions
- attendance at AML conferences
- participation in dedicated AML forums
- review of publications on current AML issues
- firm or practice group meetings for discussion of AML issues and risk factors

12.9 Providing an AML policy manual is useful to raise staff awareness and can be a continual reference source between training sessions.

12.10 Firms should also consider:

- criminal sanctions and reputational risks of non-compliance
- developments in the common law
- changing criminal methodologies

12.11 Some type of training for all relevant staff every two years is recommended.

12.12 Firms should consider retaining evidence of their assessment of training needs and steps taken to meet such needs.

Which staff require training?

12.13 Those dealing directly with clients are the first point of contact with potential money launderers and terrorist financiers and their efforts are therefore vital in the strategy for the fight against money laundering and terrorist financing. They should be made aware of their legal responsibilities and the firm’s reporting system for such transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious. This training will also include client due diligence procedures in addition to procedures for clients who cannot provide standard documentation. Training should ensure that:

- Staff are made aware that there is a very wide variety of documentation (from reliable and independent sources) that can be used to identify the client and verify their identity;
- Staff are not restricted to accepting limited types of ID documentation;
- If in doubt about whether a document is acceptable (on its own or taken together with a number of other documents), staff should speak to a partner or contact their Money Laundering Reporting Officer;
- Staff are made aware of the firm's policy for dealing with cash transactions and the need for extra vigilance in these cases; and
- The training should include details of the firm's systems for ongoing monitoring of client relationships and the role the individual plays in the functioning of that system.

How often should training take place?

12.14 It will be necessary to make arrangements for refresher training to ensure that staff are kept aware of their responsibilities and are provided with updates on any changes. While solicitors may wish to take a flexible approach to such training, depending on their type of business, it is recommended that such training should take place as frequently as is required.

How can staff be trained to be alert to specific situations?

12.15 Sufficient training will need to be given to all relevant staff to enable them to recognise when a transaction is unusual or suspicious, or when they should have reasonable grounds to know or suspect that money laundering or terrorist financing is taking place. The set of circumstances giving rise to an unusual transaction or arrangement, and which may provide reasonable grounds for concluding that it is suspicious, will depend on the client and the legal service being sought. Refer to Chapter 9 for further information.

12.16 It is important that all relevant staff are made aware of changing behaviour and practices amongst money launderers and those financing terrorism.

What are appropriate levels of training?

12.17 In terms of the level of training for different individuals within a solicitors' firm, the Society would recommend the following:

(a) Partners/Principals/Assistant Solicitors

12.18 Partners, principals and assistant solicitors who are dealing directly with clients are the primary point of contact with potential money launderers and their efforts are therefore vital to ensure compliance with the requirements of the Act. They should receive appropriate training in CDD measures, should be aware of their legal responsibilities and familiar with the firm's reporting system for suspicious transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious. If the firm does not propose to nominate a Compliance Officer and/or a Money-laundering Reporting Officer, it would be prudent for the principal, the partners and assistant solicitors to attend training sessions organized or recommended by the Law Society.

(b) Managers/Supervisors

12.19 A high level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising or managing staff. This should include the offences and penalties arising from the Act for non-reporting, the internal reporting procedures and the requirements for CDD and the retention of records. Training could be provided internally by a Compliance Officer, MLRO or partner/principal who has attended training themselves.

(c) New employees/administrative or support staff

12.20 A general appreciation of the background to money laundering, and the subsequent need for reporting of any suspicious transactions to the MLRO should be provided to all new employees and administrative or support staff who would be dealing with clients or their transactions, irrespective of the level of seniority. They should be made aware of the legal requirement to report suspicions to the MLRO, and that there is a personal statutory obligation in this respect. Training could be provided internally by a Compliance Officer, MLRO or partner/principal who has attended training themselves.

(d) Compliance Officers and Money Laundering Reporting Officers

12.21 If your firm decides to assign responsibility for compliance procedures to one individual and responsibility for reporting suspicious transactions to the same, or another, individual, then he/they should be provided with in-depth training concerning all aspects of the legislation and internal policies. In particular, the MLRO will require extensive initial and on-going instruction on the validation and reporting of suspicious transactions to the Garda Síochána and the Revenue Commissioners and on the feedback arrangements and new trends and patterns of criminal activity.

12.22 It is the **strong recommendation** of the Law Society that, at a minimum, every solicitors' firm should appoint an MLRO (see paragraphs 10.11 - 10.15). In addition, the Society recommends that every firm should appoint a Compliance Officer (see paragraph 10.16).

What role does the State play in training?

12.23 To assist all designated persons in meeting this obligation, the State must provide them with access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions. The State is also obliged to provide timely feedback on the effectiveness of and follow up to reports on suspected money laundering or terrorist financing.

CHAPTER 13

MONITORING OBLIGATION – ROLE OF THE LAW SOCIETY

What is the impact of the 2010 Act on the Law Society’s monitoring role?

13.1 The 2010 Act extends the role of the Law Society as the competent authority (supervisory body) in respect of solicitors’ compliance with their money laundering obligations. Previously, under the Criminal Justice Act, 1994, as amended, the Society was obliged to make a report where it suspected that a solicitor had either committed the substantive offence or failed to implement measures to combat money laundering (identification and records). The Society had no obligation to report a solicitor for failure to make a suspicious transaction report. The Society will now be required to “effectively monitor” solicitors’ compliance, which is a substantially-increased obligation. Compliance will include monitoring whether a solicitor has met his/her obligation to make a suspicious transaction report in relation to a client.

What is the Law Society’s role as a competent authority under the 2010 Act?

13.2 Section 60 appoints the Law Society as the competent authority for the monitoring of solicitors for the purposes of compliance with the 2010 Act. Section 63 sets out the functions and duties of a competent authority. Under section 63(1), the Law Society will be obliged to “effectively” monitor designated solicitors and the Society will also be required to take measures “that are reasonably necessary for the purpose of securing compliance” by solicitors with their AML obligations. Section 63(2) provides that these measures may include reporting to the Gardaí and Revenue “any knowledge or suspicion” it has that a solicitor “has been or is engaged in money laundering or terrorist financing.” The Society, when determining whether a solicitor has fulfilled their AML obligations, shall consider whether the solicitor is able to demonstrate that their AML requirements have been met which include client due diligence, enhanced client due diligence and reporting obligations (including with designated States under section 43).

13.3 Section 64 provides that nothing in the Act shall limit any functions of the Society derived under any other enactment or rules of law. The Society’s Annual Report will have to include a report of its activities under this section as specified by section 65.

How does the Law Society monitor and secure compliance?

13.4 In order to meet its obligations the Law Society is obliged to widen the scope of a Solicitors Accounts Regulations investigation, pursuant to the provisions of section 66 of the Solicitors Act 1954 (as substituted by section 76 of the Solicitors (Amendment) Act 1994). Solicitors, of course, will be notified of this in the letter they receive from the Law Society in advance of an investigation. The Society must also meet its obligations by widening the scope of an examination of a solicitor’s file in the investigation of a complaint pursuant to section 14 of the Solicitors (Amendment) Act 1994 (as amended by Section 15 of the Solicitors (Amendment) Act 2002).

13.5 In the course of an investigation to ascertain whether there has been due compliance with the Solicitors Accounts Regulations 2001 to 2006, the authorised person will look for evidence that there are proper written procedures within the firm for the prevention and detection of money laundering and terrorist financing as recommended in these Guidance Notes, including procedures for the:

- identification and verification of a client's identity on the basis of documents, data or information obtained from a reliable and independent source,
- identification, where applicable, of the beneficial ownership of various legal entities, as required by the 2010 Act, and taking adequate risk-based measures to verify identities,
- obtaining information, where necessary, on the purpose and intended nature of the business relationship,
- conducting of ongoing monitoring of the business relationship, where appropriate, including scrutiny of the transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the solicitor's knowledge of the client, the business and risk profile, including, where necessary the source of the funds, and
- reporting of suspected money laundering and terrorist financing offences.

13.6 The authorised person is obliged to look for evidence of written procedures within firms which demonstrates that all relevant staff have been provided with guidance in relation to:

- the circumstances when simplified, enhanced and 'standard' client due diligence should be applied,
- how to obtain proof of identity and how to verify that documentation,
- how to assess the risk that a person may be involved in money laundering or terrorist financing,
- procedures to be followed where a principal or member of staff has reasonable grounds to suspect or knows that a person may be involved in money laundering or terrorist financing,
- the identity of the money laundering reporting officer, where appropriate,
- the appropriate records to be maintained of the actions taken by the firm on notification of a suspicion that a person may be involved in money laundering or terrorist financing, in particular risk assessment notes, supporting evidence and records of suspicions and disclosures,
- the prohibition on tipping off to all persons aware of the suspicion and
- the firm's policy on ceasing or continuing to act for a person where a suspicion has been formed and a report made to the appropriate authorities.

13.7 The Society strongly recommends that all staff are thoroughly trained in the proper application of these guidance notes.

13.8 In carrying out an inspection of files, whether in the course of a Solicitors Accounts Regulations investigation or in the course of investigating a complaint, the authorised person will look for evidence that the procedures that the solicitor has in place to combat money laundering and terrorist financing are being implemented. Particular attention will be paid to ensure that the solicitor has fulfilled the obligations in respect of client due diligence and, in appropriate circumstances, reporting of suspected offences of money laundering and terrorist financing.

13.9 If, in the course of examining a solicitor's files the authorised person suspects that a solicitor has

- a) committed a substantive offence of money laundering or terrorist financing,
- b) failed to put in place and implement procedures to combat money laundering and terrorist financing or
- c) failed to fulfil the reporting obligations,

the authorised person must submit a report on that matter to the Money Laundering Reporting Committee of the Law Society. Upon considering the report, the Committee will, where appropriate, report the matter to the Garda Síochána and Revenue Commissioners.

13.10 The money laundering reporting obligation covers the provision of false or misleading information by the solicitor in relation to the statutory provisions relating to the taking of measures to establish the identity of persons for whom certain persons and bodies, generally financial institutions and professional advisers concerned with financial, land and business services, propose to provide specific services, principally services relating to finance, land and business.

13.11 In practice any suspected criminal activity involving identifiable proceeds of crime, including tax evasion and mortgage fraud, on the part of a solicitor might give rise to a money laundering report by the Law Society. A money laundering report might also be required in relation to suspected breach of a solicitor's anti-money laundering obligations.

What is the Society's reporting obligation?

13.12 Section 63 sets out the Law Society's function as a competent authority including reporting to the authorities any knowledge or suspicion acquired in the course of monitoring solicitors that a designated person and/or any other person has been or is engaged in money laundering or terrorist financing.

What is the effect of the tipping off offence on the Society?

13.13 Where a money laundering report has been made by the Law Society, a person who, knowing or suspecting that such a report has been made, makes any disclosure which is likely to prejudice an investigation arising from the report into whether an offence has been committed shall be guilty of an offence. This offence of prejudicing an investigation is often referred to as tipping off. The existence of this offence means that the Law Society must ensure a high standard of confidentiality in administering its reporting procedures.

What constitutes suspicion for the purpose of the money laundering reporting obligation?

13.14 There is no definition of "suspicion" in the legislation. The suspicion is not required to be a reasonable one. Suspicion requires a lesser factual basis than belief, but it must have some factual foundation. Whether or not there was a factual foundation for a suspicion would be tested at the time when the suspicion was formed. It would not be tested retrospectively with the benefit of hindsight. Suspicion does not have to have a basis in

admissible evidence. It can legitimately take into account matters that should be excluded in the trial of a case in court. There are no financial thresholds specified and the obligation to report applies regardless of the amounts involved. For further information, see Chapter 8.

What is the role of the Law Society’s Money Laundering Reporting Committee?

13.15 The Law Society has a Money Laundering Reporting Committee, which carries out the functions generally vested in the Money Laundering Reporting Officer in other organisations with money laundering reporting obligations. The money laundering reporting obligations of the Law Society have been delegated to this Committee with a duty to report to the Council of the Law Society (on a “no-names basis”) on the performance of such obligations. The Money Laundering Reporting Committee is a stand-alone committee with the sole function of making money laundering reports.

How does the Law Society meet the money laundering reporting obligation in practice?

13.16 The Law Society has an internal procedure whereby suspicion that a money laundering offence or an offence of financing terrorism has been or is being committed by a solicitor requires the submission of an internal money laundering report in a prescribed form to the Registrar of Solicitors. This report is then submitted to the Money Laundering Reporting Committee, which decides in each case whether or not a money laundering report should be made to the Garda Síochána and the Revenue Commissioners. In practice, as might be expected, any suspicion is most likely to arise during an accounts inspection or when dealing with a complaint about a solicitor.

What is the Society’s role in relation to Trust and Company Service providers?

13.17 The Society's regulatory function does not extend to bodies corporate providing trust and company services where such bodies corporate are owned and controlled by solicitors. A separate requirement exists for trust and company service providers to register with the relevant competent authority for trust and company service providers, namely the Department of Justice and Law Reform’s Anti-Money Laundering Compliance Unit. Further information is available at www.antimoneylaundering.gov.ie.

CHAPTER 14

DIRECTIONS, ORDERS AND AUTHORISATIONS

14.1 Part 3 of the legislation provides for Gardaí to give directions in relation to transactions. This is a new concept in the fight against money laundering. Essentially, a solicitor can be instructed to not proceed with a transaction for a client. A solicitor can also be authorised to proceed with a transaction which would otherwise be prohibited.

Who can make a direction or order and what can a solicitor be instructed to do under a direction or order?

14.2 A direction can be made by a member of the Garda Síochána, not below the rank of superintendent, for 7 days, or by a District Court Judge, for a period of 28 days. A solicitor can be instructed to not carry out any specified service or transaction during the period of the direction or order.

14.3 The legislation provides, at section 17(1), that a member of the Garda Síochána not below the rank of superintendent may direct a person not to carry out a service or transaction for a period not exceeding 7 days. Section 17(2) provides that a judge of the District Court may order a person not to carry out a specific service or transaction for a period not exceeding 28 days if satisfied on information given by a member of the Garda Síochána that the service or transaction would compromise or assist in money laundering or terrorist financing.

What are the notice obligations?

14.4 Section 18 obliges the Gardaí to ensure that any person affected by an order is provided with notice in writing of the order.

Is there an exemption from giving notice to the person affected?

14.5 There is an exemption from informing someone affected by the order about its existence where disclosure to the person would adversely affect the investigation.

What form should a notice take?

14.6 Section 18(4) specifies that a notice should include the reasons for the direction or order while also advising of the right to make an application for revocation of the order with exemptions from this obligation, contained in section 18(5), where such disclosure might prejudice an investigation.

How can an application for revocation be made?

14.7 Section 19 provides that a judge of the District Court may revoke a direction or order if the judge is satisfied, on the application of a person affected by the direction or order, that the circumstances envisaged under section 17 do not, or no longer, apply.

How can expenses contained in property the subject of an order be discharged?

14.8 Section 20 provides that a judge of the District Court may, on application by any person affected by a direction or order, make any order appropriate to discharge legal expenses and other reasonable living and other necessary expenses.

What is an authorisation?

14.9 Section 23 provides that a member of the Garda Síochána not below the rank of superintendent may, by written notice, authorise a person to engage in an act prohibited under section 7(1), i.e. a money-laundering offence, if the member is satisfied that the act is necessary for the investigation of an offence.

What should a solicitor do if he receives a direction or order?

14.10 If a solicitor receives a direction or order, the Society advises that it is best practice for the solicitor to

- Inform the client that an order has been made;
- Explain the provisions in sections 19 and 20 which (a) permit an application to the Court for the direction or order to be revoked and (b) permit an application to the Court in relation to the property affected by the direction or order;
- Make such application(s) to the Court, if so instructed.

Are there any other relevant statutory provisions?

14.11 Under section 63 of the Criminal Justice Act, 1994, a member of the Gardaí can apply to the District Court for materials to be made available. However, it must be shown that there are reasonable grounds for suspicion in order for the court order to be granted. The MLRO (or other relevant party) is served with the order and must produce the material requested within a timescale of 7 days, unless the District Judge decides otherwise. A file must be prepared within the allotted time granted by the District Court and presented to the Gardaí accordingly. In certain circumstances, the judge may grant a warrant to authorised officers to enter the premises within one month of the issue of the warrant in order to obtain access to materials. It is recommended that anyone required to hand over materials under this section should keep a copy of the materials that are supplied to the authorities.

How can solicitors deal with Criminal Assets Bureau (CAB) warrants?

14.12 A Practice Note entitled “What to do when the CAB comes to call” was published by the Society in 2000. It is available for download in the AML section in the members’ area of the website.

APPENDIX 1

CHECKLIST OF 'ACTIONS' RECOMMENDED TO SOLICITORS TO ENSURE COMPLIANCE WITH AML OBLIGATIONS

1. Read these Guidance Notes in full
2. Read the relevant legislation
3. Appoint an MLRO (see paras 8.38– 8.42)
4. Appoint a Compliance Officer (see para 10.16)
5. Review your Letter of Engagement and ensure that it makes reference to your anti-money-laundering obligations
6. Assess your firm's risk profile (see paras 4.13 – 4.21)
7. Conduct a risk assessment (see paras 4.22 – 4.30)
8. Draft a formal written policy and procedure document to contain guiding principles and the firm's risk mitigation approach (see para 4.33) and to cover the following:-
 - Risk Assessment & Risk Management (see paras 4.1 – 4.32)
 - Internal Controls & Compliance Management (see paras 10.3 – 10.10)
 - Client Due Diligence (see paras 5.2 – 5.74)
 - Identification & Verification (see paras 6.1 – 6.50)
 - Third-party Reliance (see paras 7.1 – 7.19)
 - Record-keeping (see paras 11.1 – 11.23)
 - Reporting and Tipping Off (see paras 8.1 – 8.58)
 - Training (see paras 12.1 – 12.23)
 - Policy for dealing with directions, orders and authorisations from Gardaí (see paras 14.10)
9. Communicate the policy and procedures to all relevant staff
10. Organise training

APPENDIX 2

STANDARD REPORTING FORM - ML 1 - Front

ML1

CRIMINAL JUSTICE (MONEY LAUNDERING & TERRORIST FINANCING) ACT, 2010



GARDA REF. NO. _____ SOURCE REF. NO. _____ DATE _____

NAME OF REPORTING ENTITY:		(Please tick one of the following boxes)	
CONTACT: Money Laundering Reporting Officer		<input type="checkbox"/> Credit Institution	
		<input type="checkbox"/> Financial Institution	
		<input type="checkbox"/> Property Service Provider	
		<input type="checkbox"/> Accountant/ Auditor	
		<input type="checkbox"/> Tax Advisor	
		<input type="checkbox"/> Trust/Company Service Provider	
		<input type="checkbox"/> Relevant Independent Legal Professional	
		<input type="checkbox"/> Casino/Private Members' Club	
		<input type="checkbox"/> Dealers in High Value Goods	
		<input type="checkbox"/> Competent Authority	
<input type="checkbox"/> Other			
ADDRESS OF REPORTING ENTITY:		CONTACT PHONE NO:	
ACCOUNT/POLICY NOS. & DATE BUSINESS RELATIONSHIP COMMENCED:			
CUSTOMER/CLIENT/POLICY NAME(S):		ADDRESS OF CUSTOMER/CLIENT:	
		DATE OF BIRTH:	
IDENTIFICATION AND/OR REFERENCES PRODUCED (INCLUDING SERIAL NOS./IDENTIFICATION NOS., WHERE APPROPRIATE – PASSPORT NOS., DRIVING LICENCE NOS., ETC.)			
EMPLOYER:			
OCCUPATION:			
NATIONALITY:			

APPENDIX 2

STANDARD REPORTING FORM - ML 1 – Back

Details of sum(s) leading to suspicion [specifying whether cash, cheque, etc. and details of person carrying out transaction/instructing same. If sum(s) relate(s) to electronic transfers, specify sender/beneficiary details and respective bank details, etc.]

Other relevant information pertaining to the designated person's knowledge, suspicion or reasonable grounds upon which this Suspicious Transaction Report (STR) is based:

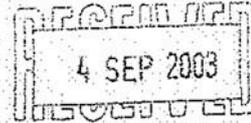
(To be continued on additional pages, if required)

APPENDIX 3

LETTER DATED 3RD SEPTEMBER, 2003



OFFICE OF THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
OIFIG AN AIRE DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRTHE DLÍ



3 September, 2003

Criminal Justice Act 1994 (Section 32) Regulations 2003
S.I. No. 242 of 2003

Dear Geraldine,

I refer to recent correspondence and our meeting of 2nd September 2003 in connection with Directive 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

I now enclose the draft text of an amending statutory instrument which I propose making in the immediate future. It will come into effect at the same time as the earlier statutory instrument on 15th September, 2003.

I wish to confirm that it is my clear view formed on the basis of advice from the Attorney General that there is nothing in the 1994 Act or the regulations that would prohibit a solicitor from informing his or her client that he or she was ceasing to act for the client or, indeed, that he or she was ceasing to act for a client because he or she was unhappy with any transaction in which the client was involved.

I acknowledge that the Society would have preferred me to include a declaratory paragraph to the foregoing effect in the body of the regulation. However, I am of the view that the purpose of the regulation is to make law rather than to declare it.

I also confirm that the Society should feel at liberty to bring this letter to the attention of its members in case any of them might have felt that the making of the regulations obliged them to continue to act for a client in breach of their professional ethics.

Yours sincerely

Michael McDowell, T.D.
MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM

Ms. Geraldine Clarke,
President,
Law Society of Ireland,
Blackhall Place,
Dublin 7.

72-76 ST. STEPHEN'S GREEN, DUBLIN 2 / 72-76 FAICHE STIABHNA, BAILE ÁTHA CLUATH 2
TELEPHONE/TELEFÓN: (01) 602 8202 LO-CALL: 1890 221227 FAX/FACSIMHUR: (01) 661 5461 E-MAIL/RÍOMHÍPOST: info@justice.ie

APPENDIX 4

INTERNAL MONEY LAUNDERING REPORTING FORM

TO: MLRO

FROM: Name..... Extn

Section..... Position

CLIENT:

Name(s)

Permanent Address

..... Date of Birth

Nationality Occupation/Employer

File reference Date business relationship commenced

Legal services previously provided

.....
.....
.....

INFORMATION/SUSPICION:

Transaction/Instruction
.....

Reason for suspicion (please attach copies of any relevant documents)

.....
.....
.....

SIGNATURE..... **Date:**

MLRO USE:

Date received Time received Ref.....

Garda/revenue advised?Yes/No Date..... Ref

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Blackhall Place T +353 1 672 4800 E aml@lawsociety.ie
Dublin 7 F +353 1 672 4801 W www.lawsociety.ie

