



# **Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013.**

**A brief guide for members of the Institute of Certified Public Accountants**

**July 2018**

## **Contents**

- 1. Background**
- 2. What is a money laundering offence.**
- 3. What is a “designated person.**
- 4. Tax Advisers/External Accountants**
- 5. Trust or Company Service Provider (TCSPs)**
- 6. Meaning of “fit and proper person”.**
- 7. Subcontractors**
- 8. Authorisation**
- 9. Key Steps for members**
- 10. Useful Websites**

## 1. The Background

In the Republic of Ireland, where obliged to report under the law, firms are required to submit reports to the Garda Síochána and the Revenue Commissioners in accordance with Irish legislation, the legislation in this area is the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by Part 2 of the Criminal Justice Act 2013.

The purpose of this legislation is to:

- Transpose the third EU Money Laundering Directive (2005/60/EC) and the associated implementing Directive (2006/70/EC) into national law;
- Reflect recommendations made by the Financial Action Task Force (FATF) – a specialist international anti money laundering and counter terrorist financing body established by the G7;
- Require designated members to register with CPA Ireland or another competent authority to ensure these entities or individuals are monitored for compliance with anti-money laundering and terrorist financing legislation in the Republic of Ireland;
- To specify the obligations applicable to those members and registered entities; and
- To enable CPA Ireland to take the measures that are reasonably necessary to secure compliance by those members and registered entities with the requirements of anti-money laundering legislation in the Republic of Ireland.

The Act also establishes a number of **competent authorities** who monitor designated persons and secure compliance with the requirements of the Act.

- The [Central Bank of Ireland](#) for credit institutions or financial institutions
- The designated accountancy bodies for auditors, external accountants or tax advisers
- The [Law Society of Ireland](#) for solicitors
- The [General Council of the Bar of Ireland](#) for barristers
- The Minister for Justice and Equality for any other designated person (administered by the Anti-Money Laundering Compliance)

The Institute of Certified Public Accountants is a competent authority under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by Part 2 of the Criminal Justice Act 2013 and is, in this capacity, required to monitor certain individuals and entities, known as “designated persons”, and to take such measures as are reasonably necessary for the purpose of securing their compliance with the requirements specified in the Act. Accounting firms and individuals are advised to take account of this Guidance when acting in the course of business as **auditors, external accountants, insolvency practitioners and tax advisers**, and when acting in the course of business as trust and company service providers. To do so may provide them with evidence of compliance with the obligations set out in the abovementioned legislation. Failure to meet those obligations could have serious legal, regulatory or professional disciplinary consequences.

## 2. What is a money laundering offence?

Part 2 of the Act defines a **money laundering offence** in terms of property that is the “proceeds of criminal conduct”.

Money laundering offences are committed where a person knows or believes (or is reckless as to whether or not) that the property represents the proceeds of criminal conduct and the person is involved in:

- Concealing or disguising the true nature, source, location, disposition, movement or ownership of the property
- Converting, transferring, handling, acquiring, possessing or using the property or
- Removing the property from, or bringing the property into, the State

A person who commits an offence under this section is liable -

- on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
- on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

### 3. What is a “designated person”?

The Act places obligations on **designated persons** to guard against their businesses being used for money laundering or terrorist financing purposes. Section 25 of the Act defines the term “designated person” as any person working in Ireland in any of the following capacities: A credit or a financial institution (this includes funds and fund service providers, money lenders and money transmission or bureaux de change businesses) unless specifically excepted

- An auditor, external accountant or tax adviser
- A relevant independent legal professional
- A trust or company service provider
- A property service provider
- A casino\*
- A person who directs a private members club at which gambling activities are carried out
- A person trading in goods in respect of transactions involving the receipt of cash of at least €15,000
- Any other person of a prescribed class

\*Casinos are currently illegal in Ireland, but they have been included on the list above as a result of judgements of the European Court. These judgements found that even though Casinos are illegal in Ireland, EU member states must still ensure all provisions of the money laundering directive are set down in national law.

### What are the obligations of designated persons?

Designated persons must:

- Apply **customer due diligence** (for example, identify customers or beneficial owners),
- Report suspicious transactions to An Garda Síochána and Revenue and
- Have specific procedures in place to prevent money laundering and terrorist financing

**It is important to note that the failure of a ‘designated person’ to comply with the obligations contained in the Act is an offence and a person if convicted is liable to a fine or imprisonment or both. It is also an offence for a person to provide advice or assistance to anyone engaged in money laundering.**

### 4. Tax Advisers/External Accountants

Under Section 25 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 a ‘designated person’ is defined as including tax advisers/external Accountants i.e. persons who are not regulated by a designated competent authority providing the following services:

- Tax Advice
- Tax Returns
- Book-keeping

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by Part 2 of the Criminal Justice Act 2013.

An external accountant means a person who by way of business provides accountancy services (other than when providing such services to the employer of the person) whether or not the person holds accountancy qualifications or is a member of a designated accountancy body;

#### **What you need to do:**

You must apply Customer Due Diligence (CDD) to all your clients.

You must keep an anti-money laundering (AML) file containing information on money laundering e.g. policies, guides, correspondence, etc.

You must keep these documents on file with the Accounts for inspection by the institute of Certified Public Accountants

#### **Points to note:**

- Should you have any knowledge, suspicion or reasonable grounds for suspicion, based on information obtained through business activities, that another person is engaging in money laundering or terrorist financing you are required to report your knowledge or suspicions to An Garda Síochána and the Revenue Commissioners using a 'Suspicious Transactions Report form' (STR) form.
- Where you submit a STR form you should note that it is an offence to make any disclosure 'that is likely to prejudice an investigation' to anyone other than An Garda Síochána and the Revenue Commissioners'.

#### **Money Laundering Risk factors for Tax Advisers and External Accountants**

Tax advisers and External Accountants should consider the following risk factors when entering into a business relationship:

- A customer who is reluctant or refuses to meet face to face.
- A customer who creates an undue level of secrecy about transactions or their business.
- A customer who is reluctant or refuses to provide I.D.
- A customer who is associated with criminality in Ireland or abroad.
- A customer who is considered a Politically Exposed Person (PEP).
- A customer who is based in or does business in a high-risk jurisdiction. A high-risk jurisdiction is one which is considered to have low or no money laundering regulations in place. ([www.fatf.org](http://www.fatf.org))
- A customer whose funds are not commensurate with their occupation/background.

The above list is not exhaustive, and businesses should remain vigilant to any suspicious behaviour. Suspicious behaviour is difficult to define and can be considered as behaviour that is outside of the norm and doesn't make sense.

You are reminded that it is your legal obligation to make a STR if anything suspicious arises. You do not need proof to make a STR and you should note that it is an offence to 'tip off' the customer that you are making the report.

#### **4. Trust or Company Service Provider (TCSPs)**

A Trust or Company Service Providers (TCSP) is any person whose business provides any of the following services:

- (a) forming companies or other bodies corporate.
- (b) acting as a Director or Secretary of a company under an arrangement with a person other than the company.
- (c) arranging for another person to act as a Director or Secretary of a company.

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by Part 2 of the Criminal Justice Act 2013.

(d) acting, or arranging for a person to act as a partner of a partnership.

(e) providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership.

(f) acting, or arranging for another person to act, as a trustee of a trust.

(g) acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

A business is prohibited from carrying on the activities of a TCSP without Authorisation under Section 87(1) of the 2010 Act. Please note that it is an offence to carry out TCSP activities without an Authorisation where you could be liable:

- On summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months (or both), or
- On conviction on indictment, to a fine or imprisonment not exceeding 5 years (or both).

#### **What you need to do:**

To carry out activities of a TCSP you must be authorised by the Institute of Certified Public Accountants when you are not monitored by another competent authorities Bank. An authorisation is valid for a period of 3 years from the date of authorisation.

#### **5. Fit and Proper person.**

An application for authorisation is designed to provide the Institute with the necessary information to determine whether a person meets the fit and proper requirements as established by legislation. The criteria for determining whether or not a person is fit and proper has been established in conformity with national law and as a core principle reflects the need to protect businesses from being misused for criminal money laundering purposes.

To issue an authorisation the Institute must be satisfied that each of the following persons are fit and proper persons:

- (i) the proposed holder of the authorisation;
- (ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carry on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);
- (iii) any person who is, or is proposed to be, a beneficial owner of the business concerned,

#### **“principal officer” means—**

- (a) in relation to a body corporate—

any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or

- (b) in relation to a partnership—

- (i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and
- (ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

“ **beneficial owner** ” has the meaning assigned to it by sections 26 to 30 of the Act ;

**Meaning of “fit and proper person”.**

For the purposes of the Act Section 85, a person is not a fit and proper person if any of the following apply:

- (a) the person has been convicted of any of the following offences:
  - (i) money laundering;
  - (ii) terrorist financing;
  - (iii) an offence involving fraud, dishonesty or breach of trust;
  - (iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in *subparagraph (i), (ii) or (iii)* if the conduct occurred in the State;
- (b) in a case where the person is an individual, the person is under 18 years of age;
- (c) the person—
  - (i) has suspended payments due to the person’s creditors,
  - (ii) is unable to meet other obligations to the person’s creditors, or
  - (iii) is an individual who is an undischarged bankrupt;
- (d) the person is otherwise not a fit and proper person.

**6. Subcontractors**

Regarding sub-contractors, please note that Sections 41 to 43 of the Act establish that 'agents' and other persons engaged by way of contract for services with accounting firms have a reporting obligation under the Act.

“a reference to a designated person 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.”

Agents of, and other persons 'engaged under a contract for services' with, accounting firms are required, under Sections 41 to 43, to make a report to the Garda Síochána and the Revenue Commissioners where they have knowledge, suspicion or reasonable grounds for suspicion that another person “has been or is engaged in an offence of money laundering or terrorist financing.

Such reporting is required, independently of the accounting firm and unlike the approach of the 2010 Act regarding employees being permitted to report by way of an internal reporting procedure, agents do not fulfil their obligations by reporting up to the accounting firm to which they are contracted by way of an agreed reporting procedure. Section 52 would, however, permit agents, who are themselves external accountants, to report their knowledge and suspicions also to the accounting firm to which they are contracted without committing the offence of prejudicing an investigation

A person who fails to comply with section 43 commits an offence and is liable—

- on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
- on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Note that the Irish anti-money laundering regime does not apply to some services that accounting firms may undertake and applying the regime’s requirements to all their services may in these cases be

unnecessarily costly. This Guidance assumes that many accounting firms will find it easier, and more effective, to apply the requirements to all their services. However, it is a decision for each business to take. Where accounting firms choose to outsource or subcontract work to non-regulated entities that are not designated persons under the 2010 Act, they should bear in mind that they remain subject to the obligation to maintain appropriate risk management procedures to prevent money laundering activity. In that context, accounting firms should consider whether the subcontracting increases the risk that they will be involved in or used for money laundering, in which case accounting firms are advised to implement appropriate controls to address that risk.

It is recommended that accounting firms employing the services of subcontractors, who are themselves external accountants/auditors, should establish procedures whereby any suspicions that such agents may have of money laundering and terrorist financing activity, such that they are obliged under the abovementioned sections to report to Garda Síochána and the Revenue Commissioners, are also communicated to the accounting firm in accordance with that procedure.

Individuals who provide accountancy services as subcontractors will not be required to register if they subcontract to an accountancy service provider but do not provide services directly to the clients and have evidence in the form of a contract that they are included in, and comply with, all the firm's anti-money laundering procedures and policies.

Subcontractors and firms who outsource or subcontract work should refer to Section 1.20 M42 (revised) Anti-Money Laundering Guidance for members of the Bodies affiliated to the Consultative Committee of Accountancy Bodies in Ireland (CCAB-I) for guidance in this matter which is available on CPA Ireland's website.

## **7. Authorisation**

To obtain authorisation or renew an existing authorisation you must complete and submit:

- An application form;
- A 'fit and proper' form for individuals, each beneficial owner and each principal accompanied by valid photographic identification in the form of a passport or driving licence;
- Proof of address in the form of a utility bill / bank statement / government document;
- Payment in the amount of €130;
- Constitution in the case of a Corporate Body; and
- Certificate of Incorporation in the case of a Corporate Body.

Authorisation will depend on the type of work you do;

- whether your business is a "designated person" (as defined in the Act),
- whether or not you are a principal in the firm / other entity
- whether or not you and / or the firm / other entity is already subject to supervision by another competent authority; and
- whether or not you are a subcontractor



Consider the following member status to determine if your authorisation is required.

Member status	Firm / other entity	Authorisation required
Employee	A member firm	None
Employee	A non-member firm operating within the Republic of Ireland	None
Employee	Entity providing book-keeping services or trust or company services	None
Principal	Regulated Member firm for the purposes of AML	None
Principal	Non-Regulated Member firm (including sole trader) firm for the purposes of AML operating in the following areas within the Republic of Ireland: <ul style="list-style-type: none"> <li>• audit</li> <li>• accountancy (including book-keeping)</li> <li>• tax advice</li> <li>• trust or company service provision</li> </ul>	The firm is a designated person and you must ensure that the firm is subject to supervision for money laundering purposes. If it is not already subject to supervision by another competent authority.
Subcontractors (non-regulated entity)	That do not provide services directly to the clients and have evidence in the form of a contract that they are included in, and comply with, all the firm's anti-money laundering procedures and policies.	No Authorisation required but will have a reporting obligation under the Act.
Subcontractors (non-regulated entity)	That provide services outsourced by the firm directly to the clients and no contract that they are included in, and comply with, all the firm's anti-money laundering procedures and policies.	Authorisation required and have a reporting obligation under the Act.

## 9. Key Steps for members

- 1) Read the 2010 Act as amended by the Criminal Justice Act 2013 and M42 (revised) Anti-Money Laundering Guidance for members of the Bodies affiliated to the Consultative Committee of Accountancy Bodies in Ireland (CCAB-I)
- 2) Ensure that you and your employees are aware of the legislation governing money laundering and the implications of changes to the day-to-day operations.

- 3) Ensure your policies and procedures are updated to reflect the Act's requirements.
- 4) Keep abreast of all new developments via the CPA's Ireland anti-money laundering webpage, ebulletins, accountancy plus and other sources.
- 5) You should satisfy yourself that your staff are trained in and aware of both the legislative requirements and your firm's own procedures. It is advisable that you monitor the training they have received and consider whether there is adequate knowledge of the legislation governing money laundering and that their obligations are always up to date. The maintenance of training records evidencing the fulfilment of all obligations in this regard should be considered.
- 6) It would be useful to draw clients' attention to the requirements under the Act and the engagement letter is one way of doing this. It may be helpful to explain to their client the reason for requiring evidence of identity and this can be achieved by including an additional paragraph in the engagement letter. It may also be helpful to inform clients of the accounting firm's responsibilities under the Act to report knowledge or suspicion, or reasonable grounds to know or suspect, that a money laundering offence has been committed

## 10. Useful Websites

<b>Criminal Justice (Money Laundering and Terrorist Financing) Act 2010</b>	<a href="http://www.irishstatutebook.ie/eli/2010/act/6/enacted/en/html">http://www.irishstatutebook.ie/eli/2010/act/6/enacted/en/html</a>
<b>Criminal Justice Act 2013</b>	<a href="http://www.irishstatutebook.ie/eli/2013/act/19/enacted/en/pdf">http://www.irishstatutebook.ie/eli/2013/act/19/enacted/en/pdf</a>
<b>M42 (Revised) Anti-Money Laundering Guidance ROI</b>	<a href="http://www.cpaireland.ie/members/members-in-practice/anti-money-laundering">http://www.cpaireland.ie/members/members-in-practice/anti-money-laundering</a>
<b>Further AML Reading – CPA AML webpage (Republic of Ireland)</b>	<a href="http://www.cpaireland.ie/members/members-in-practice/anti-money-laundering">http://www.cpaireland.ie/members/members-in-practice/anti-money-laundering</a>
<b>Financial Action Task Force</b>	<a href="http://www.fatf-gafi.org/pages/">http://www.fatf-gafi.org/pages/</a>
<b>Department of Justice Law &amp; Equality Compliance Unit AML</b>	<a href="http://www.antimoneylaundering.gov.ie/">www.antimoneylaundering.gov.ie/</a>